

CANADA GAMES AQUATIC CENTRE RENEWAL AND ENERGY EFFICIENCY RETROFIT SERVICES AGREEMENT

This Efficiency Services Agreement (“ESA”) is made as of _____, 2013 by and between AMERESCO CANADA INC., a Canadian corporation with an office at 90 Sheppard Avenue East, 7th Floor, Toronto, Ontario, M2N 6X3 (“Ameresco”), and The Corporation of the City of London with an office at City Hall, 300 Dufferin Ave., P.O. Box 5035, London, Ontario, N6A 4L9 (“Customer”). Ameresco and Customer are hereinafter sometimes referred to individually as “Party” and collectively as “Parties”. This Efficiency Services Agreement (“ESA”) includes general terms and conditions (“GT&C”) that are attached hereto or included herewith as **Appendix A** and each other supplement, exhibit, appendix and other attachment hereto. The “Execution Date” of this ESA is the date written above.

SECTION 1 Identification of Projects

1.1 Canada Games Aquatic Centre Energy Reduction and Facility Renewal Study Report. For each proposed Measure in Customer’s facilities identified on **Exhibit 1** hereto (the “Facilities”), Ameresco has conducted an engineering, site evaluation study and financial analysis (“Canada Games Aquatic Centre **Energy reduction and Facility Renewal Study Report**”) to identify cost reduction and efficiency projects (“Measures”). The Measures shall consist of the related engineering, design and construction services, equipment, devices, and software that Ameresco will install and implement in the Customer’s Facilities to achieve energy and operational cost reductions, increased efficiencies and productivity improvements under this ESA. (Equipment installed as part of or incorporated into the Measures is referred to as the “Equipment.”) The results of the Canada Games Aquatic Centre **Energy Reduction and Facility Renewal Study Report** has been delivered to the Customer in a report (“Canada Games Aquatic Centre **Energy Reduction and Facility Renewal Study**”) that includes the following:

- (i) A description of the existing conditions and costs of energy consumption and operation at the Facility;
- (ii) A description of the specific Measures recommended by Ameresco for installation and implementation at the Facility; and
- (iii) An estimate of the energy and operating costs that will be saved and/or efficiencies that will be gained by the Measures.

1.2 Identification of the Measure. The Canada Games Aquatic Centre **Energy Reduction and Facility Renewal Study Report** describe specific Measures to be provided under this ESA via a project summary (a “Project Summary”) which is attached to this Agreement as **Exhibit 2**. The Project Summary also sets forth certain terms upon which the services of Ameresco shall be provided. Additional terms relating to each Measure will be included in the final Design Documents Package (as such term is defined below). Subject to the terms of this ESA, including the terms in the Project Summary and final Design Documents Package, Ameresco agrees to provide, and Customer agrees to accept, the Measures. The cost of the Measures will be as stated in the Project Summary and such Measure costs shall be adjusted by the final Design Documents package and will be paid by Customer on the terms stated therein and in accordance with this Agreement and its attachments.

SECTION 2 Scope of Work and Ameresco' Responsibilities

2.1 Measure Implementation. Measure installation and implementation work (the "Work") shall be completed by Ameresco and any third-party contractor (and subcontractors thereof) retained by Ameresco to perform the Work (the "Implementation Contractors"). Ameresco, acting by itself and in conjunction with or through its Implementation Contractors, shall perform the following tasks:

- (a) Consult with Customer's Facility staff to coordinate Work, responsibilities, third party contractor selection, subcontractor selection and schedule.
- (b) Execute Measure final design, including final sizing and selection of Equipment and components associated with installation.
- (c) Prepare written technical specifications for the Measure. Prepare diagrammatic mechanical, electrical, and other drawings illustrating the proposed scope of Work.
- (d) Review design documents package ("Design Documents Package") with Customer. Modify design documents as necessary, based on this review.
- (e) Prepare a final Design Documents Package. The final Design Documents Package will include technical and diagrammatic mechanical, electrical, and other drawings and specifications as necessary to illustrate the scope of Measure installation Work. The Design Documents Package shall be the basis for bidding or negotiation of prices for construction labor and materials required for the Work.
- (f) Review the bid or negotiated prices received from the Implementation Contractors for the Work.
- (g) Present the final Design Documents Package and the Implementation Contractors and materials vendor selections to Customer, and obtain the approval of Customer to commence the Work. Customer acknowledges that the pricing presented in the final Design Documents Package is only valid for a period of thirty (30) days from the date of issuance and if Ameresco does not receive approval to commence the Work in such timeframe, the pricing may vary.
- (h) Upon Customer's approval of the final Design Documents Package, execute contracts with the selected Implementation Contractors and vendors. Prepare final Measure construction schedule and review same with Customer, Implementation Contractors, and material vendors in construction startup meeting.
- (i) Review shop drawings and other submissions for major pieces of Equipment prior to installation.
- (j) Act as General Contractor on the project and assume all the obligations and requirements of the Occupational Health & Safety Act. Manage construction labor and materials delivery and construct the Measure utilizing the Implementation Contractors. Conduct periodic construction progress meetings and prepare and submit monthly construction progress reports, which will include a progress report, a narrative description of the Measure installation Work completed during the previous month and an estimate of percentage completion of Measure installation.
- (k) Review and submit any change order requests for approval by Customer pursuant to Section 5.1 hereof.
- (l) Prepare and submit a list of remaining Work at substantial completion of Measure construction.
- (m) Conduct commissioning of Measure Equipment at final construction completion.
- (n) Prepare operation and maintenance manuals, as-built drawings, and train personnel for operation and maintenance and consulting during operation.
- (o) If necessary, apply, obtain and pay for any required permits.
- (p) Pay for and provide 50% Performance and 50% Labour and Material bonds in the form as described in Appendix 4. The cost for the 50% Performance and 50% Labour and Material Bond shall be paid for by the Customer and such cost is not included in 6.1 (a) or 6.1 (b).

2.2 Measure Completion. When the Measure Work is completed, Ameresco shall prepare and deliver to Customer a “Project Completion Report” for all buildings covered under the Measure. The Project Completion Report shall not be issued until all work required to be done by the Design Documents Package, as amended from time to time, has been completed, a deficiency list has been created and all deficiencies contained in the deficiency list have been completed. The Project Completion Report shall include:

- (a) A description of the procedures used and results of Measure commissioning.
- (b) Final Measure economics of any change orders approved during construction.
- (c) A final invoice for the Measure and data supporting the invoiced amount.

Upon delivery of the Project Completion Report, the Work shall be deemed completed and Customer shall be deemed to have accepted the Work (the “Acceptance”).

2.3 Liens. Ameresco shall indemnify, hold harmless, and defend Customer from and against any and all loss, costs, damages and expense arising out of or in connection with any and all liens filed in connection with the Work, including, without limitation, all reasonable expenses and reasonable legal fees incurred in discharging any liens or similar encumbrances. If Ameresco shall fail to discharge promptly any lien or claim upon the Measure, any interest therein, or upon any materials, equipment or structures encompassed therein, or upon the Facilities, Customer shall notify Ameresco in writing and Ameresco shall then satisfy or defend any lien or claims. If Ameresco either does not promptly satisfy such liens or claims or does not give reasons in writing satisfactory to Customer for not causing the release of such liens or paying such claims, Customer shall have the right, at its option, upon the giving of written notification to Ameresco, to cause the release of, pay or settle such liens or claims. Ameresco shall have the right to contest any such lien provided it first provides a bond or other assurance of payment reasonably satisfactory to Customer, in the amount and in such form and substance to satisfy such lien.

2.4 Customer’s Facility; Concealed Conditions. Neither Ameresco nor its Implementation Contractors assume any responsibility or liability for the existing status and/or condition of Customer’s Facility. To the extent that Ameresco or the Implementation Contractors discover that, as an incidence to the performance of services hereunder, the Facility or any existing equipment therein must be modified to bring it into compliance with applicable codes, it shall be the sole responsibility of Customer to arrange to have the necessary work done in a timely manner at Customer’s expense so as not to unduly delay Ameresco’s performance. Ameresco shall not have control or charge of and shall not be responsible for the acts or omissions of Customer, or for delays or cost increases due to concealed conditions or Customer-caused delays.

2.4.1 Specific Facilities. In the event that the Customer determines that concealed conditions in any specific location of the Customer are such that the costs of remediation are in the sole discretion of the Customer excessive or unreasonable under the circumstances, the Customer may notify Ameresco in writing of such circumstances and in such event the Customer shall be entitled to terminate this Agreement as to that specific location and in such instance the compensation to be paid by the Customer to Ameresco for such location would be reduced by an amount of the costs allocated to such location adjusted for Work done by Ameresco up to the termination date for that specific location.

