Call to Order
Roll Call

ORAL COMMUNICATIONS
This is the opportunity to address the City Council on any matter scheduled for Closed Session.

CLOSED SESSION:
A. Closed Session Pursuant to:
   1- Government Code Section 54956.9(c) – Conference with Legal Counsel – Anticipated Litigation – One Case.

6:00 P.M. RECONVENE OPEN SESSION
REPORT ON ANY CITY COUNCIL ACTION TAKEN IN CLOSED SESSION

Pledge of Allegiance Led by Mayor Pete V. McCracken
Invocation

ORAL COMMUNICATIONS
This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time.

CONSENT CALENDAR
1. Approve Energy Conservation Performance Contract with Johnson Controls, Inc.
   Re: Considering approval of a contract with Johnson Controls for the accomplishment of energy conservation programs at various City facilities at a total cost of $1,599,467 to be funded through Energy Efficiency and Conservation Block Grant Funds and energy cost savings.

ADJOURNMENT - to the meeting of October 6, 2009.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.
COUNCIL AGENDA: SEPTEMBER 29, 2009

SUBJECT: APPROVE ENERGY CONSERVATION PERFORMANCE CONTRACT WITH JOHNSON CONTROLS, INC.

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: Under previous direction from the City Council, City staff has negotiated a contract and the scope of work with Johnson Controls, Inc. (JCI) for the accomplishment of energy conservation programs at various city facilities. The scope of work provides for JCI to undertake the City’s $496,000 EECBG project for lighting retrofit and plumbing/irrigation conservation equipment at city facilities, including all documentation and reporting required by the federal grant program. Porterville’s application for the EECBG funds is in the final stages of consideration with approval anticipated by the end of September 2009.

The energy reductions generated from this project will result in ongoing cost savings that in turn will be utilized to repay a loan from the Building Construction Fund for other energy conservation projects contained within the scope of the JCI contract. Most significant will be the replacement and reconfiguration of the heating, ventilation, and air conditioning systems (HVAC) for City Hall and the Police Department.

The full project cost is $1,599,467 and is anticipated to be fully accomplished within seven months from its commencement, which is presently scheduled in early October 2009. The City Attorney has approved the legal form of the contract and supports a recommendation for City Council approval.

RECOMMENDATION: Approve an Energy Conservation Performance Contract with Johnson Controls, Inc., and authorize and direct the Mayor to sign same.

ATTACHMENTS: Project Summary Table
Performance Contract

Director  Appropriated/Funded  City Manager

ITEM NO.: 1
## Project Summary Table

**City of Porterville**

**ECM Cost Break Down**

*(September 10, 2009)*

<table>
<thead>
<tr>
<th>Site</th>
<th>Lighting Improvements</th>
<th>HVAC Improvements</th>
<th>Water Conservation Improvements</th>
<th>Total</th>
<th>Lighting</th>
<th>HVAC</th>
<th>Windows</th>
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| Project Development, Engineering, Rebate Applications, PM, Permits & Bonds | $181,519 |

**Total**  

$267,717 $962,950 $187,281 $1,599,467 $36,925 $17,049 $ - $13,231 $67,205

Note: water savings highlighted in yellow is estimated. JCI will provide final savings prior to installation and reconciled in the Measurement and Verification Report.
PERFORMANCE CONTRACT

PARTIES: JOHNSON CONTROLS, INC. (JCI)
12393 Slauson Avenue
Whittier, CA 90606

CITY OF PORTERVILLE, CA
291 N. Main Street
Porterville, CA 93257

AGREEMENT DOCUMENTS: In addition to the terms and conditions of this Performance Contract, incorporated into this Agreement are the following (check as applicable).

X Schedule 1—Scope of Work Schedule
X Schedule 2—Assured Performance Guarantee Schedule

X Schedule 3—Services Schedule
X Schedule 3—Exhibit 1
X Schedule 4—Price and Payment Terms Schedule
X Schedule 4a—Cash Payment Schedule
OR
Schedule 4b—Lease/Purchase Schedule

1. SCOPE OF THE AGREEMENT. JCI agrees to install identifiable improvement measures as delineated in Scope of Work Schedule (Schedule 1) which will result in Project Benefits as set forth in the Assured Performance Guarantee (Schedule 2). After installation of the improvement measures, JCI agrees to provide the services identified in Services Schedule (Schedule 3), that include services that are necessary to monitor, measure, and achieve the identified Project Benefits, subject to the terms of the Assured Performance Guarantee (Schedule 2). The Customer agrees to take all actions identified in this Agreement that are necessary to achieve the Project Benefits identified. JCI shall supervise and direct the Work and Services and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work and Services under this Agreement. JCI shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work and Services. The Customer's payments to JCI and its interest in the Equipment will be based upon the terms of Schedule 4.

2. TERM. The Term of this Agreement shall begin the date of this Agreement. If the Work is divided into phases or individual projects for which individual prices have been negotiated, then separate Commencement Dates shall apply to each phase or individual project. The Work shall be completed by the Substantial Completion Date, which shall be the earlier of:

(a) the date on which the Customer executes a Certificate of Substantial Completion; or

(b) 300 days after the Commencement Date, subject to adjustments as set forth in Paragraph 3 below.

If the Work is divided into phases or individual projects for which individual prices have been negotiated, then separate Substantial Completion Dates shall apply to each phase or individual project. Substantial Completion means that JCI has provided sufficient materials and services to permit the Customer to operate the Equipment or achieve the intended Project Benefits. The Services shall commence on the Substantial Completion Date and shall continue for 180 months. The term of the Assured Performance
Guarantee (see Schedule 2) shall coincide with the term of the Services Schedule (see Schedule 3). If for any reason, the Customer cancels or breaches this Agreement, including but not limited to the Service Schedule, the Assured Performance Guarantee shall automatically terminate. The Payment Term shall be defined in Price and Payment Term Schedule (Schedule 4).

3. DELAYS. If JCI is delayed in the commencement or completion of the Work and/or Services by causes beyond its control and without its fault or negligence, including but not limited to inability to access property, fire, flood, labor disputes, unusual delays in deliveries, abnormal adverse weather conditions, acts of God, acts of war and acts of terrorism or by failure by the Customer to perform its obligations under the Performance Contract and Schedules or failure by the Customer to cooperate with JCI in the timely completion of the Work, then JCI shall provide written notice to the Customer of the existence, extent of, and reason for such delays. An equitable adjustment in Substantial Completion Date, Payment Terms and Assured Performance Guarantee shall be made as a result.

ACCESS. Customer is responsible to provide JCI, its subcontractors and/or its agents reasonable and safe access to all facilities and properties that are in the Customer's control which are subject to the Work and Services contained in this Agreement. Customer further agrees to assist JCI, its subcontractors and/or its agents to gain access to facilities and properties that are not controlled by the Customer which are subject to the Work and Services contained in this Agreement. An equitable adjustment in Substantial Completion Date, Payment Terms and Assured Performance Guarantee shall be made as a result of any failure to grant such access.

4. CERTIFICATE OF SUBSTANTIAL COMPLETION. The Certificate of Substantial Completion to be executed by the Customer shall include:

   a. an acknowledgement by the Customer of the buildings or Improvement Measures substantially completed and the Substantial Completion Date for each building or Improvement Measure;

   b. an acknowledgment by the Customer of receipt of manuals and training provided by JCI under the Agreement;

   c. an acknowledgement by the Customer of the warranty start date and warranty period;

   d. a punch list of items remaining to be completed by JCI and;

   e. an acknowledgement by the Customer that

      (i) changes of fire or alarm control points may significantly alter a life safety system, and contribute to a dangerous or life-threatening situation.

      (ii) changes to fire or alarm points may also require approval of local fire authority; changes to other control points may be linked to the life safety system and affect it; and after each such change, the life safety system should be exercised to see that its integrity has not been violated and it functions properly, as was intended.

      (iii) JCI does not warrant against system malfunction caused by improper use, misuse or wrong entry of data by the customer, and JCI shall not be liable for situations or damages that are the direct result of user-generated databases.

5. TAXES, PERMITS, AND FEES. JCI shall be responsible for obtaining all permits and related permit fees associated with the Work and Services. JCI shall pay sales, consumer, use, and other similar taxes and shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution. The Customer shall be responsible for securing any necessary approvals, easements, assessments, or zoning changes and shall be responsible for real estate and personal property taxes where applicable. JCI makes no representations regarding the tax implications or Customer's accounting treatment of this Agreement.
6. WARRANTY. JCI warrants that materials and equipment furnished by JCI will be of good quality and new; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work and Services will conform to the requirements of the Agreement Documents. JCI warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one year from the Installation Date and that its Services will be free from defects in workmanship, design, and material until the end of the Term, or for one year, whichever is earlier. Upon written notice from the Customer, JCI shall, at its option, repair or replace the defective Work or re-perform defective Services. These warranties do not extend to any Work or Services that have been abused, altered, misused, or repaired by the Customer or third parties without the supervision of and prior written approval of JCI; or if JCI serial numbers or warranty date decals have been removed or altered. The Customer must promptly report any failure of the Equipment to JCI in writing. All replaced Equipment or parts become JCI's property.

THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE. Customer understands that JCI is a provider of services under this Agreement. JCI shall not be considered a merchant or a vendor of goods. If JCI installs or furnishes a piece of equipment under this Agreement, and that equipment is covered by a warranty from the manufacturer, JCI will transfer the benefits of that manufacturer's warranty to Customer if this Agreement with Customer terminates before the equipment manufacturer's warranty expires.

7. CLEANUP. JCI shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, JCI shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

8. SAFETY. JCI shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work or Services. JCI shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property.

9. HAZARDOUS MATERIALS. Unless specifically noted in Schedule 1, JCI's obligations expressly exclude any Work or Services of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of hazardous materials or substances, including but not limited to asbestos, lead or PCBs, in or on the premises in which JCI will be required to perform Work. The Customer warrants and represents that, to the best of the Customer's knowledge, there is no asbestos or other hazardous materials in the Customer's building(s) or other premises in which JCI will be required to perform Work that will in any way affect JCI's Work. Should JCI become aware of or suspect the presence of asbestos or other hazardous materials, JCI shall have the right to stop work in the affected area immediately and notify the Customer. The Customer will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. The Customer agrees to assume responsibility for any claims arising out of or relating to the presence of asbestos or other hazardous materials in the Customer's buildings or any premises in which JCI will be required to perform Work.

10. INSURANCE. Prior to commencing the Work, JCI shall provide a certificate of insurance with Contractor showing its insurance coverage's, and JCI shall maintain such insurance in full force and effect at all times until the Work and Services have been completed, in the following minimum amounts:

<table>
<thead>
<tr>
<th>COVERAGES</th>
<th>LIMITS OF LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workmen's Compensation Insurance or self insurance, including Employer's Liability</td>
<td>Statutory</td>
</tr>
</tbody>
</table>
Comprehensive General Liability Insurance, including Contractual

$5,000,000 One Occurrence
$5,000,000 Each Aggregate

Comprehensive Automobile Liability Insurance

$5,000,000 Combined Single Limit

The above limits are obtained through primary and excess policies.

The Customer shall be responsible for obtaining any builder's risk insurance and shall assume full responsibility for any risk of loss to the Work.

11. INDEMNITY. The Customer assumes all risk and liability for the use, operation, and storage of the Equipment, and for injuries or death to persons or damage to property arising out of the use, operation, or storage of the Equipment, except for any injuries or death to persons or damage to property caused by the negligence of JCI, its employees, agents or assigns. The Customer shall indemnify and hold harmless JCI, its employees, agents, and assigns from and against all claims, actions, damages, liabilities, and expenses, including attorney's fees, arising out of or related to this Agreement, except for injuries or death to persons or damage to property caused by the negligence of JCI, its employees, agents or assigns.

JCI shall indemnify and hold harmless the Customer, its employees, agents, and assigns against all claims, actions, damages, liabilities, and expenses, including attorney's fees, arising out of or related to any claims of patent infringement and any claims of construction or materialman's lien made by any subcontractor or materialman. JCI and the Customer agree that JCI shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligence act or omission of JCI. The obligations of JCI and of the Customer under this paragraph are further subject to paragraph 12 below.

12. LIABILITY AND FORCE MAJEURE. Neither JCI nor the Customer will be responsible to the other for any special, indirect, or consequential damages arising in any manner from the Work or Services. Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: acts of God; acts of Government agencies; strikes; labor disputes; fire; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; or unavailability of parts, materials or supplies. If this Agreement covers fire safety or security equipment, the Customer understands that JCI is not an insurer regarding those services. JCI shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to perform properly or fails to prevent a casualty loss. JCI is also not responsible for any injury, loss, or damage caused by equipment that is not Covered Equipment, as defined in Schedule 3.

