

ORDINANCE/RESOLUTION REQUEST

Please email requests to the Mayor's Legislative Team

at MileHighOrdinance@DenverGov.org by **3:00pm on Monday**. Contact the Mayor's Legislative team with questions

Date of Request: May 30, 2022

Please mark one: **Bill Request** or **Resolution Request**

1. Type of Request:

- Contract/Grant Agreement** **Intergovernmental Agreement (IGA)** **Rezoning/Text Amendment**
- Dedication/Vacation** **Appropriation/Supplemental** **DRMC Change**
- Other:**

2. Title: (Start with *approves, amends, dedicates*, etc., include name of company or contractor and indicate the type of request: grant acceptance, contract execution, contract amendment, municipal code change, supplemental request, etc.)

A resolution to amend the Energy Conservation Measure Equipment lease purchase agreement #FINAN-202161239-00 (RQ-00075443), for the purposes of modifying the escrow agreement and Acceptance Certificates, both exhibits to the lease purchase agreement.

3. Requesting Agency: Department of Finance

4. Contact Person:

| | |
|---|---|
| Contact person with knowledge of proposed ordinance/resolution | Contact person to present item at Mayor-Council and Council |
| Name: Hannah Stewart | Name: Kiki Turner; Hannah Stewart |
| Email: Hannah.Stewart@denvergov.org | Email: Kiki.Turner@denvergov.org ; Hannah.Stewart@denvergov.org |

5. General description or background of proposed request. Attach executive summary if more space needed:

The City and the Lessor (JP Morgan Chase Bank, N.A.) previously entered into a capital equipment lease purchase agreement dated December 13, 2021, related to the purchase of Energy Conservation Measure Equipment ("Equipment") on behalf of the City's Department of General Services, from two separate vendors, Ameresco, Inc. and McKinstry Essention, LLC. The proposed changes to the agreement include:

1) modifications to the lease purchase agreement equipment list and acceptance certificates as a result of changes to the scope of work to the Ameresco Energy Performance Agreement, which includes replacing a fabric pool cover and Live Energy real-time energy reporting from the eligible Energy Conservation Measures with additional LED lighting retrofits. The proposed modification will result in funds remaining in escrow after all payments have been made to the vendor. The remaining funds will be applied to the rental payments, as directed in the lease purchase agreement.

2) modifications to the lease purchase agreement acceptance certificates for the Equipment related to improvements to be delivered by McKinstry Essention, LLC as a result of changes to the Energy Performance Agreement agreed to by General Services and the vendor.

These amendments to the lease purchase agreement are necessitated by Energy Performance Agreement amendments originated by General Services with each of the respective vendors; therefore this resolution request should be read in conjunction with the two resolution requests being submitted by General Services to amend the Ameresco, Inc. (GENRL-202263188-01 / GENRL-202161178-01) and McKinstry Essention, LLC (GENRL-202263189-01 / GENRL-202161179-01) contracts.

The amendments to the lease agreement are administrative changes that will not change to the total contract amount or the contract duration.

6. City Attorney assigned to this request (if applicable): Laurie Heydman

7. City Council District: Citywide

8. **For all contracts, fill out and submit accompanying Key Contract Terms worksheet**

To be completed by Mayor's Legislative Team:

Resolution/Bill Number: _____

Date Entered: _____

Key Contract Terms

Type of Contract: (e.g. Professional Services > \$500K; IGA/Grant Agreement, Sale or Lease of Real Property): Capital Equipment Lease Purchase Agreement

Vendor/Contractor Name: JP Morgan Chase Bank, N.A.

Contract control number: FINAN-202262870-01/202161239-01 (amends FINAN-202161239-00)

Location: Citywide

Is this a new contract? Yes No **Is this an Amendment?** Yes No **If yes, how many?** 1

Contract Term/Duration (for amended contracts, include existing term dates and amended dates): 15-year Lease term, amendment does not change lease term

Contract Amount (indicate existing amount, amended amount and new contract total):

| <i>Current Contract Amount</i> (A) | <i>Additional Funds</i> (B) | <i>Total Contract Amount</i> (A+B) |
|---------------------------------------|--------------------------------|---------------------------------------|
| \$16,514,858.73 | \$0 | \$16,514,858.73 |

| <i>Current Contract Term</i> | <i>Added Time</i> | <i>New Ending Date</i> |
|------------------------------|-------------------|--------------------------|
| 15-year term (1/31/2037) | N/A | 15-year term (1/31/2037) |

Scope of work: This administrative amendment is needed to process payments to the vendors, McKinstry Essention LLC and Ameresco, Inc., for delivery and installation of the Equipment through USBank, the escrow bank.