2.5 Standards of Performance; Warranties

- (a) Ameresco warrants that its services will be performed with professional thoroughness and competence of the engineering profession, that materials and Equipment incorporated in the Measure will be new unless otherwise specified, and that the Work will be of good and workmanlike quality, and in conformance with the final Design Documents Package. There is no other warranty or representation, whether statutory, expressed or implied. The sole liability of Ameresco relating to its services shall be limited to performing at Ameresco’s expense any services performed by Ameresco which have failed to meet the above warranties, if such failure is promptly reported to Ameresco no later than 365 days following the Acceptance. The foregoing remedy shall be Customer’s sole remedy for any failure of Ameresco to comply with its warranty obligations, and Customer releases from all further liability for its warranty obligations.

- (b) Ameresco shall provide to the Customer where applicable, the Manufacturer's Warranty and the Installation Subcontractors' Warranty for deficiencies in materials and workmanship. Ameresco shall have no obligations or liability with respect to any defects in the materials or Equipment.
- (c) Ameresco shall, at the request of the Customer, during the term when any manufacturer's warranty and/or installation subcontractor's warranty for deficiencies in materials and workmanship is in effect, assist the Customer in dealing with any such manufacturer and/or installation subcontractor.
- (d) The Parties acknowledge that the terms of this Agreement together with any documentation referred to in this Agreement constitute the entire relationship between the Parties and that there are no representations and warranties by either Party except as expressed in this Agreement or in any document referred to in this Agreement

2.6 Implementation Contractors. Construction services shall be performed by Ameresco and the Implementation Contractors and suppliers selected by Ameresco in consultation with the Customer and acting in Ameresco's interest. Such Implementation Contractors and suppliers shall be paid by Ameresco. Nothing contained herein shall create any professional obligation or contractual relationship between Customer and Ameresco's Implementation Contractors and suppliers. The Implementation Contractors and suppliers shall at all times remain independent contractors. Ameresco shall also require its Implementation Contractors to secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured or are legally required at the time the final Design Documents Package is submitted. Ameresco shall require its Implementation Contractors to correct Work which does not conform to the final Design Documents Package.

2.7 Additional Services. The following services are not included in Ameresco's services under this ESA, but can be performed as additional services subject to mutual agreement of the Parties as to scope and compensation. Such services include but are not necessarily limited to the following:

- (a) Preparing to serve or serving as a witness in connection with any public hearing, arbitration proceeding or legal proceeding at the request of Customer, except where Ameresco is a party to such activity.
- (b) Providing services after delivery of the Project Completion Report.

2.8 Energy Performance Monitoring. In the event that the Customer approves the 2014 Capital Budget as described in 6.1 (b), Ameresco shall provide energy performance monitoring for Three (3) years (the "Energy Performance Monitoring Period") following the execution date of the project Acceptance Certificate as described in **Exhibit 2** attached hereto. The fee for this service is included in Ameresco's compensation as described in Section 6.1 (b) and is part of the Base Services in Exhibit 2 attached hereto. . Ameresco shall carry out the energy performance monitoring in general compliance with the International Performance Measurement and Verification Protocol (IPMVP, EVO 10000 – 1:2012), Option C.

2.9 Energy Savings Guarantee. In the event that the Customer approves the 2014 Capital Budget as described in 6.1 (b), Ameresco guarantees to the Customer an annual energy saving guarantee based on One Hundred Percent (100%) of the annual energy savings total of One Hundred and Thirteen Thousand, Six Hundred and Ten Dollars (\$113,610.00) for each of the Three (3) years of the Term following the execution date of the project Acceptance Certificate. The Customer acknowledges that the calculation of the annual energy saving guarantee is based on approved final Design Documents Package targets and will incorporate the following reconciliation process:

- (a) If savings in the last year of the Energy Performance Monitoring Period fail to meet the Energy Savings Guarantee as defined in Section 2.9, then Ameresco will pay the Customer the net present value of the difference between the Annual Savings Guarantee and the savings realized in the last year of the Energy Performance Monitoring Period calculated over the simple payback term. Such payment shall be Ameresco's sole liability for failing to achieve Energy Savings Guarantee.

2.10 Calculation of the Savings Realized to Date. Avoided energy costs (“Savings Realized to Date”) will be calculated in the following manner for each month:

- (a) Customer shall at the end of each month and upon receipt thereof by Customer, send Ameresco copies or electronic media of all of the energy bills for the Facilities which it receives after the execution of this Agreement, and copies of all other data required by Ameresco to enable Ameresco to determine energy savings;
- (b) A “Base Line” of energy consumption as described in the Canada Games Aquatic Centre **Energy Reduction and Facility Renewal Study Report**, as agreed between the parties, attached hereto will be used to determine the amount of energy consumption avoided as a result of the installation of the Measure.
- (c) Ameresco shall calculate the avoided energy consumption achieved at the Facilities by comparing the actual energy consumption of the current month with consumption during the equivalent Base Line month for each type of energy consumed in the Facilities. For such actual measurements, Ameresco will rely upon energy bills received by the Customer, with such adjustments which have been communicated and processed with the Customer and as appear to Ameresco to be necessary wherever the period covered by an energy bill does not coincide with the report or a reconciliation period.
- (d) Ameresco will process the current month and the equivalent Base Line month through the applicable utility rate structure in the manner set forth in the Canada Games Aquatic Centre **Energy Reduction and Facility Renewal Study Report** to determine the avoided energy cost.
- (e) Ameresco shall prepare and send to Customer an annual Energy Savings Report which shall set forth for each month the amounts of the savings realized to date. This shall be submitted within 90 calendar days of receipt of all of the applicable utility bills and the Customer’s annual base line changes report as in accordance with Section 2.8 for all of the facilities from the Customer for the billing period. The annual report shall include percent achievement figures for utility units and total dollar savings by Facility. Within 90 Days following the execution date of the project Acceptance Certificate and receipt of the required utility billing data, Ameresco shall submit a report of the total Construction Period savings generated including monthly amounts.
- (f) In the event that actual measurements of energy consumption for any type of energy used for the Facilities are not available or readily obtainable because of a strike or other labour dispute by employees of Customer or employees of the energy suppliers, damage to or destruction of any energy counters or registers or any other cause beyond the reasonable control of Ameresco, the Energy Savings Report may be based upon estimates of energy consumption as detailed, in the Energy Reduction and Facility Renewal Study Report with such modifications as may appear to Ameresco to be necessary. For any amount by which the savings realized to date is different from the estimated energy savings for such period, in circumstances where such actual energy savings can be subsequently determined, the variance shall be adjusted with the next Energy Savings Report.
- (g) Each Energy Savings Report will include any stipulated utility savings as described and agreed to by the Customer in Appendix 4 and the Canada Games Aquatic Centre Energy Reduction and Facility Renewal Study Report.

SECTION 3 Customer's Responsibilities

3.1 Customer's Responsibilities. In connection with the Measures and the Work, Customer shall have the following responsibilities:

- (a) Customer shall assist Ameresco in the coordination and approval of the Work and shall provide full information regarding its requirements and shall designate a person with authority to act on its behalf with respect to all matters concerning the Facility upon which Ameresco shall have the right to rely.
- (b) Customer shall provide access to existing plans, blue prints or schematics, and equipment related operational records/information for the Facility as needed for the performance of the Work hereunder.
- (c) Customer shall provide Ameresco and its Implementation Contractors appropriate access and rights to occupy and work upon the Customer Facility, including access and rights to use various utilities available at the Facility in order to undertake the services called for under this ESA.
- (d) Customer shall provide any information concerning any concealed or latent conditions, which are of an unusual nature that affects the performance of the Work and vary from those indicated by the Final Design Documents. To the extent Customer observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the final design or construction documents, Customer shall give prompt written notice thereof to Ameresco.
- (e) The services, information, access, and assistance required by paragraphs (a) through (d) above shall be furnished at the expense of Customer, and Ameresco shall be entitled to rely on the completeness and accuracy thereof. Unexcused nonperformance of any of these obligations shall relieve Ameresco of its obligations to perform hereunder to the extent that it prevents Ameresco or its Implementation Contractors from performing. Nonperformance by Customer shall be excused when caused by an act or omission of Ameresco. Customer shall, at the request of Ameresco, endeavor to assist Ameresco in obtaining from Customer all services, information, access, and assistance as expeditiously as possible for the orderly progress of Ameresco's services.

