

RETURN TO:

**TROY CITY CLERK
116 E. MARKET STREET
TROY, IL 62294**

**CITY OF TROY
RESOLUTION 2023 – 31**

**A RESOLUTION OF THE CITY OF TROY, ILLINOIS AUTHORIZING THE MAYOR
TO EXECUTE AN AGREEMENT WITH GRP WEGMAN COMPANY CONCERNING
A GUARANTEED ENERGY SAVINGS CONTRACT**

**ADOPTED BY THE
CITY COUNCIL OF THE
CITY OF TROY, ILLINOIS
THIS 7th DAY OF AUGUST 2023**

RESOLUTION NO. 2023 - 31

A RESOLUTION OF THE CITY OF TROY, ILLINOIS AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH GRP WEGMAN COMPANY CONCERNING A GUARANTEED ENERGY SAVINGS CONTRACT

WHEREAS, the City believes it is in the best interest of the City and its citizens to enter into an Agreement with GRP Wegman to provide a guaranteed energy savings contract for the City of Troy, which will provide solar power for the Administrative Building and Police Department; and

WHEREAS, the City and GRP Wegman have negotiated the terms, conditions and rates of the Agreement attached hereto and incorporated herein as Exhibit A and the City believes that such terms, conditions and rates are in the best interest of the health, safety and general welfare of its citizens; and

WHEREAS, GRP Wegman was the sole bidder on this project, which was properly advertised, and the bid provided was less than the estimated cost.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TROY, ILLINOIS, AS FOLLOWS:


1. The recitals set forth above are hereby incorporated herein as if fully set forth.
2. The Mayor of the City of Troy, Illinois, is hereby authorized to execute and enter into the attached Agreement with GRP Wegman, and is further authorized to take all actions and sign all documents necessary to fulfill the intent of this Resolution.
3. This Resolution shall be in effect following its passage, approval and publication as provided by law.

PASSED by the City Council of the City of Troy, Madison County, Illinois, approved by the Mayor, and deposited in the office of the City Clerk this 7th day of August, 2023.

Aldermen:

Dan Dawson	<u>AYE</u>	Sam Italiano	<u>AYE</u>	Ayes:	<u>8</u>
Tim Flint	<u>AYE</u>	Debbie Knoll	<u>AYE</u>	Nays:	<u>0</u>
Elizabeth Hellrung	<u>AYE</u>	Tony Manley	<u>AYE</u>	Absent:	<u>0</u>
Nathan Henderson	<u>AYE</u>	Troy Turner	<u>AYE</u>	Abstain:	<u>0</u>

APPROVED:

By: 
DAVID NONN, Mayor
City of Troy, Illinois

ATTEST:

By: 
KIMBERLY THOMAS, Clerk
City of Troy, Illinois

GUARANTEED ENERGY SAVINGS CONTRACT

This Guaranteed Energy Savings Contract ("Contract") is made and entered into as of August 7, 2023 between **GRP Mechanical Company, Inc. dba GRP WEGMAN Company ("GRP | WEGMAN")**, having its principal offices at 1 Mechanical Drive, Bethalto, IL 62010, and the **City of Troy, Illinois, ("City")** having its principal offices at 116 E. Market Street, Troy, IL 62294.

RECITALS

City owns and operates the City facilities ("Premises") in Madison County, Illinois, and wishes to acquire equipment and services to reduce energy consumption or operating costs and provide operational savings in the Premises.

GRP | WEGMAN has the experience and project management capabilities to identify and evaluate Energy Cost Savings Measures ("ECMs") and provide recommendations for designing and implementing such measures.

GRP | WEGMAN has delivered to City a Proposal in response to City's Request for Proposal ("RFP"), dated June 30, 2023, pertaining to GRP | WEGMAN's furnishing a phased approach (for all City's buildings over a period of several years) of all labor, material, equipment, and services necessary for the execution and completion of all items of Energy Cost Savings as specified in the contract. Unused energy savings from a prior phase can be used on future phases.

In accordance with the provisions of the RFP, the facilities of the City were analyzed to identify and evaluate viable ECMs that would improve the use of those facilities, as well as estimates of expected energy and operational savings and associated project costs for each recommended ECM.

City desires to contract with GRP | WEGMAN for the design, installation, project management, coordination, and scheduling of the ECMs as set forth herein.

GRP | WEGMAN and City acknowledge that the purpose of this Contract is to achieve the ECMs contemplated by this Contract for the benefit of City and agree to cooperate to achieve the purpose of this Contract.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. ENERGY SURVEY

Section 1.1. Details. GRP | WEGMAN has prepared a survey of the City's facilities ("Survey") in response to City's RFP. The Survey has been approved and accepted by City. The Survey includes all identified ECMs.

Section 1.2. Schedules and Exhibits. GRP | WEGMAN has prepared, and the City has approved and accepted the Schedules and Exhibits as set forth below, copies of

which are attached hereto (or will be as provided for in this Contract) and are made a part of this Contract by reference. "Contract Documents" means this Contract with the conditions described herein, the Schedules identified below, exhibits attached to such Schedules, the Design & Engineering Documents prepared by GRP|WEGMAN and approved by the City, the Construction Schedule, any Change Orders, other documents listed in the Contract, and any modifications to the foregoing documents issued after execution of this Contract.

Schedules:

- Schedule A Scope of Work to be performed by GRP | WEGMAN
- Schedule B Energy Savings Guarantee
- Schedule C Compensation to GRP | WEGMAN
- Schedule D Construction and Installation Schedule
- Schedule E Required Standards of Comfort
- Schedule F Project Cash Flow
- Schedule G Final Delivery and Acceptance Certificate
- Schedule H Form Allocation of Section 179D Deduction

Section 1.3. Other Documents. The provisions of this Contract shall govern in the event of any inconsistencies with the Schedules.

SECTION 2. GENERAL

Section 2.1. City engages and GRP|WEGMAN agrees to perform and provide the Energy Cost Savings Measures, and such other goods and services (collectively the "Work") described in Contract Documents for the Project and in accordance with the terms of this Contract.

Section 2.2. City has furnished or shall furnish (or cause its energy suppliers to furnish if reasonably possible) to GRP|WEGMAN, upon request, all of its records and complete data concerning energy usage and energy-related maintenance for the Premises, including the following data for the most current twelve (12) month period; utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy-related equipment, and a description of energy management procedures presently utilized

SECTION 3. CONTRACT TIME

Section 3.1. The Contract Time consists of the Installation Period and the Guarantee Period. The "**Installation Period**" is the period-of-time from the Notice of Commencement until Final Acceptance of the Work identified in Schedule A, Scope of Work. The "**Guarantee Period**" is the period-of-time from the Guarantee Commencement Date, as defined in Section 3.2, until the end of the Guarantee Term. A separate Installation Period and Guarantee Period shall apply to any subsequent Work added by

Contract Change Order after Final Acceptance of the Work identified in Exhibit A, Scope of Work.

Section 3.2. Guarantee Commencement Date. The Guarantee Commencement Date shall be the first day of the month after the month in which the Final Acceptance of the Work included in Schedule A, Scope of Work has occurred. "**Final Acceptance**" shall be deemed to have occurred when: (i) GRP | WEGMAN has delivered a Certificate of Substantial Completion and/or Punch List to the City indicating that it has installed and commenced operating all of the Work and equipment specified in Schedule A and in accordance with the provisions of Section 8, and (ii) City has inspected and accepted said installation and operation and signed GRP | WEGMAN's Certificate of Substantial Completion and/or Punch List. If the City does not concur that the Work has achieved Substantial Completion and/or that the Punch List is not complete or correct, then the City shall notify GRP | WEGMAN within ten (10) business days of any discrepancies. To the extent GRP | WEGMAN does not dispute the discrepancies raised by the City, GRP | WEGMAN shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein and resubmit the certificate of Substantial Completion to the City, and (ii) promptly complete all items on the Punch List. If GRP | WEGMAN disagrees with the discrepancies raised by the City, GRP | WEGMAN shall notify the City of a dispute and such dispute shall be resolved in as provided under this Contract. If the City does not deliver written notice to GRP | WEGMAN within twenty (20) business days of receiving the certificate of Substantial Completion and the Punch List, the City will be deemed to have agreed to, signed and returned the certificate of Substantial Completion and the Punch List. Any Work added to this Contract by Contract Change Order subsequent to Final Acceptance shall have a separate Guarantee Period commencing on the Guarantee Commencement Date for such Work and shall not: 1. Extend the Guarantee Period for the Work included in Schedule A, Scope of Work, or any other Work for which Final Acceptance has occurred, or; 2. Extend either the contractual liability of GRP | WEGMAN, or the liability of its bond surety under payment or performance bonds for the Work included in Schedule A, Scope of Work, or any other Work for which Final Acceptance has occurred.

