

“Placerville, a Unique Historical Past Forging into a Golden Future “



City Manager’s Report
March 10, 2015 City Council Meeting
Prepared By: M. Cleve Morris
Item#: 12.1

Subject: Adopt a Resolution authorizing the City Manager to execute a Project Development Agreement with Johnson Controls, Inc. to develop a Water and Energy Efficiency Project pursuant to California Government Code Section 4217.

Background: California Government Code Sections 4217.10-4217.18 were enacted in 1984 as a result of an energy crisis. The purpose was to assist public agencies in expediting and financing energy conservation measures. This Code eliminates the necessity to separately contract for the design and construction phases of a project. As well, it provides public agencies an exception from statutory competitive bidding requirements for public works energy services contracts related to renewable energy and energy conservation. Under these provisions of law, the agency must: (1) provide a two-week public notice before authorizing the procurement; and (2) find that funds for the repayment of the financing or the cost of design, construction, and operation of the facility, or both, as required by contract, are projected to be available from revenues resulting from sales of electricity from the facility.

For the past few months, staff has been working with Johnson Controls, Inc. on a potential project to increase water and energy efficiency throughout City facilities.

Discussion: The City of Placerville spends an average of \$585,000 per year on electric utilities. In order to provide more efficient services consistent with General Plan policies, and with electricity costs continuously on the rise, staff began exploring the potential for achieving greater energy efficiency and improve facility infrastructure for the City. A strong driver was the desire to create more sustainable facilities by using new technologies and clean energy that align with our goals to preserve our historic and natural resources.

California Government Code Section 4217 allows the City to forgo its standard low-bid public procurement processes to implement turn-key water and energy services projects when the City finds this procurement method in its best interest. This procurement model ensures that JCI will implement the project for a Guarantee Maximum Price with no change orders, complete the project on-time, and ensure that the systems are performing as specified in the design-build contract.

The Johnson Controls, Inc. (JCI) Water and Energy Efficiency Project Development Agreement involves a unique public/private partnership; an approach that allows for a streamlined solution to implementing energy and infrastructure replacement projects. The program is divided into four phases:

1. Preliminary Analysis
2. Detailed Design Analysis and Cost Analysis
3. Installation
4. Performance Guarantee Term

A major objective of JCI's process is to minimize risk to the City. JCI does this in a number of ways. First, the City expends no funds until the City has co-authored goals and objectives that must be met by the project in order to move forward, and has developed a project that meets those criteria. Second, Project cost is a guaranteed maximum price with no changes orders. Finally the annual savings are guaranteed and backed by a financial stability of a fortune 100 company.

In November 2014, staff began conversations with JCI about available funds or incentives for water and energy efficiency projects. JCI representatives stated there was an opportunity, and have provided a Project Development Agreement (PDA) that is a two-step approach with an option for a second phase at the completion of preliminary Water and Energy Savings Analysis. The preliminary analysis will include, but not be limited to, the following items:

1. Waste Water Treatment Plant
2. Photovoltaic (Solar)
3. SCADA
4. Water Storage
5. AWWA Water Meter Audit
6. HVAC
7. Roofing
8. Indoor/Outdoor Lighting

Preliminary Analysis will be developed to provide a Water and Energy Services project that will be self-funding. JCI will collect data and conduct onsite surveys of infrastructure improvements. This effort will develop a list of potential Facility Improvement Measures (FIMs) that will be the basis of the energy, water and operational and maintenance savings plan. A Pro-Forma business case for the financial impact of the FIMs relative to the baseline will be developed.

The deliverables resulting from the Preliminary ("Step 1") Analysis will include:

- a) A list of FIMs expected to meet City of Placerville financial criteria with a summary of the scope of each measure.
- b) A summary of the energy savings and greenhouse gas emissions reduction expected to result from the package of FIMs.
- c) An estimated cost to implement the package of FIMs and to provide optional ongoing services.
- d) A recommended implementation process.
- e) A cash flow Pro-Forma and Potential financing, grant and rebate sources.
- f) Preliminary analysis.
- g) In addition to the above, JCI will complete an AWWA Water Audit.

