PORTERVILLE CITY COUNCIL MINUTES
ADJOURNED MEETING - JULY 9, 2007
CITY HALL MIKKABI CONFERENCE ROOM
291 NORTH MAIN STREET, PORTERVILLE
MONDAY - 5:30 P.M.

Roll Call: Council Member McCracken, Council Member Pedro Martinez, Mayor Pro Tem Felipe Martinez, Council Member Hernandez
Absent: Mayor Hamilton

Pledge of Allegiance led by Council Member Eddie Hernandez
Invocation – a moment of silence was observed.

ORAL COMMUNICATIONS
None

SCHEDULED MATTER

1. PROJECT PROPOSAL FOR INFRASTRUCTURE AND OPERATIONAL ENHANCEMENTS

Recommendation: That the City Council provide direction to staff as to whether to proceed with the project proposed by Johnson Controls.

Deputy City Manager John Lollis presented the item and the staff report. Mr. Lollis indicated that approximately two years prior, the City had engaged with Johnson Controls in conducting a preliminary energy use analysis to determine whether the City could realize better energy efficiency. He spoke of the various components initially included, and stated that in August of 2006, the City and Johnson Controls had entered into Project Development Agreement limiting the scope to energy and water conservation issues. He stated that the proposed project was based on performance contracting, which he stated essentially meant that whatever costs were incurred in implementing the project would be paid for through realized savings due to the project, thereby making the project “cost neutral.” He went on to review the project costs and projections as identified by Johnson Controls, and elaborated further on the service contract, which Mr. Lollis indicated would be required to continue to maintain the annual savings guarantee. He stated that the guarantee was initially placed at $110,000 with the water pump component included. He then outlined the various project components, including the following:

1. Outdoor Lighting Retrofit, including Street, Safety, and Recreational Parks;
2. Indoor Lighting Retrofit of City Facilities;
3. HVAC Retrofits and Control Improvements of City Facilities; and

Mr. Lollis indicated that if the City elected not to proceed with the proposed project, then the City would be required to remit $62,000 to Johnson Controls for the expenses incurred by them in designing the project. He stated that because there was significant expense in the project’s debt service, estimated at approximately $1.7 million per year, staff felt that the Council should consider
the project in the context of the current budget. He stated that the City had defined four options for Council’s consideration, and briefly reviewed each as follows:

1. That the City proceed with the project as proposed by Johnson Controls, identifying the cost of project financing as an individual expense in the budget (“above the line”);
2. That the City proceed with the project as proposed by Johnson Controls, with utilities expense/savings and project financing segmented by some proportion to the departments that benefit from the project;
3. That the City defer making a determination on the proposed project until January 2008, when City finances for the new fiscal year can be analyzed for feasibility (Riverwalk, building slowdown, “Freeze,” etc.); and
4. That the city make a determination to vacate the proposed project, remitting the amount of $62,000 to Johnson Controls for its expense in designing the project.

In response to a question posed by Council Member Pedro Martinez, staff elaborated on Option No. 2. It was stated that allocations pertaining to energy costs at City Hall would be the only facility that would be handled differently. A discussion ensued as to how the costs distribution between the departments would be handled.

Mr. Lollis then elaborated on the initial funding for the project. He indicated that funds had already been allocated for certain energy costs, and that the concept was that the savings that came with the efficiencies from the implementation of the project would be at least what the financing cost would be.

Council Member Pedro Martinez inquired as to when the City would realize any savings.

- Ralph Tyrell, Johnson Controls, spoke of the savings, using the example of changing a lightbulb. He stated that savings would begin immediately after screwing in the new energy efficient lightbulb, and that savings would be realized when the first electric bill was received. He stated that Johnson Controls would take a measurement of the City facilities to obtain a snapshot of its usage and to create a baseline. Upon completion of the project, another measurement would be taken. He stated those measurements would be Johnson Control’s point of reference. He stated that even prior to the end of the project, the City would be realizing savings.