SECTION 4 Time

4.1 Time. Ameresco shall provide all services under this ESA as expeditiously as is consistent with reasonable skill and care and the orderly progress of design and construction; provided that all services to be performed by Ameresco pursuant to this Agreement shall be completed within 18 months of the date of execution of this Agreement, failing which any services not yet performed by Ameresco may at the option of the Customer be terminated and cancelled and the Agreement shall thereupon proceed with respect only to those services which have in fact been performed and completed by Ameresco. The construction contract schedule is based on the following time lines:

1. Based on an expectation of the contract execution date on June 26th, 2013.
2. Preplanning and Design will commence on July 2nd, 2013.
3. All Design approvals will be provided so that equipment required for the project will be secured for appropriate delivery times in 2014 by December 6th, 2013.
4. The Facility will be shut down and available to Ameresco to start work on March 31st, 2014.
5. The Facility will be available for the City on October 17th to prepare for its re-opening on November 1st, 2014.
6. All services to be performed by Ameresco pursuant to the agreement will be completed by November 28th, 2014.
7. The October 17th date will be delayed by the number of business days the contract is signed after June 26th, 2013 and by the number of days the Facility is available for Ameresco to start work following March 31st, 2014.

SECTION 5 Changes in the Work

5.1 Change Orders.

- (a) In the event the cost and/or time of a Measure is impacted by changes in the Work not caused by the fault of Ameresco or its Implementation Contractors or delays resulting from acts or neglect of Customer or events of Force Majeure, the contract time and contract price shall be reasonably adjusted by change order ("Change Order"). The Parties must agree in writing upon changes in the Work consisting of additions, deletions or other revisions. Ameresco may however, make changes in the Work within the general scope of this ESA with the issuance of and consent to a Change Order by the customer., so long as the changes do not adversely affect the contract price or time.
- (b) If Customer requests Ameresco or its Implementation Contractors to submit a proposal for a change in the Work and then elects not to proceed with the change, a Change Order shall be issued to reimburse Ameresco for all internal and third party costs incurred or committed by Ameresco in performing this additional work, plus fifteen per cent (15%) as compensation for Ameresco.
- (c) Cost or credit to Customer resulting from a change in the Work shall be determined in one or more of the following ways:
 - i. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - ii. by unit prices stated in the Project Summary of final Design Documents Package or subsequently agreed upon;
 - iii. by cost to be determined in a manner agreed upon by the parties with a mutually acceptable fixed or percentage fee.

5.2 Concealed Conditions. If concealed or unknown conditions of an unusual nature that affect the performance of the Work and vary from those indicated by this ESA are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in work of the character provided for, notice by the observing Party shall be given promptly to the other Party, and in no event later than twenty-one (21) days after first observance of the conditions. The contract price shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either Party made within twenty-one days after the claimant becomes aware of the conditions.

5.3 Regulatory Changes. Ameresco and its Implementation Contractors shall be compensated an additional amount in accordance with the provisions of this ESA, for changes in the Work necessitated by the enactment or revision of codes, laws or regulations subsequent to the submission of the final Design Documents Package.

SECTION 6 Compensation and Energy Savings Guarantee

6.1 Compensation.

- (a) During the Measure implementation, Ameresco shall invoice the Customer monthly based upon progress billings on a percentage completion basis, including external costs and associated mark-ups as described in **Exhibit 2** attached hereto. Customer shall pay Ameresco all reasonable amounts invoiced by subcontractors and approved by Ameresco, and Ameresco' related costs, within thirty (30) days of the date of Ameresco' invoice.
- (b) Customer shall pay Ameresco for its services under this ESA an implementation fee:
 1. For the Measures listed under heading "2013 budget" in Exhibit 2 attached hereto (hereinafter referred to as Part 1 work) an upset limit of three million seven hundred thousand dollars (\$3,700,000.00), excluding HST; and

2. For the Measures listed under the heading “2014 Proposed” in Exhibit 2 attached hereto (hereinafter referred to as Part 2 work) as upset limit of two million six hundred and fifty thousand dollars (\$2,650,000.00), excluding HST, with the completion of Part 2 work being subject to the Corporation of the City of London Council approval of the required funding for Part 2 work as part of the 2014 Capital Budget.

- (c) The above fee as described in 6.1 (b) includes the following service fee percentage:
1. Overhead & Profit: 11.5% mark-up on all 3rd party costs.
 2. Engineering: 7% mark-up on all 3rd party costs.
 3. Project Management: 7.5% mark-up on all 3rd party costs.

SECTION 7 Term

7.1 Term. The term of this ESA will be for a period commencing on the Execution Date and continuing for Three (3) years following, the execution date of the Project Acceptance Certificate as identified in Appendix B attached hereto.

SECTION 8 Discovery and Disposal of Hazardous Substances

8.1 Representation of Customer. Customer has informed Ameresco that to the best of its knowledge, there do not exist any asbestos, asbestos containing material, formaldehyde, refrigerant fluid, mercury, PCBs or other toxic or hazardous substance (each a "Hazardous Substance") at the Facilities that could create an unsafe condition where the Measures are to be performed. Customer agrees to notify Ameresco as soon as Customer becomes aware of any such Hazardous Substances at the Facilities that have not yet been reported to Ameresco.

8.2 Identification; Removal. Ameresco shall not be obligated to test for or identify Hazardous Substances and assumes no responsibility for such testing or identification under this ESA. If any Hazardous Substance is discovered at the Facilities that may adversely affect or interfere with the Measures or create potential liability to Customer or Ameresco in connection with the Projects, Ameresco will have the right to suspend the Projects until Customer, at its expense, as appropriate, tests, abates, encapsulates, cleans up, removes and disposes of such Hazardous Substance. In the event Customer decides not to remove such Hazardous Substances or such Hazardous Substances have not been removed within sixty (60) days of notice by Ameresco, the affected Measures will be deemed terminated and Customer will pay Ameresco in accordance with Section 9.1 hereof.

8.3 Assistance. Upon Customer's request, Ameresco will assist Customer by providing Customer a list of qualified disposal companies, or arranging for contracts between Customer and a qualified disposal company to coordinate the disposal, clean-up and related activities concerning Hazardous Substances. In the event costs for such arranging services by Ameresco have not been included in the [Project Summary] and a provision for payment to Ameresco included therein, Customer will compensate Ameresco for such additional services at a mutually agreeable rate. Customer will be solely responsible for contracts with and payments to disposal companies.

SECTION 9 Termination

9.1 Termination and Payment. Subject to the acceptance in writing by Customer Building Performance Assessment Report, if at any time after delivery to Customer of the Project Summary Customer elects not to proceed with a Measure, terminates a Measure or suspends performance of a Measure for a period longer than thirty (30) days, Customer shall promptly pay to Ameresco 100% of all direct and indirect costs including overhead and profit fee of 11.5% for internal and third party costs incurred or committed by Ameresco in performing and preparing to perform and in de-installing and otherwise demobilizing the Measures. Upon such termination, any Equipment remaining in Customer's Facility shall be deemed abandoned by Ameresco and Customer agrees to accept title to such Equipment on an AS IS, WHERE IS BASIS without recourse to or warranty from Ameresco, express or implied and indemnify Ameresco against any and all claims, obligations or liabilities arising from such Equipment after such date.

SECTION 10 Ownership of Documents

10.1 Ownership of Documents. All drawings, plans, specifications, studies, reports, photographs, recordings, and documentation, and all copies thereof, furnished or prepared by Ameresco and or its Implementation Contractors as part of Ameresco's services under this ESA, upon receipt of all amounts due, shall be the property of Customer to use in any way it sees fit and disclose to others in connection with such use. Ameresco and its Implementation Contractors shall not be responsible for changes made in its materials or documents or for the use of said materials or documents by Customer or any third party without the participation of Ameresco. Customer agrees to defend, indemnify, and hold harmless Ameresco and its Implementation Contractors against all claims and liability arising out of such unauthorized uses of its materials and documents.

SECTION 11 General Terms and Conditions

11.1 Incorporation of General Terms and Conditions. The Parties acknowledge that the GT&C attached hereto or incorporated herewith are a part of this ESA as if fully set forth herein. The GT&C shall be construed in combination with the foregoing sections of this ESA, provided that in the event of any direct conflict between the foregoing sections and the GT&C, the terms of the foregoing sections shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Efficiency Services Agreement by and through their duly authorized representatives as of the Execution Date.

The Corporation of the City of London

AMERESCO CANADA INC.

By: _____

By: _____

Title: _____

Title: _____

By: _____

By: _____

Title: _____

Title: _____

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Appendix A – General Terms and Conditions

The following General Terms and Conditions (the “GT&C”) shall apply to all Services by Ameresco to Customer under, and are incorporated by reference into, the agreement between Ameresco and Customer (the “Services Agreement”) to which the GT&C are attached as an appendix. In the event of any conflict between any term in the GT&C and any term in the Services Agreement, the terms in such Services Agreement shall govern and control. Customer and Ameresco are each referred to as a “Party” and collectively as “the Parties” hereunder.