13. JCI'S PROPERTY. All materials furnished by and used by JCI personnel and/or JCI authorized subcontractors or agents at the installation site, including documentation, schematics, test equipment, software, and associated media remain the exclusive property of JCI. The Customer agrees not to use such materials for any purpose at any time. The Customer agrees to allow JCI personnel and/or JCI authorized subcontractors or agents to retrieve and to remove all such materials remaining after installation or maintenance operations have been completed. The Customer acknowledges that all JCI software included is proprietary and will be delivered only under the provisions of an appropriate Software License Agreement that will limit its use to the system purchased under this Agreement.

14. DISPUTES. If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation, and mediation if negotiation efforts fail. All disputes not resolved by negotiation or mediation shall be resolved in a court of competent jurisdiction. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of the dispute.

15. MODIFICATIONS. Additions, deletions, and modifications to this Agreement may be made upon the mutual agreement of the parties in writing. The parties contemplate that such modifications may include but are not limited to the installation of additional improvement measures, energy conservation measures, facility improvement measures, and operational efficiency improvements or furnishing of additional services within the identified facilities, as well as other facilities owned or operated by the Customer. These
modifications may take the form of additional phases of work or modifications to the original scope of Work or Services.

16. NOTICES. All notices or communications related to this Agreement shall be in writing and shall be deemed served if and when sent by facsimile or mailed by certified or registered mail to JCI at the address listed on page 1 of this Performance Contract and to JCI, ATTN: General Counsel - Controls, 507 East Michigan Street, Milwaukee, Wisconsin, 53202, and to Customer at the address listed on page 1 of this Performance Contract.

17. ADDITIONAL TERMS.

A. Any failure of one party to require strict performance by the other, or any waiver by one party of any requirement under this Agreement, does not consent to or waive any subsequent failure or breach by the other.

B. If any provision of this Agreement is invalid under any applicable law, that provision shall not apply, but the remaining provisions shall apply as written.

C. The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.

D. This Agreement is the full Agreement between JCI and the Customer as of the date it is signed. All previous conversations, correspondence, agreements, or representations related to this Agreement (including any Project Development Agreement) are not part of the Agreement between JCI and the Customer and are superceded by this Agreement.

E. This Agreement shall be construed in accordance with the laws of the state of the principal place of Business of the Customer at the time of the execution of this Agreement. Venue for any legal action shall be Tulare County, California.

F. If there is more than one Customer named in this Agreement, the liability of each shall be joint and several.

NOTICE: JCI MAKES NO WARRANTIES AS TO THE EQUIPMENT EXCEPT AS SET FORTH ABOVE.

CUSTOMER: CITY OF PORTERVILLE

Signature: ____________________________

Printed Name: Pete V. McCracken

Title: Mayor

Date: September 29, 2009

JOHNSON CONTROLS, INC.

Signature: ____________________________

Printed Name: ____________________________

Title: ____________________________

Date: ____________________________
SCOPE OF WORK

This project consists of various facility improvement measures (FIM) involving modifications and upgrades to the existing systems presently in operation at the City of Porterville. This summary is a retrofit to existing systems, the project scope and responsibility involves only those services that involve the modifications themselves. JCI does not accept responsibility for existing conditions (known or unknown) associated with those systems affected, providing that these existing conditions do not prevent the specific modifications and upgrades identified in the following scope from performing as intended.

JCI will also provide assistance during the installation period on the utility incentive application process and the required reporting for Federal ARRA funds. Utility incentive applications will be completed and filed on the customer's behalf, and measure documentation will also be provided during the review process. Depending on the specific requirements for each, a representative from City of Porterville may be needed to assist for both the utility application and annual reporting for ARRA.

Prior to commencement of the Scope of Work herein, JCI and the City of Porterville, will jointly conduct a verification to validate existing improvements that are currently identified in the Scope of Work and have already been completed by the City. Adjustments to the contract will be made to reconcile for previously installed items.

<table>
<thead>
<tr>
<th>FACILITY IMPROVEMENT MEASURES</th>
<th>Scope of Work Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site</td>
<td>Lighting Improvements</td>
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<tr>
<td>Airport (Admin Building)</td>
<td>X</td>
</tr>
<tr>
<td>City Corporate Yard</td>
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<td>City Hall</td>
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<td>Community Center</td>
<td>X</td>
</tr>
<tr>
<td>Computer Building</td>
<td>X</td>
</tr>
<tr>
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</tr>
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</tr>
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</tr>
<tr>
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<td>X</td>
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<td>Library</td>
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<tr>
<td>Murry Park</td>
<td>X</td>
</tr>
<tr>
<td>Police Department</td>
<td>X</td>
</tr>
<tr>
<td>Sports Complex</td>
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<tr>
<td>Zalud Park</td>
<td>X</td>
</tr>
<tr>
<td>Veterans Park</td>
<td>X</td>
</tr>
</tbody>
</table>

Johnson Controls, Inc. Initials: ____________________

Performance Contract [Rev 15] 0408
Johnson Controls, Inc. – Proprietary
© 2008 Johnson Controls, Inc.
1. Facility Lighting Improvements

Project Description:

This Measure will upgrade existing lighting systems using a combination of energy-efficient lamps, high-efficiency ballasts, reflectors, and, in some cases, fixture replacements. Electrical usage, along with air-conditioning load will be reduced through the installation of energy-efficient equipment. A new lighting technology is available which operates the fluorescent bulbs at a higher temperature, more closely approaching the "natural" color rendition provided by sunlight. This lighting source provides improved efficiency by stimulating the eyes' photoreceptors, resulting in increased visual acuity. In addition, the higher temperature bulbs use 26 watts of energy, compared to the 32 watts consumed by the traditional T8 bulb. Indoor lighting will be improved while reducing energy expenditures.

Many of the buildings or areas within buildings were found to contain standard T12 fluorescent lighting fixtures with magnetic ballasts. The data collected during the survey confirmed the accuracy of the overall facility lighting survey in the attachments. The lighting equipment varies in age and condition. Fluorescent fixtures were assessed to determine the work necessary to convert them to a more efficient lamp and ballast. Table below lists the buildings surveyed by Johnson Controls for this Initial Proposal.

The goal of the proposed lighting system is to achieve appropriate usable light levels for the distinct needs of a multitude of lighting configurations located in workplace and public access areas. This FIM proposes to upgrade existing lighting systems through the installation of low Wattage energy-efficient lamps, low ballast factor electronic ballasts, new compact fluorescent fixtures and fixture retrofit/conversion kits. Areas that already employ 2-lamp energy-efficient 32-Watt lighting systems are to be re-lamped with more energy efficient T-8 lamps and re-ballasted with multi-volt super efficient electronic ballast. Older T-12 lamps will also be replaced with the same energy efficient T-8 lamp and ballast combination. This FIM will improve the energy efficiency of the existing T-8 and T-12 fixtures. The general quality of lighting will be increased by improving the color rendition index (CRI) of the system, maintaining appropriate usable levels of lighting, and reductions to the existing lighting system maintenance costs. The proposed lighting retrofit will result in light levels that meet or exceed existing usable levels in most areas.

The improvements will also include installation of compact fluorescent lamps. Lamps installed in exterior fixtures will contain amalgam for better performance in cold temperatures. The following paragraphs describe the typical retrofits to be implemented and the approach to be used:

Ballast: The new fluorescent lighting system will consist of ballasts that have a UL listing and are type CC anti-arc rating. The lamps will also have anti-striation technology that eliminates lamp striation (lamp strobe). In addition the advanced electronic circuit board on the ballast is parallel wired so if one lamp burns out the other stays lit, helping to accurately identify the proper maintenance issue. This ballast also is multi-volt (120-277 volt), which helps standardize ballast stock by reducing voltage specific ballast types. It also has a five-year manufacturer's warranty and total harmonic distortion rating of less than 20%. The rated life expectancy of this ballast is 100,000 hours at 60 degrees Celsius (140 F).

Lamps: The proposed 25-Watt T-8 lamps have a rated life of up to 30,000 hours at 12 hours per start and 24,000 hours at 3 hours per start. It has lumen maintenance of over 95%. These T-8
lamps also provide superior energy efficiency and better color rendering index when compared to conventional T-8 and T-12 lamps. The lamps installed through this project will have more usable lumens and longer life than other T-8 lamps readily available in the marketplace. In addition, due to the longer rated life and the ability of the T-8 tri-phosphor lamp to maintain its lumen levels longer, there are ongoing operations and maintenance savings attributable to this project.

The lighting retrofit / replacement scope will be implemented in the following quantities:

<table>
<thead>
<tr>
<th>Site</th>
<th>New Fixtures</th>
<th>Retrofits</th>
<th>Sensors</th>
<th>No Change</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Hall</td>
<td>11</td>
<td>340</td>
<td>32</td>
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<td>25</td>
<td>310</td>
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<tr>
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<td>46</td>
<td>10</td>
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<td>9</td>
<td>7</td>
<td>1</td>
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</table>

| Total               | 211          | 1,538     | 145     | 288       | 2,120 |

**Incandescent Fixtures:** Incandescent fixtures will be retrofitted or replaced with comparable compact fluorescent lamps and/or fixtures. The exterior lamps will have amalgam in the lamp to help start and maintain light levels in colder exterior temperatures.

**Exit Signs:** The exit signs with incandescent lamps will be replaced with new LED exit signs that include battery back up. Included in above New Fixture Quantities.
2. Heating, Ventilation and Air-Conditioning Upgrades

**Project Description:**

This measure upgrades the existing heating, ventilating, and air-conditioning (HVAC) systems in the Police Station and City Hall to achieve improved efficiency as well provide increased comfort. Currently, the City Hall has (15) HVAC units and the Police Station has (2) Variable Air Volume (VAV) Air Handling Units (AHU) with (28) VAV terminal units. The systems will improve the comfort by thermostatic control for each unit by modulating the amount of air supplied. Savings will be realized with high-efficiency units and better control during unoccupied periods.

The existing City Hall HVAC system utilizes multiple rooftop gas heating electric cooling units. The systems serving the older portion of the building has much of its air distribution exposed on the roof with many restrictive fittings. The newer portion of the building has its air distribution in the attic space with some areas inaccessible behind sheet rock ceilings. The existing controls use mechanical thermostats with manual bypass timers and a building time clock for scheduling.

The Police Station HVAC system utilizes a gas fired boiler, a small stand alone gas heating and electric cooling unit, as well as a large rooftop electric cooling VAV unit with VAV terminals and VAV terminals with hot water reheat. The existing controls use pneumatic thermostats, dampers, and controllers and a building time clock for scheduling.

Since all of the HVAC for both facilities have well exceeded their useful life, maintenance personnel have stated that the units have been failing and have comfort issues for the occupants. In addition, the systems are inherently inefficient and beyond the average age of a typical system.

Energy savings for both facilities will be achieved by increased efficiency of the heating and cooling equipment, as well as improved space control. Both facilities will improve occupant comfort and save energy by increasing system performance through improved air distribution and temperature control.

The new HVAC system will be installed and connected to the existing air distribution wherever feasible, replacing or redesigning the restrictive fittings. The new system will consist of (12) new gas/electric rooftop package units, and (3) zoning systems with bypass dampers. The scope shall include the new units, factory economizers, curbs and accessories, ductwork and removal of condensate removal as needed and integrated electronic controls.
City Hall Detail Description

See the following for a detailed description of the work to be performed in each of the zones designated in drawing M-2.

**Zone 1 – Clerical:**
Remove the existing (2) a/c units and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing rooftop air distribution, electrical, and plumbing, install a new supply air smoke detector, new web based controls, air balance, and start up. The majority of the work will be on the roof and will be minimally disruptive.

**Zone 2 – City Manager:**
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration, electrical, and plumbing; install a new air distribution system, install a new supply air smoke detector, new web based controls with a four zone damper system, air balance, and start up. The majority of the work will be in the occupied area and the disruption will last 5 days.

**Zone 3 – Employee:**
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration and air distribution, electrical, and plumbing, install a new supply air smoke detector, new web based controls, air balance, and start up. The majority of the work will be on the roof and will be minimally disruptive.

**Zone 4 – City Planner:**
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration and air distribution, electrical, and plumbing, install a new supply air smoke detector, new web based controls, air balance, and start up. The majority of the work will be on the roof and will be minimally disruptive.

**Zone 5 – Accounting:**
Remove the existing (3) a/c units and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; add a new roof penetration for a new air distribution system, new supply air smoke detector, new web based controls with a seven zone damper system, new electrical and plumbing, air balance, and start up. The majority of the work will be in the occupied area and the disruption will last 15 days.

**Zone 6 – Council Chambers:**
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration, electrical, and plumbing, install a new air distribution system, install a new supply air smoke detector, new web based controls with a two zone damper system, air balance, and start up. Some of the work will be in the occupied area and the disruption will last 5 days.