In response to an inquiry made by Council Member McCracken, Deputy City Manager Lollis elaborated on the service contract. He indicated that it was optional and that in the event the City chose not to continue with it, it would give up the savings guarantee and Johnson Control’s maintenance of the system. A discussion ensued as to replacement costs for equipment. Mr. Tyrell indicated that the equipment, such as an HVAC unit, would carry a warranty. He stated that all of the City’s contact would be with Johnson Controls, and that the City would never have to deal with a manufacturer. Mr. Lollis clarified that even in the event that the City did not proceed with the service contract, Johnson Controls would still be the City’s contact for warranty issues. Mr. Lollis then stated that there were two benefits to carrying the service contract. The first being that if the City’s energy savings did not meet the $110,000 threshold, the City would be owed the amount it was short. He stated that the City could either request a check from Johnson Controls, or request
improvements to the system in that amount. Mr. Lollis suggested that the greatest risk to Johnson Controls would be in the first several years, noting that as energy costs increased, their risk would likely decrease as time went on.

Council Member McCracken then posed a hypothetical question as to what would happen if three of the City’s HVAC units became inoperable on the last day of the contract. He questioned whether Johnson Controls would replace that equipment.

• Mr. Tyrell elaborated on Johnson Control’s service contract. He indicated that annual and/or periodic maintenance would be undertaken on the systems. He stated that in the event that equipment became inoperable as a part of normal wear and tear, replacement would be covered as a part of the service contract. Mr. Tyrell stated that he would have to check further as to the exact requirements, but that his understanding was that the equipment covered by the contract would be covered for the life of the contract, and that Johnson Controls took on the risk.

Council Member McCracken indicated that this issue was substantial and he would need further confirmation. A discussion ensued as to several possible ways in which the hypothetical situation could be handled.

• Mr. Tyrell contacted a Johnson Controls engineer and inquired as to how the service contract would apply to Council Member McCracken’s hypothetical situation. He was advised that while under the full maintenance contract, Johnson Controls would replace an inoperable system, up to the end of the contract period. Mr. Tyrell then spoke of the reputation of Johnson Controls and of the science involved in the work his company performed. He stated that while the contract was the guarantee, the real guarantee was the credentials of Johnson Controls.

In response to a question from Mayor Pro Tem Felipe Martinez, Mr. Lollis confirmed that during the first year, there was a negative cash flow with the project. He noted that the savings in the first year was slightly less than the cost of the financing. He stated that the financing in the documentation before the Council was at 4.5%, yet staff was confident that a better rate could be secured, such as 4.25%.

• Mr. Tyrell then introduced Jake Pierson from Citibank. He stated that Johnson Controls worked very closely with Citibank, and that he had brought him along that evening to review a financing structure that would eliminate any negative cash flow.

• Jake Pierson, Vice President of Healthcare/Energy Finance with Citibank, indicated that Citibank had evaluated the credit of the City of Porterville, and that his bank had no problem with underwriting the transaction for $1.3 million, even up to $10 million. He stated that the rate of 4.25% was good about two months before, and that rates had since increased. He stated that if the transaction was funded that day, the rate would be approximately 4.37%. He stated that Citibank anticipated further increases in the future. He indicated that the 4.5% figure would likely be valid for approximately 30 to 60 days, and that if there was a commitment on the part of the City in the very near future, Citibank would reserve the $1.3 million, and the rate
would be 4.37%. He stated that the transaction could be structured as budget neutral from Day 1, by structuring the payments smaller in Years 1 through 7, or as needed. He stated for example that payments would be $1 in those years in which there was negative cash flow. He stated that the amount would be funded into escrow, and that the escrow earnings were approximately 4.72%, which would allow the City to accrue additional funds to help to pay down principal, and the payment schedule readjusted accordingly. Mr. Pierson indicated that Citibank had structured something similar on three different transactions, one being the City of Compton.

Mr. Lollis indicated that the California Utilities Commission was also doing those types of projects, and he recalled that if the project was completed by December 31, 2007, the rate was 4.00%; if completed by either April or July 1, 2007, the rate would be 4.25%, and if completed by December 31, 2008, the rate would be 4.5%.

- Mr. Pierson indicated that if the Council elected that evening to move forward, he would send the City a proposal in writing containing everything that had been discussed that evening. If that proposal was signed by the City by the end of the week, Citibank would reserve funds on the day he received a verbal or faxed commitment by the City. He clarified that once the funds were reserved with Treasury, that rate was locked in. Mr. Pierson then noted the volatility of the market during the past three weeks.

