

EXHIBIT A

INTERGOVERNMENTAL GUARANTEED ENERGY SAVINGS AGREEMENT

THIS INTERGOVERNMENTAL GUARANTEED ENERGY SAVINGS AGREEMENT (“Agreement”) is dated as of _____, 2022 (the “Contract Effective Date”) by and between THE CITY OF PHILADELPHIA (“City”) acting through its Procurement Department and THE PHILADELPHIA ENERGY AUTHORITY, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (“Authority” or “PEA”).

RECITALS

WHEREAS, the Authority is a body corporate and politic organized under the provisions of the Municipalities Authorities Act of 2001 (the Act of June 19, 2001, P.L. 287, No. 22, as amended) pursuant to ordinances of the Council of the City; and

WHEREAS, the Authority is authorized by an Ordinance approved on July 29, 2010 (Bill No. 100163-AA), as amended by an Ordinance approved on January 3, 2019 (Bill No. 181007) to take actions concerning the development or facilitation of energy efficiency projects on behalf of the City; and

WHEREAS, the City has requested that the Authority enter into a Guaranteed Energy Savings Contract (the “Guaranteed Energy Savings Contract” or “GESC”) with Ameresco Inc. (together with any successors or assigns, the “Vendor”), to provide and install energy conservation measures to the municipal owned street lighting system (the “City Street Lighting System”) which will include equipment, alterations or upgrades designed to reduce energy, or other measurable consumption or operating costs and otherwise improve performance of the City Street Lighting System (the “Project”); and

WHEREAS, the City and the Authority anticipate financing the installation of the energy conservation measures through the issuance of tax-exempt and/or taxable bonds (the “Project Bonds”) by the Authority, and anticipate that the City will enter into a service agreement with the Authority pursuant to which the Authority will, at the direction of and with the cooperation of the City undertake the Project and the City will make service fee payments to the Authority sufficient to timely meet, *inter alia*, all debt service (including any prepayments) on the Project Bonds; and

WHEREAS, the Council of the City of Philadelphia enacted an ordinance, Bill No. _____, approved by the Mayor on _____, 2022 duly empowering the City and the Authority to enter this Agreement and Exhibits thereto; and

WHEREAS, by resolution dated _____, 2022, the Board of Directors of the Authority has authorized its Chairman, Vice-Chairman or its President & CEO to, among other things, execute this Agreement and the GESC; and

WHEREAS, the Vendor and the Authority propose to enter into the GESC, in the form attached hereto as Exhibit A, contemporaneously with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and for other valuable consideration, the City and the Authority (collectively, the “Parties”), intending to be legally bound, hereby agree as follows:

1. Definitions.

Capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in the GESC.

2. Term.

The term of this Agreement shall commence on the Contract Effective Date and shall terminate one day after the expiration or termination of the GESC; provided that to the extent that any obligations of the Authority under the GESC survive expiration or termination of the GESC, the City’s corresponding obligations under this Agreement shall remain in effect and be enforceable following such expiration or termination.

3. Obligations of the Authority.

(a) Authority shall provide all required administrative services necessary to fulfill its obligations to the Vendor and the City for the prompt and timely submission of any required representations and documents required under the GESC (the “Administrative Obligations”).

(b) The Authority shall provide the City with copies of any notices received by the Authority from the Vendor, unless the Authority shall have determined by reasonable means that the City received a copy of such notice directly from such party.

(c) The Authority shall provide the City with copies of any notices received from any governmental authority with respect to the City Street Lighting System or Equipment in relation to the performance or transactions contemplated by this Agreement, the GESC, or the other operative documents.

(d) The Authority shall not amend, modify, alter or otherwise change the GESC, once fully executed, without the prior written consent of the City.

(e) The Authority shall not assign the GESC once fully executed, without the prior written consent of the City.

(f) The Authority shall pay over to the City any payments due from the Vendor with respect to the GESC other than payments such as indemnities of PEA that are intended for the direct benefit of PEA.

(g) The Authority shall transfer all rights and ownership to the City of all energy conservation measures, equipment, warranties, licenses, or other materials obtained from the Vendor in accordance with the GESC; provided that PEA may retain copies of all documents related to the administration of the GESC.

4. Obligations of the City

(a) With the exception of Administrative Obligations, the City assumes and shall perform all other non-financial obligations of the Authority to the Vendor under the GESC and all obligations which PEA undertakes to cause the City to Perform. In addition, except in cases where payments to the Vendor are made from the proceeds of the Project Bonds, the City shall make timely payments to the Authority for all approved invoices submitted to the City by the Authority for services, products, or materials provided by the Vendor under the GESC or damages, termination payments, Break Fee, indemnification, charges, reimbursements, or any other payment of any kind, in each case payable by the Authority under the GESC.

