

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 2/13/2014

Action Requested By:
General Services

Agenda Item Type
Resolution

Subject Matter:

Resolution Authorizing the Mayor to execute an Agreement between the City of Huntsville and Jake Marshall Services Inc. for LED Retrofit Lighting.

Exact Wording for the Agenda:

Resolution Authorizing the Mayor to execute an Agreement between the City of Huntsville and Jake Marshall Services Inc. for LED Retrofit Lighting.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

The City of Huntsville realizes the savings on energy and associated funds the LED Retrofit will create.

Associated Cost: \$710,233.94

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____



Date: 1/29/2014

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: General Services

Council Meeting Date: 2/13/2014

Department Contact: Barry Crumrine

Phone # 256-427-5670

Contract or Agreement: Contract

Document Name: Agreement between the City of Huntsville and Jake Marshall Services for LED retrofit

City Obligation Amount: \$710,233.94

Total Project Budget: 710,233.94

Uncommitted Account Balance: _____

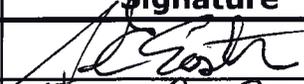
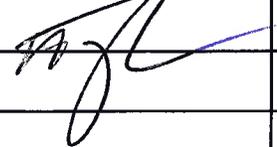
Account Number: _____

Procurement Agreements

Title 39	Competitive
-----------------	--------------------

Grant-Funded Agreements

Not Applicable	Grant Name:
-----------------------	--------------------

Department	Signature	Date
1) Originating		1/28/14
2) Legal		2/4/14
3) Finance		2/10/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be and he is hereby authorized to enter in an agreement by and between the City of Huntsville and Jake Marshall Service, Inc., for LED Light Conversion at several City facilities on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to the certain document attached hereto and identified as "Energy Saving Contract for LED Lighting Retrofit and Motion Sensors" consisting of six (6) pages plus attachments A, B, and C with the signature of the City Council President or President Pro Tem and an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama

ADOPTED on this the 13th day of February, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED on this the 13th day of February, 2014.

Mayor of the City of Huntsville,
Alabama

**ENERGY SAVINGS CONTRACT
FOR
LED LIGHTING RETROFIT AND MOTION SENSORS**

PARTIES: **Jake Marshall Service, Inc.** (“JMSI” or “Contractor”)
700 Washington Street; Suite 6
Huntsville, Alabama 35801
 and
611 W Manning St.
Chattanooga, TN. 37405

CITY OF HUNTSVILLE (“Customer” or “City”)
308 Fountain Circle SW
Huntsville, AL 35801

CONTRACT DOCUMENTS: In addition to the terms and conditions of this Energy Savings Contract, incorporated by reference into this Contract are the following:

Request for Proposals : LED and Motion Sensors Conversions #52-2013-7400-2 issued May 31, 2013, Jake Marshall Service, Inc. Proposal response to Request for Proposal #52-2013-7400-2 including the updated .10 cents kwh TVA lighting workbook listings for each building. General Services LED Lighting Recommendations Building List. Certain portions of the Contractor’s proposal are included herein as Attachment “C”.

In the event of a conflict between or among these contract documents and the terms and conditions of this Energy Savings Contract, the terms and conditions of the Contract shall take precedence. Although the Request for Proposals solicited proposals for motion sensors in addition to LED Conversions, this Contract does not include any work on motion sensor conversion or new installation of motion sensors.

1. SCOPE OF THE CONTRACT.

- a. JMSI agrees to perform the work identified on a written task order basis as identified and issued in writing by the General Services Department of the City of Huntsville. LED lighting modification shall be performed in accordance to the JMSI proposal for each identified project within the JMSI proposal as requested in writing on each written task order. It is anticipated multiple task orders may be issued for work to begin on one or more buildings as funding is determined to be available.
- b. City buildings have been separately identified by a project number with an initial cost, incentive, final cost, and annual savings estimate for estimated usage identified using the Lighting Workbook for Business format as included herein in Attachment “A”. All products provided under the .10 cent TVA Work Books will be no more, no less than what is stated in the work books. Change orders will have to be issued for any changes to the scope of the TVA Work Books. Within Attachment “A” the projects are divided into Group A and Group B. Group A represents those projects presently determined by the City to be the highest priority for work, with Group B representing projects that may be considered secondarily in the event that funds may become available for additional projects. The City reserves the right to change this priority during the term of this Contract.
- c. JMSI shall supervise and direct the Work 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 Contract. Inasmuch as this contract is deemed an Energy Savings contract, the stipulated savings shall be determined to be