Project Benefits

The triple bottom line principles can be incorporated as a tool to view the potential benefits gained through the implementation of this energy efficiency project. Using this concept, the

project benefits will be updated throughout the process as listed below under their respective headings of Economic, Environmental, and Social.

Economic

The Energy Efficiency Project will be calculated to save dollars to the City's budget each year, with an annual utility increasing by assumed energy rate increases, for a total project cost over the 25-year equipment life through energy efficiency savings and a reduction in operation and maintenance costs.

Environmental

Typical projects through this process have an estimated annual carbon offset of approximately 1 million pounds of carbon dioxide per year. This is an annual equivalent to removing 96 cars from the road, powering 69 homes, or the addition of 378 acres of forestland.

The proposed process will also utilize, to the extent possible, existing structures. Decreasing the need for new construction materials decreases the generation of construction and demolition debris and the associated air pollution and landfill disposal needs.

Social

This energy efficiency project significantly advances the mission of changing the traditional processes of providing services, and helps the City to provide more and better services efficiently.

Advantages of Energy Savings Performance Design-Build Contracting

California Government Code Section 4217 allows the City to forgo its standard low-bid public procurement processes to implement turn-key energy services projects when the City finds this procurement method in its best interest. This procurement model ensures that JCI will implement the project for a Guarantee Maximum Price with no change orders, complete the project on-time, and ensure that the systems are performing as specified in the design-build contract.

- Collaborative Project Development Process – The design process enables the City to define project goals, participate in the project's design process, and select the subcontractors and equipment vendors that provide the best value solution.
- Faster Project Delivery – Since the design build procurement method integrates the project design and pricing/bidding process, this enables the City to significantly reduce the time it takes to move from design to construction.
- Fixed Price Contract (with no change orders) – The detailed design process will define the project's scope of work, develop engineering documentation and specifications, and engage subcontractors and equipment vendors to verify project constructability and pricing.
- Fewer Construction Issues & Cost Impact – The project team (JCI and City) will work together for the term of the project development; together they will identify many of the

probable construction issues and potential project pitfalls. This collaborative approach would not be possible as part of a normal design, bid, and build project.

Projected Schedule

- March 10, 2015 Approve Project Development Agreement (PDA)
- March 16, 2015 Project Goals and Objectives Workshop
- March 25, 2015 Site Visit
- April 29, 2015 Johnson Controls to complete Step 1
- May 12, 2015 Preliminary Analysis and Financial Workshop
- May 26, 2015 City of Placerville to approve “Attachment 1” – Notice to Proceed with Step 2

Options:

This process is not new to staff. Two years ago we began a project with Chevron Corporation. At that time it did not appear the benefits would be sufficient to justify the project. After initial reviews with JCI, staff felt it would be appropriate to consider a project again. The following options are available to Council at this time.

1. Adopt this item as recommended and proceed with the study.
2. Request additional information prior to proceeding.
3. Request proposals from other companies that do similar work, such as Chevron.
4. Reject the proposal and do not proceed at this time.

Cost: All costs associated with Step 1 with the exception of staff time to assist in the study, are to be funded by JCI and, therefore, JCI will not charge City of Placerville for any work associated with Step 1. If the City decides not to proceed to Step 2 at this point, no costs will be incurred by the City. Upon final determination of scope of work from Preliminary Analysis, the City will move into Step 2 and provide a written Notice to Proceed from the City to JCI. All costs associated with Step 2 will be included in the Guaranteed Maximum Price. Should the City decide not to proceed with the installation and JCI has met the mutually agreed upon financial criteria, a payment for work completed will be due within 60 days.

Budget Impact: As there is no cost to the City for this phase, no budget impact is anticipated. Should the City proceed with Steps 2 and 3, appropriate budget measures will be identified.