(b) The City shall timely and promptly review all required representations and documents, and shall confirm the accuracy of any representations and provide timely approvals of all documents required under the GESC.

(c) The City shall perform all of the Authority's obligations to the Vendor under the GESC which it has obligated itself to undertake herein in a prompt and timely manner.

(d) The City will promptly furnish information as needed by the Authority to comply with this agreement or the vendor to perform the GESC.

5. Indemnification.

Subject to the provisions and limitations of this Section and to the extent permitted at law, the City hereby indemnifies and holds harmless the Authority and each member, officer, and employee of the Authority against any and all claims, losses, damages or liabilities, joint and several, to which the Authority or any member, officer or employee of the Authority or any member, officer or employee of the Authority may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of this Agreement or the GESC, unless the losses, damages or liabilities arise from an adjudication of gross negligence, bad faith, fraud or deceit of the member, officer or employee of the Authority. In the event any claim is made or action brought against the Authority, or any member, officer, or employee of the Authority, the Authority may request that the City assume the defense of the claim and any action brought thereon and pay all reasonable expenses incurred therein; or the Authority may assume the defense of any such claim or action, provided, however, that counsel selected

by the Authority shall be approved by the City and the City shall reimburse the Authority's associated reasonable costs of such defense, and further provided that the City may engage its own counsel to participate in the defense of any such action. The defense of any such claim shall include the taking of all actions necessary or appropriate thereto. The City's obligations to the Authority under this indemnity survive any termination of this Agreement or assignment to a Successor Authority (as defined below).

6. Successor Authority.

In the event that the Authority ceases to exist or otherwise does not perform its obligations hereunder, or the City chooses to cause the Authority to assign the GESC to another authority, the City shall have the right to appoint and substitute a successor authority (the "Successor Authority") to succeed to the rights and assume the obligations of the Authority hereunder, in which event, the City shall cause such Successor Authority to assume all obligations and liabilities of the Authority under the GESC. The City's foregoing right to appoint a Successor Authority shall be a continuing right and shall not be exhausted by the exercise thereof. Notwithstanding the foregoing, upon any termination of an Authority, (a) the City shall enter into a new Intergovernmental Agreement, substantially in the form hereof, with any such Successor Authority that succeeds to the rights of or assumes the obligations and liabilities of the Authority under the GESC; and (b) all obligations of the City to a terminated Authority that accrued prior to termination shall survive termination and shall be owed to (i) the Authority to the extent of expenses incurred by the Authority, and (ii) to the Successor Authority that assumes the obligations and liabilities of the terminated Authority under the GESC to the extent they represent unpaid obligations to the Vendor.

7. Limitation of Liability: Special Obligations of the Authority.

Notwithstanding anything contained in this Agreement to the contrary, the payment obligations of the Authority arising under the GESC are special obligations of the Authority, payable solely from proceeds of the Project Bonds and payments received from the City. The Authority will do all things within its power to timely request funds from the City to fulfill its payment obligations.

The City's obligations under this Agreement shall not create any indebtedness of the City within the meaning of any constitutional or statutory provision relating to the incurrence of debt by the City.

8. Tort Claims Act.

Nothing in this Agreement or the GESC shall waive or be construed to waive or amend, or be deemed to waive or amend, any tort immunity which the City or the Authority, or their officials, members, officers, agents, employees or representatives, may have under Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes Annotated, as applicable, or other Applicable Law.

9. Representations and Warranties of Authority.

The Authority represents and warrants that:

- (a) The Authority is a body corporate and politic, validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform the obligations under this Agreement.
- (b) The Authority has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms.
- (c) Neither the execution nor the delivery by the Authority of this Agreement nor the performance by the Authority of its obligations hereunder nor the consummation by the Authority of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any Applicable Law in effect on the date as of which this representation is being made or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.
- (d) (1) The Authority will execute the GESC. The Authority is duly authorized to execute and deliver the GESC. The GESC will constitute legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, receivership, moratorium and other laws affecting creditors' rights generally; and (2) the City was allowed to review and approve the form of the GESC prior to its execution, in the form executed by the Authority and the Vendor.
- (e) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the Authority's best knowledge, threatened against the Authority which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of the GESC or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.
- (f) The Authority has complied with the provisions of Chapter 17-1400 of the Philadelphia Code, including the provisions of Subsection 17-1404(3), in awarding the GESC as though such agreement was directly subject to the provisions of Chapter 17-1400.

