



## AGENDA REPORT

**Meeting Date:** December 2, 2008  
**Item Number:** F-9  
**To:** Honorable Mayor & City Council  
**From:** Alan Schneider, Director of Project Administration  
**Subject:** APPROVAL OF THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ENGINEERING ECONOMICS, INC. FOR COMMISSIONING CONSULTING SERVICES FOR THE 331 FOOTHILL ROAD OFFICE BUILDING; AND  
APPROVE A PURCHASE ORDER IN THE AMOUNT OF \$64,000 TO ENGINEERING ECONOMICS, INC. FOR THESE SERVICES  
**Attachments:** 1. Agreement

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### **RECOMMENDATION**

Staff recommends that the City Council move to approve an agreement with Engineering Economics, Inc. for commissioning consulting services for the 331 Foothill Road Office Building project in the amount of \$57,000; reimbursable expenses of \$2,000; a contingency of \$5,000; and approve a Purchase Order in the amount of \$64,000.

### **INTRODUCTION**

The proposed agreement will provide for the fundamental and for the enhanced commissioning of various building systems to verify the installation, performance, operation, and maintenance documentation. The fundamental commissioning is a mandatory Leadership in Energy and Environmental Design (LEED) requirement, and the additional commissioning service earns a LEED point toward certification.

### **DISCUSSION**

The City Council awarded the construction contract for the 331 Foothill Road Office Building on August 5, 2008. The central heating, ventilating, and air conditioning (HVAC) plant for this structure will be located in the adjacent parking structure, and is designed to serve all of the tenants including the Cable TV studio.

The commissioning process is one of verification of the HVAC system from plans through installation, operation, training, and maintenance. In addition, the consultant will

Meeting Date: December 2, 2008

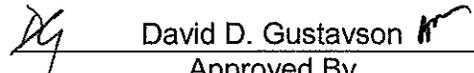
provide similar services for the solar panel energy system, the hot water system, the lighting, and the day lighting control systems.

The Consultant has successfully provided comparable services for the Vehicle Shop and other City projects.

**FISCAL IMPACT**

Funding for this agreement has been allocated from the fiscal year 08-09 Capital Improvement Program (CIP) budget for 331 Foothill Road Office Building Project #888 and is available to cover the cost of these services.

  
\_\_\_\_\_  
Scott G. Miller  
Finance Approval

  
\_\_\_\_\_  
David D. Gustavson  
Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY  
HILLS AND ENGINEERING ECONOMICS, INC. FOR  
COMMISSIONING CONSULTING SERVICES FOR  
THE 331 FOOTHILL ROAD OFFICE BUILDING

NAME OF CONSULTANT: Engineering Economics, Inc.

RESPONSIBLE PRINCIPAL  
OF CONSULTANT: Bill Folkerts, Branch Manager

CONSULTANT'S ADDRESS: 5721 W. Slauson Avenue, Suite 160  
Los Angeles, CA 90230

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: Alan Schneider  
Director of Project Administration

COMMENCEMENT DATE: When authorized by a written Notice to  
Proceed

TERMINATION DATE: June 30, 2011, unless extended pursuant to  
Section 2 of the Agreement

CONSIDERATION: Fees not to exceed \$57,000 as set forth in  
Exhibit B

Reimbursable expenses not to exceed \$2,000  
as described in Exhibit C

Contingency not to exceed \$5,000 based on  
hourly rates set forth in Exhibit B

Total compensation, including fees,  
contingency and expenses not to exceed  
\$64,000

AGREEMENT BETWEEN THE CITY OF BEVERLY  
HILLS AND ENGINEERING ECONOMICS, INC. FOR  
COMMISSIONING CONSULTING SERVICES FOR  
THE 331 FOOTHILL ROAD OFFICE BUILDING

THIS AGREEMENT is made as of the Commencement Date set forth above, by and between the City of Beverly Hills (hereinafter called "CITY"), and Engineering Economics, Inc. (hereinafter called "CONSULTANT").

RECITALS

A. CITY desires to have certain services provided (the "services") as set forth in Exhibit A, attached hereto and incorporated herein.

B. CONSULTANT represents that it is qualified and able to perform the services.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Services. CONSULTANT shall perform the services as described in Exhibit A, attached hereto and incorporated herein, to the full satisfaction of CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Time of Performance. CONSULTANT shall perform the services as required by this Agreement and complete all the services on or by the Termination Date set forth above. The Agreement may be extended in writing by the Chief Financial Officer or his designee for two additional one year periods.

Section 3. Compensation. CITY agrees to compensate CONSULTANT, and CONSULTANT agrees to accept in full satisfaction for the services required by this Agreement an amount not to exceed the Consideration set forth above and more fully described in Exhibit B (Compensation), attached hereto and incorporated herein and Exhibit C (reimbursable expenses), attached hereto and incorporated herein. Said Consideration shall constitute reimbursement of CONSULTANT's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). CITY shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in Exhibit B.

