

**SECOND AMENDMENT TO AGREEMENT 19-194
BETWEEN THE CITY OF CUPERTINO AND ACUIITY
BRANDS, INC., FOR BUILDING ENERGY
MANAGEMENT PLATFORM**

This Second Amendment to Agreement 19-194 between the City of Cupertino and ACUIITY BRANDS, INC., is by and between the CITY OF CUPERTINO, a municipal corporation (hereinafter "City") and ACUIITY BRANDS, INC., a ("Contractor") whose address is 55 Harrison St., #200, Oakland, CA. 94607, and is made with reference to the following:

RECITALS:

- A. On December 17, 2019, Agreement 19-194 ("Agreement") was entered into by and between City and Contractor for Building Energy Management Platform.
- B. On November 30, 2022, First Amendment ("Agreement") was entered into by and between City and Contractor for Building Energy Management Platform.
- C. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

TERM

1. Paragraph 1 is modified to read as follows:

The term of this Agreement shall commence on December 10, 2019. The term of this Agreement is 5 years, unless the Agreement is terminated prior thereto under the provisions of Section 16, below.

COMPENSATION

2. Paragraph 1 is modified to read as follows:

Software Provider shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed \$227,500.00. The payments specified in this section shall be the only payments to be made to Software Provider for services rendered pursuant to this Agreement. Software Provider shall invoice City according to the following schedule of milestones/ deliverables:

Milestone	Schedule	Amount
Upon execution of this Agreement	Year 1 (Initial Period) <i>December 10, 2019 through December 9, 2020</i>	\$45,500
Year 2 (Renewal 1)	<i>December 10, 2020 through December 9, 2021</i>	\$45,500
Year 3 (renewal 2)	<i>December 10, 2021 through December 9, 2022</i>	\$45,500
Year 4 (renewal 3)	<i>December 10, 2022 through December 9, 2023</i>	\$45,500
Year 5 (renewal 4)	<i>December 10, 2023 through December 9, 2024</i>	\$45,500
total		\$227,500

City shall pay Contractor within thirty (30) days after receipt of Service Provider's invoice. City shall return to Contractor any payment request determined not to be a proper payment request as soon as practicable, but not later than seven (7) days after receipt, and shall explain in writing the reasons why the payment request is not proper.

1. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

CITY OF CUPERTINO

ACUITY BRANDS, INC.

By _____

By _____

Title _____

Title _____

Date _____

Date _____

APPROVED AS TO FORM

City Attorney

ATTEST:

City Clerk

Date _____

EXPENDITURE DISTRIBUTION

Item	Amount
Original Contract	\$136,500
First Amendment	\$45,500
Second Amendment	\$45,500
Total	\$227,500



Your acceptance of this Formal Quote will create a non-cancellable purchase commitment, effective as of the date this Formal Quote is signed by the duly authorized officer(s) or representative(s) of the Purchaser (the "Effective Date"). Unless otherwise stated in Section F below, this Quotation is governed by, and all terms herein are defined the same as in, the Software as a Service Terms and Conditions which are available at <https://www.acuitybrands.com/support/customer-support/terms-and-conditions>, incorporated herein by reference.

Contracting Company: City of Cupertino

End User Shipping Address

City of Cupertino
 10300 Torre Ave
 Cupertino, California 95014-3202
 United States

Marilyn Pavlov
 marilyn@cupertino.gov

Company Details

Acuity Brands Technology Services, Inc.
 1170 Peachtree Street, NE Suite 2300
 Atlanta, GA 30309-7676
 US

Wanda Ferraro
 wanda.ferraro@acuitybrands.com

Section B: Quote and Expiration Date

Quote Expiration Date	12/8/2023
Order Form #	2310-4150

Section C: Commercial Terms

Initial Term (Years)	1.00
Auto Renewal Term (Years)	0.00
Subscription Start Date	12/10/2023
Non-Renewal Notice	days
Annual Price Adjustment	0%

Section D: Payment Method and Terms - First invoice(s) sent upon contract signature with agreed upon payment terms.

