

City of Fayetteville Staff Review Form

2020-1000

Legistar File ID

2/16/2021

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Peter Nierengarten

1/26/2021

SUSTAINABILITY/RESILIENCE (631)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of the Project Development Agreement (PDA) with Johnson Controls Incorporated (JCI). This is the first step toward executing an Energy Savings Performance Contract designed to reduce energy consumption, reduce energy costs, and offset 100% of City government electricity use with clean power. PDA deliverables will cost \$70,450.00. PDA costs can be paid outright or if the City elects to enter into an Implementation Agreement with JCI, costs can be transferred to total cost of the Implementation Agreement.

Budget Impact:

4470.140.8900-5315.00	4470																								
Account Number	Fund																								
15009.1	Building Efficiency Improvements																								
Project Number	Project Title																								
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Budgeted Item?</td> <td style="width: 20%;"><u>Yes</u></td> </tr> <tr> <td>Does item have a cost?</td> <td><u>Yes</u></td> </tr> <tr> <td>Budget Adjustment Attached?</td> <td><u>NA</u></td> </tr> </table>	Budgeted Item?	<u>Yes</u>	Does item have a cost?	<u>Yes</u>	Budget Adjustment Attached?	<u>NA</u>	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Current Budget</td> <td style="width: 10%;">\$</td> <td style="width: 10%; text-align: right;">185,000.00</td> </tr> <tr> <td>Funds Obligated</td> <td>\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Current Balance</td> <td style="border-bottom: 1px solid black;">\$</td> <td style="border-bottom: 1px solid black; text-align: right; background-color: #f0f0f0;">185,000.00</td> </tr> <tr> <td>Item Cost</td> <td>\$</td> <td style="text-align: right;">70,450.00</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Budget Adjustment</td> <td style="border-bottom: 1px solid black;"></td> <td style="border-bottom: 1px solid black;"></td> </tr> <tr> <td style="border-bottom: 1px solid black;">Remaining Budget</td> <td style="border-bottom: 1px solid black;">\$</td> <td style="border-bottom: 1px solid black; text-align: right; background-color: #f0f0f0;">114,550.00</td> </tr> </table>	Current Budget	\$	185,000.00	Funds Obligated	\$	-	Current Balance	\$	185,000.00	Item Cost	\$	70,450.00	Budget Adjustment			Remaining Budget	\$	114,550.00
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Budget Adjustment																									
Remaining Budget	\$	114,550.00																							

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF FEBRUARY 16, 2021

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Peter Nierengarten, Environmental Director
Paul Becker, Chief Financial Officer

FROM: Chris McNamara, Sustainability Project Manager

DATE: January 26th, 2021

SUBJECT: Project Development Agreement with Johnson Controls Incorporated.

RECOMMENDATION:

Staff recommends approval of the Project Development Agreement (PDA) with Johnson Controls Incorporated (JCI). This is the first step toward executing an Energy Savings Performance Contract designed to reduce energy consumption, reduce energy costs, and offset 100% of City government electricity use with clean power. PDA deliverables will cost **\$70,450.00**. PDA costs can be paid outright or if the City elects to enter into an Implementation Agreement with JCI, costs can be transferred to total cost of the Implementation Agreement.

BACKGROUND:

On January 2, 2018, the City Council adopted an Energy Action Plan by Resolution 25-18. The Energy Action Plan was created to build a policy, program, and project framework and initiate action for Fayetteville's efforts to be a resource and energy efficient community. Included among the Energy Action Plan's high-level goals was a City government specific goal of utilizing 100% clean energy in City-owned facilities by 2030 and make all new and existing city-owned facilities and assets more energy efficient.

Since 2012, City staff have managed multiple energy efficiency upgrades on City facilities including: HVAC upgrades, window replacement, low flow plumbing fixtures and LED lighting upgrades on City building, street lights and trail lights. In 2019 the City entered into a solar services agreement with Today's Power to build two 5MW solar arrays at our two Wastewater Treatment Plants. These projects brought the City's clean energy consumption from 16% to 72% of our total electricity and are projected to save the City \$6 million over the 20-year life of the project.

Looking to offset the last 28% of City electricity consumption with clean energy and to conduct more thorough facility energy efficiency assessments, staff identified the Energy Savings Performance Contract (ESPC) as the best pathway to meet these goals. Enabled by Act 1275 of the 90th State of Arkansas General Assembly, a guaranteed energy savings contract allows municipalities to enter into a contract in order to reduce energy consumption or operating costs

of government facilities and mandates “the energy cost savings and operating cost savings to be realized over the term of the guaranteed energy cost savings contract meet or exceed the costs of the energy efficiency project.” This allows local governments and agencies to finance energy conservation measures through the savings those projects generate.