Was this contractor selected by competitive process? Yes **If not, why not?**

Has this contractor provided these services to the City before? Yes No

Source of funds: Annual Capital Improvement Program, Utility Savings and Climate Protection Fund

Is this contract subject to: W/MBE DBE SBE XO101 ACDBE N/A

WBE/MBE/DBE commitments (construction, design, Airport concession contracts): None

Who are the subcontractors to this contract? None

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CITY AND COUNTY OF DENVER

DEPARTMENT OF FINANCE

CASH AND CAPITAL FUNDING
201 WEST COLFAX AVE.
DENVER, COLORADO 80202
PHONE: (720) 913-5500

Executive Summary

Resolutions to amend 1) the Energy Performance Agreement with Ameresco, Inc. for the purpose of changing the scope of work for services related to the implementation of energy conservation measures at City buildings, 2) the Energy Performance Agreement with McKinstry Essention, LLC for the purpose of changing the term and payment structure for services related to the implementation of energy conservation measures at City buildings, and 3) the Energy Conservation Measure Equipment lease purchase agreement for the purpose of modifying the lease purchase agreement.

Background:

On December 13, 2021, the City and County of Denver executed Energy Performance Agreements for services related to the purchase of energy conservation measure implementation in 45 city buildings throughout the city. The energy conservation measures were awarded to two Energy Services Companies: Ameresco, Inc. and McKinstry Essention, LLC. Energy Performance Agreements are a strategy to reduce energy use in existing buildings per the Strategic Energy Plan for City and County of Denver Municipal Facilities 100% Renewable Electricity Goal. The strategy prioritizes large buildings with high energy-use intensity (EUI). Energy Conservation Measure recommendations were reviewed by the Denver Energy Office and building stakeholders, and a final list of Energy Conservation Measures for implementation was agreed upon by both parties. The equipment was purchased through a capital lease purchase agreement with JP Morgan Chase, payments for which will be made from utility savings. Additional funding to support the direct purchase of equipment and required professional services will be from the Climate Protection Fund and Annual Capital Improvement Program.

Proposed Amendments:

Ameresco: We are modifying the scope of work to the Ameresco Contract based on end-use customer feedback. The fabric pool cover and “live energy modeling” components of the scope of work have been removed and substituted with LED lighting replacements. These modifications to the scope of work are not expected to significantly change the expected energy savings. The cost reduction is \$367,279 with an add back of about \$260,359. This leaves a net cost reduction to the equipment under the lease agreement of \$101,997, and these funds will be applied directly to the lease agreement to balance that offset. The EPC non-equipment costs will be reduced by \$13,923 and applied to the Owner’s Contingency for unforeseen conditions and minor adjustments. Final costs related to the work outside the capital lease are to be determined.

Impacts: The reduced scope and cost necessitate revised exhibits/schedules to the Energy Performance Contract previously approved by City Council. The Lease Agreement will be impacted by modifying the Certificates of Acceptance. The Certificates of Acceptance (repayment schedule) will also be modified to accurately reflect actual acceptance of work in the field.

McKinstry: The original Lease Agreement draw schedule was based on progress payments, rather than specific equipment related to completed delivery and install of projects. The Lessor only authorizes payments made upon acceptance of completed projects. In this amendment, we are replacing the Lease Agreement draw schedule and making other minor, no-cost corrections. This replacement draw schedule and added Certificates of Acceptance allow for the release of payments upon completion and acceptance of projects. There are other minor changes to the performance contract that include address corrections and extending the contract completion date to allow for completion of Measurement and Verification of savings portion of the work, as detailed below.

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Term

- Amended to align with the 3-year post-construction measurement and verification process.
- Original: December 13, 2021 – December 31, 2025
- Amended: December 13, 2021 – December 31, 2026

Address Changes

- Police Academy Solar to 2155 N. Akron Way, Denver, CO 80238
- Police Traffic Operations Solar to 3381 Park Avenue West, Denver, CO 80216

Impacts: The schedule of values will be revised to replace the original, which will reflect whole, complete projects rather than payments based on partial completion. Other minor changes are not expected to have significant impacts. There are no changes in the scope of work, or contract value.

JPMorgan Chase – Lessor: Due to the amendments referenced above, the original Equipment delivery schedules for both Ameresco and McKinstry and the equipment list for Ameresco are no longer accurate.

Impacts: An administrative change to three lease purchase agreement exhibits lead by the adjustments to the ESCO contracts. There is no change to the cost of the lease and the \$101,997 delta due the change in scope of the Ameresco contract will be applied to the lease rental payments, in accordance with the lease purchase agreement.

For more details on the amendments, please see the accompanying Energy Performance Contract Resolution Requests.

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