

Council Meeting  
May 18, 2010

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

**Members of the Council:**

**SUBJECT: City Manager/General Services – Award a consulting agreement for design of the City of Torrance Service Facility HVAC modification and appropriate Energy Efficient and Conservation Block Grant Funds.**

**Expenditure: \$28,350**

**RECOMMENDATION**

Recommendation of the City Manager and General Services Director that City Council:  
1) Award a consulting agreement with Bartef Yoosephiance & Associates, Inc. \$27,000 with a 5% contingency of \$1,350 for design of the City of Torrance Service Facility HVAC modification.  
2) Appropriate \$1,462,300 from the Energy Efficient and Conservation Block Grant to the Energy Efficient Retrofits and Street Lighting Replacement Project.

**Funding** Funding is available Energy Efficiency and Conservation Block Grant.

**BACKGROUND**

In July 2009 the City of Torrance applied and was provided formula grants under the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5, Energy Efficiency and Conservation Block Grant (EECBG) Program. The City was awarded \$1,462,300 in energy grants under this program. Projects identified for funding under this program are listed in Attachment A.

During the process to receive EECBG funds, the City contracted with Johnson Controls Inc. (JCI) to review projects which could be submitted under the EECBG program and assist City staff to complete necessary documents required to obtain the grant funding. Included in the contract was the completion of a preliminary audit by JCI to determine the feasibility of an Energy Services Contract, (or Energy Savings Performance Contract (ESPC)), for completion of other projects for added energy savings. An ESPC is a compilation of energy savings projects paid for over time by the savings generated by the completed work. Attachment B contains a more thorough explanation of the ESPC process.

Council also considered award of a sole source contract to accomplish an ESPC with JCI as authorized under California Government Code Section 4217.12. This code authorizes public agencies to enter into an energy service contracts if its governing body determines it is in the best interests of the public agency and that the energy savings over a reasonable period of time generated by the project will be equal to or greater than the project costs.

In November 2009, a public hearing was held and Council authorized a sole source Energy Savings Contract with Johnson Controls Inc., subject to the following conditions:

1. Completion of a detailed analysis of energy savings projects under consideration.
2. Completion and acceptance of a measurement and verification plan for all projects.
3. Council approval of terms and conditions for the contract with JCI for energy savings projects.

If the above conditions were met, EECBG funded work would be accomplished under a sole source Energy Savings Contract with Johnson Controls Inc. along with other possible work funded from non-EECBG sources. Council in authorizing a sole source contract also expressed concerns that the identified projects would be competitively priced. Johnson Controls commented during their presentation that they would ensure competitive pricing during their internal bid process they would obtain multiple bids, make use of local contractors, and that work would be performed as turnkey type projects without change orders

### **ANALYSIS**

Johnson Controls Inc. (JCI) during the detailed audit met with various members of City staff to gather information on projects that could be considered for accomplishment via an ESPC. This listing was provided in November of 2009 for staff review.

During various iterations of the JCI submitted projects, staff made recommendations for adjustments that resulted in fully usable and complete projects. Project costs during this iterative process were also adjusted for both EECBG and non-EECBG projects.

In March 2010 JCI provided a project update as provided in Attachment C. After review, City staff met with JCI staff and discussed various elements within their proposal that did not meet previously agreed requirements. The discussions included

- Multiple subcontractor proposals for each project not provided
- Solicitation of quotes from local contractors not received
- Overhead costs not included with cost estimates.

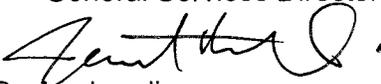
At this time City staff became concerned with the competitiveness of the JCI proposal, and after discussions with City Manager and Finance, staff obtained additional independent local contractor budget quotes. JCI was asked to review their proposal and provided a final update in April 2010. Comparing City estimated costs (Attachment D) and JCI April 2010 costs (Attachment E) showed that JCI costs exceeded City estimates by over \$400,000 for the EECBG projects. The JCI estimate also exceeds the EECBG grant amount by \$200,000.

Based on the significant differences in project costs performed using standard open bid practices and with JCI sole source contracting, staff recommends accomplishing the 3 EECBG funded projects using standard open bidding procedures.