Mr. Lollis suggested that another way to make the cash flow positive was to abandon the service contract, indicating that there were a number of cities that did that. It was noted that there were real costs to the services that Johnson Controls would be providing in the service contract, and that those costs would need to be absorbed someplace.

- Mr. Tyrell indicated that the service contract simply regarded how much risk the City was willing to take on. He suggested that during the first three to five years of the contract it would not be prudent for the City to go it alone. He stated that within three to five years, staff would likely have some idea as to how the enhancements were operating, and at that point, it could be feasible to terminate the service contract.

In response to a question posed by Council Member Pedro Martinez, a discussion ensued as to whether the City could self-execute the project. Parks & Leisure Services Director Jim Perrine indicated that certainly staff could change light bulbs, but spoke of challenges with staffing and expertise for tasks such as changing light fixtures, HVAC units, duct work, etc. He indicated the expertise and staff time would include design and specification work, placing the projects out to bid, awarding contracts, and performing project management during the construction period. Mr. Perrine pointed out that Johnson Controls’ proposal was turn-key and guaranteed.

- Mr. Tyrell then addressed concerns raised by Council Member Pedro Martinez with regard to adjustments to staffing levels during the construction phase of the enhancements. He stated that Johnson Controls routinely worked with the military, hospitals, prisons, airports, and other municipalities, such as their current project with the City of Tulare. He stated that Johnson Controls adjusts its schedule to accommodate their clients so as be the least intrusive as possible. He stated that
prior to commencing the work, Johnson Controls representatives would meet with City staff and determine when the work should be performed to be the least disruptive to staff.

Mr. Peirson spoke of the relationship between Citibank and Johnson Controls. He stated that Citibank was a very conservative bank and that the only reason it was in the energy performance market was due to Johnson Controls track record and guarantee record. He indicated that there were not many banks in the energy financing business, and that Citibank had been in that business for approximately 20 to 25 years. He stated that Citibank’s credit team would not have underwritten the transaction if they believed that Johnson Controls would not guarantee the savings.

Mr. Lollis returned to reviewing the options for the Council’s consideration, pointing out that Option Nos. 1 and 2 were similar in that they both entailed proceeding with the project as proposed and differed only in terms of how the expenditures were handled, with Option 1 being handled as a City-wide expense, and Option 2 being proportioned on a departmental level basis. He stated that Option No. 3 proposed to defer making the decision until January 2008 during the budget review. Mr. Lollis indicated that Mr. Longley was primarily concerned with three different factors: the impact of the freeze relative to sales tax revenue over the next six to eight months; the progress of Riverwalk; and the building/construction slowdown in the community.

Council Member McCracken suggested that Mr. Longley’s concerns and preference to wait until January 2008 were based on the belief that there would be negative cash flow. He pointed out that with Citibank’s proposal, this was no longer the case. Mr. Lollis indicated that Mr. Longley’s recommendation came from a more philosophical standpoint. He stated that Mr. Longley preferred working in the concrete. He stated that while one knew what things cost, savings were more ambiguous. He indicated that Mr. Longley’s concern was that when savings were achieved, something else would fill that void. He stated that the feeling was that the project would have a cost impact because while the savings should offset the financing costs, those monies would likely find their way elsewhere. Mr. Lollis indicated that the financing cost was a real cost, despite it not having a true $100,000 or so impact.

Council Member Pedro Martinez noted that the project should allow the City to achieve some things that it could not do before. Mr. Lollis agreed, and noted that if the City did nothing, which he stated was Option No. 4, this would not be the case. An analogy of receiving a tax return was cited as an example, wherein an individual used a tax return for a down payment on a vehicle, without contemplating the future payments of that vehicle. Mr. Lollis stated that he did not think there was an argument that the savings was not going to be there, but that the concern was more of what would happen to that savings.