President of the City Council of the
City of Huntsville, Alabama
Date: _____

realized by using baseline measurements. JMSI shall be responsible for performing the pretesting of current wattage use at each fixture and providing a written record of such usage to the General Services Department representative prior to the replacement of each fixture. A General Services Department representative may be present to observe this pretesting and post testing for savings validation purposes. This pretesting shall be performed in order to validate the savings realized from the each fixture replacement. The basis of each fixture savings shall be calculated on presumption that each fixture burns twelve (12) hours per day. JMSI shall develop a worksheet, subject to approval by the City, that documents all work performed.

- d. JMSI shall furnish and be responsible to pay for all labor, materials, equipment, fixtures 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.
- e. City shall provide access to JMSI during reasonable work hours in order to perform the scope of work. JMSI workers shall restrict their movement within each building to the relevant work area and shall perform the work without undue interference or interruption of the day to day operations of the facility and its workforce. In the event that JMSI needs to perform work for any building during a second or third shift schedule, the task order shall provide advance notice of that requirement, if required by the City.
- f. JMSI shall ensure that all work performed complies with all applicable codes and standards.
- g. Exceptions to the JMSI proposal are:
 - (1) Any construction badges for JMSI personnel shall be provided by JMSI. The City will not provide such badging. (Clothing with the JMSI logo will be acceptable)
 - (2) The City will provide internet access only to electronic versions of historical plans for buildings to be modified pursuant to this contract.
 - (3) The City will provide pallets instead of bins at the General Services Building for drop-off by JMSI of all removed materials.

2. **CONTRACT TERM** . The Term of this contract shall begin on the Commencement Date, which shall be the date of this Contract. An initial task order shall be issued within fourteen (14) days of the original Commencement Date. Subsequent task orders for additional work may be issued for the work identified on additional buildings as set forth in Attachment "A". Task orders may be issued during the period starting with the original contract Commencement Date and ending not later than two hundred seventy (270) days after the Commencement Date. The Work is divided into individual projects for which individual prices have been negotiated, and each task order shall include a separate Commencement Date and Completion date for each phase or individual project.

3. **CONTRACT TYPE AND PAYMENTS**. This contract is an indefinite quantity task order contract type. An initial task order shall be issued by the City. Although the City may issue additional task orders for work to be performed at other buildings as indicated and priced within Attachment "A", there is no requirement for the City to do so and the initial Task Order represents the total financial obligation of the City until such time as additional task orders may be issued. The total Not to Exceed (NTE) amount for all task orders issued pursuant to this contract shall not be more than \$ 710,233.94. The contractor shall be required to perform all task orders issued by the City for the work on the buildings identified in Attachment "A". JMSI may invoice the City on a task order basis upon completion and acceptance by the City of the work detailed in each task order. The amount invoiced shall be the identified "initial cost"

realized by using baseline measurements. JMSI shall be responsible for performing the pretesting of current wattage use at each fixture and providing a written record of such usage to the General Services Department representative prior to the replacement of each fixture. A General Services Department representative may be present to observe this pretesting and post testing for savings validation purposes. This pretesting shall be performed in order to validate the savings realized from the each fixture replacement. The basis of each fixture savings shall be calculated on presumption that each fixture burns twelve (12) hours per day. JMSI shall develop a worksheet, subject to approval by the City, that documents all work performed.