Section 3.3. Term of Contract. Subject to the following sentence, the term of this Contract shall be twenty (20) years measured beginning with the Commencement Date.

SECTION 4. COMPENSATION TO GRP | WEGMAN

Section 4.1. Energy Savings Guarantee. GRP | WEGMAN has formulated and, subject to the adjustments provided for in Section 14, guaranteed the energy consumption, operating costs, and operational savings to be achieved as a result of the installation and operation of the Work and equipment and services provided for in this Contract. The Energy Savings Guarantee for the Work performed under this Contract is specified in Schedule B (Energy Savings Guarantee). All or some portion of the Energy Savings Guarantee may consist of energy and operations savings stipulated to by the City and GRP | WEGMAN (Stipulated Savings). These Stipulated Savings shall be based on GRP | WEGMAN's customary standards and methodologies and include avoided maintenance, avoided capital investments, operational savings or avoided personnel costs. The City and GRP | WEGMAN acknowledge that Stipulated Savings are being used

to avoid the high costs for measuring the categories of savings included in the parties' stipulation. The City acknowledges that it has evaluated sufficient information to accept the determination of Stipulated Savings contained in the Energy Savings Guarantee of this Contract. The Stipulated Savings shall be deemed achieved on the date the City accepts and signs GRP | WEGMAN's Certificate of Substantial Completion. The parties agree that Stipulated Savings shall not be measured or monitored at any time in connection with the Energy Savings Guarantee.

Section 4.2. Review and Reimbursement/Reconciliation. To the extent not included in the Stipulated Savings referenced in Section 4.1, and if, at the end of any calendar year during the guarantee period as specified in Schedule B (Energy Savings Guarantee), GRP | WEGMAN has failed to achieve the annual Energy Savings Guarantee specified in Schedule B, upon written request by City, which shall be given no earlier than the end of such year and no later than thirty (30) days thereafter, GRP | WEGMAN will pay the City the difference between the annual amount guaranteed and the amount of actual energy and operations savings achieved at the City's Premises in accordance with the provisions of Schedule B. GRP | WEGMAN shall remit such payments to City within ninety (90) days of written notice by City of such monies due. When the total energy savings in any one year during the guarantee period exceed the Energy Savings Guarantee set forth in Schedule B and are in addition to those monies due GRP | WEGMAN for compensation for services as set forth in Schedule C, (Compensation to GRP | WEGMAN), such excess savings shall be first applied to reimburse GRP | WEGMAN for any payment GRP | WEGMAN made to the City to meet GRP | WEGMAN's guarantee for previous years in which the energy savings fell short of the Energy Savings Guarantee specified in Schedule B. Under no circumstances will this reimbursement be more than what GRP | WEGMAN has previously paid to the City under this Section 4.2.

Section 4.3. GRP | WEGMAN and City agree to work in good faith to resolve any disagreement over the calculation of the energy savings. Should an irresolvable disagreement arise as to the calculation of energy savings, an independent public accounting firm may be engaged by either party to conduct a review and give an opinion on whether the calculation of savings or deficiencies as prepared by GRP | WEGMAN is fairly stated in accordance with this Contract. The independent public accounting firm shall be mutually agreed upon by the parties. Exercise of the right to request a review shall in no way affect City's obligation to make current payments pursuant to this Contract unless otherwise described herein. Any payments between the parties necessary to resolve any irregularities identified in the review will be made within sixty (60) days after submission of the review to the parties.

Section 4.4. GRP | WEGMAN Compensation and Fees: GRP | WEGMAN has structured the Energy Savings Guarantee referred to in Section 4.1 above so as to be sufficient to equal or exceed the sum of any and all payments required to be made by City in connection with the Work to be performed by GRP | WEGMAN under this Contract. City shall pay GRP | WEGMAN the Contract Sum of Three Hundred Thirty-Seven Thousand Six Hundred Seventy-Six Dollars (\$337,676.00) for the provision of services as set forth and in accordance with the provisions of Schedule C (Compensation to GRP | WEGMAN).

Section 4.5. Billing Information Procedure. Payments due to GRP|WEGMAN under this Section 4 shall be calculated in accordance with the provisions of Schedule C. GRP|WEGMAN shall provide City with an invoice of the total amount due. Payments shall be made by the City within thirty (30) days of GRP|WEGMAN's presentation of its invoice. For any Work not covered by Schedule C, GRP|WEGMAN shall invoice City on a monthly basis with payment due upon presentation of an invoice. GRP|WEGMAN reserves the right to suspend or terminate its Work if payment is not received within thirty (30) days of an invoice due date. Interest charges on unpaid Work shall be added to the invoice at the rate of 9% per annum.

Section 4.6. Extra work requested by the City shall be estimated and agreed-upon by the City and GRP|WEGMAN prior to GRP|WEGMAN performing the Work.

SECTION 5. PERMITS AND APPROVALS; COORDINATION

Section 5.1. Permits and Approvals. City shall assist in obtaining all necessary permits and approvals required by local law for installation of the Equipment, except as otherwise provided in the Contract Documents. City shall furnish copies of each permit or license to GRP|WEGMAN, which is required to perform the work for the City. GRP|WEGMAN shall obtain and pay for all licenses and permits and shall pay all fees and charges for connections to outside services and for the use of municipal or private property for storage of materials, parking, temporary obstructions, enclosures, or the opening and patching of streets, arising from the construction and completion of the Work contemplated by this Contract.

Section 5.2. Coordination During Installation. City and GRP|WEGMAN shall coordinate GRP|WEGMAN's performance of the Work with the City. GRP|WEGMAN shall not commit or permit any act that will interfere with the performance of business activities conducted by City without prior written approval of City.

SECTION 6. CITY'S RESPONSIBILITIES

Section 6.1. City shall provide, with reasonable promptness, full and complete information regarding the Premises, including but not limited to, all building controls, systems, apparatus, equipment and machinery. City agrees to furnish surveys, legal descriptions, drawings, waste management plans and all other information pertinent to the Work and the Premises where the Work is to be performed. City shall appoint an authorized representative to approve, reject or otherwise facilitate GRP|WEGMAN's performance of the Work.

Section 6.2. City shall provide sufficient space on the Premises for the performance of the Work and shall take reasonable steps to protect all material and equipment from harm, theft and misuse. City shall provide access to the Premises for GRP|WEGMAN to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by GRP|WEGMAN and acceptable to City. City shall not unreasonably restrict GRP|WEGMAN's access to

Premises to make emergency repairs or corrections as GRP | WEGMAN may determine are needed.

Section 6.3. City shall promptly notify GRP | WEGMAN of all known unusual or materially changed operating conditions that affect any equipment or building condition that may affect Work to be performed by GRP | WEGMAN. City shall furnish GRP | WEGMAN with prompt written notice of any defects in GRP | WEGMAN's Work.

SECTION 7. WORK PERFORMED BY GRP | WEGMAN

Section 7.1. GRP | WEGMAN shall perform the Work under this Contract in accordance with the Scope of Work contained in Schedule A. GRP | WEGMAN shall act as an independent contractor with responsibility for the means, methods, techniques, sequences, procedures and coordination of the Work. All Work performed under this Contract shall be coordinated by GRP | WEGMAN with local utilities, subcontractors, equipment suppliers and City's facility personnel. GRP | WEGMAN shall arrange for, prepare, or otherwise furnish, for written approval by the City, working drawings and specifications setting forth in detail the requirements of the construction and installation of the Project in accordance with the Contract Documents ("Design & Engineering Documents"). The Design & Engineering Documents shall include all drawings, specifications, schedules, diagrams, and plans, and such content and detail as is necessary to properly complete the construction of the Project. All engineering services shall be rendered by an employee or sub consultant of GRP | WEGMAN who is properly registered as a Professional Engineer in the State of Illinois and designated as a Certified Energy Manager. The Work shall be performed in a manner consistent with the degree of skill and care ordinarily exercised by similar contractors performing the same or similar work in the same locale under similar circumstances and conditions. GRP | WEGMAN shall furnish or arrange for all required services, labor, materials, equipment and supervision as are necessary for the proper performance of the Work. GRP | WEGMAN shall complete its Work in accordance with the construction schedule specified in Schedule D.