10. Representations and Warranties of the City.

The City hereby represents and warrants that:

(a) The City is a body corporate and politic validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The City has duly authorized the execution and delivery of this Agreement and the taking of any and all actions as may be required on its part to carry out and to give effect and to consummate the transactions contemplated by this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as such enforcement may be limited by laws relating to bankruptcy, insolvency, reorganization, receivership, arrangement, moratorium and other laws affecting creditors' rights, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion in appropriate cases.

(c) Neither the execution nor the delivery by it of this Agreement, nor its performance of its obligations in connection with the transactions contemplated hereby nor its fulfillment of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any Applicable Laws in effect on the date as of which this representation is being made, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

(d) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the City's best knowledge, threatened against the City having a material adverse effect on the right of the City to execute this Agreement or its ability to comply with its obligations under this Agreement.

(e) The City has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the City of this Agreement and the transactions contemplated hereby.

11. Effect of City Approval

Review, approval or acceptance by either Party of any documents submitted by the other Party or the Vendor under or in connection with the Agreement or the GESC shall not constitute approval otherwise required under Applicable Law by any and all City departments, boards or commissioners, or by any other federal, state, or local governmental authority having jurisdiction.

12. No Merger.

The rights and obligations of the Parties under this Agreement shall remain in effect and shall not merge, even if the same Party holds rights of both Parties hereunder, unless such

Party terminates this Agreement in writing.

13. Severability.

In the event that any of the provisions, or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

14. Notice.

Any notice required to be given by City to the Authority hereunder shall be in writing and shall be addressed to:

The Philadelphia Energy Authority
City Hall, Room 566
1400 JFK Boulevard
Philadelphia, PA 19107
Attention: President & CEO

Any notice required to be given by the Authority to the City hereunder shall be in writing and shall be addressed to:

City of Philadelphia Office of Sustainability
1515 Arch Street, 13th Floor
Philadelphia, PA 19102
Attention: Energy Manager

with a copy to:

City of Philadelphia Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA 19102
Attention: Chief Deputy City Solicitor – Regulatory Law

All notices under this Section shall be delivered in person, sent via certified mail with a return receipt requested or sent via facsimile or electronic mail and shall be effective when received at the address specified above. The Parties hereto, by like notice in writing, may designate, from time to time, another address or facsimile number to which notices may be given pursuant to this Agreement.

15. Entire Agreement.

This Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior written and oral agreements, proposals, negotiations, understandings and representations pertaining to the subject matter hereof.

16. Amendments.

The parties acknowledge that from time to time the Agreement may require amendments to support the Parties interests and obligations under the GESC. Such requests for amendment from either Party shall not be unreasonably denied or delayed. However, no amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of the Party against which enforcement is sought.

17. No Third-Party Rights.

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

18. No Conflict.

To the extent of any conflict between the terms and conditions set forth in this Agreement, notwithstanding the City's assumption of the Authority's obligations in Section 4 of this Agreement, and the Guaranteed Energy Savings Contract, the terms and conditions of the Guaranteed Energy Savings Contract shall govern.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:
Diana P. Cortes, City Solicitor

THE CITY OF PHILADELPHIA, acting
through its Procurement Department

By: _____
Kevin Birriel
Deputy City Solicitor

By: _____
Monique Nesmith-Joyner
Commissioner

**THE PHILADELPHIA ENERGY
AUTHORITY**

By: _____
Emily Schapira
President & CEO

Exhibit A
Form of Guaranteed Energy Savings Contract

EXHIBIT B

EXHIBIT B
TERMS AND CONDITIONS OF GUARANTEED ENERGY SAVINGS CONTRACT
FOR CITY OF PHILADELPHIA VIA THE PHILADELPHIA ENERGY
AUTHORITY

Agreement	This Term Sheet is intended to identify the principal terms and conditions to be included in a Guaranteed Energy Savings Contract (the “ <u>Agreement</u> ”), which will set forth the commitments, conditions and obligations of the City of Philadelphia, the Philadelphia Energy Authority and other parties relating to the conversion of streetlighting from High Pressure Sodium (“HPS”) luminaires to Light Emitting Diode (“LED”) luminaires throughout Philadelphia’s city boundaries that is controllable through remote monitoring on a secure network which may include other network capabilities.
Project	LED Streetlighting, Controls, and Networking, Philadelphia, PA
Seller	Ameresco, Inc. (“Ameresco”)
Buyer	City of Philadelphia via the Philadelphia Energy Authority (“PEA”)
Estimated Cost and Annual Savings	<p>Not to exceed \$92MM par amount</p> <p>Based on project size of \$68MM: \$5.4MM Estimated Average Annual Savings \$4.8MM Estimated Average Annual Debt Service</p> <p>Ameresco will provide submit an Investment Grade Audit (“IGA”) Report to PEA within 270 days of the date of execution of the Agreement. The IGA will specifically identify the Installation Price for the Project. The primary purpose of the Investment Grade Audit Report is to provide the engineering and economic basis for the Work and the Guaranteed Savings.</p> <p>These figures should be considered estimates until the IGA is complete and are subject to change based on project sizing and market conditions.</p>
Term	20 years from the Guaranteed Completion Date (expected completion of installation)
Approximate Number of Fixture Replacements	<p>112,540 Total HPS to LED Conversions</p> <p>The City has already converted over 12,000 lights to LEDs and these along with the HPS to LED conversions under this Agreement, will be connected to a new lighting management system as part of the Project.</p>