The two zone damper system will allow for independent comfort and the new rooftop ductwork will increase overall airflow to the space.
Zone 7 – Conference:
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration and air distribution, electrical, and plumbing, install a new supply air smoke detector, new web based controls, air balance, and start up. The majority of the work will be on the roof and will be minimally disruptive.

Zone 8 – Planning & Engineering:
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration and air distribution, electrical, and plumbing, install a new supply air smoke detector, new web based controls, air balance, and start up. The majority of the work will be on the roof and will be minimally disruptive.

Zone 9 – City Engineer:
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration, electrical, and plumbing, install a new air distribution system, a new supply air smoke detector, new web based controls with a four zone damper system, air balance, and start up. The majority of the work will be in the occupied area and the disruption will last 5 days.

Zone 10 – Parks & Leisure:
Remove the existing a/c unit with exposed ductwork and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration, electrical, and plumbing, install a new air distribution system in a very tight space, install a new supply air smoke detector, new web based controls with a three zone damper system, air balance, and start up. The majority of the work will be in the occupied area and the disruption will last 10 days.

Zone 11 – Public Lobby: (zone is not included)
The scope of work has already been completed.

Zone 12 – Building 7 Public Works:
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb and accessories; reconnect to the existing roof penetration and air distribution, electrical, and plumbing, install a new supply air smoke detector, new web based controls, air balance, and start up. The majority of the work will be on the roof and will be minimally disruptive.
Police Station Detail Description

See the following for a detailed description of the work to be performed in each of the zones designated in drawing M-0.

**Boiler:**
Replace the pneumatic controls with electronic digital controls, check and set the temperature reset based on outside air temperature, start/stop scheduling, retro-commission sequence of operation, observe gas train and pump operation, and prepare a start up report. The majority of the work will be in the boiler room and will be minimally disruptive.

**Small Unit (4 Ton):**
Remove the existing a/c unit and install (1) new rooftop unit with a factory dual input enthalpy economizer, curb adapter and accessories; reconnect to the existing roof penetration and install a new air distribution smoke detector, new web based controls, air balance, and start up. The majority of the work will be on the roof and will be minimally disruptive.

**Large Unit (60 Ton):**
Remove the existing a/c unit and install (1) new rooftop unit with a factory power exhaust economizer, static pressure control, soft start, curb adapter and accessories; reconnect to the existing roof penetration and air distribution, new web based controls, air balance, and start up. The majority of the work will be on the roof and will be minimally disruptive.

**VAV Terminals:**
Replace the pneumatic controls at the terminals and room sensors with electronic digital controls, set terminal min/max positions, air balance, and start up. The majority of the work will be in the occupied area and the disruption will last 45 days.

**General:**

1) Demolition
   A. Lock-out and tag-out electrical power to all affected equipment.
   B. Remove and dispose of (14) rooftop a/c units including a portion of the air distribution systems. Preserve enough of the existing ductwork for connection to the new units. Patch and seal any unused openings.
   C. Remove all of the existing HVAC control systems. Time clock, bypass timers, thermostats and wiring.
   D. Recover all refrigerant and oil, recycle or dispose of in compliance with EPA guidelines.

2) Retrofit
   A. See the attached a/c unit boundary sketch for the areas affected and the individual zones created. The new rooftop units will be ducted to the existing branch air distribution whenever possible and new ductwork added for each unit to serve the areas shown. All duct connections to new equipment shall be installed with flexible connections and sun shields.
   B. All interior ductwork shall be R-6 flexible duct and hard sheet metal duct with insulation over wrap for 20” ducts and larger.
   C. The main lobby area will have a new high wall ductless split system added for supplemental capacity. The addition of a ceiling access door is required as well.
D. Furnish and install new HVAC units sized as per the attached HVAC load summary
   schedule. All rooftop units shall be York. All units will have dual input enthalpy outside air
   economizers, and supply air smoke detectors for fan shut down.

3) Controls will be "Metasys" with unit mounted controllers and room sensors. The new controls
   shall communicate with a web based facility manager allowing system access from a web
   browser.

4) Install new or extend the existing electrical and plumbing for the new units.

5) The new units shall be installed in four phases to minimize system downtime. The phases
   and scheduling will be coordinated with our project manager and the owner.

6) The final HVAC engineering, drawings, and energy compliance documentation for
   mechanical plan check will be JCI's responsibility. This will also include plumbing (gas and
   condensate) as well as electrical (power and control) drawings and details.

7) All work to be performed during normal business hours and will require some disruption to
   the office work in both the public and private areas of the building. Careful consideration will
   be given to avoid conflicts with special office events.

8) Provide a complete system start-up, testing, and air balance report.

9) The proposed HVAC equipment has a 1 year warranty.

Exclusions

- Sight Screens and Burglar Bars
- Structural and Seismic modifications
- Code upgrades
- Fire or Combination fire/smoke dampers
- Overtime Labor Premium
3. Water Conservation Improvements

This measure replaces the existing domestic and irrigation water fixtures with more water-efficient fixtures. The intent of this measure is to reduce water consumption. The scope of work includes the one-for-one replacement of existing domestic water fixtures in bathrooms and includes the following equipment:

- Replace nine-teen (19) existing 3.0 gallons per flush (gpf) tank type toilets with new 1.6 gpf tank-type toilets.
- Replace or retrofit thirty-six (36) existing Flushometer type toilets with new 1.6 gpf type.
- Retrofit twenty-three (23) existing 1.5 gpf urinal flush valves with 1.0 gpf type.
- Replace twenty-three (23) existing shower heads with 2.0 gpm type.
- Retrofit seventy-one (71) existing 1.33 gpm faucets with 0.5 gpm flow moderator.
- Replace twelve (12) existing irrigation stations with automatic stations.

<table>
<thead>
<tr>
<th>Site</th>
<th>Tank Type Toilets</th>
<th>Flush Valve Toilets</th>
<th>Urinals</th>
<th>Showers</th>
<th>Faucets</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
<td>9</td>
<td>4</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Golf Course</td>
<td>4</td>
<td></td>
<td>1</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Library</td>
<td></td>
<td>4</td>
<td>2</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Murry Park</td>
<td></td>
<td>9</td>
<td>2</td>
<td></td>
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</tr>
<tr>
<td>Police Department</td>
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<td><strong>14</strong></td>
<td><strong>11</strong></td>
<td><strong>29</strong></td>
</tr>
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</table>
Irrigation Modifications and Upgrades

Project Description:

The goal of the project is to reduce unnecessary watering by integrating weather stations and a central control unit into the existing irrigation systems via wireless communication and control.

There are currently a variety of manufacturers and models of controllers utilized by the City of Porterville. The controller details, including the number of zones is shown in the table below.

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<thead>
<tr>
<th>Site</th>
<th>Controllers</th>
<th>Valves</th>
</tr>
</thead>
<tbody>
<tr>
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<td>4</td>
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<td>Golf Course</td>
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<td>96</td>
</tr>
<tr>
<td>Murry Park</td>
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<td>9</td>
</tr>
<tr>
<td>Police Department</td>
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<td>12</td>
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<td>Sports Complex</td>
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<td>36</td>
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<tr>
<td>Veterans Park</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>351</strong></td>
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</tbody>
</table>

Irrigation Control Upgrades

Irrigation systems that are over five years old are often candidates for control system upgrades. These system changes include the installation of integrated control systems that allow the communication of field controllers to centralized computers. It also provides for the installation of an evapo-transpiration (ET) gage. The evapo-transpiration figure is the primary irrigation adjustment tool, and is the irrigation industry accepted method for calculating water needs by plants by measuring the evaporation (water loss from sun exposure), and transpiration (water loss through plant use).

Each day the weather station will indicate weather conditions and then adjust the frequency of irrigation watering, reducing water waste. In addition, the system can remotely and automatically turn off all systems when an adequate level of rain for plant use has accumulated.

For the City of Porterville project, the Rain Master Evolution system will be installed. This is due to the investment in Rain Master that has already been made by the City at the Sports Complex and Heritage Center.
Schedule 1

Below is a Rain Master communications schematic showing the typical components included in the installation.

As part of this project the existing irrigation controllers will either be retrofit or replaced to allow for the communication to a central computer as shown in the communications schematic. Further detail associated with the scope of work at each site is provided in attachment section.
ASSURED PERFORMANCE GUARANTEE

I. PROJECT BENEFITS

A. Certain Definitions. For purposes of this Agreement, the following terms have the meanings set forth below:

Annual Project Benefits are the portion of the projected Total Project Benefits to be achieved in any one year of the Guarantee Term.

Annual Project Benefits Realized are the Project Benefits actually realized for any one year of the Guarantee Term.

Annual Project Benefits Shortfall is the amount by which the Annual Project Benefits exceed the Annual Project Benefits Realized in any one year of the Guarantee Term.

Annual Project Benefits Surplus is the amount by which the Annual Project Benefits Realized exceed the Annual Project Benefits in any one year of the Guarantee Term.

Baseline is the mutually agreed upon data and/or usage amounts that reflect conditions prior to the installation of the Improvement Measures as set forth in Section IV below.

Guarantee Term will commence on the first day of the month next following the Substantial Completion date and will continue through the duration of the M&V Services, subject to earlier termination as provided in this Agreement.

Installation Period is the period beginning on JCI's receipt of Customer's Notice to Proceed and ending on the commencement of the Guarantee Term.

Measured Project Benefits are the utility savings and cost avoidance calculated in accordance with the methodologies set forth in Section III below.

Non-Measured Project Benefits are identified in Section II below. The Non-Measured Project Benefits have been agreed to by Customer and will be deemed achieved in accordance with the schedule set forth in the Total Project Benefits table below. Customer and JCI agree that: (i) the Non-Measured Project Benefits may include, but are not limited to, future capital and operational costs avoided as a result of the Work and implementation of the Improvement Measures, (ii) achievement of the Non-Measured Project Benefits is outside of JCI's control, and (iii) Customer has evaluated sufficient information to conclude that the Non-Measured Project Benefits will occur and bears sole responsibility for ensuring that the Non-Measured Project Benefits will be realized. Accordingly, the Non-Measured Project Benefits shall not be measured or monitored by JCI at any time during the Guarantee Term, but rather shall be deemed achieved in accordance with the schedule set forth in the Total Project Benefits table below.

Project Benefits are the Measured Project Benefits plus the Non-Measured Project Benefits to be achieved for a particular period during the term of this Agreement.

Total Project Benefits are the projected Project Benefits to be achieved during the entire term of this Agreement.

B. Project Benefits Summary. Subject to the terms and conditions of this Agreement, JCI and Customer agree that Customer will be deemed to achieve a total of $0, in Non-Measured Project Benefits and JCI guarantees that Customer will achieve a total of $1,450,187 in Measured Project Benefits during the term of this Agreement, for Total Project Benefits of $1,450,187, as set forth in the Total Project Benefits table below.
### Total Project Benefits

<table>
<thead>
<tr>
<th>Year</th>
<th>Utility Cost Avoidance*</th>
<th>Operations &amp; Maintenance Cost Avoidance**</th>
<th>Future Capital Cost Avoidance**</th>
<th>Annual Project Benefits</th>
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<td>$0</td>
<td>$1,450,187</td>
</tr>
</tbody>
</table>

*Utility Cost Avoidance is a Measured Project Benefit. Utility Cost Avoidance figures in the table above are based on anticipated increases in unit energy costs as set forth in the table in Section IV below.

** Operations & Maintenance Cost Avoidance and Future Capital Cost Avoidance are Non-Measured Project Benefits. Operations & Maintenance Cost Avoidance and Future Capital Cost Avoidance figures in the table above are based on a mutually agreed fixed annual escalation rate of five percent (5%).

***It should be noted that currently a four year measurement and verification (M&V) term is included in this agreement, and consequently only the first four years of the annual project benefits will be guaranteed because the M&V cost is not included beyond year four. If desired, the M&V services can be extended beyond the initial four year term at the customer's discretion and the guarantee will be extended over that term.

Within sixty (60) days of the commencement of the Guarantee Term, JCI will calculate the Measured Project Benefits achieved during the Installation Period plus any Non-Measured Project Benefits applicable to such period and advise Customer of same. Any Project Benefits achieved during the Installation Period may, at JCI's discretion, be allocated to the Annual Project Benefits for the first year of the Guarantee Term. Within sixty (60) days of each anniversary of the commencement of the Guarantee Term, JCI will calculate the Measured Project Benefits achieved for the applicable year plus any Non-Measured Project Benefits applicable to such period and advise Customer of same.

**Customer acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services in accordance with Schedule 4, (iii) fails to fulfill any of its responsibilities necessary to enable JCI to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this Agreement, the Assured Performance Guarantee shall automatically terminate and JCI shall have no liability hereunder.**

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Johnson Controls, Inc. Initiials: ___________  Customer Initials: ___________
C. Project Benefits Shortfalls or Surpluses.