Implementation & Hardware Terms	Due on Receipt (prior to commencement of services)
Software Subscription Terms	Net 30
Payment Method	ACH
Invoice Amount	Total First Year
Billing Frequency	Annual



Section E: Fees and Charges

All amounts are denoted in U.S. Dollars ("USD"). If applicable, the estimated tax amount will be applied on the invoice in addition to the fees and charges noted below. *Taxes are estimated only. Customer agrees to pay the tax rate applicable to the End User Shipping Address if provided, or Billing Address if no End User Shipping Address is provided.

Subscription

Product	Description	Quantity	Total
Atrius Platform	Includes all Atrius Strategic Services, including dedicated Customer Success Manager	1	\$45,500.00
Software Subscription: Building	Facilities included in platform fee up to 17	1	\$0.00
Points: Automated		68	\$0.00
Bill Points: Automated		369	\$0.00

Total Amount Due (First Year Only):

The contract value for the 1.00 year term is \$45,500.00 (tax not included). Implementation Services will commence upon receipt of first payment.

Annual Subscription Cost: \$45,500.00

Implementation Cost: \$0.00

Hardware Cost: \$0.00

***Estimated Tax (Year 1):** \$0.00

Total (Year 1): \$45,500.00

Section F: Notes

If Purchase Order (PO) is required it must be delivered to the Company within 15 business days following Effective Date to avoid disruption in current service. The Purchase Order must reference Order Form # 2310-4150

If applicable, I hereby authorize Acuity Brands and its service provider to use my credentials to access my utility account information and use the utility information in connection with my transaction with Acuity Brands.



Section G: Billing Information (customer completes)

PO Required Yes / No
(If yes) PO Number:
Tax Exempt? Yes / No

Billing Address:
10300 Torre Ave
Cupertino, California 95014-3202
United States

Billing Contact: IT Billing
Billing Email: MarilynM@cupertino.org, ITBilling@cupertino.org
Billing Phone: (408) 777-3238

***Electronic remittance information is provided on the invoice. Checks are not an accepted payment method.**

IN WITNESS WHEREOF, the Purchaser's duly authorized officer(s) or representative(s) have executed this Agreement as of the Effective Date.

Customer
Signature

Acuity Brands Technology Services, Inc.
Signature

Name

Name

Title

Title

Date

Date

Contract No. _____

Exhibit B: Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with City named as additional insured.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES

Additional Insureds:

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's Commercial General Liability and Cyber Liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage:

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Software Provider's insurance and shall not contribute to it.

Notice of Cancellation:

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Workers' Compensation:

As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Software Provider, its employees, agents, and subconsultants.

General Liability:

For bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.

a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.

b. Additional Insured coverage under Software Provider's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).

Contract No. _____

c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Agreement. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.

Automobile Liability

ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

Cyber Liability:

Insurance, with limits not less than:

\$2,000,000 each occurrence

\$2,000,000 aggregate - all other

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Software Provider in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Software Provider maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Software Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

2. ABSENCE OF INSURANCE COVERAGE.

City may direct Software Provider to immediately cease all activities with respect to this Agreement if it determines that Software Provider fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Software Provider.

3. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.

A Certificate of Insurance, on an Accord form, and completed coverage verification shall be provided to City by each of Software Provider's insurance companies as evidence of the stipulated coverages prior to the Commencement Date of this Agreement, and annually thereafter for the term of this Agreement. All of the insurance companies providing insurance for Software Provider shall be licensed to do insurance business in the State of California and shall have, and provide evidence of, a Best Rating Service rate of A:VII or above.

Contract No. _____

4. SUBCONTRACTORS

Software Provider shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant's insurance policies.

5. HIGHER INSURANCE LIMITS

If Software Provider maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Software Provider.

6. ADEQUACY OF COVERAGE

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.



ADDITIONAL REMARKS SCHEDULE

AGENCY Willis Towers Watson Southeast, Inc.		NAMED INSURED Acuity Brands, Inc. ONE LITHONIA WAY CONYERS, GA 300123957	
POLICY NUMBER See Page 1		EFFECTIVE DATE: See Page 1	
CARRIER See Page 1	NAIC CODE See Page 1		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Waiver of Subrogation applies in favor of Additional Insureds with respects to Workers Compensation as permitted by law.

