
**HONEYWELL
AGREEMENT**

Customer Name: Mamaroneck UFSD

Honeywell Proposal Number: MUFSD081123

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Note Regarding Modifications Made to this Agreement: Provisions in the printed document that are not to be included in the Agreement may be deleted by striking through the word, sentence or paragraph to be omitted. It is recommended that unwanted provisions not be made illegible. The parties should be clearly aware of the material deleted from the standard form. **Do not make any modifications to this Agreement unless approval to do so has been granted. Changes may be made only by deletion as explained above, or, by addendum.**

ARTICLE 1
GENERAL PROVISIONS

1.1 This Agreement, including all Attachments, 2.1 Exhibits, and Schedules referenced herein (hereinafter the "Agreement") is made by and between Honeywell International Inc. ("HONEYWELL"), a Delaware Corporation, acting through its Honeywell Building Technologies business unit, with a principal place of business at 715 Peachtree Street N.E., Atlanta, GA 30308, and the Mamaroneck UFSD at 1000 West Boston Post Road, Mamaroneck, New York 10543 ("CUSTOMER," and together with HONEYWELL, the "Parties").

1.2 **EXTENT OF AGREEMENT** This Agreement, including all attachments and exhibits hereto, represents the entire agreement between CUSTOMER and HONEYWELL and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both CUSTOMER and HONEYWELL. None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order issued by CUSTOMER, which relates to the subject matter of this Agreement.

1.3 As used in this Agreement, the term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by HONEYWELL to fulfill HONEYWELL's obligations, as described in Attachment A and otherwise set forth in the Contract Documents. The Work as described in 2.2 Attachment A constitutes the Project.

1.4 The Project is the total construction of which the Work performed by HONEYWELL under this Agreement may be the whole or a part.

1.5 The Contract Documents consist of this Agreement, its attachments, exhibits, schedules, and authorized amendments.

1.6 Support Services means those services and obligations to be undertaken by HONEYWELL in support of CUSTOMER as set forth in Attachment D.

1.7 Installation Schedule means that schedule set out in Attachment C describing the Parties' intentions respecting the times by which the components or aspects of the Work therein set forth shall be installed and/or ready for acceptance or beneficial use by CUSTOMER.

ARTICLE 2 HONEYWELL'S
RESPONSIBILITIES

HONEYWELL Services

2.1.1 HONEYWELL shall be responsible to provide labor and materials required for the performance of the Work. HONEYWELL shall supervise and direct the Work and shall be solely responsible for all construction, means and methods, and coordination of all portions of the Work to be performed and furnished under this Agreement.

2.1.2 HONEYWELL, on behalf of CUSTOMER, will obtain all required, licenses, and permits which may be required by Federal, State, and local laws, rules, regulations and ordinances for the Work.

2.1.3 HONEYWELL will provide coordination and total supervision of the work of separate energy conservation measures ensuring enforcement of all contract provisions and timely completion of the Project. In the event the Customer undertakes a bond referendum and/or capital improvement project during the course of the Installation Schedule Honeywell shall coordinate the Work with the Customer, the Construction Manager, if any, and the Architect/Engineer. HONEYWELL shall be fully responsible for scheduling and coordinating its Work with the ongoing bond referendum project(s) and capital improvement projects at the CUSTOMER's facilities. All schedules for the installation of the work covered under this Agreement shall be approved by the Construction Manager, if any, and Architect/Engineer in writing.

Responsibilities with Respect to the Work

2.2.1 HONEYWELL will provide construction supervision, inspection, labor, materials, tools, construction equipment and subcontracted items necessary for the execution and completion of the Work in accordance with the terms of this Agreement.

2.2.2 HONEYWELL, its employees, consultants, subcontractors and agents shall keep the premises in an orderly fashion and free from accumulation of waste materials and/or any dangerous conditions caused by the Work on a daily basis or rubbish caused by its operations. If HONEYWELL, its employees, consultants, subcontractors or agents damage any property or equipment (not being removed as part of the scope of work), HONEYWELL shall repair the property to its pre-existing condition unless CUSTOMER directs otherwise. At the completion of the Work, HONEYWELL shall remove waste material produced by HONEYWELL, its employees, consultants, subcontractors and agents under this Agreement as well as all its tools, construction equipment,

machinery and surplus material and shall clean up the^{2.3} Work including any dust from the materials and surrounding areas to the satisfaction of the CUSTOMER. Should HONEYWELL fail to clean up the Work within twenty-four (24) hours of receiving notice that such clean-up has not occurred, the CUSTOMER shall undertake such cleanup and all costs associated with the cleanup shall be back charged to HONEYWELL. HONEYWELL shall dispose of all waste materials or rubbish caused by its operations. HONEYWELL shall be responsible for disposal of fluorescent lights, potential polychlorinated biphenyl containing light ballasts and mercury containing controls as specified in Attachment A.

2.2.3 HONEYWELL shall give all notices and comply with all laws and ordinances enacted as of the date of execution of the Agreement governing the execution and performance of the Work. Provided, however, that HONEYWELL shall not be responsible nor liable for Customer's violation of any code, law or ordinance or an existing violation in CUSTOMER's property. HONEYWELL shall comply with and obtain, at its expense, all licenses and permits required by Federal, State and local laws, rules and ordinances in connection with the installation of the Energy Conservation Measures (ECMs). In the event that HONEYWELL cannot procure any such license or permit in light of a requirement that the CUSTOMER is required to do so, the CUSTOMER will procure the same. HONEYWELL further understands and agrees that this project must be performed in accordance with all applicable sections of New York State Labor Law.

