

AGREEMENT

THIS CONTRACT is made and entered into as of this 14th day of January, 2020, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as “**SBBC**”),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

JOHNSON CONTROLS, INC. (hereinafter also referred to as “**VENDOR**”), whose principal
place of business is
15901 SW 29th St., Suite #801
Miramar, Florida 33027

WHEREAS, Rule 6A-1.012(6), Florida Administrative Code and SBBC Policy 3320 Part II, subparagraph M, states that in lieu of requesting competitive solicitations from three (3) or more sources, the School Board may make purchases at or below the specified prices from contracts awarded by other city or county governmental agencies, other districts school boards, community colleges, federal agencies, the public or governmental agencies of any state, or from state university system cooperative bid agreements, when the proposer awarded a contract by another entity will permit purchases by a district school board at the same terms, conditions and prices (or below such prices) awarded in such contract, and such purchases are to the economic advantage of the district school board;

WHEREAS, on Wednesday, August 23, 2017, the City of Jacksonville, Florida (the “**CITY**”) received proposals in response to a competitive solicitation (RFP# P-65-17) to provide Guaranteed Energy Performance Contracting Services; and

WHEREAS, on February 15, 2018, the **CITY** approved the award of RFP# P-65-17 to **VENDOR** for a term of five (5) years effective February 15, 2018 through February 28, 2021 [renewable for an additional two-year term upon mutual agreement of the parties]; and

WHEREAS, **VENDOR** will permit **SBBC** to purchase goods and services through the contract awarded under RFP# P-65-17 at the same terms, conditions and at or below the prices set forth therein, and such purchases are to the advantage of **SBBC**;

WHEREAS, **SBBC** desires to procure Guaranteed Energy Performance Contracting Services from **VENDOR** at the same terms, conditions and at or below prices set forth in RFP# P-65-17, and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals**. The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Contract**. Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon execution by all parties and conclude on June 30, 2020.

2.02 **VENDOR Responsibilities**. Upon receipt of written request for proposal from SBBC's Procurement & Warehousing Services (hereinafter "PROCUREMENT"), VENDOR shall immediately prepare and submit a written proposal which identifies the following: a) the complete Scope of Work to be provided which is consistent with the terms and conditions of the competitively bid, RFP# P-65-17 and b) price, consistent with and which may not exceed those as contained in RFP# P-65-17. Upon review and acceptance of VENDOR's proposal, PROCUREMENT shall issue VENDOR a Purchase Order. VENDOR shall not commence work prior to receipt of a Purchase Order from SBBC. VENDOR agrees that it is neither guaranteed to receive written and dispatched instructions from PROCUREMENT, nor guaranteed to receive a Purchase Order subsequent to VENDOR's submission of a written proposal.

2.03 **SBBC Responsibilities**. SBBC shall issue a request for proposal to VENDOR which shall include the appropriate timelines for VENDOR's submission of its written proposal to PROCUREMENT. PROCUREMENT shall review VENDOR's written proposal within a reasonable period after receipt, and shall, in its sole discretion and in the best interest of SBBC, make a determination of whether the VENDOR's written proposal is approved. Subsequent to approval of the VENDOR's written proposal, SBBC may issue a Purchase Order for the approved Scope of Work.

2.04 **Cost of Services**. VENDOR's written proposal for all goods and services shall be based on the terms, conditions and at or below the costs identified in RFP# P-65-17 (attached hereto as **Exhibit "A"**) as of the date of this Agreement. There shall be no costs associated with the VENDOR's inspections and preparation of a written proposals based upon those inspections. The total amount paid to the VENDOR under this Agreement shall not exceed **[CONTRACT AMOUNT]**.

2.05 **Billing Instructions and Payment**. Upon completion of the Work identified in each Purchase Order, VENDOR shall submit an invoice to SBBC to: **School Board of Broward County, Florida, Accounting & Financial Reporting Department, ATTN: Accounts Payable, 600 SE 3rd Avenue, 7th Floor, Fort Lauderdale, FL 33301**. VENDOR's invoices shall state the assigned purchase order number for verification by Accounts Payable. All invoices submitted are subject to the approval of the **Director of Construction**, Office of Facilities and Construction. All approved VENDOR invoices will be paid net 30 days. VENDOR's invoiced prices shall be at or

below those indicated in Exhibit "A" and shall not contain costs associate with the VENDOR's inspection and preparation of a written proposal based upon that inspection. The total, cumulative amount of all VENDOR invoices shall not exceed [CONTRACT AMOUNT].