Section 4. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 5. Assignment. This Agreement may not be assigned in whole or in part by either party, without the prior written consent of the other party.

Section 6. Responsible Principal(s).

(a) The Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible Principal by CONSULTANT shall not be made without the prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 7. Personnel. CONSULTANT represents that it shall perform the services required to be performed under this Agreement.

Section 8. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 9. Insurance.

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(b) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the services required by this Agreement.

(c) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Professional Liability Insurance, with minimum limits of One Million Dollars (\$1,000,000).

(d) CONSULTANT agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

(e) CONSULTANT shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(f) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(g) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

(h) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit D, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(i) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(j) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 10. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 11. Termination.

(a) CITY may cancel this Agreement at any time upon five (5) days written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid full compensation for all services performed by CONSULTANT, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, CONSULTANT shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation, provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid CONSULTANT for the full performance of the services required by this Agreement.

Section 12. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 13. Notice. Any notice required to be given to CONSULTANT shall be deemed duly and properly given upon delivery, if sent to CONSULTANT postage prepaid to CONSULTANT's address set forth above or personally delivered to CONSULTANT at such address or other address specified to CITY in writing by CONSULTANT.

Any notice required to be given to CITY shall be deemed duly and properly given upon delivery, if sent to CITY postage prepaid to CITY's address set forth above or personally delivered to CITY at such address or other address specified to CONSULTANT in writing by CITY.

Section 14. Attorney's Fees. In the event that CITY or CONSULTANT commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

Section 15. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 16. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 17. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the

application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
BARRY BRUCKER  
Mayor of the City of  
Beverly Hills, California

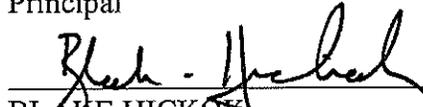
ATTEST:

\_\_\_\_\_  
(SEAL)  
BYRON POPE  
City Clerk

CONSULTANT: ENGINEERING  
ECONOMICS, INC.

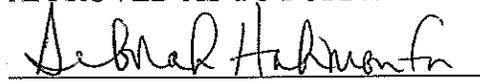


\_\_\_\_\_  
BILL FOLKERTS  
Principal



\_\_\_\_\_  
BLAKE HICKOK  
Chief Financial Officer

APPROVED AS TO FORM:



\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

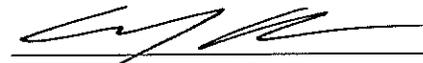
APPROVED AS TO CONTENT:



\_\_\_\_\_  
DAVID D. GUSTAVSON  
Director of Public Works & Transportation



\_\_\_\_\_  
ALAN SCHNEIDER  
Director of Project Administration



\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager

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RODERICK J. WOOD, CCM  
City Manager

## EXHIBIT A

### SCOPE OF WORK

#### Background

The CITY is constructing a four story office building at 331 Foothill Road ("Project") and desires it to meet LEED silver standards. One of the requirements for this rating is fundamental and enhanced commissioning of the building energy systems that will be provided under this Agreement.

Included in the project is a CITY TV studio that occupies a fourth floor suite, and has a separate HVAC and lighting system. This facility is included in the work scope of this Agreement.

#### Scope

All of the commissioning tasks shall include, but not limited to, the HVAC Systems and associated controls, the domestic hot water system, the solar panel renewable energy system, and day lighting control. The term, "Letter Report" below shall include all documents and forms that are required for the LEED rating.

#### Task 1 - Review CITY's Project Requirements and Basis of Design

CONSULTANT shall review the CITY's Project requirements and basis of design documentation for clarity and completeness. The design basis shall be reviewed to ensure that it reflects the CITY's needs.

Deliverable: Letter Report

#### Task 2 - Review Specification Commissioning Requirements

CONSULTANT shall review the commissioning specifications included in the contract documents to insure they clearly indicate the following: Commissioning Team involvement, contractor's responsibilities, identification of commissioned systems, submittal review procedures for commissioned systems, meeting requirements, construction verification procedures, start-up plan development and implementation, functional performance testing, and Project acceptance and closeout.

Deliverable: Letter Report

#### Task 3 - Develop a Commissioning Plan

CONSULTANT shall develop a Commissioning Plan that shall include the following: Commissioning Program Overview with general project overview including project goals and objectives, identification of commissioning team members with their responsibilities, description of Commissioning Process Activities including Owner's Project Requirements ("OPR") and Basis of Design ("BOD") documentation, functional test procedure development, verifying system performance, deficiency reporting and problem resolution, and final building acceptance.