	<p>Ameresco will submit an IGA Report to PEA within 270 days of the date of execution of the Agreement. The IGA will specifically identify the Scope of Work for the Project.</p> <p>These figures should be considered estimates until the IGA is complete.</p>
<p>Products</p>	<ol style="list-style-type: none"> 1) Investment Grade Audit: a detailed engineering and economic report that specifically identifies the Scope of Work and Installment Price for the Project. 2) Design, procurement, installation, modification, and training in the operation of new LED Streetlighting, and associated controls and networking equipment that will reduce energy consumption and maintenance. 3) Acquisition of a smart street lighting platform that: meets the requirements for eligibility for PECO's SL-C tariff; provides accurate metering, dimming, and real-time control, outage notification and asset management through a secure network; and supports an enhanced performance lighting system that can be used by first responders in emergency situations. 4) Facilitation of a community outreach and feedback process and campaign, including installing one or more demonstration trial installations, with the goal of helping inform decisions made on the Project and educating Philadelphians on LED streetlighting.
<p>Invoicing and Payment Terms</p>	<p>Not later than the 10th day of each month during the installation process, Ameresco shall submit to the Authority for its approval an Application for Payment with respect to milestones completed with respect to the Project in the prior month, accompanied by such supporting information as may be reasonably necessary to substantiate the ESCO's right to payment of the amounts requested.</p> <p>Within 60 days of its receipt of an Application for Payment, PEA shall, subject to approval of such other parties as set forth in the bond indenture, submit the Application for Payment to the indenture trustee for the bonds anticipated to be issued to finance the Project for the payment by the bond trustee from bond proceeds of all undisputed amounts set forth thereon. If PEA disputes any portion of the Application for Payment, PEA shall authorize the bond trustee to pay the undisputed amount and deliver notice to the Ameresco stating its objections to the disputed amount and giving a detailed explanation therefor within such 60-day period.</p>

<p>Consequential Damages</p>	<p>None of the Parties shall be liable under this Agreement, whether based in contract, in tort (including negligence and strict liability), warranty or otherwise, for any indirect, incidental, special or consequential loss or damage of any type, including loss of use or loss of profit or revenue, and each Party hereby releases each other Party from any such liability.</p>
<p>Uncontrollable Circumstances</p>	<p>Excuse of Performance. If, as a result of an Uncontrollable Circumstance, either party is prevented from performing or is delayed in the performance of any of its obligations under this Agreement (other than an obligation to pay money), such prevention of or delay in performance will, subject to such party's satisfaction of the conditions precedent in subsection (b) below, be excused during any period in which such performance is prevented or delayed by an Uncontrollable Circumstance, and for such period thereafter as necessary to correct the adverse effect of such Uncontrollable Circumstance; provided that the failure to pay any amounts owed hereunder (whether accruing prior to or during the Uncontrollable Circumstance) in a timely manner will not be excused by an Uncontrollable Circumstance.</p> <p>Conditions. A party will be excused from performance hereunder as a result of an Uncontrollable Circumstance subject to the following conditions:</p> <ul style="list-style-type: none"> a) such party gives the other party prompt notice describing the particulars of the Uncontrollable Circumstance and the potential duration of the prevention of or delay in performance; and b) such party uses its commercially reasonable efforts to (A) mitigate the impact of the Uncontrollable Circumstance on its performance, (B) pursue insurance and any other third-party reimbursement that may reasonably be expected to be obtained with respect to the Uncontrollable Circumstance and (C) overcome the prevention of or delay in performance, and performance is resumed at the earliest practicable time after cessation of the Uncontrollable Circumstance. c) If the Uncontrollable Circumstance delays completion of the Work by more than one-hundred-and-twenty (120) days PEA shall have the option to terminate the affected portion of the Work by a notice to ESCO. Upon any termination by PEA under this Section 24.2.3, ESCO shall have no further obligations or liability under this Agreement with respect to the terminated portion of the Work. <p>In the case of an Uncontrollable Circumstance affecting the ESCO, the ESCO will be entitled to a Change Order to reflect the increased cost and time required to complete.</p>