(i) **Project Benefits Shortfalls.** If an Annual Project Benefits Shortfall occurs for any one year of the Guarantee Term, JCI shall, at its discretion and in any combination, (a) set off the amount of such shortfall against any unpaid balance Customer then owes to JCI, (b) where permitted by applicable law, increase the next year's amount of Annual Project Benefits by the amount of such shortfall, (c) pay to Customer the amount of such shortfall, or (d) subject to Customer's agreement, provide to Customer additional products or services, in the value of such shortfall, at no additional cost to Customer.*

(ii) **Project Benefits Surpluses.** If an Annual Project Benefits Surplus occurs for any one year of the Guarantee Term, JCI may, at its discretion and in any combination, (a) apply the amount of such surplus to set off any subsequent Annual Project Benefit Shortfall during the Guarantee Term, or (b) bill Customer for the amount of payments made pursuant to Section C(i)(c) above and/or the value of the products or services provided pursuant to clause C(i)(d) above, in an amount not to exceed the amount of such surplus.*

(iii) **Additional Improvements.** Where an Annual Project Benefits Shortfall has occurred, JCI may, subject to Customer's approval (which approval shall not be unreasonably withheld, conditioned, or delayed), implement additional Improvement Measures, at no cost to Customer, which may generate additional Project Benefits in future years of the Guarantee Term.

*In the event JCI is providing an Assured Performance Guarantee under Schedule 2 and Schedule 2A, Annual Project Benefits Shortfalls and Annual Project Benefits Surpluses under each such Schedule shall be reconciled against one another.
II. NON-MEASURED PROJECT BENEFITS

There are no non-measured project benefits proposed for this project.

Customer has furnished the foregoing information to JCI, which information forms the basis of the Non-Measured Project Benefits. Customer agrees that the Non-Measured Project Benefits are reasonable and that the installation of the Improvement Measures will enable Customer to take actions that will result in the achievement of such Non-Measured Project Benefits.
III. MEASUREMENT AND VERIFICATION METHODOLOGIES

The following is a brief overview of the measurement and verification methodologies applicable to the Improvement Measures set forth below. JCI shall apply these methodologies, as more fully detailed in the guidelines and standards of the International Measurement and Verification Protocol (IPMVP) and/or the Federal Energy Management Program (FEMP), in connection with the provision of M&V Services hereunder.

M&V methods proposed for the FIM technology categories in this project scope are as follows:

<table>
<thead>
<tr>
<th>Proposed M&amp;V Methods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility Improvement Measure</td>
</tr>
<tr>
<td>Lighting Improvements</td>
</tr>
<tr>
<td>HVAC Improvements</td>
</tr>
<tr>
<td>Water Conservation Improvements</td>
</tr>
</tbody>
</table>

In Section IV, Measurement and Verification Services, a detailed description of the scope of work for this project is listed by measure.

Option A
Partially Measured Retrofit Isolation

Measured Project Benefits are determined by partial field measurement of the energy use of the system(s) to which an Improvement Measure was applied separate from the energy use of the rest of the facility. Measurements will be short-term with only one-time measurements before and after the Installation Period.

Partial measurement means that some but not all parameters will be measured. Careful review of the design and installation of Improvement Measures is intended to demonstrate that the stipulated values fairly represent the probable actual values. Agreed-upon values will be shown in the measurement and verification plan, along with analysis of the significance of the error they may introduce. Engineering calculations using short-term pre and post-retrofit measurements and stipulations are used to calculate Measured Project Benefits for the duration of the Guarantee Term.

All measures installed under this agreement will utilize an Option A M&V methodology. The details of the M&V plan are listed below for each measure.
Option B
Retrofit Isolation

Measured Project Benefits are determined by field measurement of the energy use of the systems to which an Improvement Measure was applied separate from the energy use of the rest of the facility. Short-term, long-term or continuous measurements are taken throughout the pre and post-retrofit periods. Engineering calculations using short term, long-term or continuous pre and post-retrofit measurements are used to calculate the Measured Project Benefits for the duration of the Guarantee Term.

Option B was not a selected M&V method for this project.

Option C
Whole Facility

Option C involves use of utility meters or whole building sub-meters to assess the energy performance of a total building. Option C assesses the impact of any type of Improvement Measure, but not individually if more than one is applied to an energy meter. This option determines the collective Measured Project Benefits of all Improvement Measures applied to the part of the facility monitored by the energy meter. Also, since whole building meters are used, Measured Project Benefits reported under Option C include the impact of any other change made in facility energy use (positive or negative).

Option C was not a selected M&V method for this project.

Option D
Calibrated Simulation

Option D involves the use of computer simulation software to predict energy use. Such simulation model must be "calibrated" so that it predicts an energy use and demand pattern that reasonably matches actual utility consumption and demand data from either the base-year or a post-retrofit year.

Option D may be used to assess the performance of all Improvement Measures in a facility, akin to Option C. However, different from Option C, multiple runs of the simulation tool in Option D allow estimates of the Measured Project Benefits attributable to each Improvement Measure within a multiple Improvement Measure project.

Option D may also be used to assess just the performance of individual systems within a facility, akin to Options A and B. In this case, the system’s energy use must be isolated from that of the rest of the facility by appropriate meters.

Option D was not a selected M&V method for this project.

CHANGES IN USE OR CONDITION; ADJUSTMENT TO BASELINE AND/OR ANNUAL PROJECT BENEFITS

Customer agrees to notify JCI, within fourteen (14) days, of (i) any actual or intended change, whether before or during the Guarantee Term, in the use of any facility, equipment, or Improvement Measure to which this Schedule applies; (ii) any proposed or actual expansions or additions to the premises or any building or facility at the premises; (iii) a change to utility services to all or any portion of the premises; or (iv) any other change or condition arising before or during the Guarantee Term that reasonably could be expected to change the amount of Project Benefits realized under this Agreement.

Johnson Controls, Inc. Initials: _______________                      Customer Initials: _______________
Such a change, expansion, addition, or condition would include, but is not limited to: (a) changes in the primary use of any facility, Improvement Measure, or portion of the premises; (b) changes to the hours of operation of any facility, Improvement Measure, or portion of the premises; (c) changes or modifications to the Improvement Measures or any related equipment; (d) changes to the M&V Services provided under this Agreement; (e) failure of any portion of the premises to meet building codes; (f) changes in utility suppliers, utility rates, method of utility billing, or method of utility purchasing; (g) insufficient or improper maintenance or unsound usage of the Improvement Measures or any related equipment at any facility or portion of the premises (other than by JCI); (h) changes to the Improvement Measures or any related equipment or to any facility or portion of the premises required by building codes or any governmental or quasi-governmental entity; or (i) additions or deletions of Improvement Measures or any related equipment at any facility or portion of the premises.

Such a change or condition need not be identified in the Baseline in order to permit JCI to make an adjustment to the Baseline and/or the Annual Project Benefits. If JCI does not receive the notice within the time period specified above or travels to either Customer's location or the project site to determine the nature and scope of such changes, Customer agrees to pay JCI, in addition to any other amounts due under this Agreement, the applicable hourly consulting rate for the time it took to determine the changes and to make any adjustments and/or corrections to the project as a result of the changes, plus all reasonable and documented out-of-pocket expenses, including travel costs. Upon receipt of such notice, or if JCI independently learns of any such change or condition, JCI shall calculate and send to Customer a notice of adjustment to the Baseline and/or Annual Project Benefits to reflect the impact of such change or condition, and the adjustment shall become effective as of the date the change or condition first arose. Should Customer fail to promptly provide JCI with notice of any such change or condition, JCI may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition, and such estimates shall be conclusive.
IV. BASELINE CALCULATIONS AND UTILITY RATES

The unit utility costs for the Baseline period are set forth below as "Base Utility Cost" and shall be used for all calculations made under this Schedule. The Base Utility Cost shall be escalated annually by the actual utility cost escalation but such escalation shall be no less than the mutually agreed "floor" escalation rate of five percent (5%). The Base Utility Cost for each type of utility represents the 12 month average utility costs from October 1, 2005 through September 30, 2006. The water baseline period is from January 1, 2006 to December 31, 2006.

### Utility Baselines October 1, 2005 – September 30, 2006

<table>
<thead>
<tr>
<th>Site</th>
<th>Electricity</th>
<th>Natural Gas</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total kWh</td>
<td>Cost</td>
</tr>
<tr>
<td>Airport (Admin Building)</td>
<td>3,540</td>
<td>$ 673</td>
</tr>
<tr>
<td>City Corporate Yard</td>
<td>193,360</td>
<td>$ 30,208</td>
</tr>
<tr>
<td>City Hall</td>
<td>102,000</td>
<td>$ 21,763</td>
</tr>
<tr>
<td>Community Center</td>
<td>13,800</td>
<td>$ 2,627</td>
</tr>
<tr>
<td>Computer Building</td>
<td>4,908</td>
<td>$ 984</td>
</tr>
<tr>
<td>Fire Station No. One</td>
<td>115,120</td>
<td>$ 17,108</td>
</tr>
<tr>
<td>Fire Station No. Two</td>
<td>42,640</td>
<td>$ 6,976</td>
</tr>
<tr>
<td>Golf Course</td>
<td>56,508</td>
<td>$ 8,759</td>
</tr>
<tr>
<td>Heritage Center</td>
<td>139,120</td>
<td>$ 24,577</td>
</tr>
<tr>
<td>Library</td>
<td>114,360</td>
<td>$ 24,723</td>
</tr>
<tr>
<td>Murry Park</td>
<td>1,894</td>
<td>$ 436.62</td>
</tr>
<tr>
<td>Police Department</td>
<td>488,940</td>
<td>$ 63,515</td>
</tr>
</tbody>
</table>

### Utility Baseline January 1, 2006 - December 31, 2006

<table>
<thead>
<tr>
<th>Site</th>
<th>Water</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Existing Annual Metered Water Usage (gallons)</td>
</tr>
<tr>
<td>Airport (Admin Building)</td>
<td>2,355,452</td>
</tr>
<tr>
<td>City Corporate Yard</td>
<td>1,493,756</td>
</tr>
<tr>
<td>City Hall</td>
<td>652,256</td>
</tr>
<tr>
<td>Community Center</td>
<td>845,240</td>
</tr>
<tr>
<td>Fire Offices</td>
<td>Not Available</td>
</tr>
<tr>
<td>Fire Station No. One</td>
<td>258,808</td>
</tr>
<tr>
<td>Fire Station No. Two</td>
<td>531,828</td>
</tr>
<tr>
<td>Golf Course and Country Club</td>
<td>29,293,176</td>
</tr>
<tr>
<td>Heritage Center</td>
<td>1,279,080</td>
</tr>
<tr>
<td>Library</td>
<td>147,358</td>
</tr>
<tr>
<td>Murry Park</td>
<td>11,475,068</td>
</tr>
<tr>
<td>Police Department</td>
<td>1,176,604</td>
</tr>
<tr>
<td>Porterville Sports Complex</td>
<td>37,475,548</td>
</tr>
<tr>
<td>Theatre</td>
<td>602,140</td>
</tr>
<tr>
<td>Zalud House Museum</td>
<td>317,900</td>
</tr>
</tbody>
</table>

Johnson Controls, Inc. Initials: ___________________________  Customer Initials: ___________________________
% Annual Utility Costs Increase

The following table identifies the percentage increases that will be made to the amounts in the table for each succeeding year of the Guarantee.

<table>
<thead>
<tr>
<th>Year</th>
<th>Electric</th>
<th>Natural Gas</th>
<th>Water Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>2</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>3</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>4</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>5</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>6</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>7</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>8</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>9</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>10</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>11</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>12</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>13</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>14</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
<tr>
<td>15</td>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
</tr>
</tbody>
</table>
V. PRIMARY OPERATIONS SCHEDULE PRE & POST RETROFIT

Primary Operations Schedules Pre & Post Retrofit

Pre-Retrofit City Hall

<table>
<thead>
<tr>
<th></th>
<th>Lighting</th>
<th></th>
<th>HVAC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Time On</td>
<td>Time Off</td>
<td>Time On</td>
</tr>
<tr>
<td>Monday</td>
<td>0600</td>
<td>1900</td>
<td>0500</td>
</tr>
<tr>
<td>Tuesday</td>
<td>0600</td>
<td>1900</td>
<td>0500</td>
</tr>
<tr>
<td>Wednesday</td>
<td>0600</td>
<td>1900</td>
<td>0500</td>
</tr>
<tr>
<td>Thursday</td>
<td>0600</td>
<td>1900</td>
<td>0500</td>
</tr>
<tr>
<td>Friday</td>
<td>0600</td>
<td>1900</td>
<td>0500</td>
</tr>
<tr>
<td>Saturday</td>
<td>Off</td>
<td>Off</td>
<td>0500</td>
</tr>
<tr>
<td>Sunday</td>
<td>Off</td>
<td>Off</td>
<td>0500</td>
</tr>
<tr>
<td>Holidays</td>
<td>Off</td>
<td>Off</td>
<td>0500</td>
</tr>
</tbody>
</table>

Minimum room temperature during heating season: 70 to 72 degrees F

Heating season is October to April.