Mr. Tyrell disagreed with the analogy presented. He stated that in the case of the Johnson Controls’ guarantee, it was a known annual amount of, for example, $100,000. He stated that if that amount was coming in every year, one could depend on that amount. In the case of the income tax return, the amount is variable and one could not depend on receiving the same amount. He then suggested that the discussion of the savings being intangible was confusing the issue. He stated that the City would have new lights, new HVAC units, and other tangible items. He stated
that every year those items would yield savings that the City could recognize. Mr. Tyrell went on to speak of the benefits in contracting with Johnson Controls. He stated that he understood the concern of Mr. Longley with regard to the commitment in the future for the payment for the performance contract.

Mr. Perrine stated that Southern California Edison would be receiving less compensation from the City, but that the money might be spent on something else, because there was the opportunity to spend it.

In response to a question posed by Council Member Hernandez with regard to the water meter aspect of the Johnson Controls proposal, staff indicated that the City of Porterville was approximately 98 to 99% metered, as opposed to the City of Tulare, which was the reason Tulare included the water meter portion in its project. A discussion ensued as to the higher efficiency of newer meters. Mr. Tyrell stated that Johnson Controls was available in the event that the Council wished to expand the scope of services.

Seeing that the Council had no further questions, Mr. Lollis stated that staff viewed the item as a budgetary item, and again briefly reviewed the options before the Council that evening.

Council Member Pedro Martinez requested that the item be brought back to the Council at the next Council Meeting so as to give the Mayor and Mr. Longley an opportunity to review the new information brought forward that evening. He then commented that the new financing information changed the way in which he viewed the item.

- Mr. Tyrell requested that the Council not consider Option No. 4. Mr. Lollis clarified that staff had not recommended that option. Mr. Tyrell then suggested that the City was in “analysis paralysis” and that if it elected to move forward immediately, it would not even see a bill until January 2008 anyway. He then indicated that Option No. 2 might prove to be an administrative nightmare. He stated that unless every area had a separate meter, breaking it down departmentally might be very challenging. He then suggested a hybrid idea, on perhaps a one-year trial basis, in which different areas were broken out. Mr. Tyrell then spoke in favor of the Council proceeding with Option No. 1, and reiterated his statements with regard to the benefits and savings the City would realize if it moved forward.

Mr. Perrine indicated that he understood the reasoning behind Option No. 3, but that he was uncertain as to what other equipment in City Hall would be in need of repairs in the next six months. He stated that light fixtures were becoming inoperable, and HVAC units could also follow suit. He noted that there could be real costs in keeping the equipment operational in the next six months. Mr. Rodriguez spoke of the pending award of contract to replace an HVAC unit at City Hall and inquired as to Mr. Perrine’s intentions with regard to that item if the council moved forward with the Johnson Controls Project. Mr. Perrine spoke of the benefits in having Johnson Controls perform the work, but that it depended on Council’s action, noting the need for the unit’s replacement. He indicated that items could not continue to stack up while waiting for the Johnson Controls project to address them.
Ms. Lew inquired whether Citibank would hold that rate until July 17, 2007, so as to allow for a full Council, as well as the City Manager, to be a part of the discussion and decision. Mr. Pierson indicated that he could draft a proposal which could lock in that rate until July 18, 2007. He stated that after July 18th, the rate would float upward or downward, based on the index.

Mr. Lollis indicated, that the City might also wish to determine whether the City might be able to obtain a better rate from another lender, including the California Utilities Commission.

- Mr. Tyrell spoke of the need to compare apples to apples.
- Mr. Pierson spoke of the services Citibank would provide, which he indicated would likely exceed that of other lenders, based on Citibank’s relationship with Johnson Controls. He then stated that Citibank might be able to syndicate portions of the financing to a local bank in Porterville to assist the community. In response to a question posed by Council, Mr. Pierson elaborated on the process to initiate the financing, which began with a written agreement. He then suggested that the City confirm that the funds were actually available from the Commission, stating that several cities had been committed funds, yet no funds had been released. Mr. Pierson indicated that he would draft the proposal and get it to Mr. Tyrell who would then provide it to the City.

The Council concurred that the item would be brought back before the Council at its meeting on July 17, 2007.

ORAL COMMUNICATIONS
None

OTHER MATTERS
None

ADJOURNMENT
The Council adjourned at 6:50 p.m. to the Council Meeting of July 10, 2007 at 6:00 p.m.

Patrice Hildreth, Deputy City Clerk

SEAL

Cameron Hamilton, Mayor