<p>Guaranteed Savings</p>	<p>The Investment Grade Audit Report shall offer to guarantee energy savings based on kwh savings that are equal to at least 90 percent of the energy savings (kwh) projected in the Initial Feasibility Analysis provided as a part of Ameresco’s RFP response unless the Project is changed by PEA. The 90 percent of energy savings will be calculated as follows per fixture type: total energy savings (kwh) divided by total quantity of fixtures as projected in the Initial Feasibility Analysis compared to the total energy savings (kwh) divided by total quantity of fixtures as projected in the Investment Grade Audit.</p> <p>In the event that the actual savings achieved during any Savings Year are less than the Annual Guaranteed Savings set forth in the final contract schedules for such Savings Year, Ameresco shall pay PEA an amount equal to the deficiency ("Shortfall Payment"). Ameresco shall remit all Shortfall Payments to PEA within thirty (30) days of the Annual Savings Report showing that such amounts are due (or with respect to any disputed portion of such amount, promptly upon resolution of any Dispute regarding such portion).</p> <p>Ameresco agrees that any amount of actual savings achieved (i) prior to the Guaranteed Completion Date or (ii) during any Savings Year of the Guarantee Period that exceed the Annual Guaranteed Savings for such Savings Year are for the benefit of the City and shall in no event be used to offset the Ameresco’s shortfalls in any preceding or subsequent Savings Years.</p>
<p>Credit Support</p>	<p>Ameresco will deliver to PEA payment and performance bonds, issued by a surety reasonably acceptable to PEA and the City in support of Ameresco’s obligation to perform the Construction Work and other obligations arising prior to Final Completion, in the amount of the Construction Price.</p>
<p>Seller Assignment</p>	<p>Ameresco acknowledges that PEA has been induced to enter into this Contract by, among other things, the professional qualifications of Ameresco. Ameresco agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of PEA and the City, with the exception that Ameresco may subcontract all or certain portions of the Work to the Subcontractors.</p>
<p>Buyer Assignment</p>	<p>PEA and the City may transfer or assign this Contract and its rights and obligations herein to another affiliated entity of the City or to an assignee of the City Street Lighting System.</p>

<p>Right to Terminate Prior to Commencement of Implementation.</p>	<p>If either party delivers a notice that one or more conditions precedent cannot be satisfied pursuant to Paragraph 2 below, or if any condition precedent is not satisfied or waived by 6 months following the completion of the Investment Grade Audit for reasons not due to the terminating party's failure to comply with its obligations under Paragraph 1, then (i) either party may at any time thereafter until such conditions have been satisfied or waived, by notice to the other party, terminate this Agreement, (ii) neither party will be liable to the other for any such termination and (iii) each party will bear its own expenses attributable to the transactions contemplated by this Agreement.</p> <ol style="list-style-type: none"> 1. Each party shall exercise good faith and due diligence in satisfying the foregoing conditions precedent and giving prompt notice to the other party when such conditions precedent have been satisfied or waived in writing by the party whose obligation is conditioned thereon. 2. Either party shall promptly notify the other party if any condition precedent is incapable of being satisfied. <p>PEA shall also have the right to terminate this agreement and not proceed with the Construction Work at any time prior to the issuance of the Notice to Proceed. Should PEA exercise such right, other than for a reason specified above, PEA agrees to pay the Ameresco \$1,696,279.00 (the "Break Fee").</p>
<p>Events of Default</p>	<p>Events of Default by PEA. Each of the following events or conditions shall constitute an "Event of Default" by PEA:</p> <ol style="list-style-type: none"> (a) Any failure by PEA to pay Ameresco any sum due on the date due, which failure is not cured within thirty (30) days after written notification by Ameresco that PEA is delinquent in making payment; and/or (b) Any other material failure by PEA to perform or comply with the terms and conditions of this Contract (including any such terms and conditions which PEA is obligated hereunder to cause the City to perform or comply with) , including breach of any covenant contained herein, provided that such failure continues for sixty (60) days after notice to PEA demanding that such failures to perform be cured or if such cure cannot be effected in sixty (60) days, PEA shall be deemed to have cured default upon the commencement of a cure within sixty (60) days and diligent subsequent completion thereof; and/or (c) Any representation or warranty furnished by PEA in this Contract that was false or misleading in any material respect when made.