2.2.4 HONEYWELL shall comply with all applicable federal, state and municipal laws and regulations that regulate the health and safety of its workers while performing the Work, and shall take such^{2.4} measures as required by those laws and regulations to prevent injury and accidents to other persons on, about or adjacent to the site of the Work.

2.2.5 HONEYWELL shall not be required to perform professional services that constitute the unlawful practice of architecture or engineering. Energia shall provide such services and required certifications. HONEYWELL shall obtain such services and required certifications from Energia. Energia shall be the Engineers/Architects of Record for this Project. HONEYWELL shall be solely responsible for payment to Energia. in accordance with the schedule provided at Attachment E. Under no circumstance, shall the CUSTOMER be liable for any payment to the Architect/Engineer. The parties understand and agree that at all times the Architect/Engineer owes its duty of care and professional practice, to CUSTOMER and such services are for CUSTOMER'S benefit.

Patent Indemnity

2.3.1 HONEYWELL shall, at its expense, indemnify, defend or, at its option, settle any suit that may be instituted against CUSTOMER for alleged infringement of any United States patents related to the hardware manufactured and provided by HONEYWELL, provided that: 1. Such alleged infringement consists only in the use of such hardware by itself as installed by Honeywell and not as part of, or in combination with, any other devices, parts or software added by Customer after completion of the Work; 2. CUSTOMER gives HONEYWELL immediate notice in writing of any such suit and permits HONEYWELL, through counsel of its choice, to answer the charge of infringement and defend such suit; and 3. CUSTOMER gives HONEYWELL all needed information, assistance and authority, at HONEYWELL's expense, to enable HONEYWELL to defend such suit.

2.3.2 If such a suit has occurred, or in HONEYWELL's opinion is likely to occur, HONEYWELL may, at its election and expense: obtain for CUSTOMER the right to continue using such equipment; or replace, correct or modify it so that it is not infringing; or remove such equipment and grant CUSTOMER a credit therefore.

2.3.3 In the case of a settlement, final award of damages or costs (including reasonable attorney and court fees) in any such suit, HONEYWELL will pay such settlement, award or costs in full and without contribution or set-off from CUSTOMER. HONEYWELL shall not, however, be responsible for any settlement made without its written consent, which consent shall not be unreasonably withheld.

Warranties and Completion

2.4.1 HONEYWELL warrants CUSTOMER good and clear title to all equipment and materials furnished to CUSTOMER pursuant to this Agreement, free and clear of liens and encumbrances. HONEYWELL hereby warrants that all such equipment and materials shall be new, of good quality and of recent manufacture/fabrication and shall be free from defects in materials and workmanship, including installation and setup, for a period of two (2) years from the date of substantial completion of the Energy Conservation Measure ("ECM") in question provided that no repairs, substitutions, modifications, or additions have been made, except by HONEYWELL or with HONEYWELL's written permission, and provided that after delivery such equipment or materials have not been subjected by non-HONEYWELL personnel to accident, neglect, misuse, or use in violation of any instructions supplied by HONEYWELL. HONEYWELL's sole liability hereunder shall be to promptly repair or replace defective equipment or materials, at HONEYWELL's

expense. HONEYWELL warrants that the installation services it performs will be performed consistent with good engineering practices and that such work is warranted to be free from defects in materials and workmanship for a period of two (2) years from the date of execution of the Delivery and Acceptance Certificate by CUSTOMER with respect to Substantial Completion of the ECMs as set forth in Attachment J.

2.4.2 In addition to the warranty set forth in Section 2.4.1 above, HONEYWELL shall, assign to CUSTOMER any and all manufacturer's or installer's warranties for equipment or materials not manufactured by HONEYWELL and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the two (2) year limited warranty set forth in Section 2.4.1.

2.4.3 THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE, AND HONEYWELL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT AND MATERIALS PROVIDED HEREUNDER. HONEYWELL SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES ARISING FROM, OR RELATING TO, THIS LIMITED WARRANTY OR ITS BREACH. 3.4

2.5 **SAFETY.** HONEYWELL shall be responsible for initiating, maintaining, and supervising all safety precautions and programs required by applicable laws governing the performance of the Work or Services. HONEYWELL shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property. 3.7

2.6 **REBATES.** HONEYWELL shall pursue rebates available for the District from Con Edison and other applicable rebates identified as available to the Customer prior to Final Acceptance of the project. With the exception of the NYSERDA rebates associated with the solar installations, rebates and incentives shall inure to the benefit of and be payable to the Customer. Honeywell will provide Customer copies of the solar rebates after they have been received.

Prior to financing the Project and commencement of the Work, in the event that the Project does not yield a positive cash flow to the Customer for each and every year of the contract term, the parties shall agree on modifications to the scope of Work which shall be documented by change order as to achieve a positive cash flow with substantially level annual financing payments in each year of the contract term.

Notwithstanding the foregoing, in the event that the rebates cannot be achieved in the amounts set forth in the Cash Flow Statement as updated pursuant to Article 5.1 herein, the Customer reserves the right to terminate this Agreement prior to financing without any cost or liability to the Customer if the Customer determines that it is not in its best interest to proceed with the Project.

ARTICLE 3 **CUSTOMER'S RESPONSIBILITIES**

3.1 CUSTOMER shall consult with HONEYWELL regarding the requirements for the Work. HONEYWELL shall be fully acquainted and familiar with the conditions as they exist and the character of the operations to be carried on under the Agreement and shall make such on-site inspections as necessary to perform the Work.

3.2 CUSTOMER shall designate a representative who shall be fully acquainted with the Work and who has authority to approve minor incidental changes in the scope of the Work which do not increase the Contract Price and render decisions promptly.

3.3 CUSTOMER shall furnish to HONEYWELL all information regarding utility locations and other information reasonably pertinent to this Agreement, the Work and the Project.