In addition, an ESPC guarantees that “if the annual energy or operating cost savings fail to meet or exceed the annual costs of the energy efficiency project as required by the guaranteed energy cost savings contract, the qualified provider shall reimburse the issuer for any shortfall of guaranteed energy cost savings over the term of the guaranteed energy cost savings contract.”

There are two steps to execute a guaranteed energy savings contract. First, the City must enter into a contract to complete facility energy audits which will review utility energy consumption, facility operations and mechanical equipment. These audits create a benchmark from which all future savings will be referenced, and identify the potential cost saving energy improvements for specific facilities. The City can then select which specific facility improvements it would like to implement. Signing the JCI Performance Contract Development Agreement will initiate this first step.

Step two, the City must enter into a later contract to execute identified facility improvements and energy conservation measures. Common improvements include LED lighting retrofits, HVAC systems, building insulation, water conservation and solar energy generation. Another contract will be submitted to the City Council for review and agreement to initiate step two. The City can choose to complete an energy audit but not agree to any facility improvements or energy conservations measure but will need to pay for the audit when completed. If the City enters into a contract for facility improvements and conservation measures, then the energy audit costs may be wrapped into total the contract costs.

In June 2020 the City announced a request for qualifications (RFQ 20-06) from all qualified energy service companies to execute a guaranteed energy savings contract. Four companies submitted responses and were reviewed by the selection committee. Johnson Controls Inc. (JCI) was awarded the selection. JCI has extensive experience with solar projects at airports across the country and brings a depth of technical expertise suited for enterprise-wide improvements like the City is proposing.

City staff compiled an extensive list of City energy using assets and facilities. Large energy users were identified by reviewing a year of utility consumption data. Another round of assets were identified through interviews with department and facility managers. Assets in the list were then ranked into a three-tier system based upon energy consumption, costs, equipment upgrade potential and department needs. The list of assets to review for an energy audit include many departments and operations; hangers at the airport, administrative and community service buildings, emergency service and operations facilities, parking lots, parks, sport fields, restrooms, and street and traffic signal lighting.

The compiled facility list looks for many cost savings measures but also acts as a benchmark for data collection and reporting across a breadth of City owned or operated assets. Establishing this benchmark will help the City track and improve operations for many years to follow. Data collection, integrity and performance tracking are essential elements to addressing climate change through strategic actions. This energy audit will serve as a keystone for a decade of sustainability reporting in the City.

DISCUSSION:

In order to enter into a guaranteed energy savings performance contract with Johnson Controls Inc. the City Council must approve the Project Development Agreement (PDA).

The PDA outlines the scope of the project, the obligations of both parties, the financial metrics to be met, the intended outcomes and timeline for the project. Included in the development agreement as Attachment A is the *List of Selected Facilities* the City of Fayetteville identified for improvement measures.

Scope of Services include development of facility improvement measures for facilities identified by the City, provision of information on available project financing and collection of 24 months of utility consumption data. *Development Timeline* identifies key milestones to advance the project that include signing the Project Development Agreement, completing an energy audit and providing firm costs for facility improvement measures, finalizing an implementation agreement and beginning implementation of engineering services.

Project Development Agreement Deliverables include:

- a. A written description of each Facility Improvement Measure (FIM) proposed to be implemented;
- b. A financial pro forma cash flow documenting the proposed project. The pro forma will include applicable annual costs and savings that affect the project outcome such as financing, energy, water, sewer, and maintenance costs;
- c. A preliminary schedule for implementation of the project;
- d. A summary of the Measurement & Verification plan, including proposed IPMV protocols, such as Option A, B, C, or D that will be used for each FIM;
- e. A firm offer by JCI to implement the project with a positive to neutral cash flow, based on the project Determinants

Project Determinants include success criteria that comply with Act 1275 as Enacted by the Arkansas General Assembly and a table of determinants that include utility rates and projected rate escalation trends, interest rates, City capital contributions, incentives or rebates and operational savings. The project determinants will be populated during execution of the Project Development Agreement and energy audit.

Customer Priority *FIMS* provide a list of Facility Improvement Measures (FIMs) the City can select to create a project that meet City goals. FIMS include lighting upgrades, mechanical improvements, energy management control systems, water conservation, building envelope upgrades and other facility improvement measures, which include solar power generation.

Records and Data detail City obligations to furnish utility consumption, building construction drawings, equipment performance records, maintenance and repair costs related to identified FIMs, operational requirements and relevant agreements.