Section 7.2. GRP | WEGMAN shall remain responsible for the professional and technical accuracy of all services performed, whether by GRP | WEGMAN or its subcontractors or others on its behalf, throughout the term of this Contract.

Section 7.3. GRP | WEGMAN shall be responsible for initiating, maintaining, and supervising reasonable safety precautions and programs in connection with the performance of the Contract Services. GRP | WEGMAN shall take reasonable precautions for safety of and shall provide reasonable and appropriate protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at the Site or adjacent thereto. GRP | WEGMAN shall not be required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications in other equipment beyond the Scope contained in this Contract.

Section 7.4. GRP|WEGMAN shall conduct the training program described in Schedule A. The training specified shall be completed prior to acceptance of the Work. GRP|WEGMAN shall provide ongoing training whenever needed with respect to updated or altered Work, including upgraded software, and including newly hired maintenance personnel, for a period of one year following final completion of the Work. Such training shall be provided at no charge to the City.

Section 7.5. All reports and drawings specifically prepared for City under this Contract ("Deliverables") shall become City's property upon final payment to GRP|WEGMAN. GRP|WEGMAN may retain file copies of such information. All other reports, calculations, data, drawings, estimates, specifications, manuals, computer programs, codes and computerized materials prepared by or for GRP|WEGMAN are Instruments of Service ("Instruments") and shall remain the property of GRP|WEGMAN. All Deliverables and Instruments provided to the City are only for the purposes disclosed to GRP|WEGMAN by the City, and City agrees not to transfer them to others or permit them to be used for any extension of the Work without GRP|WEGMAN's written consent. Any reuse of such Deliverables and Instruments, without GRP|WEGMAN's participation or approval, shall be at the City's sole risk and without further liability to GRP|WEGMAN.

SECTION 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 8.1. Construction and equipment installation shall proceed in accordance with the construction schedule approved by City and attached as Schedule D. Work shall be performed during normal working hours, Monday through Friday, unless otherwise agreed herein.

Section 8.2. Systems Startup and Equipment Commissioning: GRP|WEGMAN shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule A and prior to acceptance by City. GRP|WEGMAN shall provide notice to City of the scheduled test(s) and City and/or its designees shall have the right to be present at any or all such tests conducted by GRP|WEGMAN and/or manufacturers of the Equipment. GRP|WEGMAN shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures. GRP|WEGMAN shall furnish City with Certificates of Substantial or Final Completion upon completion of the Work, or portion thereof.

Section 8.3. Inspection and Final Approval: City has the right to inspect, test and approve the work conducted in the facilities during construction and operation. City shall have the right and access to the records, and other compilations of data that pertain to the performance of the provisions and requirements of this Contract. Records shall be retained for three (3) years after close-out.

Section 8.4. GRP|WEGMAN shall not be responsible for loss, delay, or failure of performance caused by circumstances beyond its control, including but not limited to acts or omissions of the City or its employees, agents or contractors, Acts of God, war,

civil unrest, acts or threatened acts of terrorism, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, explosions, delays in transportation, fuel, labor or materials. In the event of such delays or failure, GRP | WEGMAN's time for performance shall be extended by a period of time equal to that lost.

SECTION 9. INDEMNITY

Section 9.1. To the fullest extent permitted by law, GRP | WEGMAN shall indemnify and hold harmless the City, its agents and employees from and against claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from performance of the Contract provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of GRP | WEGMAN, its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. In no event shall the preceding indemnification apply to liability to the extent caused by the negligence or willful misconduct of the party indemnified or held harmless. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation act, disability benefit acts, or other employees' benefit acts.

Section 9.2. To the fullest extent permitted by law, City shall indemnify and hold harmless GRP | WEGMAN, its subcontractors, agents and employees from and against claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from performance of the Contract provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of City, its contractors, agents and employees, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. In no event shall the preceding indemnification apply to liability to the extent caused by the negligence or willful misconduct of the party indemnified or held harmless. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation act, disability benefit acts, or other employees' benefit acts.

SECTION 10. WARRANTY

Section 10.1. GRP | WEGMAN covenants and agrees that all Work performed and equipment installed, as part of this Contract, shall be new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. The Work of all Subcontractors shall be warranted for a period of one (1) year from the date of acceptance of their Work, unless otherwise stipulated for a longer period-of-time. Equipment provided by GRP | WEGMAN shall be accompanied by a manufacturer's warranty against defects in workmanship and materials. GRP | WEGMAN agrees to deliver to City for inspection and approval all such written warranties and to transfer such warranties to City.

Section 10.2. Claims under this warranty section shall be made in writing to GRP|WEGMAN within thirty (30) days after discovery of the claimed defect unless discovered by GRP|WEGMAN. City's sole and exclusive remedy for any equipment or services not conforming to the requirements of this warranty is limited to, at GRP|WEGMAN's option, (i) repair or replacement of defective components of covered equipment, or (ii) re-performance of the defective services, or (iii) to the extent previously paid, a refund for the purchase price of such defective component of the equipment or services. All warranties required hereunder shall be in force for a period of one (1) year from the date of Substantial Completion.

Section 10.3. The warranties set forth in this section will be void and not apply to, any equipment (i) repaired, altered or improperly installed by any person other than GRP|WEGMAN or its subcontractors; or (ii) subjected to unreasonable or improper use or storage, or otherwise subjected to improper maintenance.

Section 10.4. THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

SECTION 11. LIMITATION OF LIABILITY

Section 11.1 City and GRP|WEGMAN have discussed the risk and rewards associated with the Work, as well as GRP|WEGMAN's compensation for its services. City and GRP|WEGMAN agree to allocate certain of the risks so that, to the fullest extent permitted by law, GRP|WEGMAN's total aggregate liability to the City under this Contract shall be limited to the proceeds of any umbrella/excess liability insurance or an amount equal to the Contract Sum contained in Schedule C, whichever is greater.

Section 11.2 City and GRP|WEGMAN mutually agree that neither party shall be liable to the other under this Contract for any consequential, special, contingent or punitive damages, including but not limited to, loss of revenue, loss of profit, operating costs or business interruption losses, regardless of cause, including breach of contract, tort (including sole or concurrent negligence), strict liability or otherwise.

SECTION 12. EQUIPMENT SERVICE

Section 12.1. Actions by GRP|WEGMAN. GRP|WEGMAN shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to Schedule A.

Section 12.2. Malfunctions and Emergencies. City shall use its best efforts to notify GRP|WEGMAN or its designee(s) within twenty-four (24) hours after City's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the

Premises, or (iii) any alteration or modification in any energy-related equipment or its operation.

Section 12.3. City shall notify GRP | WEGMAN by email or phone within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. GRP | WEGMAN, or its designee(s) shall respond within twenty-four (24) hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by City shall be followed within three (3) business days by written notice (email or letter) to GRP | WEGMAN from City. If City unreasonably delays in notifying GRP | WEGMAN of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, such conditions will be treated as a Material Change and the applicable provisions of Section 14 (Material Changes) shall be applied.

Section 12.4. GRP | WEGMAN will provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

Section 12.5. Actions by City. City shall not move, remove, modify, alter, or change in any way the Work or any part thereof without the prior written approval of GRP | WEGMAN. Notwithstanding the foregoing, City may take reasonable steps to protect the Work if, due to an emergency, it is not possible or reasonable to notify GRP | WEGMAN before taking any such actions. In the event of such an emergency, City shall take reasonable steps to protect the Work from damage or injury and shall follow instructions for emergency action provided in advance by GRP | WEGMAN. City agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Work.