Maximum room temperature during cooling season: 72 to 74 degrees F

Cooling season is May to September.

Post-Retrofit City Hall

<table>
<thead>
<tr>
<th></th>
<th>Lighting</th>
<th></th>
<th>HVAC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Time On</td>
<td>Time Off</td>
<td>Time On</td>
</tr>
<tr>
<td>Monday</td>
<td>0600</td>
<td>1900</td>
<td>0600</td>
</tr>
<tr>
<td>Tuesday</td>
<td>0600</td>
<td>1900</td>
<td>0600</td>
</tr>
<tr>
<td>Wednesday</td>
<td>0600</td>
<td>1900</td>
<td>0600</td>
</tr>
<tr>
<td>Thursday</td>
<td>0600</td>
<td>1900</td>
<td>0600</td>
</tr>
<tr>
<td>Friday</td>
<td>0600</td>
<td>1900</td>
<td>0600</td>
</tr>
<tr>
<td>Saturday</td>
<td>Off</td>
<td>Off</td>
<td>Off</td>
</tr>
<tr>
<td>Sunday</td>
<td>Off</td>
<td>Off</td>
<td>Off</td>
</tr>
<tr>
<td>Holidays</td>
<td>Off</td>
<td>Off</td>
<td>Off</td>
</tr>
</tbody>
</table>

Minimum room temperature during heating season: 65 to 72 degrees F

Heating season is October to April.

Maximum room temperature during cooling season: 72 to 85 degrees F

Cooling season is May to September.
### Primary Operations Schedules Pre & Post Retrofit

**Pre-Retrofit Police Station**

<table>
<thead>
<tr>
<th>Day</th>
<th>Lighting</th>
<th>HVAC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Time On</td>
<td>Time Off</td>
</tr>
<tr>
<td>Monday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Tuesday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Wednesday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Thursday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Friday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Saturday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Sunday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Holidays</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
</tbody>
</table>

Minimum room temperature during heating season: 70 to 72 degrees F

Heating season is **October to April**.

Maximum room temperature during cooling season: 72 to 74 degrees F

Cooling season is **May to September**.

### Post-Retrofit Police Station

<table>
<thead>
<tr>
<th>Day</th>
<th>Lighting</th>
<th>HVAC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Time On</td>
<td>Time Off</td>
</tr>
<tr>
<td>Monday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Tuesday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Wednesday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Thursday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Friday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Saturday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Sunday</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>Holidays</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
</tbody>
</table>

Minimum room temperature during heating season: 70 to 72 degrees F

Heating season is **October to April**.

Maximum room temperature during cooling season: 72 to 74 degrees F

Cooling season is **May to September**.
VI. MEASUREMENT & VERIFICATION SERVICES

JCI will provide the M&V Services set forth below in connection with the Assured Performance Guarantee.

1. During the Installation Period, a JCI Performance Assurance Specialist will track Measured Project Benefits. JCI will report the Measured Project Benefits achieved during the Installation Period, as well as any Non-Measured Project Benefits applicable to the Installation Period, to Customer within 60 days of the commencement of the Guarantee Term.

2. The JCI Performance Assurance Engineer will also provide assistance during the installation period on the utility incentive application process. Applications will be completed and filed on the customer's behalf, and measure documentation will also be provided during the utility review process. Depending on the specific requirements of the utility incentive program, a customer representative may be needed to assist with the application process. The JCI Performance Assurance Engineer will coordinate with the designated customer representative.

3. Within 60 days of each anniversary of the commencement of the Guarantee Term, JCI will provide Customer with an annual report containing:
   A. an executive overview of the project's performance and Project Benefits achieved to date;
   B. a summary analysis of the Measured Project Benefits accounting; and
   C. depending on the M&V Option, a detailed analysis of the Measured Project Benefits calculations.

4. During the Guarantee Term, a JCI Performance Assurance Specialist will monitor the on-going performance of the Improvement Measures, as specified in the M&V plan, to determine whether anticipated Measured Project Benefits are being achieved. In this regard, the Performance Assurance Specialist will periodically assist Customer, on-site or remotely, with respect to the following activities:
   A. Perform an annual site visit to spot inspect the equipment installed under this agreement, and listed in the M&V plan attached below.
   B. Advise Customer's designated personnel of any performance deficiencies based on the results of the annual inspection, and will also include the information in the annual M&V report.
   C. Coordinate with Customer's designated personnel to address any performance deficiencies that affect the realization of Measured Project Benefits.
   D. Inform Customer of opportunities to further enhance project performance and of opportunities for the implementation of additional Improvement Measures.

5. For specified Improvement Measures utilizing an "Option A" M&V protocol, JCI will:
   A. Conduct pre and post installation measurements as required under this Agreement;
   B. Analyze actual as-built information and adjust the Baseline and/or Measured Project Benefits to conform to actual installation conditions (e.g., final lighting and water benefits calculations will be determined from the as-built information to reflect the actual mix of retrofits encountered during installation).

6. For specified Improvement Measures utilizing an "Option B" M&V protocol, JCI will:
   A. There are no measures utilizing Option B.

7. The project specific M&V plan is listed below:
Measurement and Verification Plan

Option A – Indoor Lighting Upgrades

1.1 OBJECTIVES

The objective of this M&V plan is to validate energy savings realized by implementing this indoor lighting upgrade at various buildings in the City of Porterville. This retrofit involves replacement of existing first generation T8 fluorescent lamps and electronic ballasts with the latest generation T8 lamps and electronic ballasts, per the lighting scope as defined in schedule 1. This retrofit will maintain the existing light level and/or conform to IES standard light level for the particular space usage as well as improve lighting quality. The reduction of energy consumption will also reduce greenhouse gas emissions, resulting in a healthier environment.

M&V Option A, (stipulated savings with one-time post-installation measurement) is proposed as the basis for this M&V plan.

1.2 PARAMETERS TO BE MONITORED

Pre- and post-installation measurements of fixture power draw (kW) and light levels (foot-candles) will be taken. After post-installation verification, no further measurements of this FIM will be required. Annual inspections will ensure the lighting retrofit remains in place and continues to operate. As long as lighting fixtures are verified to be operating correctly, the savings for this FIM will be equal to those predicted by the as-built survey spreadsheet.

1.3 SAMPLING PLAN

Sample size shall be determined based on FEMP M&V Guidelines Table D.2 in page 322, at 20% precision and 90% confidence level.
### Schedule 2

<table>
<thead>
<tr>
<th>Existing Fixture Type</th>
<th>Total Fixture Quantity (N)</th>
<th>Sample Size (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do Not Retrofit</td>
<td>287</td>
<td>N/A</td>
</tr>
<tr>
<td>EXIT Compact Fluorescent</td>
<td>14</td>
<td>Mfg Data</td>
</tr>
<tr>
<td>EXIT Incandescent</td>
<td>6</td>
<td>Mfg Data</td>
</tr>
<tr>
<td>Linear Fluorescent 1L2 - T12</td>
<td>1</td>
<td>N/A</td>
</tr>
<tr>
<td>Linear Fluorescent 1L3 - T12</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Linear Fluorescent 1L - T12</td>
<td>20</td>
<td>7</td>
</tr>
<tr>
<td>Linear Fluorescent 1L - T8</td>
<td>111</td>
<td>11</td>
</tr>
<tr>
<td>Linear Fluorescent 1LU - T12</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Linear Fluorescent 2L2 - T12</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Linear Fluorescent 2L5HO - T12</td>
<td>19</td>
<td>7</td>
</tr>
<tr>
<td>Linear Fluorescent 2L8SL - T12</td>
<td>107</td>
<td>11</td>
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<tr>
<td>Linear Fluorescent 2L - T12</td>
<td>399</td>
<td>11</td>
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<td>Linear Fluorescent 2L - T8</td>
<td>357</td>
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<td>Linear Fluorescent 2LU - T12</td>
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<tr>
<td>Linear Fluorescent 4L2 - T12</td>
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</tr>
<tr>
<td>Linear Fluorescent 4L - T12</td>
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<tr>
<td>Linear Fluorescent 4L - T8</td>
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<td>6</td>
</tr>
<tr>
<td>70-Watt High Pressure Sodium</td>
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</tr>
<tr>
<td>100-Watt Incandescent</td>
<td>55</td>
<td>Mfg Data</td>
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<tr>
<td>150-Watt Incandescent</td>
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<td>200-Watt Incandescent - DIM</td>
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</tr>
<tr>
<td>250-Watt Incandescent</td>
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<td>Mfg Data</td>
</tr>
<tr>
<td>300-Watt Incandescent</td>
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<tr>
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<tr>
<td>80-Watt Incandescent</td>
<td>89</td>
<td>Mfg Data</td>
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<td>Mfg Data</td>
</tr>
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<td>6</td>
</tr>
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<td>100-Watt Mercury Vapor</td>
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</tr>
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<td>175-Watt Mercury Vapor</td>
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</tr>
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<td>6</td>
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<tr>
<td>Motion Sensor</td>
<td>138</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Totals: 2142 148

### 1.4 DATA COLLECTION PLAN

#### 1.4.1 Data To Be Collected

A detailed room-by-room lighting audit was conducted to identify all the lighting fixtures/systems affected by this FIM. One-time pre- and post- spot measurements of fixture kW will be performed on a valid sample size of representative fixture types. Pre- and post- light level readings (in foot-candles) will be taken at representative spaces. Operating hours are stipulated based on site audits and data provided by The City of Porterville.

#### 1.4.2 Instrumentation and Metering Equipment

- Fluke 39 digital handheld power meter
- Handheld digital light meter

#### 1.4.3 Calibration of Equipment

Calibration certification will be submitted with the Post-Installation Report

#### 1.4.4 Data Gathering and Quality Control

All pertinent data collected will be presented in an Excel spreadsheet format and reviewed by JCI's LPDE.

#### 1.4.5 Period of Monitoring
No further measurements are required after post-installation acceptance of this FIM. An annual walkthrough inspection will be conducted to ensure the lighting retrofit remains in place and continues to operate. An annual report will be submitted to document the findings.

1.5. ANALYSIS METHOD

The formulae below are used to calculate lighting retrofit energy savings.

\[
\text{kWh Savings} = (\text{kW Pre} - \text{kW Post}) \times \text{Stipulated Operating Hours}
\]

\[
\text{kW Pre} = \text{kW prior to retrofit}
\]

\[
\text{kW Post} = \text{kW after the retrofit}
\]

Operating hours are stipulated throughout the Contract term.

1.6. PRE-INSTALLATION ENERGY AND FACILITY PERFORMANCE BASELINE

1.6.1 Equipment/Systems

A detailed audit of pre-installation lighting equipment/systems was conducted during the detailed study phase.

1.6.2 Baseline Energy Use

Baseline energy use and all affected fixture types were identified during the detailed study phase.

1.6.3 System Performance Factors

\[
\text{kW per fixture or kW per circuit.}
\]

1.7. POST-INSTALLATION FACILITY CONDITIONS

1.7.1 Equipment/Systems

Proposed retrofit and new equipment is identified in Attachment A, Lighting Upgrade Summary.

1.7.2 Post-Installation Energy Use

Energy use for the Post-Installation case was identified during the detailed study phase.

1.8. DETERMINATION OF ENERGY SAVINGS BASED ON THE SELECTED APPROACH

The lighting savings calculation spreadsheet will be updated to reflect as-built fixture types, quantities and post-installation fixture power reads. Energy savings will be determined by multiplying the as-built survey spreadsheet fixture quantities with the corresponding fixture wattages and operating hours. The result will be savings values for the Contract term. The savings value will escalate 5% per year from the Year One performance year forward for the Contract term as presented in the Contract. If significant changes made by the Customer occur to this FIM adversely impacting the savings, a contract modification may take place to reflect any impact of the changes.

1.9. POST-INSTALLATION M&V REQUIREMENTS

Beyond the Post-installation period, no future periodic (annual) measurements are required for this FIM. After installation, Johnson Controls will complete a FIM Installation and Project Acceptance Checklist for City of Porterville acceptance. Where appropriate, savings calculation spreadsheets will be revised to accurately reflect the as-built fixture retrofit. The revised calculation results will represent Year One and all future years’
energy savings. Walk-through inspections of a sample of retrofitted spaces will be performed annually to ensure the implemented FIM remains in place and operating.

The City of Porterville is responsible for the maintenance and service of the implemented retrofit for this FIM.

