

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN TEXAS A&M UNIVERSITY – CORPUS CHRISTI
AND AMERESCO, INC.**

This Professional Services Agreement (“Agreement”) between Texas A&M University- Corpus Christi, a member of The Texas A&M University System, an agency of the State of Texas (“TAMU-CC”), and Ameresco, Inc. (“Provider”), is made and entered into as of January 23, 2017.

This Agreement is for the provision of professional services outlined in the attached Preliminary Engineering and Guaranteed Maximum Price Development Proposal, dated December 9, 2016 (“Scope of Work / Work”). Provider represents to having the knowledge, ability, skills and resources to provide such services in accordance with the terms and requirements of this Agreement. To any extent required under the Scope of Work, Provider represents that any part of the performance required to be performed by a professional having state licensure in good standing will be performed by such licensed professional.

TAMU-CC and Provider hereby agree as follows:

1. SCOPE OF WORK

A. The scope of the work (“Work” or “Services”) and the time for performance thereof, is as set forth in Appendix A attached hereto, and made a part hereof for all purposes including the HUB subcontracting plan and any reports required thereunder. Future services may be performed in several phases during the term of this Agreement. Provider shall submit the applicable Scope of Work, and quote if applicable, for a future phase or phases to TAMU-CC for review and approval, prior to commencement of services. Approval shall be issued in the form of an amendment to this Agreement, and executed by both parties.

B. Upon execution of this Agreement, all services previously performed by Provider on behalf of TAMU-CC and included in the description of the Work, shall become part of the Work and shall be subject to the terms and conditions hereof.

C. TAMU-CC shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Provider for use in the Services under this Agreement. Provider shall use reasonable efforts to verify the accuracy and suitability of any information supplied to Provider by TAMU-CC, or any other party, that Provider uses for the Work. Provider shall identify to TAMU-CC in writing any such documents or data which, in Provider’s professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. TAMU-CC does not warrant the accuracy or suitability of such documents or data as are furnished unless Provider advises TAMU-CC in writing that, in Provider’s professional opinion, such documents or data are unsuitable, improper, or inaccurate and TAMU-CC confirms in writing that it wishes Provider to proceed in accordance with the documents or data as originally given.

D. Provider agrees and acknowledges that TAMU-CC is entering into this Agreement in reliance on Provider's represented professional abilities with respect to performing the services, duties, and obligations under this Agreement. Provider shall perform its Services in accordance with the usual and customary professional standards of care, skill, and diligence consistent with its industry and like firms in Texas that provide professional services for projects that are similar in size, scope, and budget to the Work (the "Standard of Care"). Subject to this Standard of Care, Provider shall interpret and apply applicable national, Federal, State, and municipal laws, regulations, codes, ordinances, and orders in effect at the time the Services are provided. There are no obligations, commitments, or impediments of any kind known to the Provider that will limit or prevent performance by Provider of its Services.

E. Provider shall allocate adequate time, personnel, internal administration, supervision, and resources as necessary to perform its Services in an expeditious and economical manner consistent with the interests of TAMU-CC. Provider's Project Principal(s) responsible for managing the Work is identified in Appendix A and, while employed by Provider, shall not be changed without the prior written approval of TAMU-CC.

F. TAMU-CC's approval or acceptance of Provider's Services shall not relieve Provider of any of its professional duties nor release Provider from any liability for negligent delivery of such Services because TAMU-CC is, at all times, relying upon Provider's skill and knowledge in performing Provider's Services. TAMU-CC shall have the right to reject any of Provider's Services due to any material errors or omissions in any deliverables prepared by Provider or its consultants. Upon notice of any such errors or omissions, Provider shall promptly provide any and all Services necessary to correct or remedy them at no additional cost to TAMU-CC. Provider's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective Services which TAMU-CC may have at law or in equity, or both.

2. TIME FOR COMMENCEMENT AND COMPLETION

It is understood that time is of the essence in the Work to be performed under this Agreement and that Provider shall complete all authorized Work in accordance with the time for performance described for the Work, and in a minimum of time consistent with the Standard of Care. The initial term of this Contract shall be for a period of one (1) year, with an option to renew annually. Initial term with renewals shall not exceed five (5) years.

3. PAYMENT TERMS and MAXIMUM CONTRACT SUM

A. For the satisfactory performance of the Work as specified in Appendix A, TAMU-CC shall pay Provider an amount not to exceed **\$74,000.00** TAMU-CC reserves the right to increase the scope of this engagement as necessary.

B. Payments of the amount due to Provider will be provided by TAMU-CC upon receipt of an invoice which details the date of service, description of work performed, billing rate as set forth in Appendix A, and provides supporting documentation for reimbursable expenses relating to Work requested by TAMU-CC, if any. The invoice must be signed by the Provider and submitted to TAMU-CC at the address specified in Section 8 below. Payment for travel related expenses shall be in accordance with State of Texas Travel Guidelines.