RESERVED.

3.5 If CUSTOMER or its representatives become aware of any fault or defect in the Work, it shall give prompt written notice thereof to HONEYWELL.

3.6 The information required by the above paragraphs shall be furnished with reasonable promptness at CUSTOMER's expense.

RESERVED.

3.8 HAZARDOUS SUBSTANCES, MOLD AND UNSAFE WORKING CONDITIONS

3.8.1 "Hazardous substance" includes all of the following, whether naturally occurring or manufactured, in quantities, conditions or concentrations that have, are alleged to have, or are believed to have an adverse effect on human health, habitability of a Site, or the environment: (a) any dangerous, hazardous or toxic pollutant, contaminant, chemical, material or substance defined as hazardous or toxic or as a pollutant or contaminant under state or federal law, and (b) any petroleum product, nuclear fuel or material, carcinogen, asbestos, lead paint, mercury, urea formaldehyde, foamed-in-place insulation, polychlorinated biphenyl (PCBs), and (c) any other chemical or biological material or organism, that has, is alleged to have, or is believed to have an adverse effect on human health, habitability of a Site, or the environment.

3.8.2 "Mold" means any type or form of fungus or biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing. This includes any related or any such conditions caused by third parties.

3.8.3 "Covered Equipment" means the equipment covered by the Services to be performed by HONEYWELL under this Agreement, and is limited to the equipment included in the respective work scope attachments.

3.8.4 Honeywell shall perform the abatement or removal of asbestos identified in the Attachment A Scope of Work. A copy of the AHERA 3-year Reinspection, Management Plan including the Ceiling Tile Survey has been provided to Honeywell by the Customer for use as a guide to ACBM in the various buildings. Honeywell shall indemnify and hold harmless the District from any and all liability to the extent caused by Honeywell's or its agents', subcontractors', or employees' negligence in its performance of removal, abatement and/or disposal of hazardous materials.

All costs associated with the testing/sampling of asbestos performed by Honeywell during the Investment Grade Audit are included in the contract price and covered by the guaranteed savings.

3.8.4.1 To the extent Hazardous Substances, other than those specifically identified as requiring abatement by Honeywell in Attachment A, are encountered or suspected once work commences it shall be handled according to the process set forth in Section 7.3 of this Agreement. Notwithstanding the foregoing, should HONEYWELL become aware of the presence of hazardous substances or mold other than those hazardous materials included in the Work, the discovery of such condition shall constitute a cause beyond HONEYWELL'S reasonable control and HONEYWELL shall have the right to stop work in the affected area immediately and shall promptly notify the CUSTOMER in writing. Upon receiving said notification, the CUSTOMER will have the following options: (1) arrange to have said asbestos abated at the CUSTOMER'S cost; or (2) remove ECMs to be provided within the Scope of Services having a value substantially equivalent to the cost of abating such asbestos. The parties shall mutually select any ECMs to be so removed and, in so doing, shall take into account the payback characteristics of the ECMs considered for removal. Any aforementioned changes to the scope of work shall be documented by Change Order signed by the parties and the Architect.

3.8.5 HONEYWELL is not responsible for determining whether the Covered Equipment or the temperature, humidity and ventilation settings used by CUSTOMER, are appropriate for CUSTOMER and the Site with respect to avoiding or minimizing the potential for accumulation, concentration, growth or dispersion of Mold.

3.8.6 CUSTOMER represents that CUSTOMER has not retained HONEYWELL to discover, inspect, investigate, identify, prevent or remediate Mold or conditions caused by Mold.

3.8.7 CUSTOMER AGREES THAT HONEYWELL WILL NOT BE RESPONSIBLE FOR ANY CLAIMS OR COSTS OF ANY NATURE THAT IN ANY WAY RESULT FROM OR ARISE UNDER THE EXISTENCE OF MOLD AT CUSTOMER'S PREMISES.

3.9 CUSTOMER is a tax exempt entity and shall provide a tax exempt certificate to HONEYWELL as evidence of such status.

ARTICLE 4 **SUBCONTRACTS**

4.1 At its option, HONEYWELL may subcontract some or all of the Work or Support Services upon the prior written notice to the CUSTOMER of the name, address, and principals of the intended subcontractor and CUSTOMER consents to such subcontractor(s). HONEYWELL and its subcontractors will be required to wear photo identification at all times while on School District property. HONEYWELL and its subcontractors as necessary shall attend any School District Construction Committee meetings when reasonably required during the construction of the Project. During implementation of the Work, HONEYWELL and its subcontractors, if requested, shall also attend meetings, to the extent they are reasonably scheduled during times when Honeywell and its subcontractors are on-site working, related to the Project, the bond referendum project or any capital improvement project being undertaken by the Customer.

4.2 A Subcontractor is a person or entity who has a direct contract with HONEYWELL to perform any effort in connection with the Work. The term Subcontractor does NOT include any separate contractors employed by CUSTOMER or such separate contractors' subcontractors.

4.3 For the purposes of this Agreement, no contractual relationship shall exist between CUSTOMER and any HONEYWELL Subcontractor. HONEYWELL shall be responsible for the management of its Subcontractors in their performance of their Work.

ARTICLE 5
INSTALLATION AND ACCEPTANCE

5.1 The Work to be performed under this Agreement shall be commenced and substantially completed as set forth in the Installation Schedule attached hereto as Attachment C.

At a minimum, and unless further walk throughs are required as requested by the Customer and/or its Engineer, HONEYWELL shall perform bi-weekly walk throughs with the Architect for the purpose of inspecting the work installed to date.