2.06 Inspection of VENDOR Records by SBBC. VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by VENDOR or any of VENDOR payees pursuant to this Agreement. VENDOR Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. VENDOR Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) VENDOR Records Defined. For the purposes of this Agreement, the term VENDOR Records shall include, without limitation, and any supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to VENDOR facilities and to any and all records related to this Agreement and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any VENDOR claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by VENDOR in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VENDOR. If the audit discloses billings or charges to which VENDOR is not

contractually entitled, VENDOR shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. VENDOR shall require all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to VENDOR pursuant to this Contract and such excluded costs shall become the liability of VENDOR.

(h) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.07 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director, Procurement and Warehousing Services
The School Board of Broward County, Florida
7720 West Oakland Park Blvd. Suite 323
Sunrise, FL 33351

To VENDOR: 15901 SW 29th St., Suite #801
Miramar, Florida 33027

2.08 **Background Screening:** VENDOR agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Contract entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its

officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from **VENDOR** failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.09 **Insurance Requirements:** **VENDOR** shall maintain the following insurance coverage:

GENERAL LIABILITY: Limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

WORKER'S COMPENSATION: Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

AUTO LIABILITY: Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit. If **VENDOR** does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 shall be accepted. In addition, an affidavit signed by the **VENDOR** must be furnished to SBBC indicating the following:

VENDOR does not own any vehicles. In the event insured acquires any vehicles throughout the term of this agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition. (Fax affidavit with Certificate of Insurance to SBBC Risk Management at 866-897-0424.)

ACCEPTABILITY OF INSURANCE CARRIERS: The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

VERIFICATION OF COVERAGE: Proof of the required insurance must be furnished by a **VENDOR** to SBBC Risk Management Department by Certificate of Insurance within 15 days of notification of award. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit **VENDOR** time to remedy any deficiencies. **FAX CERTIFICATES OF INSURANCE TO SBBC RISK MANAGEMENT AT 866-897-0424.**

REQUIRED CONDITIONS: Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured. All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida. (Certificate Holder: School Board of Broward County, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301.)

CANCELLATION OF INSURANCE: VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this Agreement.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Contract. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be terminated pursuant to the conditions set forth in Section 3.23 of RFP# P-65-17.

3.06 **(Reserved)**

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this

Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC Policies, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this AGREEMENT are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, Agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, Agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibit "A" is attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments**. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver**. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure**. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival**. All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Agreement Administration**. SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Authority**. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

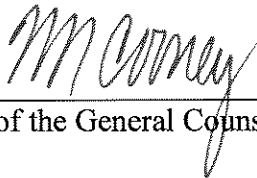
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Donna P. Korn, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Office of the General Counsel

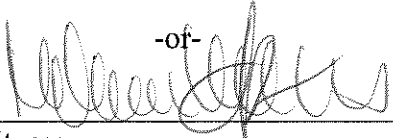
FOR VENDOR

(Corporate Seal)

JOHNSON CONTROLS, INC.

_____, Secretary

By 
Paul Angersbach, SE US Area
General Manager


-of-

Witness


Witness

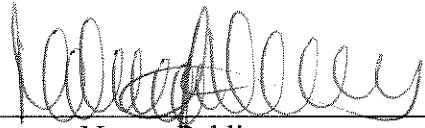
STATE OF FLORIDA

COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 16th day of December, 2019, by Paul Angersbach of JOHNSON CONTROLS, INC., on behalf of the corporation/agency.

They are personally known to me or produced FL DL as identification and did/did not first take an oath.