Project Cost and Payment Terms lists the costs associated with the executing the Project Development Agreement and Energy Audit. This cost is **\$70,450.00** and payment is required 60 days after JCI provides deliverables identified above. The City reserves the right to pay for the PDA and energy audit outright or enter into an Implementation Agreement for energy services

identified the PDA deliverables. If the City enters into an Implementation Agreement, PDA costs will be transferred to the Implementation Agreement and be subject to the payment terms outlined in the Implementation Agreement.

BUDGET/STAFF IMPACT:

The cost of the Project Development Agreement is **\$70,450.00**. PDA costs will be paid for using the Building Efficiency Improvement Fund or rolled into the total costs of an Implementation Agreement. After reviewing findings of the PDA and selecting Facility Improvement Measures, staff anticipate returning to City Council with a request to execute an Implementation Agreement with JCI.

The City anticipates there will be staff time required to support data collection for the Performance Development Agreement. Staff requirements will largely be limited to the Sustainability & Facilities Management Departments.

Attachments:

Performance Contract Project Development Agreement - JCI

Act 1275 of the 90th State of Arkansas General Assembly



PROJECT DEVELOPMENT AGREEMENT BETWEEN

City of Fayetteville, Arkansas
113 West Mountain Street
Fayetteville, AR 72701

AND

Johnson Controls, Inc.
10600 Colonel Glenn Road, Suite 200
Little Rock, AR 72204

The purpose of this Project Development Agreement (PDA) is to confirm the intent of Johnson Controls, Inc. (JCI) and the Customer named above to develop a performance contract. This agreement will provide the basis of the scope of the PDA, the obligations of both parties, the financial metrics to be met, the intended outcomes and timeline.

1. Scope of Services

It is the Parties' mutual understanding this Project Development Agreement will:

- a. Provide for the development of Facility Improvement Measures (FIMs) at the Customer's facilities (Attachment A) that will fund themselves out of energy and/or operational savings; where possible assist the Customer by providing additional improvements to reduce a Customer's deferred maintenance backlog or desired facility improvement measures not affordable otherwise;
- b. Provide information on available financing options relative to Customer's project pro forma;
- c. Utilize the Customer's most recent 24 months of utility consumption data, generally covering the time period of 2018 through 2020.

2. Development Timeline

It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others to work diligently under their direction to achieve the Milestone Schedule identified herein:

- Signed Project Development Agreement (PDA) – March 2021
- JCI to complete Project Development, and provide firm costs – 120 days after signing PDA
- Finalize Agreements and begin Implementation – 180 days after signing PDA
- Anticipated Completion and begin System Operation – 12 months after contract execution

3. Deliverables

Upon completion of the project development, JCI shall deliver to the Customer:

- a. A written description of each FIM proposed to be implemented;
- b. A financial pro forma cash flow documenting the proposed project. The pro forma will include applicable annual costs and savings that affect the project outcome such as financing, energy, water, sewer, and maintenance costs;
- c. A preliminary schedule for implementation of the project;
- d. A summary of the Measurement & Verification plan, including proposed IPMV protocols, such as Option A, B, C, or D that will be used for each FIM;



- e. A firm offer by JCI to implement the project with a positive to neutral cash flow, based on the project Determinants indicated in Paragraph 4;

4. Project Determinants

Success Criteria:

- JCI shall develop a project in compliance with Act 1275 of 2015 as Enacted by the Arkansas General Assembly Regular Session.
- JCI shall develop a project where the energy cost savings and operating cost savings to be realized over the term of the guaranteed energy cost savings contract meet or exceed the costs of the energy efficiency project with a maximum term of 20 years.
- Project Determinants in the table below will be used by JCI and the Customer to determine the economic merit of the project, **the values can change at any time throughout development as better information is made known**. Each party has a duty to inform the other of changes to any of the values indicated in a timely manner that may affect the success of the project.

	Determinant	Value	Unit
1	Project Term	20	years
2	Interest rate	TBD	% per year
4	Customer capital contribution	TBD	\$ per year
5	Electric escalation	TBD	% per year
6	Natural gas escalation	TBD	% per year
10	Electric demand	TBD	\$/kw-month
11	Electric energy on-peak	TBD	\$/kwh
12	Electric energy off-peak	TBD	\$/kwh
13	Natural gas	TBD	\$/mmbtu
14	Water	TBD	\$/k-gal
15	Sewer	TBD	\$/k-gal
16	Non-guaranteed incentives and rebates	TBD	\$ one time
27	Capital Cost Avoidance	TBD	\$ per year
21	Operational Savings	TBD	\$ per year

{Paragraph 5 Next Page}



5. Customer Priority FIMs

JCI will provide some Facility Improvement Measures (FIMs) that are essential to creating a project that meets the Customer's financial buying criteria. Examples of such FIMs may include but not be limited to FIMs such as lighting modifications, water saving fixture modifications and control system modifications. Normally, in addition to those FIMs which are essential creating a project that provides a positive cash flow, JCI can include other FIMs that help the Customer to achieve certain other desired results, such as building improvements or implementing improvements from the Customer's deferred maintenance budget.