Prior to the commencement of the Work and issuance of the final cash flow statement as set forth herein, Honeywell shall be fully responsible for reviewing existing warranties of equipment, fixtures and appurtenances located at the Customer's facilities, including roofs, windows and boilers, that may be directly and/or indirectly impacted by the work performed under the Agreement and any amendment to the Agreement provided that Customer has provided the relevant warranties to Honeywell in writing prior to commencement of the work, to verify that the Work will not void any such existing warranties. In the event that its review uncovers a potential issue, Honeywell will notify the Customer in writing and the parties will agree upon a resolution.

Honeywell shall coordinate with the existing roof manufacturer and, if required by the roof manufacturer, have a pre-inspection of the roof(s) performed prior to installing the PV system(s). In the event that the roof manufacturer does not believe that a pre-inspection of the roof is required, Honeywell will request that the manufacturer state such fact in writing and provide a copy to the Customer. Further, during performance of the Work and until Final Acceptance of the Work, Honeywell shall comply with all reasonable roof manufacturer warranty continuation procedures and will be responsible for all fees, inspections and additional materials to preserve the roof warranty(ies). All inspections must be coordinated with the Customer and its Engineer. Pre-inspection, if necessary, shall occur during the SED review phase. In the event that said work will result in additional cost or has any negative impact on the validity of any roofing warranty, as determined by the roofing manufacturer(s), the Customer in its sole discretion shall have the right to reduce the scope of Work as necessary to achieve a positive cash flow for Customer during the term of the Agreement. In such event the Parties shall mutually select any ECMs to be so removed and, in doing so, shall take into account the payback characteristics of the ECMs considered for removal so that the Final Cashflow stays positive. Any aforementioned changes to the scope of work shall be documented by Change Order in accordance with Article 7.

In the event that the work proceeds as authorized by the manufacturer and said work is not installed in Agreement

accordance with any manufacturer's requirements as set forth in the manufacturers' pre-inspection, Honeywell shall be fully responsible for performing the necessary work to achieve the requirements of the manufacturer(s) for purposes of preserving the existing roof warranties.

Honeywell shall coordinate all pre and post installation inspections with the Customer's Engineer. In addition, all pre-inspection and post-inspection costs shall be borne by Honeywell. Notwithstanding the foregoing, if Honeywell (a) proceeds with any work that will impair or nullify any existing warranty, which had been provided by the Customer to Honeywell prior to commencement of the Work, and (b) the Customer has not been notified in writing of the potential issue and agreed to the performance of such work, Honeywell shall be fully liable for the warranty. Upon completion of the Work of the Agreement and any amendment thereto, Honeywell shall be fully responsible for reviewing and providing Customer with copies of all warranties for equipment installed and/or replaced during the installation.

As set forth herein below, HONEYWELL shall provide the Customer with revised cash flow statements at the following intervals: (1) upon the New York State Education Department's approval of the Agreement and any amendment between the parties; (2) upon issuance of the State Aid report (known as the SA4 Report) identifying the aid that will be allocated for the project; (3) upon receipt of final rebate amounts; (4) upon the Customer's finalization of its financing of the project; (5) prior to the commencement of any work under the Agreement and any amendments; and (6) at any other time as may be requested by the Customer. Prior to commencement of the Work, in the event that the Project does not yield a positive cash flow to the Customer with substantially level annual financing payments for each and every year of the contract term, the parties shall agree on modifications to the scope of Work which shall be documented by change order as to achieve a positive cash flow with substantially level annual financing payments in each year of the contract term.

HONEYWELL shall provide copies of all correspondence or other communication by and or between it, the Architect/Engineer, Construction Manager or the New York State Education Department contemporaneously with its transmission or receipt.

The cash flow statement submitted to the Customer at finalization of the financing which must include the eligible building aid for the Project as provided by the New York State Education Department in writing, shall be considered the "Final Cashflow". Work will commence upon SED approval, voter approval and receipt of the necessary funding and after the Customer has provided written acceptance of the Final Cashflow to Honeywell in writing. Within seven (7) business days of receipt Customer shall review the Final Cashflow and provide in writing its approval or its reasons for withholding approval of the Final Cashflow. If

Customer does not respond to Honeywell's submission of the Final Cashflow within this timeframe, Honeywell shall remind Customer, by email or fax, of its need to respond to the submission. In the event Customer does not provide written notice of its approval or reasons for withholding its approval within seven (7) business days after Honeywell's reminder, the Final Cashflow shall be deemed approved and Honeywell shall commence work. In the event that HONEYWELL commences the Work without the Final Cashflow being approved or deemed approved by the Customer as set forth herein and if such Final Cashflow demonstrates a negative cash flow or loss for the Customer then Honeywell shall be responsible to the Customer for the difference on an annual basis between the negative cash flow or loss and the positive Cashflow Statement attached hereto at Attachment K for the entire term of the Agreement. As long as Honeywell does not commence work prior to the Final Cashflow being approved or deemed approved in accordance with this paragraph, Honeywell shall have no liability under this paragraph.

Work shall not be performed during the school day when school is in session. Hours of work when school is in session are 3:00 PM to 12AM at the High School location and 3:30 PM to 9:00 PM at the Elementary School locations Monday thru Friday. Work shall be performed from 7:00 AM to 3:00 PM during the summer when school is not in session, except for the Mamaroneck Avenue Elementary School location, which shall be coordinated with the Customer. (or otherwise during normally scheduled custodial shifts). All costs incurred by the District, including overtime^{6.1} costs for District personnel, to make the facilities available during evening and weekends (outside of the hours set forth hereinabove or other normally scheduled custodial shifts) shall be borne by HONEYWELL.