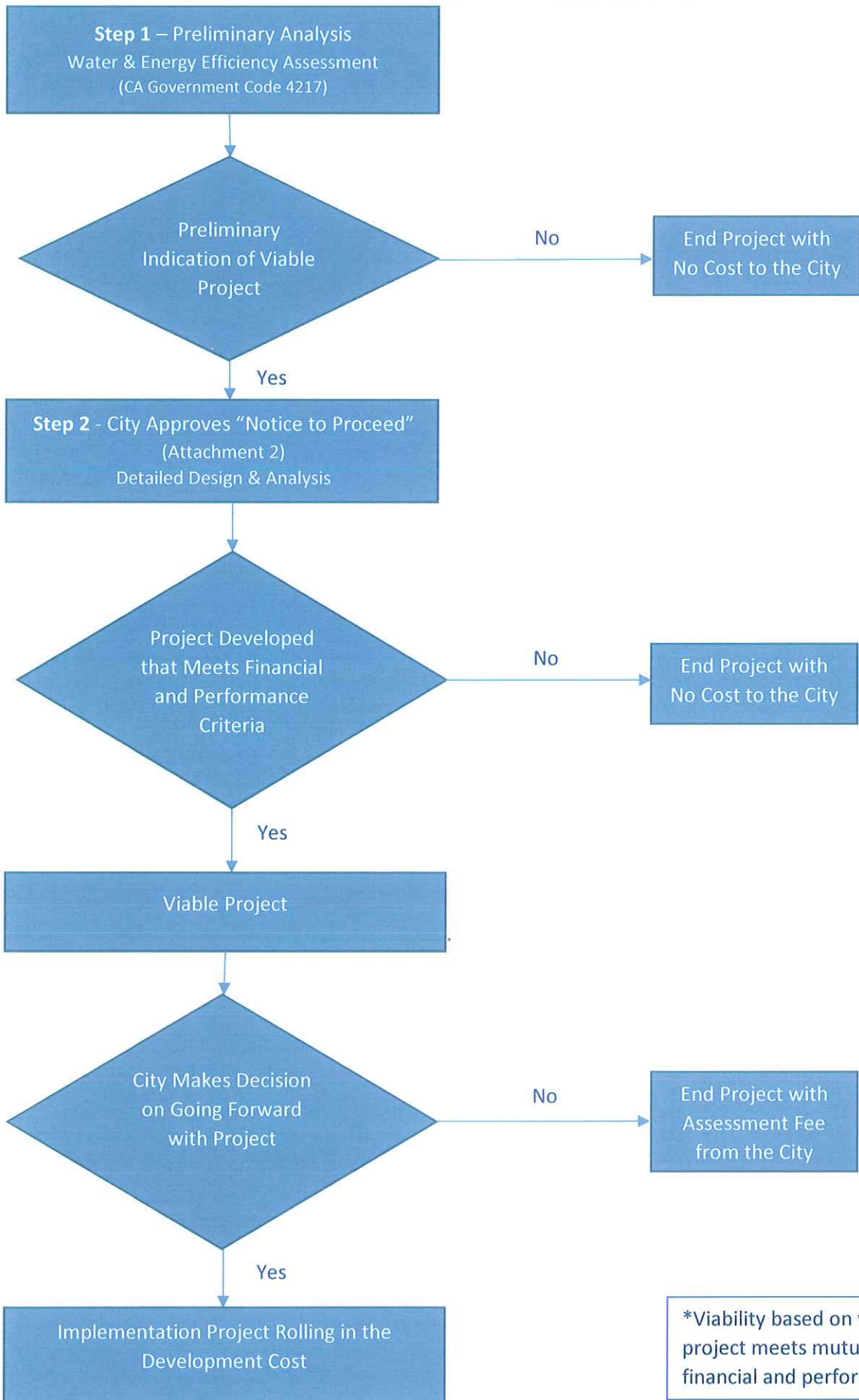
Recommendation: Adopt a Resolution authorizing the City Manager to execute a Project Development Agreement with Johnson Controls, Inc. to develop a Water and Energy Efficiency Project pursuant to California Government Code Section 4217.