SECTION 1. DEFINITIONS AND INTERPRETATIONS.

1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings ascribed to such terms in the Services Agreement, in this Section 1, and otherwise in the GT&C, unless the context of their use requires otherwise:

“Affiliate” shall mean, with respect to any Person, another Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such first Person. For purposes of this definition, “control” of a Person, including the terms “controls,” “is controlled by,” and “under common control with,” means ownership of a voting interest of fifty percent (50%) or more.

“Agreement” shall mean the Services Agreement effective as of the Effective Date between Ameresco and Customer (including the GT&C incorporated therein by reference), as amended, supplemented or otherwise modified from time to time after the Effective Date in accordance with the terms hereof.

“Business Day” shall mean a Day on which both Parties are open for business on the same calendar Day.

“Confidential Information” shall mean any information that is disclosed by one Party to the other Party in connection with the Agreement, including (a) technical and financial information relating to the Services (including Customer’s utility bills and the pricing of the Services) and (b) correspondence, proposals and other documents, including the terms and conditions of the Agreement, generated in connection with the Services; provided, however, “Confidential Information” does not include any such information that: (i) is or becomes publicly known other than through a breach of Section 3 hereof by the receiving Party; (ii) is already known to the receiving Party at the time of disclosure; (iii) is lawfully received by the receiving Party from a third

party without breach of Section 3 hereof or, to the receiving Party’s knowledge, breach of any other agreement between the disclosing Party and such third party; (iv) is independently developed by the receiving Party without use, directly or indirectly, of Confidential Information received from the disclosing Party; (v) is furnished to a third party by the disclosing Party without restriction on the third party’s rights to disclose; or (vi) is authorized in writing by the disclosing Party to be released from the confidentiality obligations in Section 3 hereof.

“Day” shall mean a period of 24 consecutive hours as defined by (i) the calendar, (ii) the Gas Industry Standards Board, or (iii) the North American Electric Reliability Council, as required by the context of the Agreement.

“Force Majeure” shall mean acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemy; wars; blockades; insurrections; riots; epidemics; landslides; earthquakes; fires; storms (including hurricanes or hurricane warnings, tornado or tornado warnings); crevasses; floods; washouts; arrests and restraints of the government; necessity for compliance with any court order or Law; freezing or failure of oil or gas wells or oil or gas pipelines; and, to the extent beyond the reasonable control of the Party claiming suspension of its duties hereunder, breakage or accident or necessity of repairs to machinery, equipment, pipelines, or power plants; curtailment of supply or unavailability of materials or equipment; and any other causes or events, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming suspension of its duties hereunder.

“Governmental Authority” shall mean, with respect to any Person, entity, or property, any national, federal, state, provincial, local, county, department, city, or other political subdivision that exercises jurisdiction over such Person, entity, or property, and any court, agency, department, commission, board, bureau, or instrumentality, whether civil or military, of any of them.

“Implementation Contractor” shall mean any third-party contractor, and subcontractor thereof, retained by Ameresco to perform work related to the Services on Ameresco’s behalf.

“Interest Rate” shall mean for any date, the then effective prime rate of interest for large Canadian Schedule “A” banks, published by The Globe & Mail, provided that in no event shall such rate exceed the maximum non-usurious rate under applicable Law.

“Law” shall mean any constitutional provision, statute, act, code, regulation, rule, ordinance, order, decree, directive, ruling, proclamation, resolution, judgment, decision, declaration, or other official interpretation thereof by an applicable Governmental Authority; and a reference to a Law shall be deemed to refer to such Law as it may be amended from time to time, including any successor legislation thereof.

“Person” shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or unincorporated organization.

1.2 Terminology. Except where the context otherwise requires in the Agreement, (a) words imparting the singular number shall include the plural number, and vice versa, and shall be construed to be of such gender or number as the context requires; (b) the words “herein,” “hereof,” “hereunder” and words of similar import when used in the Agreement refer to the Agreement as a whole, and not to any particular section or subsection; (c) any reference to Section shall mean such Section of the Services Agreement or the GT&C, as the context requires; (d) pronouns shall include natural persons, corporations and associations of every kind and character; (e) the gender of all words used herein shall include the masculine, feminine and neuter; (f) the words “include(s)” or “including” shall be deemed to be followed by “, without limitation,”; and (g) all references to “dollars,” “\$” and “CDN.. Dollars” shall refer to legal currency of the Canada.

SECTION 2. INFORMATION AND ACCESS.

The Parties recognize that it is essential for Ameresco’s performance of the Services that Ameresco has reasonable access to, and information about, the Facilities. Customer shall provide Ameresco (including its Implementation Contractors, if any) with reasonable access to each Facility to enable Ameresco to perform all Services. Customer shall comply with all reasonable requests by Ameresco for information concerning each Facility. Ameresco shall not be liable to the extent it acts on information provided by Customer that is incorrect, misleading, or inaccurate. Ameresco and its Implementation Contractors shall observe all of Customer’s safety and security procedures at a Facility which have been communicated in advance to Ameresco, and shall seek to minimize any disruption or interruption to Customer’s operations at such Facility.

2.1 WORKPLACE SAFETY AND INSURANCE BOARD

.1 Ameresco will submit evidence of compliance with all of the requirements of the Workplace Safety

and Insurance Board in Ontario, R.S.O./80 Chapter 539 as amended, including payments due there under.

.2 Ameresco shall furnish to the Customer, prior to the contract award and prior to final payment a Certificate of Clearance clearly identifying Ameresco’s Workplace Safety and Insurance Board account number and date.

.3 Ameresco agrees to comply with all requirements of the latest edition of the Occupational Health and Safety Act, and Regulations for Construction Projects and Industrial Establishments and any other applicable Safety Regulations relating to the performance of this project and agrees to provide a safe environment for all occupants, workers and the general public. The Customer has the right to cancel this contract for Ameresco’s failure to comply with these and any other applicable safety regulations. A copy of all applicable Regulations should be on the job site at all times.

.4 No work will be permitted unless Ameresco and/or one of its Contractors has on hand a complete set of unexpired Materials Safety Data Sheets relating to the W.H.I.M.S. controlled products that are being used in the performance of this project. This information is expected to be produced by Ameresco upon request by the Customer or one of its authorized agents able to make such a request.

.5 Should there be an accident/incident, Ameresco is responsible to notify the appropriate authorities and submit all required reports and documentation. Ameresco is to provide a copy of all reports and correspondence regarding the incident to both the Customer and any of its associated Contractors.

.6 Should there be a work refusal for Health and Safety concerns, Ameresco and any of its Contractors are required to notify the Customer of the reason for the refusal, the actions taken and the outcome.

2.2 ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT

.1 Ameresco shall ensure that all its employees, agents, volunteers, or others for whom Ameresco is legally responsible receive training regarding the provision of goods and services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/07 (the Regulation) made under the Accessibility for Ontarians with Disabilities Act, 2005, as amended the “Act”). Ameresco shall ensure

that such training includes without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. Ameresco shall submit to the Customer, as required from time to time, documentation describing its customer service training policies, practices and procedures, and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents, volunteers and/ or others who received such training. Customer reserves the right to require Ameresco to amend its training policies to meet the requirements of the Act and the Regulation.

SECTION 3. CONFIDENTIALITY.

3.1 Non-Disclosure. During the term of the Agreement and surviving the expiration or termination of the Agreement for a period of one year, each Party shall maintain the confidentiality of Confidential Information and to limit its disclosure to such of its directors, officers, employees, agents, advisors or Affiliates as have a need to know such Confidential Information in order that the objectives of the Agreement can be achieved. The receiving Party shall be responsible for the compliance by such directors, officers, employees, agents, advisors or Affiliates with the provisions of this Section 3.

3.2 Use of Confidential Information. Any Confidential Information shall be used by the receiving Party only for the purposes of performing its obligations under the Agreement and enforcing its rights thereunder; provided that Ameresco (i) may use the form of the Services Agreement and the GT&C in contracting to provide services to third parties, and (ii) may aggregate and utilize information obtained from Customer in connection with the Agreement and/or obtained from Ameresco's other customers in proposing to provide, or providing, services to Customer and/or others so long as such information is maintained in an anonymous format.