Listed herein is a list of Customer Priority FIMs. JCI and the Customer acknowledge that JCI will provide as many of the Customer Priority FIMs listed as possible while still meeting the criteria listed in the Deliverables paragraph. The Customer acknowledges that the project may or may not include all of the Customer Priority FIMs listed.

1. Lighting Upgrades

- a. Interior & Exterior LED Conversions & Intelligent Lighting Upgrades (as possible)
- b. Interior & Exterior Lighting Controls
- c. Street Lighting: Provide electric rate review and comment on previous Electric Utility provided audit

2. Mechanical Improvements

- a. Upgrades to High-Efficiency HVAC equipment (including potential recently completed City HVAC upgrades)
- b. Retro-commissioning of select HVAC systems

3. Energy Management Control System

4. Water Conservation

- a. Domestic high efficiency plumbing upgrades

5. Building Envelope Upgrades

- a. Windows
- b. Roofs
- c. Insulation | Building Sealing & Weatherization

6. Other Facility Improvement Measures:

- a. Waste Management
- b. Renewable Energy Systems – Solar Thermal & Solar PV, Distributed Energy Storage
- c. Streetlights, Athletic Field Lighting, Pathway trail lighting, other special lighting

6. Records and Data

During the project development, the Customer will use best efforts to furnish JCI upon its request, accurate and complete data concerning:

1. Most recent 24 months of utility consumption data, generally covering the time period of 2018 through 2020 (electricity, natural gas, waste management and water and sewer user)
2. Building construction drawings (architectural, mechanical, electrical, plumbing, structural) if available
3. Equipment performance data and equipment lists if available
4. Most recent 24 months of Maintenance and Repair budgets and invoices related to the FIMs;
5. Future projected heating/cooling loads; facility operating requirements; collective bargaining agreements; etc.

JCI will provide a separate document with a formal request for the required information shortly after touring the Customer facilities. The Customer shall make every effort to provide that information within 10 days of request.



7. Preparation of Implementation Contract

JCI will develop the framework of the subsequent Implementation Agreement and the Financing Agreement if applicable. JCI and Customer shall work diligently during the project development to complete and populate contract documents. The form of the documents will vary depending on Customer requirements, state statute where applicable and JCI requirements, but where prudent shall utilize JCI standard documents.

8. Project Development Cost and Payment Terms

The price for JCI to provide project development services identified herein is **\$70,450.00** and Customer shall pay this amount to JCI within 60 days after JCI provides the Deliverables identified herein.

However, Customer will have no obligation to pay this amount if:

- a. JCI and the Customer enter into the Implementation Agreement (outlined in Paragraph 7) within 60 days after JCI provides the Deliverables. In such case, costs for project development will be transferred to the total cost of the Implementation Agreement and be subject to the payment terms outlined in the Implementation Agreement;
- b. The project fails to meet the Project Determinants described in Paragraph 4; in which case the Customer is not obligated to pay JCI for the development services;

Obligation to pay if JCI satisfies requirements - Customer shall pay the amount indicated if JCI satisfies the requirements set forth in Paragraph 3 "Deliverables" and the Customer elects not to implement a project with JCI.

9. Indemnity

JCI and the Customer agree that JCI shall be responsible only to the extent that City's injury, loss, or damage was caused by the intentional misconduct or the negligent act or omission of JCI in providing the services required under this Agreement. JCI agrees to indemnify and to hold City, including its officers, agents, directors, and employees, harmless from all third party claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of JCI's employees or any negligent act or omission by JCI's employees or agents in providing the services required under this Agreement. Neither JCI nor the Customer will be responsible to the other for any special, indirect, or consequential damages. Nothing herein shall constitute a waiver of any of the Customer's statutory or common law immunity.

10. Disputes

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation shall be resolved in the Circuit Court of Washington County, Arkansas or the closest U.S. District Court in or to Washington County, Arkansas, with Arkansas law applying to the case.

11. Confidentiality

This agreement creates a confidential relationship between JCI and Customer. Both parties acknowledge that while performing this Agreement, each will have access to confidential information, including but not limited to systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge,



ideas, marketing promotions, current or planned activities, research, development, and other information relating to the other party ("Proprietary Information"). Except as authorized in writing, or as required by law, both parties agree to keep all Proprietary Information confidential. JCI may only make copies of Proprietary Information necessary for performing its services. Upon cessation of services, termination, or expiration of this Agreement, or upon either party's request, whichever is earlier, both parties will return all such information and all documents, data and other materials in their control that contain or relate to such Proprietary Information.