Option A – HVAC Improvements

1.1. OBJECTIVES
The objective of this M&V plan is to validate energy savings realized from replacing heating, ventilation and air-conditioning (HVAC) equipment at the City Hall and Police Station buildings. The equipment includes roof-top packaged air-conditioning units and/or split-system condensing units. Generally, this measure involves a one-for-one replacement with new, high-efficiency equipment.

M&V Option A, (stipulated savings with one-time post-installation measurement) is proposed as the basis for this M&V plan.

1.2. PARAMETERS TO BE MONITORED
Pre- and post-installation power measurements will be taken for each unit replaced, as a means to show differences in power draw between existing and new units. Manufacturers’ nameplate data were, however, used for savings calculations, using accepted engineering calculations and stipulated operating hours. Annual visual inspections will be conducted to ensure the installed FIM equipment remains in place and continues to operate. The City of Porterville is responsible for maintenance of the implemented retrofit to ensure proper operation of the affected systems/equipment.

1.3. SAMPLING PLAN
No sample plan needed; power draw for each unit will be taken once during the pre- and post-installation periods.

1.4. DATA COLLECTION PLAN
1.4.1 Data To Be Collected
Nameplate data for the affected systems/equipment; a single post-installation power read for each of the units. Operating hours were obtained by interviewing City of Porterville personnel, and are stipulated for the contract term.

1.4.2 Instrumentation and Metering Equipment
Fluke 39 digital handheld power meter

1.4.3 Calibration of Equipment
Calibration certification will be submitted with the Post-Installation Report.

1.4.4 Data Gathering and Quality Control
All pertinent data collected are presented in an Excel spreadsheet format and are reviewed by Johnson Controls’ LPDE.

1.4.5 Period of Monitoring

Johnson Controls, Inc. Initials: ___________________________  
Customer Initials: ___________________________
No further measurements are required after post-installation acceptance of this FIM. An annual walkthrough inspection will be conducted to ensure the HVAC equipment remains in place and continues to operate. An annual report will be submitted to document these findings.

1.5. ANALYSIS METHOD
Baseline and post-installation scenarios were compared using the eQUEST modeling software program. Models for individual buildings were calibrated using information gathered during numerous site audits, and compared to meter utility data. Changes were then made in the model equipment performance values for the post-installation scenario. Predicted savings are the difference between baseline and post-installation energy consumption.

Equipment operating hours are presented in Exhibit 5.

1.6. PRE-INSTALLATION ENERGY AND FACILITY PERFORMANCE BASELINE

1.6.1 Equipment/Systems
A detailed survey of existing HVAC equipment/systems was conducted during the detailed study phase. Performance of the existing equipment was assumed to be SEER 8.5.

1.6.2 Baseline Energy Use
Baseline energy use of affected HVAC systems and equipment was determined using the eQUEST building simulation program.

1.6.3 System Performance Factors
Equipment/systems power draw and efficiency; equipment operating schedules.

1.7. POST-INSTALLATION FACILITY CONDITIONS

1.7.1 Equipment/Systems
Performance of the proposed equipment will be SEER 13 for HVAC units five tons and below, and EER 11 for units six tons and above.

1.7.2 Post-Installation Energy Use
Post-installation energy use of affected HVAC systems and equipment was determined using the eQUEST building simulation program.

1.8. DETERMINATION OF ENERGY SAVINGS BASED ON THE SELECTED APPROACH
Energy savings will be verified during the post-installation period by taking power draw measurements of the new HVAC equipment. Savings values will escalate 5% per year from the Year One performance year forward for the Contract term. If significant changes made by the Customer occur to this FIM adversely impacting the savings, a contract modification may take place to reflect any impact of the changes.

1.9. POST-INSTALLATION M&V REQUIREMENTS
Other than during the post-installation period, no future periodic (annual) measurements are required for this FIM. After installation, Johnson Controls will complete a FIM Installation and Project Acceptance Checklist for City of Porterville acceptance. Walk-through inspections of the retrofitted HVAC systems will be performed annually to ensure the implemented FIM remains in place and operating.

The City of Porterville is responsible for the maintenance and service of the implemented retrofit for this FIM.
Option A – Water Conservation Improvements

1.1. OBJECTIVES
The objective of this M&V plan is to validate water savings realized from replacing existing water fixtures at the Library and Senior Community Center with new, more water-efficient fixtures. This is a one-for-one replacement or retrofit of one hundred seventy-two (172) plumbing fixtures, including tank- and flushometer-type toilets, lavatory faucets and urinals, and 12 irrigation controls.

M&V Option A, (stipulated savings based manufacturers’ data and spreadsheet calculations), is proposed as the basis for this M&V plan. Occupancy and water usage are stipulated based on information gathered during the detailed study phase.

1.2. PARAMETERS TO BE MONITORED
Not applicable; no post-installation measurements needed. Savings are based on manufacturers’ volumetric flow rates for each of the fixtures, and are stipulated for the contract term. The City of Porterville is responsible for maintenance of the new water fixtures to ensure proper operational performance.

1.3. SAMPLING PLAN
No sample plan needed.

1.4. DATA COLLECTION PLAN
1.4.1 Data To Be Collected
No data will be collected during the post-installation period, or during the performance period.

1.4.2 Instrumentation and Metering Equipment
Not applicable.

1.4.3 Calibration of Equipment
Not applicable.

1.4.4 Data Gathering and Quality Control
Not applicable.

1.4.5 Period of Monitoring
No additional measurements are required after installation and acceptance of this FIM.

1.5. ANALYSIS METHOD
Water savings values are based on information gathered during numerous site audits performed during the Detailed Study phase, including facility operational hours, occupancy schedules, and restroom/fixture usage rates. Savings were calculated using spreadsheet methods and manufacturers’ volumetric flow data, as well as the previously mentioned occupancy and usage information.

1.6. PRE-INSTALLATION ENERGY AND FACILITY PERFORMANCE BASELINE
1.6.1 Equipment/Systems
Each building included in this FIM was audited during the November 2006 Detailed Study phase for water fixture type and count, operational hours, occupancy schedules, and restroom/fixture usage rate.
1.6.2 Baseline Water Use
Baseline water usage for these buildings was established during the detailed study phase. Results of the baseline analysis are presented in Schedule 2 Exhibit 4.

1.6.3 System Performance Factors
Facility operational hours; occupancy schedules; equipment condition; and, restroom/fixture usage rates.

1.7. POST-INSTALLATION FACILITY CONDITIONS

1.7.1 Equipment/Systems
Low-flow tank- and flushometer-type toilets; waterless urinals.

1.7.2 Post-Installation Water Use
Water savings are based on spreadsheet calculations.

1.8. DETERMINATION OF WATER SAVINGS BASED ON THE SELECTED APPROACH
Water savings for this FIM are based on information gathered during numerous site audits performed during the detailed study phase, and include facility operational hours, occupancy schedules, and restroom/fixture usage rates. Savings are stipulated; no verification of savings will be performed during the post-installation or performance periods. Savings values will escalate 5% per year from the Year One performance year forward for the Contract term. If significant changes made by the Customer occur to this FIM adversely impacting the savings, a contract modification may take place to reflect any impact of the changes.

1.9. POST-INSTALLATION M&V REQUIREMENTS
No future periodic (annual) measurements are required for this FIM. After installation, Johnson Controls will complete a FIM Installation and Project Acceptance Checklist for City of Porterville acceptance.

The City of Porterville is responsible for the maintenance and service of the implemented retrofit for this FIM.
CUSTOMER RESPONSIBILITIES

In order for JCI to perform its obligations under this Agreement with respect to the Work, the Assured Performance Guarantee, and the M&V Services, Customer shall be responsible for:

1. Providing JCI, its subcontractors, and its agents reasonable and safe access to all facilities and properties that are subject to the Work and/or M&V Services;

2. Providing for shut down and scheduling of affected locations during installation, including timely shutdowns of chilled water and hot water systems as needed to accomplish the Work and/or M&V Services;

3. Providing timely reviews and approvals of design submissions, proposed change orders, and other project documents;

4. Providing the following information with respect to the project and project site as soon as practicable following JCI’s request:
   a. surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
   b. geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the project site;
   c. temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the project and enable JCI to perform the Work;
   d. a legal description of the project site;
   e. as-built and record drawings of any existing structures at the project site; and
   f. environmental studies, reports and impact statement describing the environmental conditions, including hazardous conditions or materials, in existence at the project site.

5. Securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable JCI to perform the Work;

6. Providing assistance to JCI in obtaining any permits, approvals, and licenses that are JCI’s responsibility to obtain as set forth in Schedule 1;

7. Obtaining any permits, approvals, and licenses that are necessary for the performance of the Work and are not JCI’s responsibility to obtain as set forth in Schedule 1;

8. Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems affecting the Assured Performance Guarantee in accordance with manufacturers’ standards and specifications;

9. Providing the utility bills, reports, and similar information reasonably necessary for administering JCI’s obligations under the Assured Performance Guarantee within five (5) days of Customer receipt and/or generation or JCI’s request therefor;

10. Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by JCI;

11. Providing and installing utility sub-meters on all new construction and/or additions built during the Guarantee Term as recommended by JCI or, alternatively, paying JCI’s applicable fees for
calculating necessary adjustments to the Assured Performance Guarantee as a result of the new construction;

12. Providing and maintaining a dedicated telephone line and/or TCP/IP remote connection to facilitate remote monitoring of relevant equipment;

13. Promptly notifying JCI of any change in use or condition described in Section III of Schedule 2 or any other matter that may impact the Assured Performance Guarantee;

14. Taking all actions reasonably necessary to achieve the Non-Measured Project Benefits;

15. Assist the JCI Performance Assurance Engineer in the application and documentation process for any utility incentive program that requires the involvement of the property owner.
PRICE AND PAYMENT TERMS

Customer shall make payments to JCI pursuant to this Schedule 4.

1. **Work.** The price to be paid by Customer for the Work shall be $1,599,467. Payments (including payment for materials delivered to JCI and work performed on and off-site) shall be made to JCI as follows:

   **City of Porterville**  
   **Construction Period Billing Schedule**

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<tr>
<td>December-2009</td>
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<tr>
<td>February-2010</td>
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</tr>
<tr>
<td>June-2010</td>
<td>0%</td>
<td>-</td>
</tr>
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</table>

   **Total** $1,599,467

2. **M&V Services.** The total price for JCI’s M&V Services, as detailed on Schedule 2 and/or Schedule 2A of this Agreement, is $20,763 over the four (4) year performance term. This amount will be paid to JCI in annual installments of $4,963 (year 1), $5,112 (year 2), $5,265 (year 3) and $5,423 (year 4). These payments will be due and payable when Customer receives JCI’s invoice and in advance of the services JCI is to provide, and shall be made throughout the Guarantee Term.

   - Annual amount due: $4,963 (year one payment)
   - Due Date: July 1, 2010
   - First payment due: 45 Days after final acceptance

   The annual escalation rate for the M&V Services is 3%. If desired, additional years of M&V service can be added to the original four year term. The price of each additional year will be the same as the prior year with a 3% escalation factor added.

CERTIFICATE OF SUBSTANTIAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("JCI")
12393 Slauson Ave
Whittier, CA 90606

The City of Porterville ("Customer")
291 N. Main St
Porterville, CA 93257

PROJECT: Citywide Energy Efficiency and Water Conservation Project; Performance Contract dated ____________, 20__. between JCI and Customer

By executing this Certificate of Substantial Completion, Customer acknowledges the following:

a. The work set forth in the Performance Contract is substantially complete.

b. Customer has received the manuals, warranty information, and training required under the Performance Contract.

c. The following punch list items must be completed by JCI (check as applicable):

   □ punch list attached
   □ punch list complete

d. Upon completion of the punch list items, or if such punch list items are complete, JCI and Customer shall sign the Certificate of Final Completion attached hereto.

Dated ____________, 20__.

CUSTOMER:
Signature: __________________________
Printed Name: ______________________
Title: ______________________________

JOHNSON CONTROLS, INC.
Signature: __________________________
Printed Name: ______________________
Title: ______________________________
CERTIFICATE OF FINAL COMPLETION

PARTIES:  JOHNSON CONTROLS, INC. ("JCI")
          12393 Slauson Ave
          Whittier, CA 90606

          The City of Porterville ("Customer")
          291 N. Main St
          Porterville, CA 93257

PROJECT:  Citywide Energy Efficiency and Water Conservation Project; Performance Contract dated _____________ __, 20__ between JCI and Customer

By executing this Certificate of Final Completion, Customer acknowledges the following:

a. The work set forth in the Performance Contract has been reviewed and determined by Customer to be fully complete.

b. Customer accepts the work as complete and hereby releases JCI's obligations under any performance and payment bonds posted for the project as of the date set forth below.