Events of Default by Ameresco. Each of the following events or conditions shall constitute an "Event of Default" by Ameresco:

(a) The Standard of Illumination and service set forth in Schedule L (Standard of Illumination) cannot be provided due to failure of Ameresco to properly design, install, maintain, repair or adjust the Project or any Project Unit except that such failure, if corrected or cured within sixty (60) days after written notice by PEA to Ameresco demanding that such failure be cured, shall be deemed cured for purposes of this Contract;

(b) Any representation or warranty furnished by Ameresco in this Contract is false or misleading in any material respect when made;

(c) Abandonment of the Work by Ameresco; any unexcused cessation of the Work for more than 30 days; or unexcused delays resulting in expected achievement of Substantial Completion more than 180 days later than the Guaranteed Completion Date in accordance with the Implementation Schedule

(d) Any other material failure by Ameresco to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to Ameresco demanding that such failure to perform be cured, provided that such thirty (30) day period may be extended for an additional period not to exceed one hundred eighty (180) days so long as (w) such failure is capable of being cured, (x) Ameresco shall have provided PEA, prior to the expiration of the initial 30-day period, with a reasonably detailed plan describing the actions it proposes to take to cure such failure, (y) Ameresco is diligently pursuing the cure of such failure, and (z) such cure is effected in such a manner and within such time that such failure to comply could not reasonably be expected to have a material adverse effect on PEA or PEA's ability to perform under this Agreement in accordance with the terms hereof or on the Project;

(e) Any lien or encumbrance upon the Project by any Subcontractor, laborer or materialman of Ameresco which is not released or bonded over within 30 days of filing thereof;

(f) The filing of a bankruptcy petition whether by Ameresco or

	<p>its creditors against Ameresco which proceeding shall not have been dismissed within thirty (30) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO;</p> <p>(g) Failure by Ameresco to pay any amount due PEA or the City within sixty (60) days of the required payment date.</p> <p>(h) Repossession or removal of any Lighting Unit or Project Unit by Ameresco or a third party, with whom Ameresco has a contractual relationship related to the Work, without good cause, provided that Ameresco shall have the right to cure any such removal by a third party by installation of a replacement Lighting Unit or Project Unit within thirty (30) days following written notice of such removal from PEA.</p>
Governing Law	Commonwealth of Pennsylvania
Economic Opportunity Plan	<p>The Agreement shall be subject to an Economic Opportunity Plan (“EOP”) that will provide significant opportunities for women-, minority- and disabled person-owned businesses and workforce. Seller is committed to creating opportunities for local hiring, including women and minorities, during the construction of the project prior to COD and during the operations of the project after COD.</p> <p>Ameresco is committed to 40% MWBE participation on the project in accordance with the EOP. Ameresco has also committed to local hiring on the project’s GIS audit and local assembly and disassembly (if possible), as well as full participation in Oversight Committee for the Economic Opportunity. Details are available in a signed memorandum of understanding between Ameresco and PEA.</p>

City of Philadelphia
Economic Opportunity Plan

LED Streetlighting

Introduction, Definitions and Diversity Practices

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of “Economic Opportunity Plan(s)” for certain classes of contracts and covered projects as defined in Section 17-1601. This Economic Opportunity Plan (“Plan”) memorializes the Contractor’s “Best and Good Faith Efforts” to provide meaningful and representative opportunities for Minority Business Enterprises (“MBEs”), Woman Business Enterprises (“WBEs”) and Disabled Business Enterprises (“DSBEs”) (collectively, “M/W/DSBEs” which also includes firms designated as Disadvantaged Business Enterprises or “DBEs”¹) and employ an appropriately diverse workforce in the conversion of streetlighting to energy-efficient luminaires (“Project”). The term “Best and Good Faith Efforts,” the sufficiency of which shall be in the sole determination of the City, means: a Contractor’s efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives of Chapter 17-1600 within this project. Best and Good Faith Efforts are rebuttably presumed met, when a Contractor makes commitments and causes its professional services providers and contractors retained by Contractor (collectively, the "Participants" and each a "Participant") to make commitments within the M/W/DSBE Participation Ranges established for this Project and employ a diverse workforce as enumerated herein.

Any contract resulting from this RFP is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, by submission of this Plan, a responsive and responsible Contractor makes a legally binding commitment to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the Project and its commitment to cause its Participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the Project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the Project. The objectives set forth in this Plan shall be incorporated in all Contractor requests for proposals, bids and solicitations and communicated to all Participant levels.