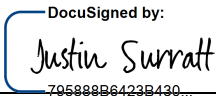
JCI and Customer understand that this is a confidential project and agree to keep and maintain confidentiality to the extent permitted by law regarding its undertaking of this project. JCI shall coordinate its services only through the designated Customer representative and shall provide information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

JCI agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, JCI will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

12. Miscellaneous Provisions

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

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

JOHNSON CONTROLS, INC.	CITY OF FAYETTEVILLE, AR
By Justin Surratt	By Lioneld Jordan
Signature  795888B6423B430...	Signature
Title Area General Manager	Title Mayor
Date 1/26/2021	Date


ATTACHMENT - A

- Attached Selected Facilities for Audit, as provided to JCI.

Selected Facilities for Improvements			
<i>Assets with Costs</i>		<i>Assets Included without Costs</i>	
Full Audit	Area (ft2)	Sport Field Lighting or Irrigation	Area (ft2)
Airport T-Hangers	120,090	Lake Fayetteville Softball	N/A
Town Center	83,000	Gary Hampton Softball	N/A
Fire Marshall Office & Fire Stations 1-7	55,485	Kessler Mountain Regional Park Ball Field	N/A
City Hall	36,140	White River Park Baseball	N/A
Happy Hollow Complex	31,250	Lewis Soccer Complex	N/A
Airport Terminal/Administration	28,500	Wilson Park Pool	N/A
Water & Sewer Office	26,481	Wilson Park/Tennis Courts	N/A
Senior Center	25,000	Walker Park Splash Pad	N/A
Police Headquarters	24,555	Veterans Park	N/A
26 Park Restroom, Concession & Misc Buildings	23,709		
Arkansas Air Museum	21,372	Lighting Only	Area (ft2)
Recycling & Trash Complex	19,230	150 Traffic Signal Area Lighting	N/A
Development Services	11,588	Blair Library	N/A
Animal Shelter Complex	11,075		
Yvonne Richardson Community Center	9,000	Review Street Light Audit & Rates	Area (ft2)
Traffic Shop - Parks	8,940	2,660 SWEPCO owned Street Lights	N/A
Facilities Maintenance Office	8,220		
West Shop	7,250		
Rangers Pantry Pet Food Bank	6,800		
Media Services/Television Center	5,116		
WWTP - Noland	4,700		
WWTP - West Side	4,700		
Compost Facility	3,900		
T-Hanger A Yard Service	N/A		
Recycling Drop Off - Happy Hollow	N/A		
Recycling Drop Off - Marion Orton	N/A		
Parking Management Systems	Area (ft2)		
16 Parking Lots	97,287		
TOTAL	673,388		

<i>AEO Sq.Ft. IGA Guidelines - Total Area</i>		
01-250,000	\$	0.20
250,000-500,000	\$	0.18
500,000+	\$	0.15
"Lighting Only" rate subject to ESCo	\$	-

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S3/24/15
A Bill

SENATE BILL 869

5 By: Senator D. Johnson
6 By: Representative *Sabin*
7

8 **For An Act To Be Entitled**

9 AN ACT TO PROVIDE ENABLING LEGISLATION FOR ENERGY
10 EFFICIENCY PROJECT BONDS ISSUED BY A MUNICIPALITY OR
11 COUNTY UNDER ARKANSAS CONSTITUTION, AMENDMENT 89; TO
12 CREATE THE LOCAL GOVERNMENT ENERGY EFFICIENCY PROJECT
13 BOND ACT; AND FOR OTHER PURPOSES.
14
15

16 **Subtitle**

17 TO PROVIDE ENABLING LEGISLATION FOR
18 ENERGY EFFICIENCY PROJECT BONDS ISSUED BY
19 A MUNICIPALITY OR COUNTY; AND TO CREATE
20 THE LOCAL GOVERNMENT ENERGY EFFICIENCY
21 PROJECT BOND ACT.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 *SECTION 1. Arkansas Code Title 14, Chapter 164, is amended to add an*
27 *additional subchapter to read as follows:*

28 *Subchapter 8 – Local Government Energy Efficiency Project Bond Act*
29

30 *14-164-801. Title.*

31 *This subchapter shall be known and may be cited as the “Local*
32 *Government Energy Efficiency Project Bond Act”.*
33



1 14-164-802. Purpose – Legislative findings.

2 (a) The purpose of this subchapter is to provide financing for energy
3 efficiency projects for municipalities and counties under Arkansas
4 Constitution, Amendment 89.