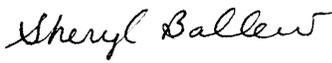
The City is now at a point to proceed with design of grant funded projects to meet the 36 month EECBG deadline of August 2012. To accomplish this, staff solicited design proposals from several area mechanical design consultants. Staff recommends award of a consulting agreement with Bartef Yoosephiance & Associates (BYA), Inc. in the amount of \$ 27,000 with 5% contingency. BYA has performed well in past contracts with the City of similar scope, both in professionalism of the supplied product and timeliness of execution. In addition, the City Manager and General Services Director recommend appropriating \$1,462,300 of the Energy Efficient and Conservation Block Grant to the Energy Efficient Retrofits and Street Lighting Replacement project.

Respectfully submitted,

SHERYL BALLEW  
General Services Director

  
By Jon Landis  
Facility Services Manager

CONCUR:

  
Sheryl Ballew  
General Services Director

  
LeRoy J. Jackson  
City Manager

Attachments:

- A – EECBG grant and tentative ESPC project lists
- B – ESPC outline
- C – JCI March 2010 proposal
- D – City of Torrance estimates
- E – JCI April 2010 proposal
- F – BYA Consulting Contract
- G - EECBG Assistance Agreement

**Original Estimated Costs, Savings and Incentives by Johnson Controls, Inc.**

<b><u>EECBG Projects</u></b> (including Project Management)	<b>Savings</b>	<b>Cost</b>	<b>Incentives</b>
Energy Efficient Retrofits	31,055	1,098,710	44,042
City Services - HVAC Upgrade & Controls			
City Hall Parking Lot LED Lighting Demonstration Project			
Street Security Lighting Replacements	38,106	426,685	19,053
	<b>69,161</b>	<b>1,525,395</b>	<b>63,095</b>

**Total**

**1,525,395**

**EECBG Funding**

**1,462,300**

## Energy Savings Performance Contracting

The Energy Savings Performance Contracting (ESPC) was established within the State of California to assist local government agencies in reducing facility costs. By making capital investments in energy conservation measures (ECMs) municipalities, such as the City of Torrance, would reduce operating expenditures with facilities benefiting from improved energy performance and reduced energy expenditures. An ESPC can apply to contracts involving energy conservation measures and energy-efficient systems, water conservation, as well as to contracts involving renewable energy systems.

If capital funds are not available for such projects, a third party, an energy service company (ESCO) such as Johnson Controls, often provides capital for purchase and installation of new equipment in exchange for a share of the agency's energy cost savings. When the third party guarantees a specific level of savings, the arrangement is known as an energy savings performance contract, or ESPC.

In an ESPC, a third party makes an investment in a facility that reduces its operating (primarily energy) costs. The third party receives periodic payments that come from a share of the reduced cost savings during the term of the contract. The energy savings realized provide the income stream that finances the project. After the contract period ends, the agency retains all of the savings.

A key element in the performance contract is the means and methods to verify savings realized. Measuring and verifying (M&V) savings from ESPC projects requires special project planning and engineering activities. Standardized practices and procedures for M&V are included in the 1998 International Performance Measurement and Verification Protocol (IPMVP) which provides an overview of current M&V techniques and sets a framework for verifying third-party-financed energy projects for public sector projects. The IPMVP is intended to be used as the basis for preparing program M&V guidelines.

The selection and tailoring of specific M&V options is based on the level of M&V precision required to obtain the desired accuracy level in the savings determination and is dependent on:

- The complexity of the Energy Conservation Measure
- The potential for changes in performance
- The measured savings value

The intent of the M&V plan is to balance the three following related elements:

- The cost of the M&V Plan
- Savings certainty
- The benefit of the particular conservation measure

**Estimated Costs, Savings and Incentives by Johnson Controls Inc. - March 2010**

<b>EECBG Funded Projects</b> (including Project Management)	<b>Savings</b>	<b>Cost</b>	<b>Incentives</b>
Energy Efficient Retrofits	16,076	1,141,247	11,242
City Services - HVAC Upgrade & Controls City Hall Parking Lot LED Lighting Demonstration Project			
Street Security Lighting Replacements	29,094	493,226	18,367
	<b>45,170</b>	<b>1,634,473</b>	<b>29,609</b>

**INDIRECT COSTS - Project Management, Development & Eng., Bond and Contingency**  
Project Management  
Development and Engineering  
Bond