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity (“OEO”). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency² or identified in the OEO Registry will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oEO/directory. If Contractor is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

C. Contractor is required to submit a statement summarizing current and past practices relating to its diversity practices (“Diversity Practices Statement”). This statement shall identify and describe examples of processes used to develop diversity at all levels of Contractor’s organization including, but not limited to, board and managerial positions. This Diversity Practices Statement should also summarize

¹ “DBE” or “Disadvantaged Business Enterprise” means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If applicant makes solicitation(s) and commitment(s) with a DBE, applicant shall indicate which category, MBE or WBE, is submitted for counting.

²A list of “OEO approved certifying agencies” can be found at www.phila.gov/oEO

Contractor's strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. The Statement shall specifically identify, for the last three years preceding the execution of this EOP (or such greater period of time as may have been set forth in the record retention requirement of an applicable EOP), all City contracts and financial assistance containing an EOP obligating Contractor and any of Contractor's "related corporate entities." "Related corporate entities" shall mean any business entity controlled by a person or business with a majority interest in the Contractor's business. For these identified contracts containing an EOP, Contractor shall enumerate the levels of M/W/DSBE participation and diverse workforce attainment achieved, comparing Contractor's achievement to the participation ranges and workforce goals contained in each identified EOP. Attachment "A" to this Plan is provided for this purpose and should be submitted with Contractor's proposal although the City reserves the right to request it at any time prior to contract award.

D. Contractor also agrees to identify in this Plan, any "Equity Ownership" which shall mean the percentage of beneficial ownership in the Contractor's firm or development team that is held by minority persons, women and disabled persons. In the event Equity Ownership is identified, Contractor agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(.3).

E. Contractor and its Participant(s) hereby verify that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and are notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Contractor and its Participants also acknowledge that if awarded a contract/subcontract resulting from this RFP, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of the contract/subcontract, Contractor and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

Goals

A. M/W/DSBE Participation Ranges

As a benchmark for the expression of Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this Project through the exercise of Best and Good Faith Efforts. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the project and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

MBE Ranges: 15-18%

And

WBE Ranges: 9-12%

B. Workforce Diversity Goals and Requirements

Contractor and its Participants agree to exhaust their Best and Good Faith Efforts to employ minority persons, by race and ethnicity, and females in its workforce of apprentices and journeypersons at the following levels³:

African American Journeypersons – 22% of all journey hours worked across all trades

Asian Journeypersons – 3% of all journey hours worked across all trades

Hispanic Journeypersons – 15% of all journey hours worked across all trades

Female Journeypersons – 5% of all journey hours worked across all trades

Minority Apprentices – 50% of all hours worked by all apprentices

Female Apprentices – 5% of all hours worked by all apprentices

III. Contractor Responsiveness and Responsibility

A. Contractor shall identify all its M/W/DSBE commitments on the form entitled, “M/W/DSBE Solicitation For Participation and Commitment Form.” The Contractor’s identified commitment to use an M/W/DSBE on this form constitutes a representation by Contractor, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Contractor has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Contractor further represents that if Contractor is awarded the contract, Contractor will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Contractor shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Contractor is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event the Contractor’s contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Contractor to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

1. Commercially Acceptable Function

A contractor that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function (“CAF”). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees. The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the Contractor receives towards the participation ranges. For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character

³ These goals have been informed by the City of Philadelphia Fiscal Year 2017 Economic Opportunity Plan Employment Composition Analysis. Contractor and its Participants are responsible for maintaining records that demonstrate an appropriately diverse workforce for this Project which may include customary hourly wage records.

required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Commitment Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). **Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO.** Throughout the term of the contract, Contractor is required to continue its Best and Good Faith Efforts.

C. In the event Contractor does not identify on the M/W/DSBE Participation and Commitment Form that it has made M/W/DSBE commitments within the participation ranges established for this Contract, Contractor must complete and submit a *Documentation of Best and Good Faith Efforts Form* (“BGFE Form”), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract. The submission of the BGFE Form is an element of proposal responsiveness and failure to include this form may result in the rejection of the Proposal. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Contractor must provide a list of all certification directories used for soliciting participation for this Contract. Contractor must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. Contractor provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. Contractor negotiated in good faith with interested M/W/DSBEs. A Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm’s price and capabilities as well as the objectives of the Plan into consideration; and

4. Documentation of the following:

i. Any commitments to use M/W/DSBEs in its bid for subcontracted services and materials supply even when Bidder would otherwise prefer to self-perform/supply these items; and

ii. Correspondence between the Bidder and any M/W/DSBE(s) related to this Bid; and

iii. Attendance logs and/or records of any scheduled pre-bid meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