- d. JMSI shall furnish and be responsible to pay for all labor, materials, equipment, fixtures 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.
- e. City shall provide access to JMSI during reasonable work hours in order to perform the scope of work. JMSI workers shall restrict their movement within each building to the relevant work area and shall perform the work without undue interference or interruption of the day to day operations of the facility and its workforce. In the event that JMSI needs to perform work for any building during a second or third shift schedule, the task order shall provide advance notice of that requirement, if required by the City.
- f. JMSI shall ensure that all work performed complies with all applicable codes and standards.
- g. Exceptions to the JMSI proposal are:
 - (1) Any construction badges for JMSI personnel shall be provided by JMSI. The City will not provide such badging. (Clothing with the JMSI logo will be acceptable)
 - (2) The City will provide internet access only to electronic versions of historical plans for buildings to be modified pursuant to this contract.
 - (3) The City will provide pallets instead of bins at the General Services Building for drop-off by JMSI of all removed materials.

2. **CONTRACT TERM** . The Term of this contract shall begin on the Commencement Date, which shall be the date of this Contract. An initial task order shall be issued within fourteen (14) days of the original Commencement Date. Subsequent task orders for additional work may be issued for the work identified on additional buildings as set forth in Attachment "A". Task orders may be issued during the period starting with the original contract Commencement Date and ending not later than two hundred seventy (270) days after the Commencement Date. The Work is divided into individual projects for which individual prices have been negotiated, and each task order shall include a separate Commencement Date and Completion date for each phase or individual project.

CONTRACT TYPE AND PAYMENTS. This contract is an indefinite quantity task order contract type. An initial task order shall be issued by the City. Although the City may issue additional task orders for work to be performed at other buildings as indicated and priced within Attachment "A", there is no requirement for the City to do so and the initial Task Order represents the total financial obligation of the City until such time as additional task orders may be issued. The total Not to Exceed (NTE) amount for all task orders issued pursuant to this contract shall not be more than \$ 710,233.94. The contractor shall be required to perform all task orders issued by the City for the work on the buildings identified in Attachment "A". JMSI may invoice the City on a task order basis upon completion and acceptance by the City of the work detailed in each task order. The amount invoiced shall be the identified "initial cost" defined on the project sheets included in Attachment "A" for each building project. This "initial cost" constitutes the "fixed fee" to

be paid to JMSI for the work on each building modification. The City shall pay JMSI within thirty (30) calendar days from receipt and acceptance of each invoice. Remit all payments to P.O. Box 4324 Chattanooga Tn. 37405

4. **DELAYS.** If JMSI is delayed in the commencement or completion of the Work by causes beyond its control and without its fault or negligence, including but not limited to fire, flood, labor disputes, unusual delays in deliveries, abnormal adverse weather conditions, and acts of God, or by failure by the Customer to perform its obligations under the Performance Contract and Schedules or failure by the Customer to cooperate with JMSI in the timely completion of the Work, then JMSI shall provide written notice to the Customer of the existence, extent of, and reason for such delays. An equitable adjustment in Substantial Completion Date shall be made as a result and shall serve as the only accommodation to be made for the delay. No monetary damages shall be awarded for any delay.
5. **CERTIFICATE OF COMPLETION.** The Certificate of Completion which shall be prepared by JMSI and is to be executed by the City for each task order shall include:
 - a. an acknowledgement by the City of the buildings completed and the Completion Date for each building;
 - b. an acknowledgment by the City of receipt of manuals and training provided by JMSI under the Contract;
 - c. an acknowledgement by the City of the warranty start date and warranty period for each task order; and
 - d. acknowledgement by the City of receipt of the required documentation for each task order.
6. **TERM.** The term of this contract shall not exceed one (1) years for the purposes of the City issuing task orders. Each task order shall set forth its specific period of performance for completion of the task.
7. **TAXES, PERMITS, AND FEES.** JMSI shall be responsible for obtaining all licenses, permits and related permit fees associated with the Work and Services. JMSI 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 of the work.
8. **WARRANTY.** JMSI warrants that materials and equipment furnished by JMSI 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 Contract Documents. Bulb manufacturer warrants that the Products shall be free from defects in material (Bulbs) for a period of five (5) years from the installation Date and JMSI warrants that its Services will be free from defects in workmanship, and design for one year. Upon written notice from the Customer, JMSI shall, at its option, repair or replace the defective Work or re-perform defective Services. The Customer must promptly report any failure of the Equipment to JMSI in writing. Fixtures, bulbs and sensors shall be tagged by the JMSI as of the date of acceptance of the completion of each task order by the City and shall be documented on a worksheet to be developed by JMSI and approved as to format by the City's General Services Department representative. The worksheet shall also include the date and measurement of the pretesting of the energy usage and the post installation testing of the energy usage. All labor provided by JMSI shall include a one (1) year warranty from the date of acceptance for each task order. All material replacement services shall be performed by JMSI for the first year from the date of completion.