M. Cleve Morris, City Manager

Attachments:

- *Flow Chart*
- *Resolution*
- *JCI Project Development Agreement*



*Viability based on whether developed project meets mutually-agreed upon financial and performance criteria.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PLACERVILLE AUTHORIZING THE EXECUTION OF AN
AGREEMENT WITH JOHNSON CONTROLS, INC. FOR THE
DEVELOPMENT OF A WATER AND ENERGY EFFICIENCY PROJECT**

BE IT, AND IT IS HEREBY RESOLVED by the City Council of the City of Placerville that the City Manager is authorized and directed to execute on behalf of the City of Placerville an Agreement with Johnson Controls, Inc. for the development of a Water and Energy Efficiency Project pursuant to California Government Code Section 4217, a copy of which Agreement is attached hereto and by reference made a part hereof.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Placerville held on March 10, 2015, by Councilmember _____, who moved its adoption. The motion was seconded by Councilmember _____. A poll vote was taken which stood as follows:

AYES:

NOES:

ABSTAIN:

ABSENT:

Patty Borelli, Mayor

ATTEST:

Susan Zito, MMC, City Clerk

**PROJECT DEVELOPMENT AGREEMENT
BETWEEN**

**City of Placerville
3101 Center Street
Placerville, CA 95667**

AND

**Johnson Controls, Inc.
103 Woodmere Road, Suite 110
Folsom, CA 95630**

The purpose of this Project Development Agreement (PDA) is to confirm the intent of City of Placerville and Johnson Controls, Inc. (JCI) to develop a Water and Energy Efficiency Project pursuant to California Government Code 4217. This PDA will provide the basis of the scope of the projects, the obligations of both parties, the technical and financial requirements to be met and the intended outcome and timeline.

1. Scope of Work

It is the Parties' mutual understanding that this PDA is for the purpose of development of a Final Proposal and pre-construction services, to be delivered to City of Placerville, for review and approval of the scope of work. The overall Project Development Agreement will be a two-step approach with an option for a second phase at the completion of Step 1 which is described in Attachment 1 – Notice to Proceed. The desired outcome of Step 1 is to accomplish the Preliminary Water and Energy savings analysis at the facilities operated and maintained by City of Placerville. The preliminary analysis will include, but is not limited to the following items:

1. Waste Water Treatment Plant
2. Photovoltaic
3. SCADA
4. Water Storage
5. Water Treatment Plant
6. AWWA Water Meter Audit
7. HVAC
8. Roofing
9. Indoor/Outdoor Lighting

Step 1: Preliminary Analysis

Preliminary Analysis will be developed to provide a Water and Energy Services project which will be self-funding. Johnson Controls will collect data and conduct onsite surveys of infrastructure improvements. This effort will develop a list of potential Facility Improvement Measures (FIMs) that will be the basis of the energy, water & operational and maintenance savings plan. A Pro Forma business case for the financial impact of the FIMs relative to the baseline will be developed. The deliverables resulting from the Preliminary ("Step 1") Analysis will include:

- a) A list of FIMs expected to meet City of Placerville financial criteria with a summary of the scope of each measure.
- b) A summary of the energy savings and greenhouse gas emissions reduction expected to result from the package of FIMs.
- c) An estimated cost to implement the package of FIMs and to provide optional ongoing services.
- d) A recommended implementation process.
- e) A cash flow Pro-Forma Potential financing, grant and rebate sources.
- f) Preliminary Analysis

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- g) In addition to the above Johnson Controls complete an AWWA Water Audit.

The Financial Goals for Step 1 are as follows:

- Johnson Controls will develop an economic proposition that is self-funding throughout the twenty-five (25) year rated useful life.
- The financial components will include, but are not limited to: (a) Utility and operational cost savings, including potential increased revenues (b) utility rebates and incentives, and (c) Federal and State grants.

City of Placerville will receive Step 1 deliverables within **60** days of the execution of this Agreement, (the “**Start Date**”).

2. Records and Data

During the development, City of Placerville will furnish to Johnson Controls upon its request, accurate and complete data concerning the most recent three years audited financial statements, the current year’s budget, current utility costs, budgets, facility operating requirements, future projected loads, collective bargaining agreements, etc. Johnson Controls will provide a separate document with the required information and City of Placerville shall make every effort to provide that information within a reasonable time.

3. Preparation of Implementation Contract

Along with the other Scope of Work required under this Agreement, Johnson Controls will develop the framework of the subsequent Contracts. These Contracts shall be co-developed by Johnson Controls and City of Placerville during the Project Development Agreement phase. These documents will vary dependent on City of Placerville desired structure and legal counsel review, but where possible shall be standardized Johnson Controls documents for most expedient delivery.