- i. Any arms length business assistance provided to interested M/W/DSBEs which may include access/introduction to major manufacturer/suppliers, lines of credit and union halls; and
- ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and
- iii. Telephone logs of communications related to this Bid; and
- iv. Notification of and access to bid documents at the Bidder's office or other office locations for open and timely review; and
- v. Bidder sought assistance from jobs training and employment referral agencies such as the Urban Affairs Coalition, PA CareerLink Philadelphia, Philadelphia OIC and Philadelphia Works to identify candidates for employment and to perform employment outreach; and
- vi. Bidder published its policy of nondiscrimination in the hiring, retention and promotion of employees; and
- vii. Any agreement with an apprenticeship or training program that targets the employment of minority persons, disabled persons and women.

IV. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Contractor's amendment of its M/W/DSBE Participation and Commitment Form or BGFE Form.

B. Administrative Reconsideration

1. If the OEO determines that the Contractor has not made sufficient Best and Good Faith Efforts, the Contractor will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the Contractor did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Contractor shall file a hard copy of this Plan, as certified below by OEO, with the Chief Clerk of City Council within fifteen (15) days of receiving a Notice of Award. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council
Room 402 City Hall
Philadelphia, Pennsylvania 19107

The Contractor also agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Contractor must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments; and
- Records relating to Workforce Diversity.

B. Prompt Payment of M/W/DSBEs

The Contractor shall within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Contractor agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

Each month of the contract term and at the conclusion of the contract, the Contractor shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

C. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Contractor's company and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.
2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

VI. Remedies and Penalties for Non-Compliance

A. The Contractor agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Contractor hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

- Refer Contractor to the City of Philadelphia Office of Inspector General for investigation of non-compliance.
- Suspend/Debar the Contractor from proposing on and/or participating in any future City contracts for a period of up to three (3) years.

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with the Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in the contract. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of the Contract except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

Peter N Christakis SVP

2/03/2022

PRINT NAME OF CONTRACTOR AND TITLE

DATE



Senior Vice President

2/03/2022

SIGNATURE OF CONTRACTOR AND TITLE

DATE

This EOP has been reviewed by OEO Specialists for compliance with 17-1600 of The Philadelphia Code and is certified as responsive to the bid requirements.

[See Forms on following pages; these Forms, must be submitted by Contractor]

STATEMENT OF DIVERSITY PRACTICES, POLICIES AND PAST ACHIEVEMENTS

In compliance with Chapter 17-1600 of the Philadelphia Code, Section 17-1603(1) entitled “Equal Opportunity Plan: Contents,” the Plan shall contain a statement from the contractor, developer and/or recipient of financial assistance, which shall include any of their related corporate entities⁴, summarizing past practices, and identifying and describing examples of processes used to develop diversity at any/all levels of its organization including, but not limited to, Board and managerial positions. This statement shall summarize strategic business plans specific to current or past practices of M/W/DSBE utilization on government and non-government projects and procurement. This statement must specifically identify past City of Philadelphia EOPs and goal attainment. The following should be included:

1. Describe employment and recruitment policies used to achieve diversity in your workforce.
2. Provide the race, gender, and residential (local) status of your
 - a) Board of Directors
 - b) Management
 - c) General Workforce
3. Identify your organization’s methods of solicitation and utilization of Minority, Woman and Disabled Businesses (M/W/DSBEs). Please be specific in describing outreach and any procurement policies that are focused on creating or sustaining business relationships with M/W/DSBEs.
4. What percentage of your company’s total spend with vendors and suppliers is attributable to M/W/DSBEs? Please include a list of the largest M/W/DSBEs used by your organization in the last 12 months.
 - a) Identify the type of goods or services purchased
 - b) Amount of the contract.
 - c) Indicate if any of these M/W/DSBEs are listed in the City of Philadelphia’s Office of Economic Opportunity Registry.
 - d) Are these companies certified as M/W/DSBEs? Do you rely on any particular certifying agency?
 - e) If there is no previous M/W/DSBE utilization, the Plan shall contain a statement that explains the reason for the lack of M/W/DSBE participation in past contract(s) or project(s).
5. Describe any initiatives made by your organization to increase investment and promote equity ownership by minorities and women.
6. Identify, for at least the past three years, each EOP that you or your related corporate entity has held with the City; show M/W/DSBE participation and Workforce Diversity under the EOP contrasting actual achievement with the goals contained in the EOP:

Name of EOP Project: _____

M/W/DSBE Ranges _____

Actual Achievement _____

Workforce Goals _____

Actual Achievement _____

⁴ E.g., Developer may have been a signatory to an EOP, under a different name in the past three years.