SECTION 13. UPGRADING OR ALTERING THE EQUIPMENT

Section 13.1. GRP | WEGMAN shall at all times have the right, subject to City's prior written approval, which approval shall not be unreasonably withheld, to change the equipment included in the Work, revise any procedures for the operation of the equipment or implement other energy saving actions in the Premises, provided that:

- (i) GRP | WEGMAN complies with the standards set forth in Schedule A;
- (ii) such modifications or additions to, or replacement of equipment, and any operational changes, or new procedures are necessary to enable GRP | WEGMAN to achieve the energy savings at the Premises and;
- (iii) any cost incurred relative to such modifications, additions or replacement of the equipment, or operational changes or new procedures shall be the responsibility of GRP | WEGMAN.

Section 13.2. All modifications, additions or replacements of the equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to City for approval, which shall not be unreasonably

withheld, provided that any replacement of the equipment shall be new as set forth in Section 10 and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. GRP | WEGMAN shall update any and all software to be used in connection with the Equipment in accordance with the provisions of Section 18.1 (Ownership of Certain Proprietary Rights). All replacements of and alterations or additions to the equipment shall become part of the equipment described in Schedule A and shall be covered by the provisions and terms of Section 8.

SECTION 14. MATERIAL CHANGES

Section 14.1. Material Change Defined: A Material Change shall include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of City, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in Schedule B by five percent (5%) or more after adjustments for climatic variations. Actions by City which may result in a Material Change include, but are not limited to the following:

- (i) manner of use of the Premises by City; or
- (ii) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- (iii) permanent changes in the comfort and service parameters set forth in Schedule A; or
- (iv) occupancy of the Premises; or
- (v) structure of the Premises; or
- (vi) types and quantities of equipment used at the Premises or
- (vii) modification, renovation or construction at the Premises; or
- (viii) City's failure to provide maintenance of and repairs to the equipment as specified in Schedule A; or
- (ix) any other conditions other than climate affecting energy use at the Premises.

Section 14.2. Reported Material Changes; Notice by City: City shall use its best efforts to deliver to GRP | WEGMAN a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least sixty (60) days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to GRP | WEGMAN of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by City within

twenty-four (24) hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by City to have occurred.

SECTION 15. CHANGES IN THE WORK

Section 15.1. Change Orders. City may order, or GRP | WEGMAN may request, changes in the Work consisting of additions, deletions, or modifications to the Work. Such changes in the Work shall be authorized only by written Change Order signed by City and GRP | WEGMAN. The adjustment to the Contract Sum shall be based on the mutual acceptance of a lump sum price for the Change Order work. Change Orders entered into after Final Acceptance of the scope of work in Schedule A of this Contract will be performed under the terms and conditions of this Contract. It is the intent of both parties that a Change Order entered into after Final Acceptance of the Work in Schedule A, Scope of Work, will not extend the Guarantee under the original scope of work in Schedule A of this Contract or extend the Guarantee for Work subject to Final Acceptance under any subsequent Change Orders, such that each subsequent Change Order will be a distinct obligation entered into between GRP | WEGMAN and City. Each subsequent Change Order will require a separate bond instrument as detailed in Section 24.12 of this Contract.

Section 15.2. No Changes That Impact Guarantee. To the extent GRP | WEGMAN reasonably determines that any change in the Work requested or directed by City will materially and adversely impact the GRP | WEGMAN's ability to meet or sustain achievement of the Guarantee set forth in Schedule B, GRP | WEGMAN has the right, in its sole and absolute discretion, to decline such change in the Work.

Section 15.3. Concealed Conditions. GRP | WEGMAN shall immediately notify City if it encounters Concealed Conditions (1) that differ materially from those indicated in the Contract Documents or (2) of an unknown physical condition, that differ materially from those ordinarily found to exist and generally recognized as inherent in the Work to be performed. GRP | WEGMAN shall give prompt notice to the City of such conditions prior to significantly disturbing the same. If such Concealed Conditions cause an increase in GRP | WEGMAN's cost of, or time required for, performance of any part of the Work, GRP | WEGMAN and City shall agree, by Change Order, to an equitable adjustment to the time required for performance of the Work and to the Contract Sum.

SECTION 16. REPRESENTATIONS AND WARRANTIES

Section 16.1. Each party warrants and represents to the other that:

(i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract

has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

(iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

Section 16.2. City hereby warrants, represents and promises that it has not entered into any undisclosed leases, or contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the energy related equipment located in the Premises. City shall provide GRP | WEGMAN with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises that may be executed from time-to-time hereafter within sixty (60) days after execution thereof.

City agrees that it shall adhere to, follow, and implement the energy Cost Savings procedures and methods of operation set forth in Schedule A.

City agrees that GRP | WEGMAN shall have the right once a month, with prior notice, to inspect Premises to determine if City is complying, and shall have complied with such obligations. City shall make the Premises available to GRP | WEGMAN for and during each monthly inspection and shall have the right to witness each inspection.

Section 16.3. GRP | WEGMAN warrants, represents and promises that before commencing performance of this Contract, (a) it is licensed or otherwise permitted to do business in the State of Illinois; and (b) it shall have provided proof and documentation of required insurance pursuant to Section 17 (Insurance Requirements).

Section 16.4. The parties acknowledge and agree that GRP | WEGMAN has entered into this Contract in reliance upon the prospect of earning compensation based on guaranteed energy savings in energy used at Premises, as set forth on Schedules B (Energy Saving Guarantee) and C (Compensation to GRP | WEGMAN), attached hereto and made a part hereof. The parties further acknowledge and agree that the said guaranteed energy savings would not likely be obtained unless certain procedures and methods of operation designed for energy Cost Savings shall be implemented, and followed by City on a regular and continuous basis.

SECTION 17. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION

Section 17.1. Prior to commencement of any work and for the duration of this Contract, GRP | WEGMAN shall provide and maintain insurance as set forth below.

Insurance required by this section shall name the City as an additional named insured and shall be with insurers rated A-VII or better in the latest *Bests Rating Guide*. The coverage provided by such policy shall be primary and shall provide that the insurance afforded applies separately to each insured against whom a claim is made, except with respect to the limitation of liability. All policies shall contain waivers of subrogation. GRP | WEGMAN waives all rights against the City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the required policies.

The following are required:

a. Workers' Compensation Insurance with statutory limits as required by statute, and Employer's Liability Insurance with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per Accident, Five Hundred Thousand and 00/100 Dollars (\$500,000.00) Disease, Policy Limit and Five Hundred Thousand and 00/100 Dollars (\$500,000.00) Disease, Each Employee.

b. Automobile Liability, including non-owned and hired with a limit not less than One Million and 00/100 Dollars (\$1,000,000.00).

c. Commercial General Liability including premises, operation, products and completed operations liability, personal injury liability (including employee acts), broad form property damage liability and blanket contractual liability in amounts of not less than One Million and 00/100 Dollars (\$1,000,000.00). GRP | WEGMAN shall maintain Commercial General Liability and, if necessary, commercial umbrella or excess liability with a limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) each occurrence/Annual Aggregate and the Annual Aggregate shall be endorsed to apply separately to each job site or location. In the event any of the hazards of explosion, collapse and underground, normally referred to as XCU, exist, then such hazards shall be covered and protection afforded under the policy.

d. GRP | WEGMAN shall maintain in full force and effect, at GRP | WEGMAN's expense, an Installation Floater, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00), for coverage of the GRP | WEGMAN's labor, materials, and any equipment to be used for completion of work under this contract. Coverage is to be on an all risk of physical damage form, including earthquake and flood. This insurance shall include the City, and all contractors as their interests may appear.

Section 17.2. City will maintain, at its own expense, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount indicated on Schedule C. Such policy shall be maintained until final payment has been made to GRP | WEGMAN and no person or entity has an insurable interest in Premises, whichever is later. The policy shall include insurance against the perils of fire and physical loss or damage, including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, testing and start-up, rebuilding and debris removal. City

shall pay any costs not covered due to deductibles or retention. City shall also purchase and maintain boiler and machinery coverage which shall specifically cover such insured objects during installation and until acceptance by the City. The insurances required under this section shall include the interests of the City, GRP|WEGMAN, and its subcontractors and it will be primary over any other insurance required in Section 17.1.