3.3 Legally Required Disclosure. If the receiving Party becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information of the disclosing Party, the receiving Party will provide the disclosing Party with prompt written notice so the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 3. In the event such

protective order or other remedy is not obtained, or the disclosing Party waives compliance with the provisions of this Section 3, the receiving Party will furnish only that Confidential Information which is legally required and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

3.4 Return of Confidential Information. Upon the expiration or termination of the Agreement, or upon the earlier request of the disclosing Party in writing, the receiving Party shall, at its own expense, either promptly return to the disclosing Party all originals and copies of the writings and hardware in its possession which contain Confidential Information of the disclosing Party or by written notice, executed by an officer of the receiving Party, certify that such writings or hardware have been destroyed or that all Confidential Information contained therein have been permanently deleted.

3.5 Marketing. Notwithstanding anything in this Section 3 to the contrary, the Parties agree that Ameresco may identify Customer as a recipient of the Services in any advertisement or marketing materials published or distributed by Ameresco; provided that such identification shall not disclose any Confidential Information regarding Customer.

SECTION 4. DOCUMENTS AND DATA.

4.1 Ownership Rights. The Parties agree that:

(a) Customer shall maintain its right, title, and interest in all proprietary data furnished to Ameresco pursuant to the Agreement ("Customer Works"); and

(b) Ameresco shall maintain its right, title, and interest in all proprietary documentation, formulas, methods, techniques, devices and software (including analytical models and tools) used by Ameresco or furnished to Customer pursuant to the Agreement ("Ameresco Works").

4.2 Custom Works. If any material enhancement, modification, or customization of the Ameresco Works is undertaken by the Parties jointly ("Custom Works"), prior to the development of such Custom Works, the Parties shall agree, in a writing separate from the Agreement, on the terms governing the ownership and licensing of such Custom Works. In the absence of such written agreement:

(a) any Custom Works so developed shall be owned by Ameresco and licensed to Customer solely for the purpose of using such Custom Works in support of Customer's internal business activities, but not for the purpose of providing services to third parties; and

Customer shall not sell, license or otherwise transfer such Custom Works to any Person not an Affiliate of Customer without the advance written consent of Ameresco; and

(b) any Customer Works used in conjunction with any Custom Works shall remain the sole and exclusive property of Customer, and any Custom Works may be used by Ameresco in its business activities so long as Ameresco complies with Sections 3.1 and 3.2 in its handling of the Customer Works related thereto.

SECTION 5. REPRESENTATIONS AND WARRANTIES.

Each Party hereby represents and warrants to the other Party as of the Effective Date of the Agreement as follows:

(a) The Party is an entity that is duly organized, validly existing, and in good standing under the Laws of its state of organization and has all requisite statutory power and authority to carry on its business as now conducted.

(b) All requisite organizational authorizations for the execution, delivery, and performance by the Party of the Agreement have been obtained, and no further organizational action shall be necessary on the part of the Party with respect to the execution, delivery, and performance of the Agreement. Upon the execution and delivery by the Party of the Agreement, such agreement will constitute a legal, valid, and binding obligation, enforceable against such Party in accordance with its terms, except as limited by Laws affecting the enforceability of creditors' rights generally and equitable principles.

(c) Neither the execution, delivery, nor performance of the Agreement or any other documents that may be required thereunder to be executed, delivered, and performed by the Party shall result in a violation of any term or provision of, or constitute a default or accelerate the performance required under, any contract or agreement to which such Party is a party or by which such Party or any of its properties is bound, or violate any order, writ, injunction, or decree of any court, administrative agency, or other Governmental Authority binding on such Party.

(d) There are no actions, suits or proceedings pending or, to the Party's knowledge, threatened against the Party that could have an adverse effect on the validity or enforceability of the Agreement or the ability of the Party to perform its obligations thereunder.

SECTION 6. INSURANCE.

6.1 Insurance to be Maintained by Ameresco and Customer. At all times that Ameresco is performing Services under the Agreement at any Facility, each of Ameresco and Customer shall separately purchase and maintain the following insurance, which shall include the minimum coverages and limits set forth herein. All policies of insurance shall comply with the insurance requirements of the Customer.

- (A) Comprehensive commercial general liability insurance, providing bodily injury and property damage coverage with a limit of not less than \$5,000,000 per occurrence; and
- (B) Errors and Omission insurance coverage limit of not less than \$2,000,000 per occurrence; and

The insurance coverage shall be indicated on the Corporation of the City of London Certificate of Insurance Form" and "the Customer reserves the right to request such higher limits of insurance or other types of insurance appropriate to the Work covered by the Agreement as the Customer may reasonably require and pay for. Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of the Agreement.

The foregoing insurance policies shall be issued by insurers of recognized responsibility, provided that Ameresco may provide part or all of such insurance through self insurance. Neither Customer nor Ameresco shall provide the other with, unemployment, medical, dental, worker's compensation, and/or disability insurance.

6.2 Waiver of Subrogation. Each Party hereby waives, and shall to the extent possible cause its insurance carrier to waive, all claims, rights of recovery and causes of action that such Party or any party claiming by, through or under such Party may now or hereafter have by subrogation or otherwise against the other Party or against any of the other Party's Affiliates (or the respective officers, directors, shareholders, partners or employees of any of them) for any loss or damage that may occur to the assets of such Party by reason of fire or other casualty, or by reason of any other cause except gross negligence or willful misconduct (thus including simple negligence of the Parties hereto or their officers, directors, shareholders, partners or employees), that could have been insured against under the terms of standard fire and extended coverage insurance policies available in the state

where the assets are located at the time of the casualty. This provision shall have no effect if it would invalidate or otherwise limit the insurance coverage of a Party. This clause is subject to the approval of the Customer's insurers from time to time.

SECTION 7. LIMITATION OF LIABILITY.

Law or in equity, are hereby waived. In no event shall any party be liable to another party for special, consequential, incidental, punitive, exemplary or indirect damages in tort, for contract or otherwise in connection with the Agreement, even if such party has been advised of the possibility of such damages. Notwithstanding anything herein contained to the contrary, Ameresco will be responsible for actual and direct damages incurred by the customer as a result of Ameresco not meeting the criteria as set forth in the Building Performance Assessment Report, subject to the terms and conditions as set out in this agreement.

SECTION 8. INDEMNIFICATION.

Subject to Section 6 and any limitations of Law, each Party shall indemnify, defend and hold harmless the other Party and its Affiliates, and their directors, officers, agents and employees from and against all liability, damage, loss, claims, demands, judgments, and actions of any nature, including the reasonable legal fees and other costs incident thereto, which any such indemnified Person may suffer or incur arising primarily out of the tortious, reckless or negligent conduct of such indemnifying Party or its employees, agents or independent contractors in connection with the performance of such Party's obligations under the Agreement; provided, however, that the foregoing indemnification shall not apply to the extent that any liability, damage, loss, claim, demand, judgment or action result from the tortious, reckless or negligent conduct of the indemnified Person. This indemnity obligation extends to, without limitation, all losses on account of property damage, bodily injury, death, personal injury, or infringement of rights suffered by any of the foregoing indemnified Persons. This indemnity obligation shall not be construed to eliminate or reduce any other indemnification right which either Party has under Law, the Services Agreement or any other agreement.

SECTION 9. BILLING AND PAYMENT.

9.1 Billing. Unless otherwise provided in the Services Agreement, Ameresco shall monthly submit to Customer an invoice setting forth the actual payment due to Ameresco for the Services provided by Ameresco under such Agreement during the prior month. Customer shall pay all invoices within 30 Days of receipt of the invoice or, if such Day is not a

Business Day, the next Business Day (the "Due Date").

9.2 Late Payment; Suspension of Services. In absence of a timely notice of billing dispute in accordance with Section 9.3, amounts not paid on or before the Due Date shall be payable with interest at the Interest Rate from the Due Date until payment is received. In absence of a timely notice of billing dispute in accordance with Section 9.3, if a Customer has not paid an invoice (or undisputed portion thereof) by the date that is 60 Days after the Due Date, Ameresco may elect to suspend further provision of any or all Services to Customer.

9.3 Billing Disputes. In the event that Customer disputes any invoice or portion thereof, Customer must provide Ameresco within 20 Business Days of receipt of the invoice (the "Dispute Date"), written notice of the disputed amounts, together with a statement of the particulars of the dispute, including the calculations with respect to any errors or inaccuracies claimed. Should Customer fail to provide timely evidence of the invoice errors claimed on or before the Dispute Date, the disputed amounts shall be owed with interest at the Interest Rate from the Due Date until payment is received. Should Customer provide the required information on or before the Dispute Date, Ameresco shall make a determination on the dispute no later than 30 Days from the Dispute Date. Based on the determination by Ameresco, (a) if Customer has under-paid the amount actually due, Customer shall remit any amount due plus interest at the Interest Rate from the Dispute Date until paid within 5 Days after receipt of the determination from Ameresco, or (b) if Customer has over-paid the amount actually due, Ameresco shall remit to Customer any refund within 5 Days after determination of such over-payment plus interest at the Interest Rate on such refund from the date Ameresco received the over-payment until refunded. Notwithstanding any disputed invoice or portion thereof, Customer shall nevertheless pay when due any undisputed amount of such invoice to Ameresco.

