

Council Meeting
May 12, 2009

Honorable Mayor and Members
 of the Torrance City Council
 City Hall
 Torrance, California

Members of the Council:

**SUBJECT: City Manager/General Services – Approve Contract for Consulting Services for Energy Efficiency and Conservation Block Grant (EECBG) Applications
 Expenditure: Not To Exceed \$ 15,000**

RECOMMENDATION

Recommendation of the City Manager and General Services Director that the City Council

- 1) Award a contract for consulting services for energy efficiency and conservation to Johnson Controls, Inc. for an amount not to exceed \$15,000; and,
- 2) Appropriate \$15,000 from the Energy Reserve Fund.

Funding Funding is available in the Energy Reserve Fund

BACKGROUND

The American Recovery and Reinvestment Act of 2009, Public Law 111-5, appropriates funding for the Department of Energy (DOE) to issue/award formula-based grants to states, U.S. territories, units of local government, and Indian tribes under the Energy Efficiency and Conservation Block Grant (EECBG) Program. The City of Torrance has been authorized to receive a formula based grant under this program of \$1,462,300. Competitive grants with a nation-wide total of approximately \$600 million may also become available to the City on a first come, first served basis.

The Act gives preference to activities that can be started and completed expeditiously, with special consideration given to projects that promote and enhance the objectives of the Act, especially job creation, preservation and economic recovery.

ANALYSIS

The City has received proposals from a variety of consultants in the energy and engineering field. Due to the immediate nature of the program, especially the competitive grant portion of funding, staff placed emphasis on those firms with proven references, staff available with expertise in the wide range of possible programs from lighting retrofits, water pumping, traffic signals, Heating, Ventilation and Air Conditioning (HVAC) as well as solar and renewable energy.

DOE has encouraged each entity to develop a strategy, including its component activities, that is likely to result in maximum energy efficiency improvements, fossil-fuel emission reductions, economic benefits and total energy use reduction. A non-inclusive list of eligible activities for use of program funds is show below.

- Development of an Energy Efficiency and Conservation Strategy
- Technical Consultant Services
- Energy Efficiency Retrofits
- Energy Efficiency and Conservation Programs for Buildings and Facilities
- Traffic Signals and Street Lighting
- Renewable Energy Technologies on Government Buildings

These goals also mirror a separate requirement by the State recently passed in Assembly Bill 32 for indentifying and reducing the City's carbon footprint to 1990 levels.

In general the EECBG program is guided by DOE developed core principles which include prioritizing energy efficiency and conservation first as the cheapest, cleanest, and fastest ways to meet energy demand. Priority is given to programs and projects that leverage federal funds with other public and private resources.

Staff was presented options from Johnson Controls, Inc. (JCI), Energy Innovation Group (EIG), and Montross & Associates. A briefing on program requirements was also provided by a Senior Associate from Townsend Public Affairs, Inc., a separately retained government consultant.

All groups that provided proposals have the technical ability to provide estimates on proposed projects. City staff also reviewed the abilities of the firms to provide services that surpassed that needed for the completion of the basic block grant applications.

Torrance was also asked to participate in a regional program sponsored by the South Bay Cities Council of Governments (SBCCOG) where a consultant has been selected to provide services to obtain federal stimulus dollars to fund energy efficiency projects for the South Bay public buildings, schools, and commercial buildings. By participating in the SBCCOG program, the City would be required to utilize the chosen consultant as project manager to implement and manage the project and disperse grant funds in order to recover compensation from the grant funding. City staff are recommending pursuing a contract with a consultant of our own choosing as we believe that Torrance will be better served by an individual agreement that better meets the needs of the City, with an organization of the size, administrative and technical abilities to ensure all deadlines are met. The staff-recommended consultant also provides us with the option to enter into a performance-based contract for broader future funding opportunities.

On consideration of the proposals received and the need to complete all work in the most expedient manner, JCI was considered the best alternative. Justification for this selection was due to the maximum benefits and options for energy savings which could be realized by the City. JCI as a relatively large organization has staff to follow and complete all requirements for the federal EECBG formula grant program. They also are sized at a level that will ensure all required submittals are completed in the most timely manner possible with concurrent completion of the most favorable application for the competitive grants. This will ensure the City's competitive grant application is received as promptly as possible. As the criteria for the competitive grants also gives favorable treatment to those agencies that leverage the received funding into the highest level of energy savings, the agreement with JCI has an option to enter into a performance based contract which would provide a substantially increased number of projects paid from the future energy savings. The option for this optional contract would give the City the ability to complete a much larger number of projects and also open capital funds for other non-energy related projects. JCI has completed major projects for organizations such as Torrance Memorial Hospital, the City of Pasadena, Beverly Hills Unified School District and Marine Training Center – 29 Palms.

The agreement is structured to immediately prepare facility audits and project evaluations for completion of the base formula grant as well as competitive grants. After these grant applications are submitted, JCI will present a proposal to City staff for a performance based contract to accomplish energy projects which would be paid back using a percentage of future energy savings over the next 10 to 15 years. JCI would guarantee the future savings based on mutually agreed assumptions. After acceptance at this intermediate stage, staff would return to council to present the proposal for the longer term contract.