Section 17.3. City and GRP|WEGMAN waive all rights against each other and their subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by insurance under this section, and for any other property insurance applicable to the Work, except such rights as they may have to proceeds of insurance held by the City as fiduciary.

SECTION 18. OWNERSHIP

Section 18.1. Ownership of Certain Proprietary Property Rights. City shall not except as required by law, by virtue of this Contract, acquire any interest in any formulas, patterns, secret inventions or processes, copyrights, patents, or other intellectual or proprietary rights that are or may be used in connection with the Equipment. GRP|WEGMAN shall grant to City a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for City to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions.

Section 18.2. Ownership of Existing Equipment. The equipment and materials at the Premises at the time of execution of this Contract shall remain the property of City even if it is replaced or its operation made unnecessary by work performed by GRP|WEGMAN pursuant to this Contract. If applicable, GRP|WEGMAN shall advise City in writing of all equipment and materials to be replaced at the Premises and City shall within thirty (30) days designate in writing to GRP|WEGMAN which equipment and materials should not be disposed of off-site by GRP|WEGMAN. It is understood and agreed to by both Parties that City shall be responsible for and designate the storage location for any equipment and materials that should not be disposed of off-site. GRP|WEGMAN shall be responsible for the disposal of all equipment and materials designated by City as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

Section 18.3. Ownership of Drawings. All drawings, reports and materials prepared by GRP|WEGMAN specifically in performance of this Contract shall become the property of City and will be delivered to City no later than sixty (60) days after completion and final payment to GRP|WEGMAN.

SECTION 19. EVENTS OF DEFAULT

Section 19.1. Events of Default by City. Each of the following events or conditions shall constitute an "Event of Default" by City:

(i) any failure by City to pay GRP | WEGMAN any sum due for period of more than thirty (30) days after written notification by GRP | WEGMAN that City is delinquent in making payment and provided that GRP | WEGMAN is not in default in its performance under the terms of this Contract;

(ii) any other material failure by City 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 notice to City demanding that such failures to perform be cured or if such cure cannot be effected in thirty (30) days, City shall be deemed to have cured default upon the commencement of a cure within thirty (30) days and diligent subsequent completion thereof; or

(iii) any representation or warranty furnished by City in this Contract, which was false, or misleading in any material respect when made.

Section 19.2. Events of Default by GRP | WEGMAN. Each of the following events or conditions shall constitute an "Event of Default" by GRP | WEGMAN:

(i) the requirements set forth in Schedule A are not met due to failure of GRP | WEGMAN to properly design, install, maintain, repair or adjust the equipment except that such failure, if corrected or cured within thirty (30) days after written notice by City to GRP | WEGMAN demanding that such failure be cured, shall be deemed cured for purposes of this Contract;

(ii) any representation or warranty furnished by GRP | WEGMAN in this Contract is false or misleading in any material respect when made;

(iii) failure to furnish and install the Work and make it ready for use within the time specified by this Contract as set forth in Schedules A (Scope of Work) and D (Construction and Installation Schedule);

(iv) provided that the operation of the facility is not adversely affected and provided that the standards in Schedule A are maintained, any failure by GRP | WEGMAN to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) days after written notice by the City to GRP | WEGMAN demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;

(v) any lien or encumbrance is placed upon the Work by any subcontractor, laborer, supplier or lender of GRP | WEGMAN;

(vi) the filing of a bankruptcy petition whether by GRP | WEGMAN or its creditors against GRP | WEGMAN which proceeding shall not have been dismissed within ninety (90) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of GRP | WEGMAN;

(vii) Any change in ownership or control of GRP|WEGMAN without the prior approval of City, which shall not be unreasonably withheld; or

(viii) failure by GRP|WEGMAN to pay any amount due City or perform any obligation under the terms of this Contract or the Energy Savings Guarantee as set forth in Schedule B (Energy Savings Guarantee).

SECTION 20. REMEDIES UPON DEFAULT

Section 20.1. Remedies upon Default by City. If an Event of Default by City occurs, GRP|WEGMAN may exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by City, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy. Election of one remedy is not a waiver of other available remedies.

Section 20.2. Remedies Upon Default by GRP|WEGMAN. In the Event of Default by GRP|WEGMAN, City may exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees. Election of one remedy is not a waiver of other available remedies.

SECTION 21. CONDITIONS BEYOND CONTROL OF THE PARTIES

If a Party to the Contract ("Performing Party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or other event beyond its control, this Contract shall at the other party's option (i) remain in effect but said Performing Party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days' notice to the Performing Party, in which event neither party shall have any further liability to the other.

SECTION 22. DISPUTES

Section 22.1. Upon mutual agreement between GRP|WEGMAN and City, any controversy or claim arising out of or relating to this Contract, including any such controversy or claim involving the parent company, subsidiaries, or affiliates under common control of any party to this Contract (a "Dispute"), shall first be submitted to mediation. Such mediation shall be attended on behalf of each party for at least one session by a senior business person with authority to resolve the Dispute. Any period of limitations that would otherwise expire between the initiation of mediation and its conclusion shall be extended until 20 days after the conclusion of the mediation.

Section 22.2. Any Dispute that cannot be resolved by mediation within 45 days of notice by one party to the other of the existence of a Dispute (unless the parties agree

to extend that period) shall be submitted to litigation in the Circuit Court for Madison County, Illinois.

Section 22.3. Continuation of Work. Pending final resolution of any dispute under this Contract, GRP | WEGMAN will proceed diligently with the performance of its duties and obligations under the Contract Documents, and the City will continue to make payments of undisputed amounts in accordance with the Contract Documents.

SECTION 23. ASSIGNMENT

Section 23.1. Assignment by GRP | WEGMAN. GRP | WEGMAN acknowledges that City is induced to enter into this Contract by, among other things, the qualifications of GRP | WEGMAN. GRP | WEGMAN 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 the City.

Section 23.2. Assignment by City. City may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Premises subject to this Contract or an interest therein. The City shall remain jointly and severally liable with its assignee or transferee to GRP | WEGMAN for all of its obligations under this Contract.

SECTION 24. MISCELLANEOUS PROVISIONS

Section 24.1. Waiver of Claims/Liens. GRP | WEGMAN shall obtain and furnish to City a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of the Work.

Section 24.2. Compliance with Law and Standard Practices. GRP | WEGMAN shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices and in compliance with any and all reasonable rules relative to the Premises. GRP | WEGMAN shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

Section 24.3. Independent Capacity of the Contractor. GRP | WEGMAN is an independent contractor in the performance of each and every part of this Contract, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, and for any and all damages in connection with the operation of this Contract, whether it may be for personal injuries or damages of any other kind.

Section 24.4. Confidential Information.

Section 24.4.1 The term "Confidential Information" means any documentation or information (i) that is marked as "proprietary" or "confidential", (ii) that is supplied orally with a contemporaneous confidential designation, or (iii) that is known by the receiving Party to be confidential or proprietary information or documentation of

the disclosing Party. Confidential Information does not include information that can be demonstrated: (i) to have been rightfully in the possession of the receiving Party from a source other than the disclosing Party prior to the time of disclosure of said information under this Contract; (ii) to have been in the public domain prior to disclosure; (iii) to have become part of the public domain after disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Contract; or (iv) to have been supplied to the receiving Party without restriction by a third party who is under no obligation to the disclosing Party to maintain such information in confidence.

Section 24.4.2. Each Party acknowledges that it may, in connection with the performance of this Contract, have access to, or be directly or indirectly exposed to Confidential Information of the other Party. Each Party shall hold confidential all Confidential Information of the other Party and shall not disclose or use such Confidential Information without express prior written consent of the disclosing Party, except as may be legally required. Each Party shall use reasonable measures at least as strict as those the Party uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors to execute a non-disclosure agreement before obtaining access to the other Party's Confidential Information.

Section 24.5. Severability. In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

Section 24.6. Complete Contract. This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written amendment signed by the parties hereto.

Section 24.7. Further Documents. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 24.8. Applicable Law. This Contract shall be construed in accordance with and governed by the laws of the State of Illinois. Any action to enforce the provisions of this Contract shall be brought in state court in Madison County, Illinois. In the event any term of this Contract is held to be invalid or unenforceable by a court, the remaining terms of this Contract will remain in force.