C. TAMU-CC makes no representations regarding the amount or type of services, if any, that Provider will be asked to provide to TAMU-CC during the term(s) of this Agreement. It is expressly understood that TAMU-CC is under no obligation to request any services from Provider and no

minimum amount of work is required or contemplated under this Agreement. All service requests will be made by TAMU-CC on an as-needed basis, subject to future agreement on the scope of the work and the fee.

4. DEFAULT AND TERMINATION

A. In the event of substantial failure by a party hereunder to perform in accordance with the terms hereof, the other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the terminating party.

B. TAMU-CC may, without cause, terminate this Agreement at any time upon giving thirty (30) days' advance notice to Provider. Upon termination pursuant to this paragraph, Provider shall be entitled to payment of such amount as shall compensate Provider for the Services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided Provider shall have delivered to TAMU-CC a final report describing the work completed to the date of termination. TAMU-CC shall not be required to reimburse Provider for any Services performed or expenses incurred after the date of termination notice.

5. TAMU-CC FACILITIES

Any non-consumable items provided by TAMU-CC will remain TAMU-CC property at the termination of this Agreement unless otherwise agreed in writing. Provider and its employees will be permitted access to facility space applicable to the Scope of Work , and TAMU-CC reserves the right to enter the premises to conduct TAMU-CC business, as may be reasonably necessary or for health and safety purposes.

6. INSURANCE

The Provider shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O) and Workers' Compensation, all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas and currently rated A- or better by A.M. Best Company or otherwise acceptable to Owner. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to the Provider under this Agreement. The Provider shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Provider is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. Required insurance shall not be cancelable without thirty (30) days' prior written notice to TAMU-CC, except ten (10) days for nonpayment of premium.

Worker's Compensation

Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

Statutory
\$500,000 Each Accident
\$500,000 Disease/Employee
\$500,000 Disease/Policy Limit

Automobile Liability

Owned Vehicles	\$1,000,000
Non-owned Vehicles	\$1,000,000
Hired Vehicles	\$1,000,000

Commercial General Liability

Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$100,000
Medical Payments	\$5,000

Professional Liability (Errors & Omissions) \$1,000,000
When Services require such coverage

On Site Insurance: For Services performed on TAMU-CC's premises, the Provider shall furnish to Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement. The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System, and TAMU-CC as additional insured.

(THE FOLLOWING INCLUDED WITH A/E or OTHER ENGINEERING SERVICES)

Provider shall maintain Professional Liability covering wrongful acts, errors and/or omissions, including design errors of the Architect/Engineer for damages sustained by reason of or in the course of performance of this Agreement for three (3) years after the Work is substantially complete, determined by the Guidelines chart below:

Guidelines

<i>Project Cost</i>	<i>Limits</i>
<i>\$0 - \$20,000,000</i>	<i>\$1,000,000 each claim/ \$2,000,000 aggregate</i>
<i>\$20,000,001 - \$60,000,000</i>	<i>\$2,000,000 each claim/ \$4,000,000 aggregate</i>
<i>\$60,000,001 - \$90,000,000</i>	<i>\$3,000,000 each claim/ \$6,000,000 aggregate</i>
<i>\$90,000,001 – 120,000,000</i>	<i>\$4,000,000 each claim/ \$8,000,000 aggregate</i>
<i>\$120,000,001 – higher</i>	<i>\$5,000,000 each claim/ \$10,000,000 aggregate</i>

Provider shall include The Texas A&M University System Board of Regents, The Texas A&M University System, and TAMU-CC as additional insured on the Commercial General Liability and Automobile Liability policies, and the Workers' Compensation policy shall include a waiver of subrogation in favor of the Owner.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be delivered electronically, hand delivered, or 1st class mail to TAMU-CC's Contracts Manager at 6300 Ocean Drive, MS 5731, Corpus Christi, Texas 78412 – contracts@tamucc.edu, prior to commencement of Services.

7. OWNERSHIP AND USE OF DOCUMENTS

All documents prepared by the Provider under this Agreement, and the ideas and designs contained therein, shall be property of the TAMU-CC. If Provider is not engaged to perform services in connection with the implementation of its designs, Provider will have no control over such implementation by TAMU-CC or any third party. Accordingly, Provider specifically and expressly disclaims all responsibility for the use of or reliance upon such documents or memoranda by TAMU-CC or any third party. Provider shall be permitted to retain copies, including reproducible copies, of all documents prepared by the Provider for information and reference in connection with the Work.

8. NOTICES

Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. TAMU-CC and Provider can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMU-CC :

Texas A&M University – Corpus Christi
attn.: Contracts and Property
6300 Ocean Drive, MS 5731
Corpus Christi, Texas 78412
Telephone: (361) 825-2422
Email: contracts@tamucc.edu

Provider:

Ameresco, Inc.
60 E. Rio Salado Drive, Suite 1001
Tempe, AZ 85281
Telephone: 480-499-9200
Email: rgeorgeoff@ameresco.com

With a copy to:

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

9. PUBLIC INFORMATION

Information provided to Provider by TAMU-CC, including but not limited to information from the members, officers, agents, or employees of The Texas A&M University System or any of its components, and information provided to Provider by members of the public or any other third party shall belong to TAMU-CC.