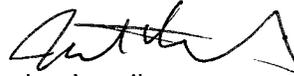
The Project timeline is as follows:

- Council Approval – 5/12/09
- Signed Contract between the City of Torrance and Johnson Controls, Inc. (JCI) – 5/18/09
- JCI to complete block grant requirements – 6/12/09
- JCI to provide a proposal for a performance contract agreement - 6/30/09
- Finalize performance contract agreement (optional) – 8/31/09
- Anticipated Completion and begin System Operation – 3/31/10

Based on staff's review of the proposal from Johnson Controls, Inc (JCI), their references and ability to perform the City Manager and General Services Director recommends Council approve a consulting services contract with Johnson Controls, Inc. for an amount not to exceed \$15,000. Projects identified for consideration include, but are not limited to, a LED streetlight demonstration project, air conditioning retrofits at Public Works and Cable, LED traffic/street safety lights, City wide lighting retrofits, and solar heating at the Benstead Plunge.

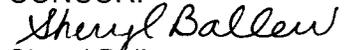
Respectfully submitted,

SHERYL BALLEW
General Services Director



By Jon Landis
Facility Services Manager

CONCUR:


Sheryl Ballew
General Services Director


LeRoy J. Jackson
City Manager

CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT (“Agreement”) is made and entered into as of May 12, 2009 (the “Effective Date”), by and between the CITY OF TORRANCE, a municipal corporation (“CITY”), and Johnson Controls, Inc., a Wisconsin Corporation. (“CONSULTANT”).

RECITALS:

- A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to develop and implement an energy conservation program.
- B. CONSULTANT represents that it is qualified to perform those services.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT will provide the services listed in the Scope of Services attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through December 31, 2010.

3. COMPENSATION

- A. CONSULTANT’s Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Compensation Schedule attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of \$15,000 (“Agreement Sum”), unless otherwise first approved in writing by CITY.

- B. Schedule of Payment.

Provided that the CONSULTANT is not in default under the terms of this Agreement, upon presentation of an invoice, CONSULTANT will be paid monthly the fees described in Paragraph 3.A. above, according to the Compensation Schedule. Payment will be due within 30 days after the date of the monthly invoice.

4. TERMINATION OF AGREEMENT

- A. Termination by CITY for Convenience.

- 1. CITY may, at any time, terminate the Agreement for CITY’s convenience and without cause.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:
 - a. cease operations as directed by CITY in the notice;
 - b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
 - c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONSULTANT, the CITY may, at the expense of the CONSULTANT and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONSULTANT under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONSULTANT and its surety from liability for the default. Under these circumstances, however, the CONSULTANT and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONSULTANT or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONSULTANT or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONSULTANT's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONSULTANT has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. **RETENTION OF FUNDS**

CONSULTANT authorizes CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONSULTANT's negligent acts or omissions or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. **CITY REPRESENTATIVE**

Jon Landis is designated as the “City Representative,” authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

8. **CONSULTANT REPRESENTATIVE(S)**

The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Claudio Andreetta, Regional Solutions Manager
Frank Mann, Account Manager

9. **INDEPENDENT CONTRACTOR**

The CONSULTANT is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONSULTANT or any of the CONSULTANT’s employees, except as otherwise set forth in this Agreement. The CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. **BUSINESS LICENSE**

The CONSULTANT must obtain a City business license prior to the start of work under this Agreement, unless CONSULTANT is qualified for an exemption.

11. **OTHER LICENSES AND PERMITS**

CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. **FAMILIARITY WITH WORK**

By executing this Agreement, CONSULTANT warrants that CONSULTANT (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform CITY of that fact and may not proceed except at CONSULTANT’s risk until written instructions are received from CITY.

13. **CARE OF WORK**

CONSULTANT must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. **CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**

Records of the CONSULTANT's time pertaining to the project, and records of accounts between CITY and the CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

15. **INDEMNIFICATION**

CITY and the CONSULTANT agree that CONSULTANT shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of CONSULTANT. To the extent permitted by law, CONSULTANT and the CITY agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their employees or any negligent act or omission by their employees or agents. Neither CONSULTANT nor the CITY will be responsible to the other for any special, indirect, or consequential damages.

16. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

17. **INSURANCE**

A. CONSULTANT must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
 - a. Primary Bodily Injury with limits of at least \$500,000 per person, \$1,000,000 per occurrence; and
 - b. Primary Property Damage of at least \$250,000 per occurrence; or
 - c. Combined single limits of \$1,000,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
 3. Professional liability insurance with limits of at least \$1,000,000 per occurrence.
 4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.
- B. The insurance provided by CONSULTANT will be primary and non-contributory
 - C. CITY ("City of Torrance"), the Redevelopment Agency of the City of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.
 - D. CONSULTANT must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.
 - E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

18. SUFFICIENCY OF INSURERS AND SURETIES

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

19. CONFLICT OF INTEREST

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONSULTANT without the prior written consent of the other.

22. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

26. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. COMPLIANCE WITH STATUTES AND REGULATIONS

CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not

be a waiver of any other default concerning the same or any other provision of this Agreement.

29. ATTORNEY’S FEES

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney’s fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. CONSULTANT’S AUTHORITY TO EXECUTE

The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONSULTANT is bound.

CITY OF TORRANCE
a Municipal Corporation

Johnson Controls, Inc.
a Wisconsin Corporation

Frank Scotto, Mayor

By: _____

ATTEST:

Frank Mann
Account Manager

Sue Herbers
City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By: _____

Attachments: Exhibit A Scope of Services
 Exhibit B Compensation Schedule

EXHIBIT A**SCOPE OF SERVICES****1. Scope of Work**

- a. Provide all required applications and associated project documentation for the City of Torrance for ARRA Energy Efficiency and Conservation Block Grant Applications for the Formula Grant and the Competitive Grant (FON:DE-FOA-0000013).
- b. Provide a process to develop a Performance Contract between Johnson Controls, Inc. (JCI) and the City of Torrance (Customer). It is the Parties' mutual understanding that this PDA will describe the co-development process including the starting point of the scope of the project, the obligations of the parties, the financial metric to employ, the projected program outcomes and the program timeline.

2. Obligations

- a. During the Study, Customer will furnish to JCI upon its request, accurate and complete data concerning current costs, budgets, facilities requirements, future projected loads, facility operating requirements, collective bargaining agreements, etc. JCI will provide a separate document with the required information and Customer shall make every effort to provide available information within 5 days of request.
- b. Along with the other Scope of Work required under this Agreement, JCI will develop the framework of a subsequent Implementation Agreement and the Financing Agreement. These Agreements shall be co-developed by JCI and Customer.

3. Financials

- a. Development the Financial metrics and a Project Pro Forma for a Performance Contract for energy conservation projects.
- b. Provide for financing of new facilities equipment by a third party funding source. Term is assumed to be no less than 10 years and no greater than 15 years.
- c. Provide a final financial Project Pro Forma wherein JCI will deliver the following results relative to the preliminary data represented using mutually agreed upon economic assumptions from this assessment.
- d. Complete and assist the City in submitting all ARRA Energy Efficiency and Conservation Block Grant Applications for the Formula Grant and the Competitive Grant (FON:DE-FOA-0000013) including but not limited to:
 - i. SF 424 (Grant Application Form)
 - ii. Project / Performance Site Locations Form
 - iii. Attachment B1: Project Activity File
 - iv. SF 424 DOE Budget Form for Non Construction Programs
 - v. Budget Justification Directions
 - vi. Attachment B: Financial Management Assessment
 - vii. Attachment D: EECS Strategy
 - viii. Assurances Directions

4. Outcomes

- a. Provide for the development of Facility improvements at the City's Buildings and various other cities facilities that will fund themselves out of energy savings over a period of 10 to 15 years.

b. The list of those Improvements to be developed but shall include:

- i. LED streetlight demonstration project
- ii. Public Works Air Conditioning retrofit
- iii. Cable Building Air Conditioning retrofit
- iv. LED traffic/street safety lights
- v. Lighting retrofits – City wide
- vi. Solar heating at the Benstead Plunge
- vii. Solar Power at the City Services Yard
- viii. Other HVAC, water, and electrical projects as determined.

5. Timeline

- a. It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others under their direction to work diligently toward meeting the following timeline:
 - i. Signed Contract between the City of Torrance and Johnson Controls, Inc. (JCI) for work described in paragraph 1.a. – 5/18/09
 - ii. JCI to complete requirements of paragraph 1.a. – 6/9/09
 - iii. JCI to provide an outline and proposal for a performance contract agreement as described in paragraph 1.b., and present this proposal to the City Manager – before 6/30/09
 - iv. Finalize Agreements and begin Implementation – 8/31/09
 - v. Anticipated Completion and begin System Operation – 3/31/10
- b. These timeframes may be modified by subsequent work plans approved by the parties.

EXHIBIT B
COMPENSATION SCHEDULE

Price and Payment Terms

- c. Customer agrees to pay to JCI the sum of \$ 15,000 within 30 days after the delivery to the Customer of the documentation described under paragraphs 1.b. and 5.a.iii of the Attached Exhibit A, Scope of Services. However, Customer will have no obligation to pay this amount if:
 - i. JCI and the Customer enter into an agreement for the implementation of all or some work identified in paragraph 1.b. within 30 days after the delivery to the Customer of the documentation described under paragraph 1.b. Costs for work in paragraph 1.a. will be transferred to the total cost of the implementation Contract and will be subject to the payment terms outlined in the Contract.
 - ii. The project benefits do not offset the cost of the project with a payback period of 15 years or less. Project benefits shall include, but not be limited to utility cost avoidance, negotiated utility rate reductions, operating cost avoidance, capital cost avoidance and utility revenue increases.