4. Price and Payment Terms - Step 1: Preliminary Analysis

All costs associated with Step 1 are to be funded by Johnson Controls and, therefore, Johnson Controls will not charge City of Placerville for Step 1 scope of work.

- In the event that City of Placerville decides to move forward with Step 2, price and payment terms are described in “Attachment 1”.

5. Indemnity

Johnson Controls and City of Placerville agree that Johnson Controls shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of Johnson Controls. To the extent permitted by law, Johnson Controls and City of Placerville 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 officers, agents or employees or any negligent act or omission by their officers, employees or agents.

**Step 2
Notice to Proceed**

Johnson Controls, Inc.
103 Woodmere Road, Suite 110
Folsom, CA 95630

ATTN: Brad Harlow, Area General Manager, West Building Efficiency

Re: Notice to Proceed for Step 2 Scope of Work

Dear Brad Harlow:

This Notice to Proceed is being issued by City of Placerville to Johnson Controls, Inc. pursuant to this Agreement between City of Placerville and Johnson Controls for the purpose of notifying Johnson Controls to commence work under Step 2 Scope of Work.

Identified above in Section 1 of this agreement, with the following Facility Improvement Measures:

1. <<Insert Measures of facility Improvement measures based on agreed upon scope of work>>

1. Detailed Design and Cost Analysis

In this phase, Johnson Controls will

- Develop detailed designs and scopes of work including mechanical, electrical, plumbing, lighting and structural engineering as appropriate for the package of FIMs selected.
- Perform, as needed, measurements of water and energy use of each FIM selected.
- Develop detailed water and energy baselines and savings estimates using spreadsheet and/or building simulation models to quantify water and energy savings to develop firm minimum savings guarantees.
- Solicit external bids or create detailed internal pricing estimates to develop a Guaranteed Maximum Price for the Project for the FIMs that meet City of Placerville approval. City of Placerville will have the opportunity to provide a preferred vendor list which Johnson Controls will use for vendor selection.
 - A competitive cost summary will be provided to show the process of the competitive procurement.
 - Johnson Controls will use a responsibility matrix to demonstrate selected subcontractors.
 - This effort will result in a final contract with a firm, guaranteed maximum price and final energy savings for the Project.

2. Price and Payment Terms - Detailed Design and Cost Analysis

All costs associated with Step 2 will be included in the Guaranteed Maximum Price. Should City of Placerville decide not to proceed with installation and Johnson Controls has met the mutually agreed upon financial criteria outlined in the "Step 1", a payment in the amount of \$_<< insert cost >>_ will be due and payable within 60 days of City of Placerville receipt of Step 2 deliverables. If a decision is made not to proceed with Johnson Controls for the project, and once City of Placerville has paid Johnson Controls for the Step 2 Detailed Analysis, Johnson Controls will have no claim or be entitled to any addition compensation.

City of Placerville will have no obligation to pay this amount if:

- a. City of Placerville enters into the Installation Contract within 90 days after City of Placerville has received the documentation described in this Agreement. The costs for the Study will be transferred to the total cost of the Installation Contract.
- b. In the event that Johnson Controls is unable to meet the City's financial criteria mutually established in the Energy Assessment.
- c. If in the City's reasonable judgment, the project fails to meet the financial impact described in Section 2 or meet the requirements outlined in the applicable enabling legislation, California Government Code Chapter 3.2. Energy Conservation Contracts, Section 4217.10-4217.18.
- d. If in the City's reasonable judgment, the project benefits do not offset the cost of the project with a payback period of 20 years or less. Project benefits shall include, but not be limited to, utility cost avoidance, negotiated utility rate reductions, operating and maintenance cost avoidance, and potential utility measurement accuracy increases.
- e. If in the City's sole discretion it determines that it is unable to obtain reasonable financing terms in order to finance the project.

3. Confidentiality

This agreement creates a confidential relationship between JCI and Customer. Both parties acknowledge that while performing this Agreement, each will have access to confidential information, including, but not limited to, systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development, and other information relating to the other party ("Proprietary Information"). Except as authorized in writing, both parties agree to keep all Proprietary Information confidential. JCI may only make copies of Proprietary Information necessary for performing its services. Upon cessation of services, termination, or expiration of this Agreement, or upon either party's request, whichever is earlier, both parties will return all such information and all documents, data and other materials in their control that contain or relate to such Proprietary Information.