5.2 If HONEYWELL is delayed at any time in the progress of performing its obligations under this Agreement by any act of CUSTOMER or any contractor employed by CUSTOMER; or by changes ordered or requested by CUSTOMER in the Work performed pursuant to this Agreement; or by labor disputes, fire, unusual delay in transportation, adverse weather conditions or other events or occurrences which are beyond HONEYWELL's control; or unavoidable casualties; or any other problem beyond HONEYWELL's reasonable control (an "Excusable Delay"), then the time for performance of the obligations affected by such Excusable Delay may be extended by the period of any delay actually incurred as a result thereof. Any extension of time is subject to the approval of Customer and its Engineer via Change Order.

5.3 HONEYWELL shall provide Delivery and Acceptance Certificates in a form acceptable to CUSTOMER (the "Delivery and Acceptance Certificates") for the Work provided pursuant to the Schedule identified in Exhibit J-1. Upon receipt of each Delivery and Acceptance Certificate, CUSTOMER

shall promptly inspect the Work performed by HONEYWELL identified therein and execute each such Delivery and Acceptance Certificate as soon as reasonably possible, but no later than thirty (30) days after installation, initiation of equipment operation and receipt of all required material and training as defined in the Agreement, unless CUSTOMER provides HONEYWELL with a written statement identifying specific material performance deficiencies that it wishes HONEYWELL to correct. HONEYWELL will use diligent efforts to correct all such material deficiencies and will give written notice to CUSTOMER when all such items have been corrected. The Parties intend that a final Delivery and Acceptance Certificate will be executed for the Work when all Work is installed and operating. Execution and delivery by CUSTOMER of such final Delivery and Acceptance Certificate with respect to the Work shall constitute "Final Acceptance" of such Work performed by HONEYWELL pursuant to the Installation Schedule. Notwithstanding, "final acceptance" as used herein, shall not constitute a waiver of any claims, rights or remedies CUSTOMER may have at law or in equity. In addition, CUSTOMER's signature on the final Delivery and Acceptance Certificate and/or its acceptance of the Work shall not preclude CUSTOMER from making any claim for corrective work and/or deficient Work subsequently identified by the CUSTOMER.

ARTICLE 6 PRICE AND PAYMENT

Price

6.1.1 The "Price" for the Work is Eighteen Million Three Hundred Ninety Six Thousand Two Hundred Dollars (\$18,396,200), subject to the adjustments set forth in Articles 5 and 7.

6.1.2 The total price for Support Services is set forth in Attachment D hereto, subject to the adjustments described therein.

6.1.3 The price is based upon laws, codes and regulations in existence as of the date this Agreement is executed. Any changes in or to applicable laws, codes and regulations affecting the cost of the Work shall be the responsibility of CUSTOMER and shall entitle HONEYWELL to an equitable adjustment in the price and schedule. In such event Customer will have the option to remove ECMs from the Scope of

Work having a value substantially equivalent to the cost impact of the changes in laws, codes and regulations. The Parties shall mutually select any ECMs to be so removed and, in doing so, shall take into account the payback characteristics of the ECMs considered for removal so that the Final Cashflow stays positive. Any aforementioned changes to the scope of work shall be documented by Change Order in accordance with Article 7.

6.1.4 The price may be modified for Changes in the Work pursuant to Article 7 and in such event Customer will have the option to remove ECMs from the Scope of Work having a value substantially equivalent to the cost impact of the Changes in the Work. The Parties shall mutually select any ECMs to be so removed and, in doing so, shall take into account the payback characteristics of the ECMs considered for removal so that the Final Cashflow stays positive. Any aforementioned changes to the scope of work shall be documented by Change Order in accordance with Article 7.

6.2 Payment

6.2.1 In accordance with the terms of this Agreement, CUSTOMER shall pay or cause to be paid to HONEYWELL the full price for the Work in accordance with Attachment E. CUSTOMER shall make payments for the Support Services in accordance with Attachment D.

6.2.2 HONEYWELL shall provide the School District with a Schedule of Values. Such Schedule shall (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to the Energy Performance Contractor throughout the Work. Customer will make payment to Honeywell against monthly invoices for work completed and approved in accordance with the approved Schedule of Values. Payments will be made on a progress payment basis for work completed and accepted by the Customer and the Engineer using the AIA application for payment form (or equivalent), including retainage. HONEYWELL must attach certified payrolls to each application for progress payment. The Work will commence upon approval of SED, and the securing of the necessary financing, and approval of Final Cashflow by the Customer for the Work.

ARTICLE 7 CHANGES IN THE PROJECT

7.1 The parties, without invalidating this Agreement, may request changes in the Work to be performed under this Agreement, consisting of additions, deletions, or other revisions to the Work ("Change Orders"). The price and payment terms, time for performance and, if necessary, the Energy Guarantee, shall be equitably adjusted in accordance with the Change Order. Such adjustments shall be determined by mutual agreement of the parties and shall be subject to the availability of funds and written approval of the Board of Education for Customer, the Architect/Engineer, SED and leasing company, if necessary. Any Change Order will not be considered effective until it is signed by Honeywell, the Architect/Engineer and the Board of Education. Any Change Order which materially modifies the scope of work or energy guarantee or the schedule for completion

will not be considered effective until it is signed by Honeywell, the Architect/Engineer and the Board of Education and approved by SED.

No work shall be undertaken pursuant to a Change Order prior to receipt of written approval (in the form of the signed Change Order) of the Customer's Board of Education.

7.2 CUSTOMER may request HONEYWELL to submit proposals for changes in the Work. If HONEYWELL submits a proposal pursuant to such request but CUSTOMER chooses not to proceed, CUSTOMER shall not be responsible to reimburse HONEYWELL for any and all costs incurred in preparing the proposal.