SECTION 10. EVENTS OF DEFAULT AND DEFAULT REMEDIES.

10.1 Events of Default. Subject to Section 14 hereof, in addition to any events of default set forth in the Services Agreement, the occurrence of any of the following events or conditions shall constitute an event of default (together with the events of default in the Services Agreement, an "Event of Default"):

(a) Involuntary Proceedings. (i) A receiver, custodian, liquidator, or trustee of a Party, or of the property of a Party, is appointed by court order and

such order is consented to by such Party or remains in effect for more than 90 Days after the commencement of such action; (ii) an order for relief under any bankruptcy Law is entered with respect to a Party or such Party is adjudicated a bankrupt or insolvent; or (iii) a petition is filed against a Party under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation Law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 90 Days after such filing.

(b) Voluntary Petitions. A Party files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation Law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of or any order to relief under any petition against it under any such Law.

(c) Material Breach. A Party breaches any of its material obligations under the Agreement and such breach is not cured within 30 Days after notice from the non-defaulting Party specifying the nature of the breach, unless such breach is not capable of being cured within 30 Days, in which event, the breaching Party must commence to cure within such 30 Days and thereafter diligently proceed to cure such breach.

(d) Failure to Pay. A Party fails to pay any amount due under the Agreement within 60 Days after the date due.

(e) Misrepresentation. A representation or warranty made by a Party in the Agreement shall be untrue in any material respect as of the date made.

10.2 Default Remedies. Upon the occurrence of an Event of Default, the non-defaulting Party may, with or without terminating the Agreement and without waiving any other remedy available to the non-defaulting Party, do any one or more of the following in addition to exercising any other remedies set forth in the Agreement or otherwise available under applicable Law:

(a) Declare immediately due and payable all sums accrued but unpaid under the Agreement through such date of declaration;

(b) Recover compensation for actual damages suffered by the non-defaulting Party, including reasonable expenses (i) incurred in canceling and demobilizing work previously undertaken for the defaulting Party, and (ii) incurred in connection with the enforcement or preservation of its rights and remedies (including reasonable legal fees);

(c) Repossess and sell or otherwise dispose of in a commercially reasonable manner any property, including equipment, in which the non-defaulting Party has a security or ownership interest and, in the sole discretion of the non-defaulting Party, dispose of such property by sale, lease or otherwise;

(d) Suspend further performance of the Services in case Customer is the defaulting Party, or suspend further payments due under the Agreement in case Ameresco is the defaulting Party; and

(e) By notice of the non-defaulting Party to the defaulting Party, terminate the Agreement.

No remedy referred to in this Section is intended to be exclusive, but shall be cumulative and in addition to any other remedy available to the non-defaulting Party.

10.3 Survival. Upon termination of the Agreement, all rights and obligations of the Parties under the Agreement shall immediately cease and terminate, except for the following which shall survive such termination: (i) the rights and obligations pursuant to Sections 3, 4, 7, 8, 14, 15.7 and 15.11 of the GT&C, (ii) the rights and obligations in the Services Agreement that expressly provides that they will survive termination of the Agreement, and (iii) Customer's obligations to compensate Ameresco for Services accrued and unpaid as of the date of termination, which shall be paid by Customer to Ameresco within thirty (30) days of the date of termination.

SECTION 11. FORCE MAJEURE.

11.1 Force Majeure. Except as otherwise expressly provided in the Agreement, neither Ameresco nor Customer shall be considered to be in default in the performance of its obligations under the Agreement, except obligations to make payments with respect to amounts already accrued, to the extent that performance of any such obligation is prevented or delayed because of an event of Force Majeure. If a Party is prevented or delayed in the performance of any such obligation by an event of Force Majeure, such Party shall provide notice in writing or by telephone within a reasonable time after the occurrence of such event with a description of the circumstances preventing or delaying performance and the expected duration thereof.

11.2 Strikes and Lockouts. The Parties agree that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty and that the requirement in Section 11.3 below that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of

strikes or lockouts by acceding to the demands of an opposing party when such course is inadvisable in the discretion of the Party having the difficulty.

11.3 Limitations. The suspension of performance shall be of no greater scope and no longer duration than is required by the applicable event of Force Majeure. An event of Force Majeure that affects the performance of a Party hereunder shall not relieve such Party of liability (i) in the event such Force Majeure was attributable solely to such Party's gross negligence or willful misconduct, or (ii) to the extent of such Party's failure to use its commercially reasonable efforts to remedy its inability to perform with all reasonable dispatch.

SECTION 12. ASSIGNMENT AND SUBCONTRACTORS.

The Agreement shall be binding upon, and inure to the benefit of, the Parties and their successors and assigns. The Agreement shall not be assignable by either Party, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that each Agreement may be assigned by Ameresco, in whole, but not in part, without such consent to one of its Affiliates. Any purported assignment contrary to the terms of this Section 12 shall be null, void and of no force and effect. In no event shall any transfer or assignment of the Agreement relieve the transferring or assigning Party of liability hereunder. Ameresco shall have the right to retain one or more subcontractors to perform any or all of its obligations under the Agreement.

SECTION 13. NOTICES.

Except as provided otherwise in the Agreement, every notice, request or other statement to be made or delivered by a Party to the other Party pursuant to the Agreement shall be directed to such other Party at the address or facsimile number given immediately below such other Party's signature on the Services Agreement or to such other address or facsimile number as the Party may designate in writing from time to time in accordance with this Section 13. Each Party, by written notice to the other Party, shall have the right to specify one additional address to which copies of notices shall be sent. Except as provided otherwise in the Agreement, any notice, request, statement, payment or other communication (including by facsimile) shall be deemed to have been given on the date on which it is received by the recipient.

SECTION 14. DISPUTE RESOLUTION.

14.1 Informal Dispute Resolution. If during the term of the Agreement any issue, dispute, claim or controversy should arise out of or in connection with the Agreement ("Dispute") and the Parties are unable to resolve the Dispute on or before the 30th Day following written notice of such Dispute, which notice describes in reasonable detail the nature of the Dispute and the facts and circumstances relating thereto, each Party shall nominate a member of its senior management team for the purpose of meeting at a mutually agreeable time and place to resolve such Dispute. Such meeting shall take place on or before forty-five (45) Days following the date of the notice of the Dispute, and if the Dispute has not been resolved within fifteen (15) Days following such meeting (or if a Party fails to designate a member of its senior management team), any Party may commence legal proceedings or submit such Dispute to binding arbitration under this Section 14.

14.2 Arbitration. Upon demand of either Party made before or within 180 Days after institution of any judicial proceeding relating to a Dispute, any Dispute shall be resolved by binding arbitration as provided herein. Institution of a judicial proceeding by a Party does not waive the right of that Party to demand arbitration hereunder. A Party may demand and commence arbitration by delivering to the other Party an arbitration notice ("Arbitration Notice") that includes a general description of the Dispute and a reference to the fact that such Dispute is being referred to arbitration under this Section 14.

14.3 Selection of Arbitrator. Promptly following the delivery of an Arbitration Notice, the Parties shall endeavor to agree upon a panel of three arbitrators. If on or before fifteen (15) Days following the delivery of an Arbitration Notice they have not agreed, then each Party, by notice to the other Party, may designate one arbitrator who shall not be an agent or employee of either Party. The two arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third arbitrator. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.

14.4 Conduct of Arbitration.

(a) The arbitration shall be conducted in the Province of Ontario, or such other place as the Parties may agree. The arbitrators shall set the date, the time, and the place of hearing, which must commence on or before Thirty (30) Days following the designation of the third arbitrator. Arbitration shall be conducted under the Arbitration Act of Ontario. In connection with any such arbitration, the arbitrators shall

construe the Agreement in a manner consistent with the choice of law provisions set forth herein.

(b) The arbitrators shall render their decision on or before ninety (90) Days following the commencement of the hearing. The arbitrators' decision shall be set forth in a writing that includes an explanation of the reason for such decision and an allocation of the fees and expenses of the arbitrators to the Parties based on the relative extent to which they do not prevail on their positions. Each Party against which the decision assesses a monetary obligation shall pay that obligation on or before thirty (30) Days following the announcement of the decision or such other date as the decision may provide.