Dated ____________, 20__

CUSTOMER:  
Signature: ____________________________
Printed Name: _________________________
Title: ________________________________

JOHNSON CONTROLS, INC.
Signature: ____________________________
Printed Name: _________________________
Title: ________________________________
## Service Agreement

The City of Porterville ("Customer")

291 N. Main St

Porterville, CA 93257

---

### Scope of Service

Johnson Controls, Inc. ("JCI") and the Customer (collectively the "Parties") agree Preventative Maintenance Services, as defined in Schedule A ("Services"), will be provided by JCI at the Customer's facility. This Service Agreement, the Equipment List, Supplemental Price and Payment Terms, Terms and Conditions, and Schedules attached hereto and incorporated by this reference as if set forth fully herein (collectively the "Agreement"), cover the rights and obligations of both the Customer and JCI.

---

### Extended Service Options for Premium Coverage

If Premium Coverage is selected, on-site repair services to the equipment will be provided as specified in this Agreement for the equipment listed in the attached Equipment List.

---

### Equipment List

Only the equipment listed in the Equipment List will be covered as part of this Agreement. Any changes to the Equipment List must be agreed upon in writing by both Parties.

---

### Term/Automatic Renewal

This Agreement takes effect on June 1, 2010 and will continue until June 1, 2014 ("Original Term"). The Agreement will automatically renew on a year-to-year basis after the Original Term ends unless the Customer or JCI gives the other written notice it does not want to renew. The notice must be delivered at least forty-five (45) days prior to the end of the Original Term or of any renewal period. The Original Term and any renewal periods are sometimes collectively referred to in this Agreement as the "Term". Renewal price adjustments are discussed in the Terms and Conditions.

---

### Refrigerant Charges

Refrigerant is not included under this Agreement and will be billed separately to the Customer by JCI.

---

### Price and Payment Terms

The total Contract Price for JCI's Services during the Original Term is $18,500 annually. This amount will be paid to JCI in annual installments. Pricing for each subsequent year of a multiyear original term is set forth in the supplemental price and payment terms. All payments will be due and payable within thirty (30) days of the invoice date and such timely payment by Customer shall be a condition precedent to JCI's obligation to perform its Services. A penalty of one and a half percent (1.5%) of the amount due per month shall accrue for payments received after the payment due date. Renewal price adjustments are set forth in the Terms and Conditions.

*This proposal is valid for thirty days from the proposal date.*

---

### JOHNSON CONTROLS, INC.

By

__________________________

Signature

__________________________

Date

Title

---

### City of Porterville

By

__________________________

Signature

__________________________

Date

Title

---

### JCI Branch Manager

__________________________

Date

(proposal not valid until signed by JCI Branch manager)

---

### JCI Branch Information

<table>
<thead>
<tr>
<th>JCI Branch</th>
<th>Fresno Service (456)</th>
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<td>Address</td>
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### Covered Equipment At

Porterville City Hall 291 N. Main Street

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<th>Item</th>
<th>Description</th>
<th>Premium</th>
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<td>Additional Options</td>
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<tr>
<td></td>
<td>Block Hours</td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional Options</td>
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<tr>
<td></td>
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<td>RTU/Package Unit (0-15T)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional Options</td>
<td># per year</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Operational</td>
<td>3</td>
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<tr>
<td></td>
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<td>Filter Replacement</td>
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<td>1</td>
<td>Split System Unit (0-15T)</td>
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<td>Ductless Split</td>
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<td>20</td>
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<td></td>
<td>Additional Options</td>
<td># per year</td>
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Customer’s Initials

---

3
Schedule A (continued)
Supplemental Price and Payment Terms (Applies to Multi-Year Contracts Only)

<table>
<thead>
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<th>Total Annual Dollar Amount</th>
<th>Payment Frequency</th>
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<td>Year 2 $19,055</td>
<td>Annual</td>
</tr>
<tr>
<td>Year 3 $19,627</td>
<td>Annual</td>
</tr>
<tr>
<td>Year 4 $20,215 + $48,267 (Re-lamping) = $68,482</td>
<td>Annual</td>
</tr>
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</table>

Special Additions and Exceptions

☐ Year 4 Re-lamping Scope of work see lighting detail identified in Attachment A

<table>
<thead>
<tr>
<th>Re-Lamping in Year 4 Summary Scope of Work</th>
</tr>
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<tbody>
<tr>
<td>Site</td>
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<tr>
<td>-----------------</td>
</tr>
<tr>
<td>City Hall</td>
</tr>
<tr>
<td>Library</td>
</tr>
<tr>
<td>Police Station</td>
</tr>
<tr>
<td>Corporate Yard</td>
</tr>
<tr>
<td>Heritage Center</td>
</tr>
<tr>
<td>Fire Station One</td>
</tr>
<tr>
<td>Fire Offices</td>
</tr>
<tr>
<td>Fire Station Two</td>
</tr>
<tr>
<td>Computer Building</td>
</tr>
<tr>
<td>Golf Course</td>
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<td>Community Center</td>
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<tr>
<td><strong>Total</strong></td>
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</table>
Terms and Conditions

DEFINITIONS

COVERED EQUIPMENT is the equipment for which Services are to be provided under this Agreement as set forth in the attached Equipment List.

EQUIPMENT FAILURE means the sudden and accidental failure of moving parts or electric or electronic components that are part of the Covered Equipment and are necessary for its operation.

SCHEDULED SERVICE VISITS are the on-site labor visits required to perform JCI recommended inspections and preventative maintenance on Covered Equipment.

SCHEDULED SERVICE MATERIALS are the materials required to perform Scheduled Service Visits on Covered Equipment, such as grease, lubricants and sprays, depending on the Covered Equipment.

REPAIR LABOR is the labor necessary to restore Covered Equipment to working condition following an Equipment Failure, but does not include services relating to total equipment replacement due to obsolescence or unavailability of parts.

REPAIR MATERIALS are the parts necessary to restore Covered Equipment to working condition following an Equipment Failure, but excludes total equipment replacement due to obsolescence or unavailability of parts. At JCI’s option, Repair Materials may be new, used, or reconditioned.

SERVICE COVERAGE OPTIONS

BASIC COVERAGE means Scheduled Service Visits, plus Scheduled Service Materials if elsewhere noted in this Agreement, for Covered Equipment. No parts or equipment are provided for under BASIC COVERAGE.

PREMIUM COVERAGE means BASIC COVERAGE as well as Repair Labor, plus Repair Material if elsewhere noted in this Agreement for Covered Equipment.

EXTENDED SERVICE means service for repairs performed outside JCI’s normal business hours (available either 24/5 or 24/7) and is available only if Customer has PREMIUM COVERAGE, as more fully described in Schedule A. The price for Extended Service, if chosen by Customer, is part of the total Contract Price.

If Services are performed, or materials, parts or equipment provided, beyond the scope or time period of those covered by the Service Coverage option selected by Customer, Customer agrees to pay JCI’s standard fee for all additional Services, materials, parts and equipment.

A. INITIAL EQUIPMENT INSPECTION NECESSARY FOR PREMIUM COVERAGE

If Customer has ordered PREMIUM COVERAGE, JCI will inspect the Covered Equipment within 45 days of the date of this Agreement or as seasonal or operational conditions permit. JCI will advise Customer if JCI finds any Covered Equipment not in working order or in need of repair. With the Customer’s approval, JCI will perform the work necessary to put the Covered Equipment in proper working condition. This work will be done at JCI’s standard fee for parts and labor in effect at that time. If the Customer does not want JCI to do the work identified by JCI, or if Customer does not have the work done, the equipment will be removed from the list of Covered Equipment and the price of this Agreement will be adjusted accordingly. This inspection does not affect Customer’s warranty. Should Customer not make recommended repairs, JCI reserves the right to invoice Customer for the cost of the inspection.

B. STANDARD OF CARE AND WARRANTIES

Customer understands JCI is a provider of services under this Agreement and shall not be considered a merchant or a vendor of goods. JCI warrants its Services will be provided in a good and workmanlike manner. Any Services not performed in a good and workmanlike manner will be re-performed by JCI provided Customer notifies JCI as soon as possible, which shall be no later than one calendar year from the date the Services were performed. Customer acknowledges that re-performance, as provided herein, shall be its exclusive and only remedy with regards to all Services provided by JCI.

If a part is installed as part of JCI’s Services, JCI warrants the installed part will be free from defects in workmanship and material until the end of the Term or for one (1) year from the date on which JCI installs the part, whichever is earlier. If the part is covered under a manufacturer’s warranty for a term less than one (1) year, JCI’s warranty to the Customer as to such part shall be limited to the term of the manufacturer’s warranty. In order to assert a warranty claim, Customer must provide prompt written notice to JCI of its claim during the applicable warranty period. Any claim based upon this warranty must be brought within one (1) year of the expiration of the applicable warranty period. This limitation is in lieu of any other applicable statute of limitation. JCI’s sole obligation under this warranty shall be to repair or replace the defective part without charge to Customer during such warranty period. If JCI installs or furnishes equipment under this Agreement, and the equipment is covered by a warranty from the manufacturer, JCI will, to the extent transferable, transfer the benefits of such manufacturer’s warranty to Customer. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ALL OTHER EQUIPMENT, MATERIALS, PARTS AND OTHER ITEMS PROVIDED BY JCI ARE PROVIDED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND.

CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT THESE WARRANTIES ARE THE SOLE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER FURTHER ACKNOWLEDGES THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY JCI, ITS AGENTS OR EMPLOYEES, SHALL CREATE A WARRANTY IN ANY WAY WHATSOEVER.
C. EXCLUSIONS

JCI's Services and Warranty obligations do not include:

1) supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as refrigerant, ribs, bulbs, and paper;
2) failures beyond JCI's reasonable control, including (i) acts of God, (ii) abuse or misuse of equipment, (iii) alterations, adjustments, attachments, combinations, modifications, or repairs to equipment not performed or provided by JCI, (iv) items caused by or related to equipment not covered by this Agreement, (v) operator error, (vi) failure to comply with Customer's obligations contained in this Agreement, (vii) use of the Covered Equipment in a manner or environment, or for any purpose, for which it was not designed by the manufacturer (including improper water treatment), and (viii) site-related problems, including power failures and fluctuations and failure to keep the site clean and free of dust, sand and other particles or debris;
3) service calls due to warranty claims on the Covered Equipment;
4) repainting or refinishing Covered Equipment;
5) electrical work to the Customer's facility;
6) stockpiling of parts or supplies;
7) the repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slates/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
8) service calls resulting from the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather;
9) service calls required because JCI had previously been denied access to the equipment;
10) disposal of hazardous wastes. Hazardous wastes remain the property and the responsibility of the Customer even when removed from equipment or replaced by JCI as provided by the terms of this Agreement. The Customer shall be responsible for the proper storage and disposal of hazardous wastes. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs; and
11) normal wear and tear.

D. CUSTOMER OBLIGATIONS AND COMMITMENTS TO JCI

1) The Customer warrants that all Covered Equipment is in good working condition and that the Customer has given JCI all information concerning the condition of the Covered Equipment.
2) The Customer agrees that, during the Term of this Agreement, the Customer will:
   (a) operate the Covered Equipment according to the manufacturer's and JCI's recommendations;
   (b) keep accurate and current work logs and information on the Covered Equipment as recommended by the manufacturer and JCI;
   (c) provide an adequate environment for Covered Equipment as recommended by the manufacturer and JCI, including, but not limited to, adequate space, electrical power, air conditioning, and humidity control;
   (d) notify JCI immediately of any equipment malfunction, breakdown, or other condition affecting the operation of the Covered Equipment;
   (e) allow JCI to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that JCI can perform the Services required under this Agreement;
   (f) provide proper condenser and boiler water treatment, as necessary, for the proper functioning of Covered Equipment, if such services are not JCI's responsibility under this Agreement;
   (g) cooperate with JCI and provide any and all necessary information to facilitate the delivery of the Services by JCI as described herein in a timely manner; and
3) The Customer acknowledges that its failure to meet its obligations will relieve JCI of any responsibility, to the extent provided in this Agreement, for any equipment breakdown, or any necessary repair or replacement of any equipment and to provide any Services.

E. CHANGES TO CUSTOMER EQUIPMENT

The Customer retains the right to make changes or alterations to the Covered Equipment. If, in JCI's sole opinion, such changes or alterations affect JCI's Services or obligations, JCI shall have the right to make appropriate changes to the scope of this Agreement or the Contract Price.

F. ACCESS

The Customer will give JCI full access to all equipment that is either Covered Equipment or associated with Covered Equipment when JCI requests such access. If access cannot be provided, JCI's obligations under this Agreement will be suspended until such access is provided. Matters affecting JCI's access to the Covered Equipment may include, but are not limited to, the removal, replacement, repair, refinishing, restoration, reconstruction, or other remedial actions taken by the Customer with respect to equipment or to the Customer's facility. Suspension of JCI's duties for this reason will not cancel or suspend any of the Customer's obligations under this Agreement.