JCI and Customer understand that this is a confidential project and agree to keep and maintain confidentiality regarding its undertaking of this project. JCI shall coordinate its services only through the designated Customer representative and shall provide information regarding this project to only those persons approved by Customer. JCI will be notified in writing of any changes in the designated Customer representative.

Notwithstanding the foregoing confidentiality provisions, JCI acknowledges that the City is a California municipality and is subject to the California Public Records Act as found under the California Government Code Section 6250 et seq. City shall provide JCI no less than six (6) days' prior written notice of City's intent to disclose any of JCI's Proprietary Information pursuant to a request for disclosure and/or copying under the California Public Records Act. If JCI disagrees with City's decision to disclose JCI's Proprietary Information, JCI will respond in writing within forty-eight (48) hours of receipt of such written notice from the City informing the City of JCI's course of action including, but not limited to, seeking a protective order. If JCI fails to initiate seeking a protective order within two days of City's receipt of JCI's notification to City, City shall be permitted to comply with the demand to disclose the Proprietary Information. If JCI does initiate seeking such a protective order, the City shall cooperate with, and shall not oppose, JCI in obtaining such protective order, provided, however, that JCI agrees to assume all out-of-pocket legal costs related to the matter incurred by the City including, but not limited to, any reasonable attorney's fees. So long as the City complies with the provisions of notification set forth in this section, the City shall not be liable for, and JCI hereby releases City

from, any liability for any damages arising from any release of Proprietary Information to a requestor of such information, and such release includes the representation of the City.

4. Miscellaneous Provisions

This Agreement cannot be assigned by either party without the prior written consent of the other party. This Agreement is the entire Agreement between JCI and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the Customer. Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement.

This Agreement and all matters arising out of or relating to it shall be governed by and construed in accordance with the laws of the State of California. The parties hereby irrevocably consent to the jurisdiction of the state courts located in El Dorado County, California, in any action arising out of or relating to this Agreement, and waive any other venue to which either party might be entitled by domicile or otherwise.

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reimbursement for all out-of-pocket costs and expenses, including without limitation, reasonable attorney's fees.

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force and effect and are not affected or impaired in any way.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency, employment, or fiduciary relationship or partnership between the parties or to impose any such obligation or liability upon either party. Neither party shall have any right, power of authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other party.

Without limiting the generality of the foregoing paragraph, neither this Agreement, nor any duties or obligations under this Agreement, nor the intentions or expectations of either party shall create an employment relationship between City and JCI for any purpose. JCI shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City. JCI shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by JCI are employees, agents, contractors or subcontractors of JCI and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against JCI by any such employees, agents, contractors or subcontractors, or any other person, resulting from performance of this Agreement.

This Agreement does not and is not intended to confer any rights or remedies upon any party other than the parties to this Agreement.

This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

All notices required or permitted under this Agreement shall be in writing and shall be deemed given on the date sent if delivered by hand or by email with an attachment in a portable document format (.pdf) or similar file format, on the next business day if sent by overnight courier, or on the third business day if sent by United States mail, postage prepaid, to each party at its address shown on Page 1 of this Agreement (or at such other address as a party may specify by notice under this section).

This document represents the business intent of both parties and should be executed by the parties who would ultimately be signatory to a final agreement.

Timeline

- TBD Johnson Controls receives "Notice to Proceed" with Step 2
- TBD Johnson Controls to complete project scope and design (60 days)
- TBD Design Workshop
- TBD Project Cost Workshop
- TBD Finalize Installation Agreement
- TBD Construction to commence

The signatories below authorize Johnson Controls to finalize Detailed Design and Cost Analysis under the terms of this Agreement.

City of Placerville

Johnson Controls Inc.

By: M. Cleve Morris

By: Brad Harlow

Signature: _____

Signature: _____

Title: City Manager

Title: Area General Manager, West Building Efficiency

Date: _____

Date: _____