7.3 Claims for Concealed or Unknown Conditions

If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by HONEYWELL shall be given to the CUSTOMER promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions, and, if appropriate, an equitable adjustment to the Contract Price and Installation Schedule shall be made by a Change Order in accordance with Paragraph 7.1. If agreement cannot be reached by the Parties, HONEYWELL may assert a claim in accordance with Paragraph 7.4.

7.4 If HONEYWELL wishes to make a claim for an extension of time in the Installation Schedule it shall give CUSTOMER written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim. This notice shall be given by HONEYWELL before proceeding to execute the Work, except in an emergency endangering life or property as described in Paragraph 7.5, in which case HONEYWELL shall have the authority to act, in its reasonable discretion, to prevent threatened damage, injury or loss and HONEYWELL shall provide written notice to CUSTOMER as soon as possible after the emergency. No such claim by HONEYWELL shall be valid unless so made.

7.5 Emergencies

In any emergency affecting the safety of persons or property, HONEYWELL shall act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the Price or extension of time claimed by HONEYWELL on account of emergency work shall be determined as provided in Section 7.4.

ARTICLE 8
INSURANCE, INDEMNITY, WAIVER OF
SUBROGATION, AND LIMITATION OF
LIABILITY

8.1 Indemnity

8.1.1 HONEYWELL shall indemnify, defend and hold harmless Customer, its officers, employees, and agents from and against all claims, actions, damages, liabilities and expenses, including reasonable attorney's fees, arising out of or related to Honeywell's negligent performance of this Agreement. HONEYWELL agrees to defend, indemnify and hold Customer, its officers, agents and employees, harmless from and against any and all claims, liabilities, actions, judgments, losses, costs, damages or expenses (including reasonable attorneys' fees) suits, actions or damages ("claims") arising by reason of bodily injury, death or damage to property to the extent caused by the negligence, misconduct or wrongful act of HONEYWELL, its officers, agents, subcontractors or employees.

HONEYWELL shall indemnify, defend and hold harmless the Customer, its officers, employees, agents, representatives and assigns against any and all claims, actions, damages, liabilities, and expenses, including reasonable attorney's fees as determined by court order, arising out of or related to any claims of construction or materialman's lien made by any of Honeywell's subcontractors or materialmen.

This provision 8.1 shall survive termination of this Agreement.

8.2 Insurance

8.2.1 HONEYWELL at its sole cost and expense, shall provide CUSTOMER with the insurance as set forth in the General Conditions attached hereto.

8.3. PAYMENT/PERFORMANCE BOND.

8.3.1 HONEYWELL shall, prior to the commencement of construction, deliver to the Customer Performance and Payment Bonds in a sum equal to the contract amount with sureties licensed by the State of New York and satisfactory to the Customer, conditioned upon the faithful performance by HONEYWELL, for the implementation of the ECMs, such bonds to be in such form of AIA Document A312 and shall contain such provisions as are reasonably satisfactory to the Customer and in

accordance with the requirements set forth in the General Conditions. Such bonds shall not apply to the Assured Performance Guarantee. A rider including the following provisions shall be attached to each Bond as set forth in the General Conditions.

8.3.2 **Dual Oblige Rider:** If the financial lending institution selected by the District requires a Dual Oblige Rider, such Rider shall be subject to review and approval by the District and its legal counsel. In addition, Honeywell shall undertake all reasonably necessary efforts to expedite the issuance of said Dual Oblige Rider and the required modifications to said Rider, if any.

Reserved

Reserved

Limitation of Liability

8.6.1 Notwithstanding any provision to the contrary, in no event shall Honeywell or the Customer be liable for any consequential damages arising from, relating to, or connected with the Work, services, equipment, materials, or any goods provided under this Agreement. The foregoing limitation of liability shall not limit Customer's right to seek damages related to the loss of use of its facilities to the extent such damages are reasonable, are caused by Honeywell's breach of this Agreement or by the negligence of Honeywell or its subcontractors and does not exceed Three Million Dollars (\$3,000,000.00) per incident.

ARTICLE 9
TERMINATION OF THE AGREEMENT

9.1 If HONEYWELL defaults in, or fails or neglects to carry forward the Work in accordance with this Agreement, CUSTOMER may provide notice in writing of its intention to terminate this Agreement to HONEYWELL. If HONEYWELL has not, within thirty (30) business days after receipt of such notice, acted to remedy and make good such deficiencies, CUSTOMER may by written notice to HONEYWELL terminate this Agreement and take possession of the site together with all materials thereon, and move to complete the Work itself expediently HONEYWELL shall be liable to CUSTOMER for any expense associated with the completion of the Work by the CUSTOMER, which exceeds the unpaid balance at the time of termination.

9.2 If CUSTOMER fails to make payments as they become due, or otherwise defaults or breaches its obligations under this Agreement, HONEYWELL may give written notice to CUSTOMER of HONEYWELL's intention to terminate this Agreement. If, within thirty (30) days following receipt of such notice, CUSTOMER

fails to make the payments then due, or otherwise fails to cure or perform its obligations, HONEYWELL may, by written notice to CUSTOMER, terminate this Agreement and recover from CUSTOMER payment for Work performed at the time of termination.

ARTICLE 10
ASSIGNMENT AND GOVERNING LAW

10.1 This Agreement shall be governed by the law of the State where the Work is performed.

This is a public work contract covered by Article 8 of the New York Labor Law. Neither HONEYWELL'S employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Labor Department. Furthermore, HONEYWELL and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor

Department in accordance with the Labor Law. Accordingly, HONEYWELL and each of its subcontractors shall comply with prevailing wage rates as issued by the New York State Department of Labor for the location and duration of the Project and shall comply with all requirements regarding payment to its employees as set forth in section 220 et. seq. of the New York State Labor Law. HONEYWELL shall submit certified payroll with its applications for payment. CUSTOMER will not make any payment to HONEYWELL unless completed certified payrolls are submitted to CUSTOMER.