SUPPLEMENT TO CERTIFICATE OF INSURANCE

Named Insured: Acuity Brands, Inc. and its subsidiaries

Brands Names:

Aculux	Lithonia Lighting	Pathway Connectivity Solutions
A-Light	Luminaire LED	eldoLED
American Electric Lighting	Luminis	IOTA
Cyclone	Mark Architectural Lighting	Power Sentry
Eureka	Peerless Lighting	RELOC Wiring
Gotham Lighting	Verjure	WhiteOptics
Healthcare Lighting	Acuity Controls	QUICKTRONIC
Holophane	Dark to Light	Atrius
Hydrel	Fresco	Distech Controls
Indy	nLight	KE2 Therm
Juno	Sensorswitch	

Acuity Brands, Inc. -- 9/1/2023 – 9/1/2024 Insurance Program Certificates of Insurance Attachment

Insured : Acuity Brands, Inc., including all Subsidiaries

Subsidiaries: Acuity Brands Lighting, Inc.

A to Z Manufacturing LLC
AB BMS B.V.
AB Netherlands Holdings B.V.
ABL IP Holding LLC
Acuity Aviation LLC
Acuity Brands BMS B.V. (Netherlands)
Acuity Brands Insurance (Bermuda) Ltd.
Acuity Brands Lighting Canada, Inc.
Acuity Brands Lighting (Hong Kong) Limited
Acuity Brands Lighting de Mexico, S de RL de CV
Acuity Brands Mexico Holdings II LLC
Acuity Brands Netherlands B.V.
Acuity Brands Services, Inc.
Acuity Brands Technology Services, Inc.
Acuity Mexico Holdings, LLC
Acuity Trading (Shanghai) Co. Ltd.
Amerillum, LLC
Arizona (Tianjin) Electronics Trade Co. Ltd.
Arizona Trading Company Ltd.

Castlight de Mexico SA de CV
Distech Controls Facility Solutions, Inc.
Distech Controls Energy Services, Inc.
Distech Controls Energy Services (Canada) Inc.
Distech Controls, Inc.
Distech Controls SAS
eldoLAB Holding B.V.
EldoLED B.V.
EXY Poland sp. Z o.o. (Poland)
Holophane Europe Ltd.
Holophane Lighting Ltd.
Holophane SA de CV
HSA Acquisition, LLC (Ohio)
ID Limited
KE2 Therm Solutions, Inc.
KE2 Connect, LLC
Luminaire LED LLC
Luxfab Limited (UK)
Rockpile Ventures, Inc.
The Luminaires Group Inc. (Canada)
The Luminaires Group USA, LLC

ENDORSEMENT

This endorsement, effective 12:01 A.M. 09/01/2023 forms a part of

Policy No. CA 499-32-11 issued to ACUITY BRANDS, INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

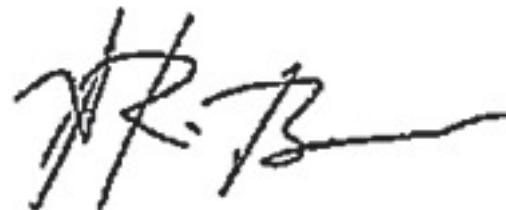
SCHEDULE

ADDITIONAL INSURED:

Any person or organization for whom you are contractually bound to provide Additional Insured status but only to the extent of such person's or organization's liability arising out of the use of a covered "auto".

I. SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. - Who Is Insured, is amended to add:

- d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:
 - (1) The coverage and/or limits of this policy, or
 - (2) The coverage and/or limits required by said contract or agreement.



AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
<p>ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.</p>	<p>PER THE CONTRACT OR AGREEMENT.</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than

that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that

which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

This endorsement, effective 12:01 AM 09/01/2023 forms a part of Policy No. WC 49154361

Issued to ACUITY BRANDS, INC.

By AIU INSURANCE CO

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION TO WHOM YOU BECOME
OBLIGATED TO WAIVE YOUR RIGHTS OF RECOVERY
AGAINST, UNDER ANY CONTRACT OR AGREEMENT YOU ENTER
INTO PRIOR TO THE OCCURRENCE OF LOSS.**

This form is not applicable in Kansas for private construction contracts as defined in K.S.A. 16-1801 through K.S.A. 16-1807 or public construction contracts as defined in K.S.A. 16-1901 through 16-1908, except where permitted by statute or other applicable law, such as for use in wrap-up insurance programs.

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, Texas, or Utah.

Countersigned by _____



Authorized Representative