5 (b) The General Assembly finds that:

- 6 (1) This subchapter is in furtherance of a public purpose; and
7 (2) The duties imposed upon and authority granted to
8 municipalities and counties in this subchapter are in furtherance of the
9 conservation of the environment, efficient government spending, and the
10 protection of the public health, welfare, and safety.

11
12 14-164-803. Definitions.

13 As used in this subchapter:

14 (1) “Bonds” means bonds, notes, certificates, financing leases,
15 or other interest-bearing instruments or evidences of indebtedness that are
16 issued under this subchapter;

17 (2) “Chief executive officer” means the chief executive officer
18 of a municipality or the county judge of a county;

19 (3) “County” means a county in the State of Arkansas;

20 (4) “Energy efficiency project” means:

21 (A) A new facility that is designed to reduce the
22 consumption of energy or natural resources or result in operating cost
23 savings as a result of changes that:

24 (i) Do not degrade the level of service or working
25 conditions;

26 (ii) Are measurable and verifiable under the
27 International Performance Measurement and Verification Protocol, as adopted
28 by the Arkansas Energy Office in the rules required under § 19-11-1207; and

29 (iii) Are measured and verified by an audit
30 performed by an independent engineer or by a qualified provider, including
31 the vendor providing the energy efficiency project; or

32 (B) An existing facility alteration that is designed to
33 reduce the consumption of energy or natural resources or result in operating
34 cost savings as a result of changes that conform with subdivisions (4)(A)(i)
35 and (ii) of this section;

36 (5) “Guaranteed energy cost savings contract” means a contract

1 for the implementation of one (1) or more energy efficiency projects and
2 services provided by a qualified provider in which the energy and cost
3 savings achieved by the installed energy efficiency project cover all energy
4 efficiency project costs, including financing, over a specified contract
5 term;

6 (6) "Issuer" means a municipality or a county;

7 (7) "Legislative body" means the quorum court of a county or the
8 council, board of directors, board of commissioners, or similar elected
9 governing body of a city or town;

10 (8) "Municipality" means a city or incorporated town in the
11 State of Arkansas;

12 (9) "Operating cost savings" means expenses eliminated and
13 future replacement expenditures avoided as a result of new equipment
14 installed or services performed;

15 (10) "Ordinance" means an ordinance, resolution, or other
16 appropriate legislative enactment of a legislative body; and

17 (11) "Qualified provider" means the same as defined in § 19-11-
18 1202.

19
20 14-164-804. Energy efficiency projects authorized.

21 (a)(1) A municipality or county may enter into a guaranteed energy
22 cost savings contract in order to reduce energy consumption or operating
23 costs of government facilities under this subchapter.

24 (2) A municipality or county may enter into an installment
25 payment contract or lease purchase agreement with a qualified provider for
26 the purchase and installation of an energy efficiency project in accordance
27 with this subchapter.

28 (b) An energy efficiency project shall comply with current local,
29 state, and federal construction and environmental codes and regulations.

30
31 14-164-805. Method of solicitation.

32 A solicitation of a guaranteed energy cost savings contract by a county
33 or municipality shall be consistent with applicable procurement laws.

34
35 14-164-806. Evaluation of responses to solicitations.

36 (a) In a municipality's or county's evaluation of each qualified

1 provider's response to a solicitation under § 14-164-805, the municipality or
2 county shall include an analysis of:

3 (1) Whether the qualified provider meets the objectives of the
4 solicitation, including without limitation a reduction in the municipality's
5 or county's energy consumption or operating costs resulting from a guaranteed
6 energy cost savings contract with the qualified provider;

7 (2) The qualifications and experience of the qualified provider;

8 (3) The technical approach to the energy efficiency project;

9 (4) The financial aspects of the energy efficiency project;

10 (5) The overall benefit to the municipality or county; and

11 (6) Any other relevant factors.

12 (b) After evaluating a response to a solicitation as required under
13 subsection (a) of this section, a municipality or county may:

14 (1) Reject the response; or

15 (2) Award a contract to a qualified provider to conduct an
16 energy audit to be used in developing the guaranteed energy cost savings
17 contract.

18
19 14-164-807. Guaranteed energy cost savings contract requirements.

20 (a) The following provisions are required in a guaranteed energy cost
21 savings contract:

22 (1) A statement that the municipality or county shall maintain
23 and operate the energy efficiency project as defined in the guaranteed energy
24 cost savings contract; and

25 (2) A guarantee by the qualified provider that:

26 (A) The energy cost savings and operating cost savings to
27 be realized over the term of the guaranteed energy cost savings contract meet
28 or exceed the costs of the energy efficiency project; and

29 (B) If the annual energy or operating cost savings fail to
30 meet or exceed the annual costs of the energy efficiency project as required
31 by the guaranteed energy cost savings contract, the qualified provider shall
32 reimburse the municipality or county for any shortfall of guaranteed energy
33 cost savings over the term of the guaranteed energy cost savings contract.