Information created, derived, or otherwise produced by Provider prior to initiation of this Agreement or unrelated to the work conducted under this Agreement shall remain the exclusive property of Provider. Provider shall have the responsibility of clearly designating any confidential information that is provided to TAMU-CC. In the event TAMU-CC receives a request for public information that includes information designated by Provider to be confidential, TAMU-CC will provide notice to Provider and Provider may submit a brief to the Office of the Attorney General, as provided by Chapter 552, *Texas Government Code*. The parties agree that TAMU-CC will be permitted, without penalty under this Agreement, to strictly comply with Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.

10. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMU-CC and Provider to attempt to resolve any claim for breach of contract made by Provider that cannot be resolved in the ordinary course of business. Provider shall submit written notice of a claim of breach of contract under this Chapter to TAMU-CC's Contracts Officer, who shall examine Provider's claim and any counterclaim and negotiate with Provider in an effort to resolve the claim.

11. HUB SUBCONTRACTING

It is the policy of the State of Texas, the Texas Procurement and Support Services and the Texas A&M University System to encourage the use of Historically Underutilized Businesses (HUBs) in our prime contracts, subcontractors and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in A&M System contracting and purchasing.

If a subcontractor will be used to provide any commodity or service as part of any Scope of Work related to this Agreement, Provider will be required to make a good faith effort and complete the State of Texas HSP found at <http://www.tamus.edu/business/facilities-planning-construction/forms-guidelines-wage-rates/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the Provider will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the Provider will be expected to make a good faith effort according to the HSP instructions.

If the event that you determine you will be using a subcontractor, please contact TAMU-CC's HUB Coordinator at (361) 825-2196 for assistance in determining available HUB subcontractors and proper completion of the HSP.

Provider agrees on allocating work to subcontractors (consultants) as listed (or indicated) on their HUB Subcontracting Plan, in accordance with The Texas A&M University System Policy on Historically Underutilized Businesses. No changes to the HUB Subcontracting Plan may be made unless approved in writing by TAMU-CC. While this Agreement is in effect and until the expiration of one year after completion, TAMU-CC may require information from the Provider, and may conduct audits, to assure that the HUB Subcontracting Plan is followed.

12. MISCELLANEOUS

A. **Ameresco agrees to defend, indemnify and hold Customer harmless from and against any and all third party claims for damages arising by reason of bodily injury, death or damage to property caused by Ameresco's negligence (or the negligence of any sub-contractor hired by Ameresco) or willful misconduct. Ameresco, however, in no event shall be obligated to indemnify Customer to the extent that any injury or damage is caused by the negligence of Customer or any entity for which Customer is legally responsible.**

B. Provider shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TAMU-CC.

C. Provider shall be an independent contractor, and neither Provider nor any employee of Provider shall be deemed to be an agent or employee of TAMU-CC. As an independent contractor, Provider will be solely responsible for determining the means and methods for performing the Services described. Provider shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to, those of TAMU-CC relative to conduct on its premises.

D. Ethics Matters. Neither Provider nor its employees, agents, representatives or consultants will assist or cause any TAMU-CC employee to violate TAMU-CC's Conflicts of Interest Policy or applicable state ethics laws or rules. Provider represents and warrants that no member of the Board of Regents of the Texas A&M University System has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

E. This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.

F. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMU-CC shall be in the county in which the primary office of the chief executive officer of TAMU-CC is located.

G. If Provider is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Provider certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Provider is exempt from the payment of franchise (margin) taxes.

H. TAMU-CC may request a consultant to perform a criminal background check on any employee and/or representative of Provider who conducts business pursuant to this Agreement on TAMU-CC's campus.

I. Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

J. Pursuant to Section 2252.903, *Texas Government Code*, Provider agrees that any payments owing to Provider under this Agreement may be applied directly toward certain debts or delinquencies that Provider owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

K. Provider expressly acknowledges that TAMU-CC is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU-CC of its right to claim such exemptions, privileges, and immunities as may be provided by law.

L. Provider acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMU-CC from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Provider is an individual, by signing this Agreement, Provider certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

M. Performance by TAMU-CC under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TAMU-CC will issue written notice to Provider and TAMU-CC may terminate this Agreement without further duty or obligation hereunder. Provider acknowledges that appropriation of funds is beyond the control of TAMU-CC.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date indicated below their signatures.

**TEXAS A&M UNIVERSITY
CORPUS CHRISTI**

AMERESCO, INC.

By: John A. Casey
John Casey
Director, Contracts & Property
Dated: 1-23-2017

By: [Signature]
Name: Robert George
Title: Vice President
Dated: 1-23-17