<b>Total</b>	<b>1,634,473</b>		
<b>EECBG Funding</b>		<b>1,462,300</b>	

**Estimated Costs, Savings and Incentives by the City of Torrance - March 2010**

	<b>Savings</b>	<b>Cost</b>	<b>Incentives</b>
<b>EECBG Funded Projects</b>			
Energy Efficient Retrofits	16,076	646,553	11,242
City Services - HVAC Upgrade & Controls			
City Hall Parking Lot LED Lighting Demonstration Project			
Street Security Lighting Replacements	29,094	455,726	18,367
	<b>45,170</b>	<b>1,102,279</b>	<b>29,609</b>
<b>INDIRECT COSTS - Project Management, Development &amp; Eng., Bond and Contingency</b>			
Project Management		100,000	
Development and Engineering		75,000	
Bond		0	
		<b>175,000</b>	
		<b>1,277,279</b>	
<b>EECBG Funding</b>		<b>1,462,300</b>	

**Estimated Costs, Savings and Incentives by Johnson Controls, Inc. - April 2010**

<b>EECBG Funded Projects</b>	<b>Savings</b>	<b>Cost</b>	<b>Incentives</b>
Energy Efficient Retrofits	16,076	832,758	11,242
City Services - HVAC Upgrade & Controls City Hall Parking Lot LED Lighting Demonstration Project			
Street Security Lighting Replacements	29,094	493,226	18,367
	<b>45,170</b>	<b>1,325,984</b>	<b>29,609</b>

**INDIRECT COSTS - Project Management, Development & Eng., Bond and Contingency**

Project Management	205,413
Development and Engineering	145,985
Bond	6,525
	<b>357,923</b>

**1,683,907**

**EECBG Funding**

**1,462,300**

## CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT (“Agreement”) is made and entered into as of May 18, 2010 (the “Effective Date”), by and between the CITY OF TORRANCE, a municipal corporation (“CITY”), and Bartef Yoosephiance & Associates, a California Corporation (“CONSULTANT”).

### RECITALS:

- A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to provide mechanical engineering services for the HVAC modification at the City of Torrance City Services Building located at the City Yard, 20500 Madrona Avenue.
- 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 Proposal attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Proposal 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, 2011.

#### 3. COMPENSATION

- A. CONSULTANT’s Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Proposal attached as Exhibit A, 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 27,000 (“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 Proposal. 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**

Hrand Ibranossian 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:

Bartef Yoosephiance  
Principal

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**

CONSULTANT will indemnify, defend, and hold harmless CITY, the Redevelopment Agency of the City of Torrance, the City Council, each member thereof, present and future, members of boards and commissions, its officers, agents, employees and volunteers from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONSULTANT, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONSULTANT's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONSULTANT will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

**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. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

**20. NOTICE**

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
  2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
  3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
  4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
  5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONSULTANT: Bartef Yoosephiance & Associates, Inc.  
3734 Gleneagles Drive  
Tarzana, CA 91356

Fax: 818-345-8615

CITY: City Clerk  
City of Torrance  
3031 Torrance Boulevard  
Torrance, CA 90509-2970  
Fax: (310) 618-2931

- 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

Bartef Yoosephiance & Associates, Inc.  
a California Corporation

\_\_\_\_\_  
Frank Scotto, Mayor

By: \_\_\_\_\_  
Bartef Yoosephiance  
Principal

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

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

By: \_\_\_\_\_

Attachment:            Exhibit A            Proposal

Revised:            10/29/2008

**EXHIBIT A**  
**PROPOSAL**

**BYA Bartef Yoosephiance & Associates, Inc.**

Consulting Mechanical Engineers

3734 Gleneagles Dr.

Tarzana, CA. 91356

Tel. (818) 345-8614

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April 28, 2010

Mr. Hrand Ibranossian  
Department of General Services  
City of Torrance,  
3031 Torrance Blvd.  
Torrance, CA 90503

Regarding: City of Torrance Service Facility  
HVAC Modification

Dear Mr. Ibranossian:

We are pleased to submit this proposal for consulting mechanical engineering services for the above named project.

**PROJECT DESCRIPTION**

The project consists of engineering and specification for HVAC system modification for existing first floor employee lounge and second floor offices of City of Torrance Service Facility, located in City of Torrance, California.

**A. SCOPE OF WORK**

1. Site survey to assess existing conditions.
2. Construction document for replacement of existing HVAC units with new high efficiency variable volume packaged roof top air conditioning unit(s) and hot water boiler, complete with hot water piping loop, circulating pumps, variable volume reheat system, air distribution layout and specifications.
3. Specification manual.
4. California energy commission Title-24 compliance calculations
5. Up to two (2) coordination meetings with the Client representative.
6. Plan check corrections.
7. Reply to contractors legitimate RFI's
8. Shop drawing and submittal review.
9. One pre construction job walk.