34 (b) The maximum term for a guaranteed energy cost savings contract is
35 twenty (20) years after the implementation of the energy efficiency project.

36 (c) Before entering into a guaranteed energy cost savings contract,

1 the municipality or county shall require the qualified provider to file with
2 the municipality or county a payment and performance bond or similar
3 assurance.

4
5 14-164-808. Bonds – Issuance generally.

6 (a)(1) A municipality or county may issue bonds for an energy
7 efficiency project within, near, or within and near the municipality or
8 county.

9 (2) Bonds shall be issued pursuant to an ordinance adopted by
10 the legislative body specifying:

11 (A) The principal amount of bonds to be issued;

12 (B) The purpose or purposes for which the bonds are to be
13 issued; and

14 (C) Any other provisions deemed important with respect to
15 the bonds.

16 (b) A legislative body shall not adopt an ordinance regarding the
17 issuance of bonds unless the legislative body has determined that:

18 (1) All of the work on the energy efficiency project will be
19 performed by a qualified provider; and

20 (2) The qualified provider has provided a guarantee of the
21 operating cost savings to be realized from the energy efficiency project
22 that:

23 (A) The energy cost savings and operating cost savings to
24 be realized over the term of the guaranteed energy cost savings contract meet
25 or exceed the costs of the energy efficiency project; and

26 (B) If the annual energy or operating cost savings fail to
27 meet or exceed the annual costs of the energy efficiency project as required
28 by the guaranteed energy cost savings contract, the qualified provider shall
29 reimburse the issuer for any shortfall of guaranteed energy cost savings over
30 the term of the guaranteed energy cost savings contract.

31 (c) The maximum term of the bonds may not exceed the shorter of:

32 (1) The useful life of the energy efficiency project; or

33 (2) Twenty (20) years.

34
35 14-164-809. Bonds – Terms and conditions.

36 (a) As provided by an ordinance or trust indenture authorized under

1 this subchapter, bonds may:

2 (1) Be in registered or other form;

3 (2) Be in such denominations as determined by the legislative
4 body;

5 (3) Be exchangeable for bonds of another denomination;

6 (4) Be made payable at places within or without the state;

7 (5) Be issued in one (1) or more series;

8 (6) Bear the date or dates determined by the legislative body of
9 the issuer;

10 (7) Mature at the time or times determined by the legislative
11 body of the issuer;

12 (8) Be payable in such medium of payment determined by the
13 legislative body of the issuer;

14 (9) Be subject to the terms of redemption determined by the
15 legislative body of the issuer; and

16 (10) Contain other terms, covenants, and conditions determined
17 by the legislative body of the issuer, including without limitation terms,
18 covenants, and conditions pertaining to:

19 (A) The custody and application of the proceeds of the
20 bonds;

21 (B) The maintenance of various funds and reserves;

22 (C) The nature and extent of the pledge and security;

23 (D) The remedies on default; and

24 (E) The rights, duties, and obligations of the legislative
25 body of the issuer and the trustee, if any, for the owners of the bonds, and
26 the rights of the owners of the bonds.

27 (b) All bonds are negotiable instruments within the meaning of the
28 negotiable instruments law of the state.

29
30 14-164-810. Bonds – Trust indenture.

31 (a) The ordinance authorizing bonds may provide for the execution by
32 the chief executive officer of the issuer of a trust indenture that:

33 (1) Defines the rights of the owners of the bonds; and

34 (2) Provides for the appointment of a trustee for the owners of
35 the bonds.

36 (b) A trust indenture executed under this section may:

1 (1) Provide for the priority between and among successive
2 issues; and

3 (2) Contain one (1) or more of the provisions stated in § 14-
4 164-809 and any other terms, covenants, and conditions that are deemed
5 desirable.

6
7 14-164-811. Bonds – Sale.

8 (a) Bonds may be sold at a public or private sale for the price and in
9 the manner determined by the legislative body of the issuer.

10 (b) Bonds sold under this subchapter may be sold at a discount or a
11 premium.

12
13 14-164-812. Bonds – Execution.

14 Bonds shall be executed in the manner provided by the Registered Public
15 Obligations Act of Arkansas, § 19-9-401 et seq.

16
17 14-164-813. Bonds – Payment – Security.

18 (a) The principal of and interest on the bonds may be secured by a
19 pledge of the operating cost savings derived from the energy efficiency
20 project, and a municipality or county may pledge or assign a guaranteed
21 energy cost savings contract to secure the bonds.