Section 24.9. Notice. Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO GRP | WEGMAN: **GRP | WEGMAN COMPANY**
Attention: Mr. Matt Keller
1 Mechanical Drive,
Bethalto, IL 62010
mkeller@grpwegman.com
618-258-9219

TO CITY: **CITY OF Troy**
Attention: City Administrator
City of Troy
116 E. Market St.
Troy, IL 62294
mayor@troyil.us
618-667-6741 Ext. 7500

Section 24.10. Headings. Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

Section 24.11. Handling of Hazardous Materials: All work completed under this Contract shall be in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials that could result from this project.

Section 24.11.1. The Work performed by GRP | WEGMAN under this Contract excludes any work or service of any nature associated or connected with the identification, abatement, cleanup, control, or removal of any currently existing Hazardous Materials or Mold on, in or nearby the Premises beyond what may be identified in Schedule A. City agrees that all duties and obligations in connection with any Hazardous Materials or Mold currently located in, on or nearby the Premises or brought into the Premises by a party other than the GRP | WEGMAN or its subcontractors, are not the GRP | WEGMAN's responsibility. Should GRP | WEGMAN become aware, discover or based on reasonable evidence suspect the presence of Hazardous Materials or Mold beyond those addressed in Schedule A, GRP | WEGMAN will immediately cease work in the affected area, and will promptly notify City of the conditions discovered. Should GRP | WEGMAN stop work because of such discovery or suspicion of Hazardous Materials or Mold, then the Contract Time will be reasonably extended by Change Order to cover the period required for abatement, cleanup, or removal of the Hazardous Materials or Mold. GRP | WEGMAN will not be held responsible for any claims, damages, costs, or expenses of any kind associated with such period during which work has been stopped as a result of Hazardous Materials or Mold.

Section 24.11.2. City warrants and represents that to the best of its knowledge, other than as disclosed to GRP | WEGMAN in writing, there are no Hazardous Materials or

Mold in or on the premises that will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the Work to be performed by the GRP | WEGMAN pursuant to this Contract. City further represents that it has not retained GRP | WEGMAN to discover, inspect, investigate, identify, or remediate Hazardous Materials or Mold or conditions caused by Hazardous Materials or Mold, except to the extent specified in Schedule A. Unless otherwise specified in Schedule A, City will be responsible for taking all necessary steps to correct, abate, clean up, or control Hazardous Materials or Mold not addressed by the GRP | WEGMAN under this Contract. City specifically agrees, to the extent allowed by state law, to indemnify and to hold the GRP | WEGMAN, its officers, agents and employees harmless from and against any and all claims, demands, damages, or causes of action in any way arising out of its release of Hazardous Materials or Mold into the air, soil, or any water system or water course, or any actions taken in connection with same, or any failure to act.

Section 24.12. Bonding Requirements: GRP | WEGMAN will provide to City separate performance and labor and material payment bonds, covering GRP | WEGMAN's installation and faithful performance of the Energy Conservation Measures specified in GRP | WEGMAN's Scope of Work, Schedule A to this Contract, each in the sum of one hundred percent (100%) of the Contract Sum. Bonds shall be issued by a surety in good standing and authorized to transact business in Illinois. Bonds covering Work under any subsequent Change Orders issued after Final Acceptance of the Work in Schedule A, Scope of Work, are obligations separate from those under the bonds issued for the Work in Schedule A, and shall not extend the bonding obligations for work in Schedule A of this Contract or for any other Work for to which Final Acceptance has occurred.

Section 24.13. As-Built Drawings: Where applicable, GRP | WEGMAN shall provide reproducible record drawings from the "as-built drawings" of all existing and modified conditions associated with the project, conforming to typical engineering standards.

Section 24.14. Operation and Maintenance Manuals: Three (3) maintenance manuals for each site will be provided by GRP | WEGMAN for all equipment replacements and/or upgrades at each location.

Section 24.15. Non-Discrimination: GRP | WEGMAN shall comply with all applicable state and federal laws, rules and regulations involving non-discrimination on the basis of any protected classification, including but not limited to race, color, religion, national origin, sexual orientation, veteran status, age, or sex.

Section 24.16. Tax-Exempt Status: The City is exempt from payment of Illinois sales and use taxes on purchases of tangible personal property or services, including materials, supplies and equipment purchased for construction of buildings and other structures. City will provide GRP | WEGMAN with applicable documentation to certify City's tax-exempt status. GRP | WEGMAN shall use its best efforts to furnish City's documentation in all applicable transactions and comply with all applicable statutory requirements related to such transactions.

Section 24.17. Drafting Not to be Construed Against any Party: Reference to "year" shall mean calendar year unless a fiscal year is specified. If a fiscal year is specified that year is July 1 through June 30.

Section 24.18. Prevailing Wage Act: GRP|WEGMAN and all subcontractors performing Work pursuant to this Agreement shall pay prevailing wages in accordance with the Prevailing Wage Act, 820 ILCS 130/0.01, et seq. GRP|WEGMAN agrees to fully defend and indemnify, including reimbursement of attorney's fees and costs, the City against any claims brought by any employee or the Illinois Department of Labor arising out of the scope of its contract with the City for violations of the Prevailing Wage Act.

IN WITNESS WHEREOF, the parties hereto have signed their names to this Contract by their duly authorized officers on the date first above written.

**GRP Mechanical Company, Inc.
d/b/a GRP Wegman Company**

By:


(Signature)

Bob Fogarty
Vice President

Date:

8/9/2023

City of Troy, Illinois

By:


(Signature)

David Nonn
Mayor

Date:

8.7.2023

ATTACHMENT I: Schedules

- SCHEDULE A: SCOPE OF WORK TO BE PERFORMED BY GRP | WEGMAN
- SCHEDULE B: ENERGY SAVINGS GUARANTEE
- SCHEDULE C: COMPENSATION TO GRP | WEGMAN
- SCHEDULE D: CONSTRUCTION AND INSTALLATION SCHEDULE
- SCHEDULE E: REQUIRED STANDARDS OF COMFORT
- SCHEDULE F: PROJECT CASH FLOW
- SCHEDULE G: FINAL DELIVERY AND ACCEPTANCE CERTIFICATE
- SCHEDULE H: FORM ALLOCATION OF SECTION 179D DEDUCTION

SCHEDULE A: SCOPE OF WORK TO BE PERFORMED BY GRP | WEGMAN

Solar PV System Scope of Work

1. Provide and install a 91.8 kW (DC) solar array with the following materials for a roof and canopy mounted turnkey system.
 - o (204) 450-watt solar panels (or total equivalent)
 - o Inverters
 - o Roof Mounting Hardware
 - o Canopy System and Mounting Hardware
 - o Disconnects, circuit breakers, trenching, conduits, cables, grounding, signage
 - o Interconnections and SREC applications and documents.
 - o Web monitoring system
 - o Electrical Permits and inspections

2. Solar array approximate locations, subject to change, as shown in the drawings below:



Engineering Scope of Work

1. GRP | WEGMAN to provide the City Engineering drawings where required for review of the above scope of work prior to work starting.
2. GRP | WEGMAN to provide the project management required to install the above scope of work in a timely fashion.

City's Scope of Work

1. City is responsible for declining the Ameren Smart Inverter Rebate which will maintain net metering for the facility. Net Metering allows the City to get credits on the utility bill for those times when the solar system generates more power than is being used. The utility will only charge for the net amount of electricity the facility consumes, plus any other fixed delivery charges.
2. City is responsible for removing city and personal items from the work area to provide clear access to implement the above scope of work.
3. City is responsible for keeping all city employees out of the building work zones during construction and implementation of the scope of work listed within this contract.
4. All City employees are required to notify GRP | WEGMAN's project management before accessing and/or entering work zones during the construction process.
5. The City is responsible for reviewing conceptual design, shop drawings and/or submittals of major equipment, and full design drawings within fifteen days of submission.
6. The City is responsible for providing hardware for an internet connection within 10 ft. of installed inverters at the Facility. City is responsible for maintaining internet access for web connectivity and web-based access. Failure to do so could affect SREC payments. Multiple options exist to collect the solar array data from the inverters and depending on the option chosen (hard-wired, cell card, wi-fi extender, etc.), there could be additional ongoing fees that the City would be responsible for.
7. In addition to regular maintenance and monitoring, the City is responsible for ensuring there are no obstructions (e.g. trees) between the solar array and sun rotation path. GRP | WEGMAN will not be responsible for loss of production or incentives due to obstructions growing or being built that will shade the solar array.