(c) The decisions of the arbitrators are final and binding on all Parties and are not subject to appeal. The decisions of the arbitrators may be enforced in any court of competent jurisdiction, and the Parties authorize any such court to enter judgment on the arbitrators' decisions. Pending the outcome of any arbitration conducted pursuant to this Section 14, the Parties shall be obligated to continue to perform their respective obligations hereunder. Each of the Parties hereby undertakes to carry out without delay the provisions of any arbitral award or decision. Each Party shall bear its own attorney's fees and costs in connection with any Dispute.

14.5 Preservation of Remedies. Notwithstanding the binding arbitration provisions in this Section 14, the Parties agree to preserve, without diminution, certain remedies that the Parties may employ or exercise freely, independently or in connection with an arbitration proceeding or after an arbitration action is brought. Each Party shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies: (i) all rights to obtain possession of property; (ii) all rights to foreclose against any property or other security by exercising a power of sale granted under the Agreement or under applicable Law or by a judicial foreclosure and sale; (iii) all rights of self-help including set-off and peaceful possession of personal property; and (iv) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of a receiver and filing an involuntary bankruptcy proceeding. Preservation of these remedies does not limit the power of the arbitrators to grant similar remedies.

SECTION 15. MISCELLANEOUS.

15.1 Headings. The subject headings of the Sections of the Agreement are inserted for the purpose of convenient reference and are not intended to be part

of the Agreement nor to be considered in any interpretation of the same.

15.2 Entire Agreement; Amendment. The Agreement (including the Services Agreement, the GT&C and each appendix, exhibit or attachment thereto) contains the entire understanding and agreement between the Parties with respect to the applicable subject matter and supersedes all previous communications, negotiations, and agreements, whether oral or written, between the Parties with respect to such subject matter. No amendment or modification of the Agreement will be valid and binding unless set forth in a written instrument signed by the Party sought to be bound thereby.

15.3 Waiver. No waiver by either Party, either express or implied, of any one or more defaults by the other Party in the performance of any provisions of the Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or different character. Failure by a Party to enforce any of the terms, covenants, conditions, remedies or other provisions of the Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce strict compliance with every such term, covenant, condition, remedy or provision in the Agreement, notwithstanding any course of dealing or custom of the trade.

15.4 Preparation. The Parties and their legal counsel have cooperated in the drafting of the Agreement, and such Agreement shall therefore be deemed their joint work product and not be construed against either Party by reason of such preparation.

15.5 Exclusion of Third Party Rights. The provisions of the Agreement shall not impart rights enforceable by any Person not a Party or bound as a Party unless such Person or organization is a permitted successor or assignee of a Party bound by the Agreement.

15.6 Severability. If any provision of the Agreement or the application thereof to any Party or circumstance shall be unenforceable to any extent, the remainder of the Agreement shall not be affected thereby, so long as the material purposes of such remainder can be determined and effectuated.

15.7 Applicable Law. The Agreement and the rights and duties of the parties thereunder shall be interpreted, performed and enforced in accordance with the Laws of the Province of Ontario, without regard to principles of conflicts of law thereof.

15.8 Consent to Jurisdiction. The Parties irrevocably agree that any suit, action or proceeding relating to or

arising out of the Agreement may be brought in the courts of the Province of Ontario. The Parties irrevocably submit to the jurisdiction of such Courts. The Parties irrevocably waive any objections which they may have now or hereafter to the venue of any proceedings brought in the Courts, or that such proceedings have been brought in a non-convenient forum.

15.9 Counterparts. The Agreement may be signed in any number of counterparts, and each counterpart shall be deemed an original, but all of which shall constitute one and the same instrument.

15.10 Mutual Cooperation. The Parties shall (a) cooperate with each other to effectuate the purposes of the Agreement, (b) execute and deliver any and all additional documents or take such additional action as may be reasonably necessary or appropriate to that end as the other Party shall deem necessary to enforce its obligations and enjoy its material rights and benefits hereunder or to otherwise effectuate the purposes of the Agreement, and (c) cooperate in obtaining any necessary consents, permits, licenses, or other authorizations from Governmental Authorities having jurisdiction of the Agreement or any Service or obligation thereunder.

15.11 Employee Non-Solicitation. No Party shall during the term of the Agreement and the period of two years thereafter, either directly or indirectly, on its own behalf or in the service of or on behalf of others, divert, solicit or hire away, or attempt to divert, solicit or hire away, any person employed by the other Party, except (i) with the prior written consent of the other Party, or (ii) in so far that such employee responds to a bona fide public job advertisement made by such Party (whether posted on a public site on the internet or in a newspaper, magazine or other publication of general circulation), or if such employee initiates contacts regarding employment with such Party on his or her own volition.

15.12 No Partnership or Joint Venture. The Parties agree that nothing in the Agreement shall serve to create any agency, employment or other master and servant relationship, partnership or joint venture relationship, or fiduciary relationship between Ameresco and Customer. Customer shall not withhold any federal, provincial or local income, unemployment or other taxes with respect to the Services rendered by Ameresco hereunder.

Appendix B - Acceptance Certificate

[Date]

[Customer. address]

To: Ameresco Canada Inc.

This is to certify that on this ____ day of _____, _____, we unconditionally and irrevocably accept the Projects described in the attached Project Summary as successfully completed and in good operating condition. This Acceptance Certificate is issued pursuant to the Efficiency Services Agreement between our two companies dated as of _____, 2013.

Customer Name.

By: _____

Name: _____

Title:

*Exhibit 1 – Canada Games Aquatic Centre Energy Reduction and Facility Renewal Study
Report*

Exhibit 2 – Project Summary

CGAC Budget Development							
2013 CANADA GAMES AQUATIC CENTRE FACILITY LIFE CYCLE RENEWAL AND ENERGY RETROFIT PROJECT Phase IV							
Year	Account	Detail	Past Budgets	2014 Budget			
2014	RC2201-14	2014 Recreation Facilities Life Cycle Renewal (Proposed)		\$1,965,000			
2013	RC2201-13	2013 Recreation Facilities Life Cycle Renewal	\$2,930,000				
2012	RC2201-12	2012 Recreation Facilities Life Cycle Renewal	\$620,000				
2012	TS6217	2012 Facility Energy Management	\$100,000	\$64,000			
2012	GG1640	2012 Building Accessibility	\$50,000				
2013	80018	Energy Reserve Fund		\$121,000			
2014	????	Gas Tax		\$500,000			
		Current Budget Available	\$3,700,000				
		Total project Budget	\$3,700,000	\$2,650,000			
		This total includes Current Budget Available		\$6,350,000			
DETAIL	See Ameresco Report Canada Games Aquatic Centre Energy Reduction and Facility Renewal Study Job Number 07-495-000-1		Ameresco Table 1	Ameresco Table 2	Ameresco Table 3	2013 Current Budget	2014 Proposed
		New lighting in Pool and Spectator Area		\$323,000		\$323,000	
		Install new DHW heater with high efficiency condensing system		\$23,600		\$23,600	
		Install new high efficiency pool pumps with VFDs		\$79,000		\$79,000	
		Install pool drain heat recovery system		\$25,600			\$25,600
		Combined Heat and Power Energy Generation	\$397,800				\$397,800
		Replace existing boilers with high efficiency condensing boilers		\$265,000		\$265,000	
		Building Automation System		\$76,000		\$76,000	
		LED Parking lot lighting		\$64,000			\$64,000
		Install new change room MUA with integral energy recovery		\$197,500		\$197,500	
		Install new high efficiency roof mount AHU for spectator area		\$397,000		\$397,000	
		Install new Packaged RTUs serving admin offices and community room		\$89,500			\$89,500
		Replace pool air handling equipment outdoor energy recovery		\$1,455,000		\$1,455,000	
		New Pool Filtration System			\$798,000	\$798,000	
		Repair / Replace Tile in Pool			\$250,000		\$250,000
		Replace Floor Tiles in Corridors			\$200,000		\$200,000
		New acoustic ceiling mats			\$220,000		\$220,000
		Refurbish Change Rooms			\$187,500		\$187,500
		Painting			\$100,000		\$100,000
		Replace Hydraulic floor components (Not in Ameresco Report)					\$500,000
		Replace existing bulkheads (Not in Ameresco Report)					\$446,400
		Reconstruct Customer Service entrance - Accessibility and Security (Not in Ameresco Report)				\$85,900	\$64,100
		Annual Monitoring of utility usage					\$8,100
		Energy Savings Guarantee					\$97,000
		Total project Budget	\$397,800	\$2,995,200	\$1,755,500	\$3,700,000	\$2,650,000
							\$6,350,000
2013	RCXXXX-14	I would like to have a new account set up for this project...					
		CGAC Major Renovation	\$3,700,000	\$2,650,000			

Exhibit 3 – Energy Performance Monitoring and IPMVP Protocol Document

Determination of Savings

Determination of the Base Year:

Energy Savings will be calculated on meter by meter basis by comparing actual energy use in each twelve (12) month period immediately following the Guarantee Period Commencement Date with the energy use in the Reference Period.