10.2 Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the prior written consent of the other party. Such consent shall not be unreasonably withheld.

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 The Table of Contents and headings in this Agreement are for information and convenience only and do not modify the obligations of this Agreement.

11.2 Confidentiality. As used herein, the term "CONFIDENTIAL INFORMATION" shall mean any information in readable form or in machine-readable form, including software supplied to either party by the other party, that has been identified or labeled as "Confidential" and/or "Proprietary" or with words of similar import or concerns the financial affairs, emergency or security plans of the Customer, its students, staff, employees or agents. CONFIDENTIAL INFORMATION shall also mean any information that is disclosed orally and is designated as "Confidential" and/or "Proprietary" or with words of similar import at the time of disclosure and is reduced to writing, marked as "Confidential" and/or "Proprietary" or with words of similar import, and supplied to the receiving party within ten (10) days of disclosure.

All rights in and to CONFIDENTIAL INFORMATION

and to any proprietary and or novel features contained in CONFIDENTIAL INFORMATION disclosed are reserved by the disclosing party; and the party receiving such disclosure will not use the CONFIDENTIAL INFORMATION for any purpose except in the performance of this Agreement and will not disclose any of the CONFIDENTIAL INFORMATION to benefit itself or to damage the disclosing party. This prohibition includes any business information (strategic plans, etc.) that may become known to either party.

Each party shall, upon request of the other party or upon completion or earlier termination of this Agreement, return the other party's CONFIDENTIAL INFORMATION and all copies thereof.

Notwithstanding the foregoing provisions, neither party shall be liable for any disclosure or use of information disclosed or communicated by the other party if the information:

- a. is publicly available at the time of disclosure or later becomes publicly available other than through breach of this Agreement; or
- b. is known to the receiving party at the time of disclosure; or
- c. is subsequently rightfully obtained from a third party on an unrestricted basis; or
- d. is approved for release in writing by an authorized representative of the disclosing party.

The obligation of this Article shall survive any expiration, cancellation or termination of this Agreement.

11.3 Risk of loss for all equipment and materials provided by HONEYWELL hereunder shall transfer to CUSTOMER upon installation at CUSTOMER'S Facilities from HONEYWELL or its Subcontractor and title shall pass upon final acceptance or final payment by CUSTOMER to HONEYWELL, whichever occurs later.

11.4 Final notice or other communications required or permitted hereunder shall be sufficiently given if personally delivered to the person specified below, or if sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To HONEYWELL:

HONEYWELL BUILDING SOLUTIONS
General Counsel
715 Peachtree Street N.E.
Atlanta, Georgia 30308

To CUSTOMER:

MAMARONECK UFSD
1000 West Boston Post Road Mamaroneck, NY 10543
Attention: Sylvia Wallach

11.5 **Waiver.** The failure of either Party to require compliance with any provision of this Agreement shall not affect that Party's right to later enforce the same. It is agreed that the waiver by either Party of performance of any other terms of this Agreement or of any breach thereof will not be held or deemed to be a waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement or any breach thereof.

11.6 HONEYWELL guarantees CUSTOMER will realize the Guarantee Savings as defined in Attachment D during the term of this Agreement.

11.7 **Severability.** The terms of this Agreement will, where possible, be interpreted and enforced so as to sustain their legality and enforceability, read as if they cover only the specific situation to which they are being applied and enforced to the fullest extent permissible under applicable law. If any term of this Agreement is determined to be invalid, illegal or incapable of being enforced, then all other terms of this Agreement will nevertheless remain in full force and effect, and such term automatically will be amended so that it is valid, legal and enforceable to the maximum extent permitted by applicable law, but as close to the parties' original intent as is permissible.

11.8 **Non-Discrimination:** HONEYWELL agrees not to discriminate against any employee, or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, disability, gender, color, religion, national origin, Vietnam era military service or ancestry in accordance with applicable Federal, New York State or local laws, rules, and ordinances.

11.9 **INDEPENDENT CONTRACTOR:** Nothing in this Agreement shall be construed as reserving to CUSTOMER any right to exercise any control over or to direct in any respect the conduct or management of business or operations of HONEYWELL on the Property. The entire control or direction of such business and operations shall be in and shall remain in HONEYWELL, subject only to HONEYWELL's performance of its obligations under this Agreement. Neither HONEYWELL nor any person performing any duties or engaged in any work on the Property on behalf of HONEYWELL shall be deemed an employee or agent of CUSTOMER.

Nothing in this Section shall be deemed to be a waiver of the CUSTOMER of the right to use its property. The CUSTOMER and HONEYWELL are independent of one another and shall have no other relationship relating to or arising out of this Agreement. Neither Party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the

name of or on behalf of the other Party.

It is understood and agreed that HONEYWELL, its employees, agents, subcontractors and employees of such agents and subcontractors, shall adhere to the CUSTOMER's policies, which have been provided to HONEYWELL in writing prior to contract execution, with respect to conduct on school property as well as any and all federal, state, and local laws, rules, codes, ordinances, School District policies and procedures applicable to construction projects on school premises.

11.10 **APPROVAL OF CONTRACT:** HONEYWELL and the CUSTOMER acknowledge that this Contract is subject to 8 NYCRR 155.20 and, as such, requires the approval of the Commissioner of Education of the State of New York. This Agreement shall not be executory until SED approval is obtained. Upon receiving State Education Department approval and Building Permits and upon finalization of the financing after voter approval, the pro forma cash flow for this project will be recalculated with current interest rates. If the recalculation of cash flow does not yield a positive cash flow for the CUSTOMER, the CUSTOMER and HONEYWELL reserve the right to negotiate changes to the scope to achieve a positive cash flow.

