



Legislation Details (With Text)

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**Type:** Resolution      **Status:** Adopted

**File created:** 5/27/2022      **In control:** Finance & Governance Committee

**On agenda:** 6/20/2022      **Final action:** 6/20/2022

**Title:** A resolution approving a proposed Amendatory Agreement between the City and County of Denver and JPMorgan Chase Bank, N.A. to purchase Energy Conservation Measure Equipment. Amends the lease purchase agreement with JP Morgan Chase Bank, N.A. for energy conservation measure equipment to address required administrative changes in the escrow agreement and Acceptance Certificates. No change to lease purchase agreement duration or amount (FINAN-202161239-00). The last regularly scheduled Council meeting within the 30-day review period is on 7-11-22. The Committee approved filing this item at its meeting on 6-7-22.

**Sponsors:**

**Indexes:** Zach Rothmier

**Code sections:**

**Attachments:** 1. RR22-0661 ESCO - Lease Purchase Resolution Request Amendment v1 5.24.22 vF, 2. 22-0661 Filed Resolution\_JP Morgan Chase Bank N.A.\_ 202262870-01, 3. 22-0661 Amendatory Agreement JPMorgan Chase Bank, N.A. 202262870-01, 4. 22-0661 Filed Resolution\_JP Morgan Chase Bank N.A.\_ 202262870-01, 5. 22-0661 - signed

Date	Ver.	Action By	Action	Result
6/21/2022	1	Council President	signed	
6/20/2022	1	City Council	adopted	Pass
6/7/2022	1	Finance & Governance Committee	approved by consent	Pass

**Contract Request Template (Contracts; IGAs; Leases)**

**Date Submitted: 5-30-2022**

**Requesting Agency: Department of Finance  
Division:**

**Subject Matter Expert Name: Kiki Turner/ Hannah Stewart**

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**Phone Number:**

**Item Title & Description:**

*(Do not delete the following instructions)*

*These appear on the Council meeting agenda. Initially, the requesting agency will enter a 2-3 sentence description. Upon bill filling, the City Attorney's Office should enter the title above the description (the title should be in **bold** font).*

*Both the title and description must be entered between the red "title" and "body" below. Do **not** at any time delete the red "title" or "body" markers from this template.*

**A resolution approving a proposed Amendatory Agreement between**

**the City and County of Denver and JPMorgan Chase Bank, N.A. to purchase Energy Conservation Measure Equipment.**

Amends the lease purchase agreement with JP Morgan Chase Bank, N.A. for energy conservation measure equipment to address required administrative changes in the escrow agreement and Acceptance Certificates. No change to lease purchase agreement duration or amount (FINAN-202161239-00). The last regularly scheduled Council meeting within the 30-day review period is on 7-11-22. The Committee approved filing this item at its meeting on 6-7-22.

**Affected Council District(s) or citywide? Citywide**

**Contract Control Number:** FINAN-202262870-01/202161239-01 (amends FINAN-202161239-00)

**Vendor/Contractor Name (including any "DBA"):** JP Morgan Chase Bank, N.A.

**Type and Scope of services to be performed: See executive summary at end of document for additional information.**

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.

**Location (if applicable):**

**WBE/MBE/DBE goals that were applied, if applicable (construction, design, Airport concession contracts):**

**Are WBE/MBE/DBE goals met (if applicable)?**

**Is the contract new/a renewal/extension or amendment? Amendment**

**Was this contractor selected by competitive process or sole source? Competitive**

**For New contracts**

**Term of initial contract:**

**Options for Renewal:**

**How many renewals (i.e. up to 2 renewals)?**

**Term of any renewals (i.e. 1 year each):**

**Cost of initial contract term:**

**Cost of any renewals:**

**Total contract value council is approving if all renewals exercised:**

**For Amendments/Renewals Extensions:**

**Is this a change to cost/pricing; length of term; terms unrelated to time or price (List all that apply)? Terms**

***If length changing***

**What was the length of the term of the original contract?**

**What is the length of the extension/renewal?**

**What is the revised total term of the contract?**

***If cost changing***

**What was the original value of the entire contract prior to this proposed change?**

**What is the value of the proposed change?**

**What is the new/revised total value including change?**

***If terms changing***

**Describe the change and the reason for it (i.e. compliance with state law, different way of doing business etc.)**

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.



## 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.

*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.