22 (b) The total annual principal and interest payments in each fiscal
23 year on bonds shall be charged against and paid from general revenues,
24 special revenues, revenues derived from taxes, or any other revenues
25 available to the municipality or county if the special revenues, revenues
26 derived from taxes, or other revenues have not been previously restricted to
27 another purpose.

28 (c) Notwithstanding any law to the contrary, a municipality or county
29 may use money budgeted for maintenance and operations to pay the principal of
30 and interest on bonds issued for an energy efficiency project under this
31 subchapter.

32 (d)(1) Bonds are not revenue bonds for purposes of any statute.

33 (2) The legislative body is not required to hold a public
34 hearing on the issuance of the bonds.

35

1 14-164-814 Bonds – Energy efficiency project liens.

2 (a) An ordinance or trust indenture authorized under § 14-164-808 or §
3 14-164-810 may impose a financing lien on an energy efficiency project
4 financed or refinanced, in whole or in part, with the proceeds of bonds.

5 (b) The nature and extent of a lien imposed under this section may be
6 controlled by the ordinance or trust indenture, including without limitation
7 provisions pertaining to:

8 (1) The release of all or part of the land, buildings, or
9 facilities from the lien;

10 (2) The priority of the lien in the event of successive bond
11 issues; and

12 (3) The authorization of any owner of bonds, or a trustee on
13 behalf of all owners, to enforce the lien and, by proper suit, compel the
14 performance of the duties of the officials of the issuer stated in this
15 subchapter or in the ordinance or trust indenture authorizing or securing the
16 bonds.

17 (c) As used in this section, "lien" includes a security interest in
18 any personal property constituting an energy efficiency project and any part
19 of an energy efficiency project financed or refinanced, in whole or in part,
20 with the proceeds of bonds issued under this subchapter.

21
22 14-164-815. Liability of legislative body's officers, employees, and
23 members.

24 An officer, employee, or member of the legislative body of an issuer
25 under this subchapter shall not be personally liable on bonds or for damages
26 sustained by a person in connection with a guaranteed energy cost savings
27 contract entered into to carry out the purposes and intent of this subchapter
28 unless the person has acted with a corrupt intent.

29
30 14-164-816. Tax exemption.

31 Bonds and the income on the bonds are exempt from all state, county,
32 and municipal taxes, including without limitation income, property, and
33 inheritance taxes.

34
35 14-164-817. Refunding bonds.

36 (a) Bonds may be issued to refund any outstanding bonds or to refund

1 any outstanding bonds issued under any other law for the purpose of financing
2 energy efficiency projects.

3 (b)(1) Refunding bonds may be sold for cash or delivered in exchange
4 for the outstanding obligations under subsection (a) of this section.

5 (2) If refunding bonds are sold for cash under subdivision
6 (b)(1) of this section, the proceeds may be applied to the payment of the
7 obligations refunded or deposited into an irrevocable trust for the
8 retirement of the refunding bonds either at maturity or on an authorized
9 redemption date.

10 (c) Refunding bonds shall in all respects be authorized, issued, and
11 secured in the manner provided in this subchapter.

12 (d) The ordinance under which refunding bonds are issued may provide
13 that any refunding bonds shall have the same priority of lien on revenues as
14 originally pledged for payment of the obligation refunded by the refunding
15 bonds.

16
17 14-164-818. Applicability.

18 This subchapter:

19 (1) Applies only to municipalities and counties; and

20 (2) Does not apply to the following governmental units:

21 (A) The state and any agency, board, commission, or
22 instrumentality of the state;

23 (B) A school district; or

24 (C) A special assessment or taxing district established
25 under the laws of the state.

26
27 14-164-819. Subchapter supplemental to other laws.

28 This subchapter is:

29 (1) Supplemental to other laws, and municipalities and counties
30 may use other applicable laws in the issuance of bonds and other obligations
31 under this subchapter; and

32 (2) Sufficient authority for the issuance of bonds and the
33 performance of all other acts and procedures authorized by this subchapter.

34
35 14-164-820. Construction.

36 This subchapter shall be construed liberally to effectuate the

1 legislative intent and the purposes of this subchapter as a complete and
2 independent authority for the performance of the acts authorized under this
3 subchapter, and the powers granted under this subchapter shall be broadly
4 interpreted to effectuate the intent and purposes and shall not be
5 interpreted as a limitation of powers.

6
7 14-164-821. Rules.

8 A municipality or county may provide by ordinance that the municipality
9 or county shall comply with the rules promulgated by the Arkansas Energy
10 Office under § 19-11-1207.

11
12 /s/D. Johnson

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15 **APPROVED: 04/08/2015**
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