G. INDEMNITY

JCI and the Customer agree to indemnify the other Party and their officers, agents, directors, and employees, from third party claims, demands, or suits for bodily injury, including death, or tangible property damage resulting from the intentional misconduct or any negligent acts by their employees or agents. Customer expressly agrees JCI shall be responsible only for such injury or damage caused by the intentional misconduct or the negligent act of JCI's employees and agents and JCI shall not be responsible for any
injury or damage caused, or contributed to, in any manner by Customer or any third-party. The obligations of JCI and of the Customer under this paragraph are further subject to paragraphs H and O below.

H. LIMITATION OF LIABILITY

JCI SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR THE LIKE) CAUSED BY THE MATERIALS, EQUIPMENT, PARTS OR SERVICES PROVIDED HEREUNDER OR THE FAILURE OF THE MATERIAL, EQUIPMENT, PART OR SERVICE TO PERFORM, ACCURATELY PERFORM, TIMELY PERFORM, OR OTHERWISE MEET THE NEEDS, SPECIFICATIONS OR EXPECTATIONS OF CUSTOMER, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF JCI OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. JCI'S TOTAL LIABILITY TO CUSTOMER FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE GREATER OF (i) $25,000, or (ii) THE AGGREGATE FEES PAID BY CUSTOMER TO JCI FOR THE SERVICES.

The waiver of warranty, exclusive remedies, waiver of consequential damages and limitation of liability set forth in this Agreement are fundamental elements of the basis for this Agreement. JCI would not be able to provide the products, parts or Services on an economic basis, and would not have entered into this Agreement, without such limitations.

I. FORCE MAJEURE

1) JCI shall not be responsible to the Customer for damage, loss, injury, or delay caused by conditions beyond JCI's reasonable control, and without the intentional misconduct or negligence of JCI. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes; (d) labor disputes; (e) fire; (f) explosions or other casualties; (g) thefts; (h) vandalism; (i) terrorism, riots or war; or (j) unavailability of parts, materials or supplies.

2) If this Agreement covers fire safety or security equipment, the Customer understands that JCI is not an insurer regarding those services. JCI shall not be responsible for any damage or loss whatsoever that may result from fire safety or security equipment that fails to perform properly or fails to prevent loss or damage.

3) JCI is not responsible for any injury, loss, or damage caused by equipment that is not Covered Equipment.

J. RENEWAL PRICE ADJUSTMENT

JCI will provide Customer with notice of any adjustments to the Price and Payment Terms of this Agreement applicable to a renewal period no later than forty-five (45) days prior to the commencement of such renewal period. Unless the Customer terminates the Agreement as provided in the Term/Automatic Renewal provision of this Agreement, the adjusted price shall be the price for the renewal period.

K. JCI's EQUIPMENT

JCI may provide tools, documentation, panels, or other control equipment in the Customer's building for JCI's convenience in performing JCI's Services. Such equipment shall remain JCI's property and JCI retains the right to remove the same during the Term or upon the termination of this Agreement.

L. JCI's EMPLOYEES

The Customer acknowledges that JCI's employees are a valuable asset to JCI. In the event during the Term of this Agreement or one hundred eighty (180) days thereafter Customer hires any JCI employee who worked at the Customer's facility at any time the Customer agrees to 1) pay JCI an amount equal to 12 months salary for such employee, and 2) reimburse JCI for all costs associated with any training JCI provided to such employee during the three years before the date the Customer hires such employee.

M. RESOLUTION OF DISPUTES

Customer shall make all payments to JCI when due in accordance with the Price and Payment Terms provision of this Agreement or any renewal adjustments thereto, and such timely payment by Customer shall be a condition precedent to JCI's obligation to perform its Services hereunder. If a dispute, claim, or other matter in question ("Dispute") related in any manner to this Agreement arises, the Parties shall promptly attempt in good faith to resolve such Dispute by negotiation. The Parties further agree as follows:

1) EACH PARTY WAIVES ANY RIGHT TO TRIAL IN A COURT OF LAW AND TO TRIAL BY JURY.

2) Notice of Dispute: In order to be able to mediate or arbitrate any Dispute between JCI and Customer, written notice thereof must be given by the Party requesting mediation within five (5) days after the Dispute arises. The purpose of such notification is to place the notified Party on notice so proper measures can be taken to defend against such Dispute, and the failure to give such notice shall preclude the Party desiring arbitration from subsequently mediating or arbitrating the particular Dispute.

3) Mediation: As a condition precedent to arbitration, the Parties must submit the Dispute to mediation within five (5) days of the notice of dispute. Mediation shall be conducted in accordance with the then current mediation rules of the American Arbitration Association or other mediation service mutually agreed to by the Parties.

4) Arbitration: In the event mediation of the Dispute is unsuccessful, no later than five (5) days following such mediation the Dispute must be submitted to arbitration. Arbitration shall be conducted in accordance with the then current arbitration rules of the American Arbitration Association or other arbitration service mutually agreed to by the Parties. Arbitration must be completed within sixty (60) days after the Dispute is submitted to arbitration unless the Parties mutually agree otherwise. The award rendered by the arbitrator shall be final, and judgment may be entered there upon in accordance with applicable law in any court.
having competent jurisdiction thereof. The Party prevailing in the arbitration shall be entitled to an award of its reasonable costs, including reasonable attorney's fees, incurred as a result of the Dispute.

5) Services, Obligation Suspended: The Parties agree while arbitration of the Dispute is pending, JCI’s obligation to provide continued Services as set forth in this Agreement shall be temporarily suspended until the arbitration award is issued. In the event JCI elects to suspend its Services Customer will remain obligated to pay any outstanding amounts owed JCI but will not be obligated to pay for the Services suspended. The right of JCI to suspend its Services hereunder is in addition to all other rights JCI may have at law or in equity and does not impair the rights of JCI with regard to a Dispute hereunder. The Customer expressly agrees JCI may not be held liable for damages of any nature which Customer may suffer as a result of JCI’s temporary suspension of its Services in accordance with this provision.

6) The rights and obligations of JCI herein are in addition to, and do not alter, impair, limit, or otherwise waive any other rights granted JCI in equity or by statute.

N. TERMINATION

In addition to the Term/Automatic Renewal provision of this Agreement, JCI and the Customer agree in the event either Party refuses or fails to perform its obligations under this Agreement in the manner specified herein, the affected Party must provide the other with written notice containing a detailed description of the alleged deficiency or breach, including specific reference to the applicable provision(s) of this Agreement within five (5) days of the alleged deficiency or breach. Should the Party alleged to be in breach of this Agreement fail to respond in writing to, or take action to cure the alleged deficiency or breach within ten (10) days of the written notice of same, the affected Party may terminate this Agreement for cause. In the event the Agreement is terminated for cause, Customer shall make payment to JCI for all undisputed amounts owed within ten (10) days of the termination effective date. A Party’s termination of this Agreement for cause shall be without prejudice to any other right or remedy.

O. ASBESTOS, MOLD AND HAZARDOUS MATERIALS

1) Asbestos-Containing Materials: Neither Party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials (“ACM”). Consistent with applicable laws, Customer shall supply JCI with any information in its possession relating to the presence of ACM in areas where JCI undertakes any Services that may result in the disturbance of ACM. It is JCI’s policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Customer shall provide such certification for buildings it owns, or aid JCI in receiving such certification from facility owners in the case of buildings that it does not own, if JCI will undertake Services in the facility that could disturb ACM. If either Customer or JCI becomes aware of or suspects the presence of ACM that may be disturbed by JCI’s Services, it shall immediately stop the Services in the affected area and notify the other’s contacts. As between Customer and JCI, Customer shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable laws and addressing the impact of its disturbance before JCI continues with its Services, unless JCI had actual knowledge that ACM was present and acted in disregard of that knowledge, in which case (a) JCI shall be responsible at its sole expense for repairing and or removing any areas impacted by the disturbance of the ACM, and (b) Customer shall resume its responsibilities for the ACM after JCI’s remediation has been completed.

2) Other Hazardous Materials: JCI shall have no obligations relating to the identification, abatement, cleanup, control, removal or disposal of mold, regardless of the cause of the mold. JCI shall be responsible for removing or disposing of any Hazardous Materials that it uses in providing Services (“JCI Hazardous Materials”) and, other than mold, for the remediation of any areas impacted by the release of JCI Hazardous Materials. For other Hazardous Materials that may be otherwise present at its facilities (“Non-JCI Hazardous Materials”), Customer shall supply JCI with any information in its possession relating to the presence of such materials if their presence may affect JCI’s performance of the Services. If either Customer or JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with JCI’s Services, it shall immediately stop the Services in the affected area and notify the other’s contacts. As between Customer and JCI, Customer shall be responsible at its sole expense for removing and disposing of mold and Non-JCI Hazardous Materials from its facilities and the remediation of any areas impacted by mold or the release of the Non-JCI Hazardous Materials. Notwithstanding the forgoing, if JCI had actual knowledge that Non-JCI Hazardous Materials other than mold were present and acted in disregard of that knowledge, then in such case (a) JCI shall be responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from JCI’s performance of the Services.

3) Environmental Indemnity. To the fullest extent permitted by law, Customer shall indemnify and hold harmless JCI and JCI’s Subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and successors and assigns, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from Customer’s or the owner’s use, storage, release, discharge, handling or presence of ACM or Non-JCI Hazardous Materials on, under or about the facility(ies), or the noncompliance with this Section O. To the fullest extent permitted by law, JCI shall indemnify and hold harmless Customer, its officers, directors, employees, agents, representatives, shareholders, affiliates, successors and assigns, from and against any and all losses, claims, damages, expenses (including reasonable legal fees and defense costs), claim, causes of action or liability, directly or indirectly, relating to or arising from JCI’s use, storage, release, discharge, handling or presence of JCI Hazardous Materials on, under or about the facility(ies), or the noncompliance with this Section O.

P. ASSESSMENT
It is the Customer's responsibility to pay all taxes or other government charges relating to the Services, transfer, use, ownership, servicing, or possession of any equipment relating to this Agreement.

Q. MISCELLANEOUS PROVISIONS

1) Any notice that is required to be given under this Agreement must be in writing and sent to the Party at the address noted on the first page of this Agreement.  
2) This Agreement cannot be transferred or assigned by Customer without the prior written consent of JCI.  
3) 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.  
4) Any change or modification to this Agreement will not be effective unless made in writing. Such written modification must specifically indicate that it is an amendment, change, or modifications to this Agreement.  
5) The Customer acknowledges and agrees that any purchase order issued by Customer, in accordance with this Agreement, is intended only to establish payment authority for the Customer's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in the Customer's purchase order will have any force or effect.  
6) Should any changes to relevant regulations, laws, or codes substantially affect JCI's Services or obligations, the Customer agrees to negotiate in good faith with JCI for appropriate and equitable changes to the scope or price of the Agreement or both.  
7) The Parties agree and acknowledge that this is a negotiated agreement and that the rule of construction that any ambiguities are to be construed against the drafting Party shall not apply.  
8) Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against JCI. The Services under this Agreement are being performed solely for the Customer's benefit, and no other party or entity shall have any claim against JCI because of this Agreement or the performance or non-performance of the Services hereunder.  
9) The failure of JCI or the Customer to insist upon, or to delay enforcing the strict performance of the terms and conditions hereof, or any right or remedy, as provider herein, shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of JCI or the Customer.  

R. CHOICE OF LAW

This Agreement shall be subject to and governed by the laws of the State where the project is located.

S. SEVERANCE

Should any term, part, portion, or provision of this Agreement be decided or declared by the courts to be, or otherwise found to be, illegal or in conflict with any law of the state governing this Agreement or the United States, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions, and provisions shall be deemed severable and shall not be affected thereby, provided such remaining parts, terms, portions, or provisions can be construed in the substance to constitute the Agreement that the Parties intended to enter into in the first instance.

T. JCI'S INTELLECTUAL PROPERTY

JCI shall retain all right, title and interest in and to any (a) deliverables provided to Customer hereunder, including without limitation, all software source and object code, documentation, technical information or data, specifications and designs and any changes, improvements or modifications thereto or derivatives thereof ("Deliverables") and (b) Know-How (defined below) employed by JCI in the creation of the Deliverables or performance of the Services, whether known to JCI prior to, or developed or discovered or acquired in connection with, the performance of its obligations hereunder. Ownership of all Deliverables and Know-How shall vest solely in JCI and no Deliverables shall be deemed "works made for hire." Without limiting the generality of the foregoing, ownership of all source files used in the course of performing the Services shall remain the exclusive property of JCI. For purposes of this Agreement, "Know-How" means any know-how, processes, techniques, concepts, methodologies, tools, analytical approaches, database models and designs, discoveries, and ideas furnished, produced by, developed, employed or used by JCI in the creation or provision of the Deliverables or in the performance of the Services, and any changes, improvements or modifications thereto or derivatives thereof.

[END OF DOCUMENT]