Clarifications

1. Any power production presented on GRP | WEGMAN documents is based on 30 years of historical weather data for your zip code and built into the solar design software used to model the system. This production and guarantee will vary up to +/- 10% per year due to weather-driven patterns (National Renewable Energy Laboratory (NREL), 2014).
2. All SREC brokerage fees and deposits are outside of the scope of this contract.

3. The savings presented are based on the City declining the Ameren Smart Inverter Rebate which was within the options provided to the City.
4. The City is responsible for any additional utility upgrades needed as a result of the Utility Company's interconnection review. If the City chooses not to move forward after the Utility review because of added costs, the City will only be responsible for the Engineering costs spent. GRP | WEGMAN is not responsible for any delays relative to utility company reviews, permits, etc.
5. Implementation of the solar arrays as described in this contract are subject to adequate structural support as determined by a preinstallation structural review. In the event structural roof members are not sufficient, changes to the solar array design can include but are not limited to changes in size, changes in final location, or installation of additional structural support. The City is responsible for additional expenses as a result of the structural review. If the City chooses not to move forward after the structural review because of added costs, the City will only be responsible for the Engineering costs spent.
6. GRP | WEGMAN is not responsible for project delays due to supply-chain issues. Note that all the components for the system need to be in place before the system will be energized. Components will be prepaid for to expedite the delivery and to be able to maintain the fixed price of this contract.
7. GRP | WEGMAN is not responsible for any ongoing maintenance and/or monitoring of the solar array system.
8. GRP | WEGMAN will provide one-year parts and labor warranty. All third-party product warranties are passed on to the customer.

SCHEDULE B: ENERGY SAVINGS GUARANTEE

1. **DEFINITIONS.** The following terms are defined for purposes of this Schedule as follows:

Annual Guaranteed Savings are the portion of the Total Guaranteed Savings guaranteed to be achieved in any one year of the Guarantee Term, calculated and adjusted as set forth in this Schedule.

Annual Savings are the Measurable Savings that occur in any one-year of the Guarantee Term plus the Stipulated Savings deemed achieved for that year.

Excess Savings are the amount by which the Annual Savings exceed the Annual Guaranteed Savings in any one-year of the Guarantee term.

Guarantee Term is the term of this Energy Savings Guarantee. As provided in Section 3.3 of the Contract, the Guarantee Term shall commence with the Guarantee Commencement Date and continue for a period of twelve (12) years.

Installation Period means the period between the Commencement Date and the first day of the month following the Substantial Completion Date. For purpose of the annual reconciliation, savings achieved during the Installation Period shall be considered savings achieved during the first year of the Guarantee Term.

Stipulated Savings are the savings that have been agreed by the parties shall be deemed achieved on the Substantial Completion Date and are set forth on Exhibit 1 of this Schedule. GRP | WEGMAN and the City agree that Stipulated Savings may include, but are not limited to, future equipment replacement or other operational costs avoided as a result of this Contract. City agrees and acknowledges that GRP | WEGMAN shall not be responsible for the achievement of such Stipulated Savings, as the actual realization of those savings is not within GRP | WEGMAN's control. City acknowledges that it has evaluated sufficient information to believe that the stipulated Savings shall occur. As a result, Stipulated Savings shall not be measured or monitored at any time during the Guarantee Term, but rather shall be deemed achieved on the Substantial Completion Date.

Total Guaranteed Savings are the amount of savings guaranteed that shall be achieved or deemed achieved during the Guarantee Term, calculated and adjusted as set forth in this Schedule.

Total Savings are the amount of savings actually achieved plus the Stipulated

Savings, calculated and adjusted as set forth in this Schedule. Total Savings include all savings achieved during the Installation Period as well as Annual Guaranteed Savings during each year of the Guarantee Term.

- 2. GUARANTEE.** GRP | WEGMAN guarantees that the City shall save \$151,073 during the Guarantee Term, calculated and adjusted as set forth in the attached Utility Evaluation, Exhibit 2 to this Schedule. If the Annual Savings in any year of the Guarantee Term are less than the Annual Guaranteed Savings for that year, GRP | WEGMAN shall pay or credit the City with the difference, as described in paragraph 5 of this Schedule. Such payment or credit shall be the sole and exclusive remedy of the City for any failure by GRP | WEGMAN to achieved guaranteed savings under this Guaranteed Energy Savings Contract, including any alleged breach of any other express or implied warranty of savings.
- 3. RECONCILIATION.** GRP | WEGMAN shall calculate the savings achieved during the Installation Period and advise the City of the amount of such savings. The frequency and the methods of reconciliation to be used during the Guarantee Term have been approved by the City at the time that this Contract was executed and are defined in the Exhibits attached to this Schedule. Except by mutual agreement of the parties, no changes to the frequency or methods of reconciliation may be made during the Guarantee Term; but, if a utility providing energy to the City modifies its method of billing during the Guarantee Term, or if the City changes its utility suppliers or method of purchasing, GRP | WEGMAN may, at is option, adjust the reconciliation methods to methods appropriate to the utility's revised method of billing.
- 4. CHANGES IN USE.** The City agrees to notify GRP | WEGMAN, within five (5) business days, of any actual or intended change, whether before or during the Guarantee Term, in the use of any facility to which this Schedule applies, or of any other condition arising before or during the Guarantee Term, that reasonably could be expected to change the amount of energy used at any facility to which this Schedule applies. Such a change or condition would include but is not limited to: changes in the primary use of any facility; changes to the hours of operation of any facility; changes or modifications to the Equipment or Services provided under this Guaranteed Energy Savings Contract; failure of the premises to meet local building codes; changes in utility suppliers, method of utility billing, or method of utility purchasing; improper maintenance of the Equipment or of any related equipment other than by GRP | WEGMAN; change to the Equipment or to any facility required by changes to local building codes; or additions or deletions of energy-consuming equipment at any facility. Such a change or condition need not be identified in the Base Line or Benchmark in order to permit GRP | WEGMAN to make an adjustment.

Upon receipt of such notice, or if GRP | WEGMAN independently learns of any such change or condition, GRP | WEGMAN shall calculate and send to the City a notice of adjustment to the Base Lien or Benchmark to reflect the impact of such change or condition, and the adjustment shall become effective upon approval by the City as of the date that the change or condition first arose. Should the City fail to provide GRP | WEGMAN with notice of any such change or condition, GRP | WEGMAN may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition, and such estimates upon approval by the City shall be accepted.

- 5. SAVINGS SHORTFALLS.** If the Annual Savings during a specific year of the Guarantee Term are less than the Annual Guaranteed Savings for that year, GRP | WEGMAN will at the City's written election, pay the City the Shortfall amounts or upon the mutual agreement of the parties, GRP | WEGMAN may also provide additional products or services, in the value of the shortfall, at no additional cost to the City. Where shortfalls have occurred, GRP | WEGMAN reserves the right, subject to the approval of the City, which shall not be unreasonably withheld, to implement additional operational improvements or conservation measures, at no cost to the City that shall generate additional savings in future years of the Guarantee Term.

The following Exhibit is attached and made part of the schedule:

Exhibit 1: Stipulated Savings

Exhibit 2: Utility Evaluation

EXHIBIT 1: Stipulated Savings

The savings identified below shall be Stipulated Savings (as defined above) under this Schedule. These savings are based on the verification approach prescribed for projects in which year over year savings are stipulated based on procedures for verifying that (1) baseline conditions have been defined; (2) the Work and equipment contracted to be installed have been installed; (3) installed Work and equipment, as completed at the end of construction, meets the requirements of the Contract in terms of quality; and (4) installed Work and equipment is operating and performing in accordance with the requirements of the Contract and the Contract Documents. This protocol is based on the guidelines for measurement and verification contained in the guidelines of the Federal Energy Management Program of the U.S. Department of Energy.