If SED approval, voter approval and financing is not obtained by June 30, 2024, HONEYWELL reserves the right to propose modifying the terms of this Agreement, subject to CUSTOMER's approval in writing, which shall not be unreasonably withheld. Prior to financing the Work, the CUSTOMER reserves the right to modify the scope of work or terminate the Agreement without cost or liability if the CUSTOMER determines the project is no longer in its best interest. HONEYWELL agrees to cooperate with the CUSTOMER in obtaining necessary approvals, including approval by the Commissioner of Education. This shall include providing the certifications pursuant to 155.20 (d) (7) (ii), (iii) and (iv) of the Regulations of the Commissioner of Education. Notwithstanding the above, should this Project fail to be approved by SED, the CUSTOMER may, in its sole discretion, elect to terminate this Agreement at no cost or liability to the CUSTOMER.

It is further understood and agreed that if solely due to the fault of HONEYWELL, any portion of this Agreement is not in compliance with Article 9 of the Energy Law and or Article 5 of the General Municipal Law, and any amendments thereto or deemed not in compliance with such laws by any court or governmental authority and/or agency, this Agreement shall be null and void and the CUSTOMER shall not be liable for any costs incurred by HONEYWELL as a result of such non-compliance.

11.11 **NON-APPROPRIATION:** This Agreement shall be executory only to the extent of the monies appropriated and available for the purposes

of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.

11.12 THIRD PARTY BENEFICIARIES:

Except as may be specifically provided for in this Agreement, the Parties hereto do not intend to create any rights for, or grant any remedies to, any third party beneficiary of this Agreement.

11.13 WAGE AND HOURS PROVISIONS:

HONEYWELL shall comply, and ensure that all Subcontractors shall comply, with all applicable provisions of federal, State and local laws, rules and regulations, including New York Labor Law section 220 et. seq. and all applicable prevailing wage requirements. HONEYWELL and each of its subcontractors shall be responsible for submitting certified payrolls to the CUSTOMER with each application for payment as required by Attachment E.

11.14 NON-COLLUSIVE BIDDING REQUIREMENT:

In accordance with Section 139-d of the State Finance Law and/or Section 103 of the General Municipal Law, if this contract was awarded based upon the submission of bids, HONEYWELL warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition.

11.15 SET-OFF RIGHTS: CUSTOMER shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the CUSTOMER's option to withhold for the purposes of set-off any moneys due to HONEYWELL under this contract up to any amounts due and owing to the CUSTOMER with regard to this contract, any other contract with CUSTOMER, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the CUSTOMER for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The CUSTOMER shall exercise its set-off rights in accordance with normal CUSTOMER practices including, in cases of set-off pursuant to an audit, the finalization of such CUSTOMER audit by the State agency, its representatives, or the State Comptroller.

11.16 RECORDS: HONEYWELL shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General,

Agreement

the Commissioner of Education, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of HONEYWELL within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The CUSTOMER shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) HONEYWELL shall timely inform an appropriate CUSTOMER official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records are exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the CUSTOMER's right to discovery in any pending or future litigation. Any audit and inspection rights include only the rights to verify compliance with the Contract Documents and do not include the right to review HONEYWELL's proprietary information unless otherwise required by law.

11.17 If any provision of this Agreement or the application thereof to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected hereby and shall be valid and enforceable to the fullest extent permitted by law.

11.18 The undersigned representative of HONEYWELL hereby represents and warrants that the undersigned has the power and authority to enter into this Agreement on behalf of HONEYWELL and bind HONEYWELL with respect to the obligations enforceable against HONEYWELL in accordance with the terms contained herein.

11.19 The undersigned representative of CUSTOMER hereby represents and warrants that the undersigned has the power and authority to enter into this Agreement on behalf of CUSTOMER and bind CUSTOMER with respect to the obligations enforceable against CUSTOMER in accordance with the terms contained herein.

11.20 ABSENCE OF FRAUD OR COLLUSION: HONEYWELL hereby certifies, by its execution of this Agreement, that to the best of its knowledge, no official or employee of CUSTOMER has any pecuniary interest in this Agreement or in the expected profits to arise hereunder, and that this Agreement is made in good faith without fraud or collusion with any other person involved in the bidding/proposal process.

11.21 NOTIFICATIONS OF GOVERNMENTAL ACTION- Occupational Safety and Health.

Parties agree to notify each other as promptly as is reasonably possible upon becoming aware of an inspection under, or any alleged violation of: the Occupational Safety and Health Act or any other provision of federal, state or local codes, laws, rule or regulation relating in any way to the undertakings of either Party under this Agreement. HONEYWELL represents and warrants that it will meet all applicable OSHA requirements applicable to this Agreement, including any required certification and training

requirements for its employees and its subcontractors.

11.22 HONEYWELL shall comply with all applicable laws, rules, regulations, statutes, ordinances, and orders governing the work and the performance of the work of this Agreement.

11.23 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument. Facsimile and/or electronic signatures shall have the same force and effect as originals thereof.

APPROVALS:

The parties hereby execute this Agreement as of the date first set forth herein by the signatures of their duly authorized representatives:

HONEYWELL INTERNATIONAL INC.

By: Terence M. Garry
Name: Terence M. Garry
Title: Senior Business Consultant

12/13/2023

MAMARONECK UFSD

By: [Signature]
Name: CHARLES STAMPSON
Title: Squad Leader

1/23/24