If JMSI installs or furnishes a piece of equipment under this Contract, and that equipment is covered

by a warranty from the manufacturer, JMSI will transfer the benefits of that manufacturer's warranty to Customer if this Contract with Customer terminates before the equipment manufacturer's warranty expires.

9. **CLEANUP.** JMSI 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, JMSI shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.
10. **SAFETY.** JMSI shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work or Services. JMSI shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property.
11. **INSURANCE.** Prior to commencing the Work, JMSI shall provide a certificate of insurance showing its insurance coverage's, and JMSI shall maintain such insurance in full force and effect at all times until the Work and Services have been completed. Insurance requirements are as set forth in Attachment "B".
12. **MODIFICATIONS.** Additions, deletions, and modifications to this Contract may be made upon the mutual consent of the parties. The parties contemplate that such modifications may include but are not limited to the installation of additional 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 City. These modifications may take the form of additional phases of work or modifications to the original scope of Work or Services.
13. **NOTICES.** All notices or communications related to this Contract shall be in writing and shall be deemed served if and when sent by facsimile or mailed by certified or registered mail to JMSI at the address listed on page 1 of this contract and to City at the address listed on page 1 of this contract.
14. **E-VERIFY.** Effective May 16, 2012, this notice shall be included in all competitively bid contracts awarded for labor, supplies, or services for the City of Huntsville, Alabama and in the award of all grants or incentives.

E-VERIFY – NOTICE

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, Code of Alabama (1975) § 31-13-1 through 31-13-30 (also known as and hereinafter referred to as " the Alabama Immigration Act") as amended by Act No. 2012-491 on May 16, 2012 is applicable to all competitively bid contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, as amended, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are included in each subcontract in accordance with §31-13-9(c). Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2).

Code of Alabama (1975) § 31-13-9 (k) requires that the following clause be included in all City of Huntsville contracts that have been competitively bid and is hereby made a part of this contract:

"By signing this contract the contracting parties affirm, for the duration of the Contract, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Contract and shall be responsible for all damages resulting therefrom."

15. **TERMINATION.** If the City of Huntsville determines that JMSI has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the City may, by providing written notice to JMSI, terminate the contractor's right to proceed with all or part of the remaining work.

The City reserves the right to cancel this contract without cause giving a thirty day (30) written notice.

16. **ADDITIONAL TERMS.**

- A. Any failure of the City to require strict performance by JMSI, or any waiver by the City of any requirement under this Contract, does not consent to or waive any subsequent failure or breach by the Customer.
- B. If any provision of this Contract 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 Contract are for convenience only and shall not affect the interpretation or meaning of this Contract.
- D. This Contract is the full Contract between JMSI and the City as of the date it is approved and executed by the properly authorized representatives of the parties. All previous conversations, correspondence, Contracts, or representations related to this contract, unless specifically included herein, are not part of the contract between JMSI and the City and are superceded by this Contract. In the event of a conflict among this contract and any of the attachments or documents incorporated by reference hereto, this contract shall take precedence.
- E. This Contract shall be construed in accordance with the laws of the state of the Alabama.

Dated _____, 2014.

CUSTOMER:

Signature: _____

Printed Name: _____

Title: _____

ATTEST: _____

JAKE MARSHALL SERVICE, INC.

Signature: *Marie M Marshall*

Printed Name: Marie M Marshall

Title: Chairman

ATTEST: _____