Savings

1. The energy and operational savings have been verified prior to contract acceptance and will be stipulated as cost savings going forward after the project has been accepted as being complete by the City.
2. The basis for the energy savings is the period from May 2022 to April 2023. The City purchased electricity from Ameren Illinois and Direct Energy during the above time period.
3. The energy usage reduction outlined in the savings exhibit utilizes the base year utility rates of \$0.139/kWh. Actual dollar savings may vary based on fluctuations in utility cost. Overall energy reduction will come from the solar PV system.
4. It is the City's responsibility to maintain the existing and new equipment at its full efficiency so no adjustments to the energy savings will be required.
5. The base year utility usage (5/2022 to 4/2023):
 - Municipal Building: Electric Meter total usage of 131,163 kWh

EXHIBIT 2: Utility Evaluation

Solar PV Savings				
Building	System kW (DC)	Estimated Annual kWh Produced	Electric Utility Rate (\$/kWh)	Potential Utility Saved
Municipal Building	91.8	116,700	\$0.139	\$16,221
Guarantee Total*		93,360		\$12,977

*GRP | WEGMAN is guaranteeing 80% of the anticipated energy produced by the solar array, which at current utility rates corresponds to \$12,977. The 20% reduction is based on two factors:

- 10% from weather variances year to year as stated in Schedule A / Clarifications / #1.
- Additional 10% from the 0.5% degradation of the solar production every year over the 20-year contract term (0.5% x 20 = 10%).

SCHEDULE C: COMPENSATION TO GRP | WEGMAN

1. **CONTRACT SUM AND PAYMENT TERM.** The City shall make payments to GRP | WEGMAN for Work performed, as well as payments for Services rendered pursuant to the Services Schedule.

- (a) The Contract Sum to be paid by the City for the Work shall be an amount of Three Hundred Thirty-Seven Thousand Six Hundred Seventy-Six Dollars (\$337,676.00). Progress payments (including payment for materials delivered to GRP | WEGMAN and work performed on and off-site) shall be made to GRP | WEGMAN.
- (b) GRP | WEGMAN's initial application for payment will include 30% mobilization and will be submitted within 10 days of commencement date. Subsequent payment applications shall be submitted monthly based on the value of labor and materials incorporated in the work and for materials stored at the site. GRP | WEGMAN will develop a schedule of values and submit the schedule of values to the City for review. Progress payments shall be submitted to the City on standard AIA documents. Progress payments, less 5% retainage, shall be made no later than 30 days after submission. All applications for payment shall include certified payroll records in accordance with the Illinois Prevailing Wage Act. See estimated payment schedule below:

Date	%	Total
Sep-23	30.0%	\$ 101,303
Oct-23	0.0%	\$ -
Nov-23	5.0%	\$ 16,884
Dec-23	5.0%	\$ 16,884
Jan-24	20.0%	\$ 67,535
Feb-24	20.0%	\$ 67,535
Mar-24	10.0%	\$ 33,768
Apr-24	5.0%	\$ 16,884
May-24	5.0%	\$ 16,884
Total	100%	\$ 337,676

- (c) If application is made for material not installed in the work, but delivered and stored at the site, GRP | WEGMAN shall submit a stored material log.
- (d) Partial waivers of lien shall be provided for the prior month's application with the current application for payment submission.

Final payment, including retainage, constituting the entire unpaid balance for the Work, shall be made to GRP | WEGMAN within 30 days after the Substantial

Completion Date. Payments may be withheld on account of any breach of this Contract by GRP|WEGMAN and claims by third parties (including GRP|WEGMAN subcontractors and material suppliers), but only to the extent that written notice has been provided to GRP|WEGMAN and GRP|WEGMAN has failed, within ten days of the date of receipt of such notice, to provide adequate security to protect City from any loss, cost, or expense related to such claims.

SCHEDULE D: CONSTRUCTION AND INSTALLATION SCHEDULE

GRP | WEGMAN shall prepare and submit to the City a detailed progress schedule for the Work which shall be reasonably consistent with the anticipated completion date of May 2024. The progress schedule shall be attached to and incorporated by reference into this Schedule D upon its approval by City and GRP | WEGMAN. A preliminary schedule is below:

- August 2023 – Contract Signed
- September – November 2023 – Final design, Ameren Interconnection and Net-Metering submittal, structural survey, material ordered
- December 2023 – Material delivered, site prep work, construction begins
- January – March 2024 – Construction
- April – May 2024 – Construction complete, Ameren Witness Test, Final paperwork submitted

*Note that the project schedule could vary significantly due to things that are beyond our control such as material delays, utility approval and/or upgrades, structural upgrades, weather conditions, etc.

SCHEDULE E: REQUIRED STANDARDS OF COMFORT

This contract assumes the City will operate the building in a similar fashion that it is currently operating at. The City is responsible for maintaining the same schedules as presently exists. The temperatures during occupied heating periods will be maintained in the range of 70 to 72 degrees F. In unoccupied periods the heating will be set back to 55 degrees F. The temperatures during occupied cooling periods will be maintained in the range of 74 to 76 degrees F. In unoccupied periods the cooling will be set back to 82 degrees F or off completely.

SCHEDULE F: PROJECT CASH FLOW

Year	Energy Savings	Solar Renewable Energy Credit (SREC) Proceeds	Inverter Rebate	Federal Investment Tax Credit (ITC) Direct Pay Proceeds	Operational Savings					
1	\$12,977	\$472	\$0	\$101,303	\$0					
2	\$12,977	\$14,138			\$0					
3	\$12,977	\$14,138			\$0					
4	\$12,977	\$14,138			\$0					
5	\$12,977	\$14,138			\$0					
6	\$12,977	\$14,138			\$0					
7	\$12,977	\$14,138			\$0					
8	\$12,977				\$0					
9	\$12,977				\$0					
10	\$12,977				\$0					
11	\$12,977				\$0					
12	\$8,326				\$0					
13					\$0					
14					\$0					
15					\$0					
16					\$0					
17					\$0					
18					\$0					
19					\$0					
20					\$0					
Total	\$151,073	+	\$85,300	+	\$0	+	\$101,303	+	\$0	= \$337,676

Notes:

- 1 – Year 1 in Cash Flow is the first year after the system is installed and operational.
- 2 – SREC proceeds are lower in year two because of application fees, bonds/deposits, and brokerage fees.
- 3 – SREC, Inverter Rebate, and Federal ITC Direct Pay Proceeds are reflective of current incentives available and may be subject to change at any time.

SCHEDULE H: SECTION 179D ALLOCATION

As part of the Energy Policy Act of 2005, Congress enacted Section 179D of the Internal Revenue Code to encourage the design and construction of energy efficient commercial building property. This program allows government building owners to allocate potential Section 179D deductions to the designer that creates the technical specifications for the installation of the energy efficient commercial building property.

Under the provisions set forth by the Internal Revenue Service, (Notice 2008-40, Section 3. Special Rule for Government- Owned Buildings, the undersigned do hereby acknowledge this document as execution of transfer of allowable 179D tax deduction for the Public Building(s) detailed below from the 'Owner' to the 'Designer'.

Property Name	Property Address	Placed in Service	Cost of Project	Square Feet	Allocation Percent
Municipal Building	116 E. Market St., Troy, IL 62294	05/01/2024	\$337,676	10,500	100%


Owner Information	
Governmental Entity Name ("Owner"):	City of Troy, IL
Representative Name:	David Nonn
Title:	Mayor
Address:	116 E. Market St., Troy, IL 62294
Phone Number:	618-667-9924

Designer Information	
Designer Entity Name ("Designer"):	GRP Mechanical Company, Inc.
Representative Name:	Matt Keller
Title:	Engineering Director
Address:	1 Mechanical Drive, Bethalto, IL 62010
Phone Number:	618-258-9219

The authorized owner representative is not responsible for certification of the energy efficient commercial building property. The taxpayer receiving the allocation is solely responsible for obtaining the required certification, supporting documents, and ensuring their accuracy and substance.

I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete.

AGREED TO AND ACCEPTED:


 Signature (Owner Representative)
 DAVID P. NONN
 Print Name
 Date: 8.7.23


 Signature (Designer Representative)
 Matt Keller
 Print Name
 Date: 08/09/23