

ORDINANCE/RESOLUTION REQUEST

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.)

Approves a no-cost amendment to the Energy Performance Agreement with McKinstry Essention, LLC to change the term and payment structure for services related to the implementation of energy conservation measures at City buildings.

3. Requesting Agency: General Services

4. Contact Person:

Contact person with knowledge of proposed ordinance/resolution	Contact person to present item at Mayor-Council and Council
Name: Kami Johle	Name: Kami Johle
Email: kami.johle@denvergov.org	Email: kami.johle@denvergov.org

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

This resolution request is to approve a no-cost amendment to the Energy Performance Agreement for services related to the purchase of energy conservation measure implementation in 23 city buildings throughout the city. 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). This amendment will realign of the lease-equipment schedule with work occurring in the field; correct the date of completion of measurement and verification services to December 31, 2026; and correct two property physical addresses.

This request seeks approval of a no-cost amendment to extend the term and change the payment structure, and the maximum contract amount of \$2,346,783 for professional services remains the same. The companion agreements include \$13,834,597 in Financed Equipment and \$735,094 in Direct Purchase of Equipment through purchase order PO-00107101, amounting to a total project cost of \$16,916,474, which also remains the same.

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

Lindsay Carder

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): Standard expenditure

Vendor/Contractor Name: McKinstry Essention, LLC

Contract control number: GENRL-202263189-02 (GENRL-202161179-01 – original contract number).

Location: Various City-owned buildings (1245 Champa, City and County Building, various CPD, various Fire Stations, various Safety Facilities, Denver Crime Lab, Lindsey-Flanigan Courthouse, Denver Animal Shelter, Rose Andom, Elections Building, etc.)

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):

Original Contract Expiration – December 31, 2025.

New Contract Expiration – December 31, 2026.

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

<i>Current Contract Amount</i>	<i>Additional Funds</i>	<i>Total Contract Amount</i>
<i>(A)</i>	<i>(B)</i>	<i>(A+B)</i>
\$2,346,783	0	\$2,346,783

<i>Current Contract Term</i>	<i>Added Time</i>	<i>New Ending Date</i>
12/31/2025	12 months	12/31/2026

Scope of work: This agreement is for services associated with the purchase energy conservation measure implementation equipment in 23 city buildings throughout the city.

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): 18%

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Who are the subcontractors to this contract?

ECM Holdings

ATS Rocky Mountain

Trane

Setpoint

Westover

Siemens

Haynes Mechanical

LEI Electrical

MGT Landscaping

Standard Mechanical

Murphy Company

Circuitus Energy Solutions

Titan

Jedi

Certified Balancing and Commissioning

Pella

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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 Lease Purchase and Energy Performance Contract Resolution Requests.

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