Deliverable: Letter Report

#### Task 4 - Installation Verification

Individual components of commissioned systems shall be verified by CONSULTANT to ensure they meet the requirements of the OPR, BOD and contract documents, and have been installed properly. This shall be accomplished through review of the installing

contractors completed construction checklists. These reviews are intended to identify and correct relatively minor issues prior to systems performance testing.  
Deliverable: Letter Report

Task 5 - Systems Performance Testing

CONSULTANT shall functionally test components and systems utilizing written, test procedures, prepared specifically for the systems to be tested. Testing shall include each sequence from the sequence of operation to evaluate that the system being tested performs to the requirements of the OPR, BOD, and contract requirements in all modes of operation. Discrepancies or deficiencies shall be reported to CITY and the commissioning team members. The team members shall work collaboratively to find appropriate resolution for identified problems.

Deliverable: Letter Report

Task 6 - Summary Commissioning Report

After completion of installation inspections and performance verification, CONSULTANT shall prepare and submit a summary commissioning report. The report shall include confirmation that commissioned components and systems met the requirements of the OPR, BOD and contract documents. The report shall include and executive summary of the commissioning process, a history of system deficiencies and how they were resolved, identification of any outstanding issues, identification of seasonal testing to be performed at a later date, and system performance test results and evaluation.

Deliverable: Letter Report

Task 7 - Enhanced Commissioning Design Review

CONSULTANT shall conduct, at a minimum, one commissioning design review of the CITY's Project requirements and basis of design, and design documents prior to mid-construction documents phase and back-check the review comments in the subsequent design submission.

Deliverable: Letter Report

Task 8 - Focused Enhanced Commissioning Review of Submittals

CONSULTANT shall review contractor standard submittals of commissioned features and systems to ensure that the feature being provided will meet the specifications and design intent, particularly as it relates to the environmentally responsive characteristics.

Deliverable: Letter Report

Task 9 - Enhanced Commissioning Manual

CONSULTANT shall develop a systems manual that provides future operating staff the information needed to understand and optimally operate the commissioned systems.

Deliverable: Letter Report

Task 10 - Enhanced Commissioning Training

CONSULTANT shall verify that the requirements for training operating personnel and building occupants are completed.

Deliverable: Letter Report

Task 11 - Enhanced Commissioning Ten Month Building Review

CONSULTANT shall review building operation within 10 months after substantial completion with Operations and Maintenance ("O&M") staff and occupants. CONSULTANT shall develop a plan for resolution of outstanding commissioning-related issues.

Deliverable: Letter Report

Exclusions

CONSULTANT is not responsible for design concept or criteria, code compliance, construction scheduling, cost estimating, fire alarm, fire sprinkler, and smoke control system testing or construction management. CONSULTANT however, shall assist with problem-solving or resolving non-conformance or deficiencies.

CONSULTANT shall perform the services in accordance with the schedule set forth in Exhibit A-1, attached hereto and incorporated herein.

## EXHIBIT A-1

### SCHEDULE

CONSULTANT's services shall be coordinated with the construction of the Project. It shall be the responsibility of CONSULTANT to keep in touch with the Contractor and the Architect and to visit the Project periodically to determine when the various aspects of CONSULTANT's services are required.

The ten month review shall take place ten months after substantial completion of the Project.

EXHIBIT B  
COMPENSATION/PAYMENT

FEES

Compensation shall be based on an hourly rate of \$130.00 and shall not exceed the sum listed below for each component without the written approval of CITY.

Task	Description	Not to exceed fee
1-6	Commissioning	\$38,000
7-11	Enhanced commissioning	\$19,000
	Total fee	\$57,000

In addition, a contingency not to exceed \$5,000 shall be used for unanticipated services outside of the scope of services set forth in Exhibit A. The contingency shall be at the sole discretion of the CITY and must be authorized in writing.

Reimbursable expenses as defined in Exhibit C shall not exceed \$2,000.

Total Compensation Not to Exceed \$64,000.

SCHEDULE OF PAYMENT

CONSULTANT shall submit an itemized statement to the CITY for its services performed, which shall include documentation setting forth in detail a description of the services rendered, the hours of service and reimbursable expenses incurred. CITY shall pay CONSULTANT the amount of such billing approved for satisfactory performance within thirty (30) days of receipt of same.

## EXHIBIT C

### REIMBURSABLE EXPENSES

Reimbursable expenses reasonably incurred by CONSULTANT in connection with the performance of services under this Agreement shall be billed at direct cost and shall be limited to travel made in connection with the services provided under this Agreement, and reproduction of reports and plans. Reimbursable expenses shall not exceed \$2,000.00.



**CERTIFICATE OF INSURANCE**

This is to certify that the following endorsement is part of the policy(ies) described below:

**NAMED INSURED**

**COMPANIES AFFORDING COVERAGE**

- A.
- B.
- C.

**ADDRESS**

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	LIMITS		AGGREGATE
				B.I.	P.D.	
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Authorized Insurance Representative

AGENCY: \_\_\_\_\_  
\_\_\_\_\_

TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

RM02.DOC REVISED 10/14/96.

EXHIBIT D