The Reference Period for the purposes of this Contract has been identified in Energy Reduction and Facility Renewal Study Report.

Adjustments to the Reference Period:

Adjustments to the Reference Period can occur by mutual consent between the Customer and Ameresco to account for changes in energy consumption and occupancy rates provided such changes are clearly set out in writing, including the impact on the calculation of Energy Savings.

Calculation of Energy Savings:

The calculation of Energy Savings will focus on the actual units of energy consumed between the period in question and the Reference Period on meter by meter basis, taking into account adjustments for differences in:

- (a) heating and cooling degree days, if applicable; and,
- (b) the number of days in the billing period between the period in question and the equivalent period in the Reference Period.
- (c) adjusting for changes in occupancy rates and other variables.

Energy savings and adjustments will be determined by the METRIX Software Programme or other comparable energy accounting software programme.

Translating Energy Savings into Energy Cost Savings:

Energy Cost Savings are determined by multiplying Energy Savings by the current energy rates using a monthly average unit cost method.

Monitoring and Tracking Energy Cost Savings:

Energy Cost Savings will be established during the Guarantee Period.

Energy Cost Savings for each month will be estimated by Ameresco, and reconciled semi-annually according to the provisions of this Contract.

Other Methods of Calculating Energy Savings:

The Customer and Ameresco, by mutual consent, may elect to determine Energy Savings by calculations based on accepted industry standards rather than by direct comparison with the Base Year. In this event, Ameresco will perform the necessary calculations, which will be subject to approval by the Customer within fifteen (15) working days.

Exhibit 4 – Surety Requirements

PERFORMANCE

- .1 The Contractor shall furnish a Performance Bond from a Surety Company licensed to operate in the Province of Ontario, to cover the faithful performance of the Contract including the corrections after final payment as provided for in the Contract Documents and the payment of all obligations arising under the Contract or as a result of any default, delay, neglect, or wrongful act of the Contractor and including the payment of all resulting legal and engineering expenses incurred by the Owner in the event of any default, delay, neglect or wrongful act by the Contractor. The City of London Form of Bond is annexed to this Section. Only this form is acceptable.**
- .2 The Contractor shall, throughout the term of the Contract, advise the Bonding Company of all changes to the Contract Price or the nature of the work so that the Bond may be revised if necessary. The Contractor shall furnish the Owner with a copy of each revision to the Bond.**
- .3 The Performance Bond shall be for 50% of the Contract Price.**

4 LABOUR AND MATERIAL PAYMENT BOND

- .1 The Contractor shall furnish a Labour and Material Payment Bond from a Surety Company licensed to operate in the Province of Ontario to cover the faithful performance of the Contract as provided for in the Contract Documents in regard to all payments for labour, materials and services required for the work and the discharge of all liens and claims connected therewith and to cover the payment of all resulting legal and engineering expenses incurred by the Owner in the event of any default, delay, neglect or wrongful act of the Contractor. The Form of Bond is annexed to this Section.**

The Contractor shall, throughout the term of the Contract, advise the Bonding Company of all changes to the Contract Price or the nature of the work, so that the Bond may be revised if necessary. The Contractor shall furnish the Owner with a copy of each revision of the Bond.

The Labour and Material Payment Bond shall be for 50% of the Contract Price.

PERFORMANCE BOND

Bond No. _____ **Amount \$** _____
(executed in triplicate)

Know all Men by These Presents that we,

herein called "the Principal" and

herein called "the Surety"

are jointly and severally held and firmly bound unto the CORPORATION OF THE CITY OF LONDON, hereinafter called "the Corporation", each in the penal sum of

of lawful money of Canada, to be paid to the Corporation, or to its successors or assigns, for which payment well and truly to be made, we jointly and severally bind ourselves, our and each of our several and respective heirs, executors, administrators and successors and every of them forever firmly by these presents.

SEALED with our several and respective seals.

DATED this _____ day of _____ 20 ____.

WHEREAS BY a certain Agreement bearing even date with the above obligation the Principal has contracted with the Corporation for the construction of more particularly mentioned in the said Agreement, General Conditions, Plans, Drawings, Profiles, Form of Tender, Information for Bidders, Specifications and Special Provisions annexed to or forming part of such Agreement (all of which are herein called "the Contract") at the price and upon the terms and conditions as in the Contract set forth, and having been required to furnish satisfactory and sufficient security for the due and proper performance of the Contract, the Surety has consented to become obligated in the manner and to the extent hereinafter set forth.

PERFORMANCE BOND

NOW THE CONDITIONS OF THIS OBLIGATION are such, that if the Principal shall well, truly and faithfully in all respects perform, execute and carry out the Contract, and all the terms and conditions thereof to the satisfaction of the Engineer mentioned in the Contract and of the Corporation, and shall keep and maintain in good working order and complete repair the whole of the work performed under the Contract, including any extra work ordered pursuant thereto, for the period mentioned in the Contract and shall then forthwith hand over the same to the Corporation completed and in perfect order and repair as provided in the Contract, and shall at all times indemnify and keep respective officers, servants, employees and agents of, from and against all and manner of loss, damage, expense, suits, claims, liens and demands arising out of the Contract or incurred by reason of the execution of the said work or the supply of material therefore, according to the terms of the Contract, then this obligation shall be null and void but otherwise shall be and remain in full force and virtue.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of sureties to the contrary notwithstanding.

SIGNED, SEALED AND DELIVERED

PRINCIPAL

in the presence of

SURETY

Bond No.
(executed in triplicate)

KNOW ALL MEN BY THESE PRESENTS THAT

AS PRINCIPAL,

hereinafter called the Principal, and

AS SURETY,

hereinafter called the Surety, are subject to the conditions hereinafter contained, held and firmly bound unto

AS TRUSTEE,

hereinafter called the Obligee, for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns in the amount of

Dollars,

(\$) of lawful money of Canada, for the payment of which sum well and truly to be made the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

SIGNED AND SEALED THIS day of 20

WHEREAS the Principal has entered into a written contract with the Obligee dated the day of

, 20 for the construction of

which contract is by reference made a part hereof and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall make payments to all Claimants for all labour and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- 1. A claimant for the purpose of this Bond is defined as one having a direct contract with the principal for labour, material, or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract provided that a person, firm or corporation who rents equipment to the principal to be used in the performance of the Contract under the contract which provides that all or any part of the rent is to be applied towards the purchase price thereof shall only be a claimant to the extent of prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association entitled "Rental Rates on Contractors' Equipment" published prior to the period during which the equipment was in the performance of the Contract.**

- 2. The Principal, and the Surety hereby jointly and severally agree with the Oblige as Trustee that every Claimant who has not been paid as provided for under the terms of his contract with the principal before the expiration of the period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of his said contract with the Principal and have execution thereon. Provided that the Oblige is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants or any of them to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Oblige or by joining the Oblige as a party to such proceedings then such act, action or proceeding shall be taken on the understanding and basis that the Claimants or any of them who take such act, action or proceeding shall indemnify and save harmless the Oblige against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Oblige by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants or any of them may use the name of the Oblige to sue on and enforce the provisions of this Bond.**

- 3. No suit or action shall be commenced hereunder by any Claimant:**

 - (a) Unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, Surety and Oblige, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, Surety and Oblige at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the contract is located. Such notice shall be given (i) in respect of**

any claim for the amount or any portion thereof required to be held back from the Claimant by the Principal under either the terms of the Claimant's contract

LABOUR AND MATERIAL PAYMENT BOND

LB-3

with the Principal or under the Construction Liens Legislation applicable to the Claimant's contract with the Principal whichever is the greater within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal; (ii) in respect of any claim other than for the holdback or portion thereof referred to above within one hundred and twenty (120) days after the date upon which such Claimant did or performed the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal.

- (b) After the expiration of one (1) year following the date on which Principal ceased work on the Contract including work performed under the guarantees provided in the Contract.
 - (c) Other than in a court of Competent jurisdiction in the Province or District of Canada in which the subject matter of the Contract or any part hereof is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such court.
4. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of Construction Liens which may be filed or recorded against the subject matter of the Contract, whether or not claim for the amount of such lien be presented and against this Bond.
5. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its Attorney-in-fact the day and year first above written.

Principal

Surety