City of Torrance Service Facility  
HVAC modification  
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10. Up to four (4) construction meetings.
11. One final walk through to provide punch list

B. WORK NOT INCLUDED

1. Electrical system engineering.
2. Structural system engineering
3. Value engineering design

C. EXTRA SERVICES

1. Client's requested changes, which are inconsistent with previously approved or completed design. All minor revisions or adjustments are part of the basic Scope of Work.
2. Items not included in Paragraph A, Scope of Work.
3. Compensation for extra services shall be reimbursed on a base hourly rate of \$95.00 per hour.

D. COMPENSATION

1. Our fee for services as outlined will be a lump sum \$27,000.00 due and payable on monthly progress billings.

E. REIMBURSABLES

1. Reproduction costs of drawings and documents, including AutoCAD plotting other than for in house use.
2. Plan check fees.

We are looking forward to this opportunity of working with you. Please indicate your acceptance of this contract by sending us a work order number to proceed.

Very truly yours,  
BARTEF YOOSEPHIANCE AND ASSOCIATES, INC.

Bartef Yoosephiance, PE  
Principal.

## ATTACHMENT G

NOT SPECIFIED /OTHER

ASSISTANCE AGREEMENT			
1. Award No. DE-SC0001528	2. Modification No.	3. Effective Date 08/21/2009	4. CFDA No. 81.128
5. Awarded To TORRANCE, CITY OF (INC) Attn: Jon Landis 3031 TORRANCE BOULEVARD TORRANCE CA 905035015		6. Sponsoring Office EERE (FORS) U.S. Department of Energy Office of Energy Efficiency & Renewable Forrestal Building 1000 Independence Avenue, SW Washington DC 20585	
7. Period of Performance 08/21/2009 through 08/20/2012			
8. Type of Agreement <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other	9. Authority Energy Independence and Security Act EISA of 2007	10. Purchase Request or Funding Document No. 09SC004712	
11. Remittance Address TORRANCE, CITY OF (INC) Attn: Jon Landis 3031 TORRANCE BOULEVARD TORRANCE CA 905035015		12. Total Amount Govt. Share: \$1,462,300.00 Cost Share : \$63,095.00 Total : \$1,525,395.00	13. Funds Obligated This action: \$1,462,300.00 Total : \$1,462,300.00
14. Principal Investigator Jon Landis 310-781-7140	15. Program Manager Martha J. Kass Phone: 865-576-0717	16. Administrator Oak Ridge U.S. Department of Energy P.O. Box 2001 Oak Ridge TN 37831	
17. Submit Payment Requests To OR for Oak Ridge/OSTI U.S. Department of Energy Oak Ridge Office Oak Ridge Financial Service Center P.O. Box 6017 Oak Ridge TN 37831		18. Paying Office	19. Submit Reports To See Reporting Requirments Checklist
20. Accounting and Appropriation Data Block Grant			
21. Research Title and/or Description of Project ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT			
For the Recipient		For the United States of America	
22. Signature of Person Authorized to Sign 		25. Signature of Grants/Agreements Officer 	
23. Name and Title JON LANDIS FACILITY SERVICES MANAGER	24. Date Signed 10/20/09	26. Name of Officer JUDITH S. WILSON	27. Date Signed 08/21/2009

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CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED	PAGE	OF
	DE-SC0001528	2	2

NAME OF OFFEROR OR CONTRACTOR  
TORRANCE, CITY OF (INC)

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	DUNS Number: 066674169 TAS::89 0331::TAS Recovery Recovery Act: Block Grant for ARRA Funding. New award for Torrance, CA ASAP: Yes Extent Competed: NOT AVAIL FOR COMP Delivery Location Code: 00522 Oak Ridge Office U.S. Department of Energy Oak Ridge Office 230 Warehouse Road Oak Ridge TN 37830  Payment: OR for Oak Ridge/OSTI U.S. Department of Energy Oak Ridge Financial Service Center P.O. Box 6017 Oak Ridge TN 37831  Fund: 05796 Appr Year: 2009 Allottee: 30 Report Entity: 471999 Object Class: 41000 Program: 1005115 Project: 2004350 WFO: 0000000 Local Use: 0000000 TAS Agency: 89 TAS Account: 0331				

NOT SPECIFIED /OTHER