My Commission Expires:


Signature – Notary Public

GERALDINE VERDES
Printed Name of Notary

66102700
Notary's Commission No.

(SEAL)

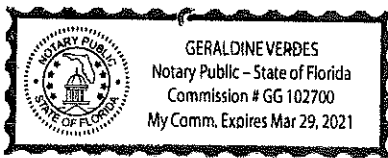


EXHIBIT A

9572-05

EXHIBIT A

MASTER SERVICES CONTRACT
BETWEEN
THE CITY OF JACKSONVILLE
AND
JOHNSON CONTROLS, INC.
FOR
GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES

THIS MASTER SERVICES CONTRACT FOR GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES ("Contract") is made and entered into this 14 day of March, 2018 (the "Effective Date"), by and between the CITY OF JACKSONVILLE (the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and

JOHNSON CONTROLS, INC. (the "CONTRACTOR" or "JCI"), a Wisconsin corporation authorized to transact business in Florida and with an office at 4820 Executive Park Court, Ste. 109, Jacksonville, FL 32216.

WHEREAS, the CITY issued a Request for Proposal No. P-65-17 (the "RFP") for certain services described in the RFP; and

WHEREAS, based on CONTRACTOR'S response to the RFP dated August 30, 2017 (the "Response"), the CITY has negotiated and awarded this Contract to CONTRACTOR;

WHEREAS, the CONTRACTOR is party to the state term contract procured by the State of Florida, Department of Management Services, ITN No. 24-973-320-X, Contract No. 973-320-08-1, Comprehensive Energy Strategy, which enables the CONTRACTOR to perform work under the Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act, codified at section 489.145 of the Florida Statutes; and

WHEREAS, the CITY is responsible for the operation, management and maintenance of the facilities as described in Article 1 of this Contract (the "Facility(s)"); and

WHEREAS, an IGA (as defined in the RFP) and savings analysis (the "Report") must be performed at the Facility(s) in order to determine the feasibility of entering into a guaranteed energy performance savings contract (the "Energy Performance Contract" or "EPC") to provide for the installation and implementation of energy conservation measures ("ECMs") at the Facility; and

WHEREAS, if the ECMs are demonstrated to be feasible, and if the amount of energy, water, and operational cost savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs associated with an energy performance contracting project at the Facility(s), the Parties intend to negotiate an Energy Performance Contract under which the CONTRACTOR shall design, procure, install, implement, maintain and monitor such ECMs at the Facility(s);

NOW THEREFORE, in consideration of the premises and the mutual covenants contained below, the parties agree as follows:

Article 1. Contract Structure. This Contract shall serve as a master agreement between the parties. This Contract sets forth the basic terms that shall apply to the performance of the IGA services by Contractor during the term of this Contract. Specific terms that shall apply to a particular Facility and the performance of particular IGA services ("Services") shall be set forth in an IGAA, as defined in the RFP, substantially in the form of Attachment F to the RFP or in some other document mutually agreed upon between the parties. Each such IGAA shall reference this Contract and shall be governed by the terms

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and conditions herein. In the event of a conflict between an IGAA and this Contract, the terms and conditions of this Contract shall control unless the IGAA expressly states that the terms and conditions of the IGAA shall control. Specific terms in an IGAA shall not affect any other IGAA under this Contract without explicit agreement of the parties.

Article 2. This Contract consists of the following documents, which are hereby incorporated as if fully set forth herein and which, in case of conflict, shall have priority in the order listed:

- This document, as modified by any subsequent signed amendments
- Any amendments to the RFP
- Specific information regarding the RFP (Section 1 of the RFP)
- Description of Services and Deliverables (Section 4 of the RFP)
- General Instructions to Respondents (Section 2 of the RFP)
- General Contract Conditions (Section 3 of the RFP)
- Any IGAA
- The Response, provided that any terms in the Response that are prohibited under the RFP shall not be included in this Contract

Article 3. Performance of IGA. The IGA will be performed by CONTRACTOR as specified in the RFP and the Response. The scope of the IGA will be as follows:

The CONTRACTOR will

- Perform the IGA
- Prepare a Report that specifically identifies the energy, water, and wastewater improvements and operational changes which are recommended to be installed or implemented and detailed measurement and verification plan for each measure
- Deliver a Draft version of the *"Implementation Contract"* for negotiation of final terms and conditions with the CITY.

As outlined in Section 4, Description of Services & Deliverables of the RFP, Facilities and associated ECMs will be selected by the CITY. The facilities, timeline, compensation, and project contacts will be specified on a phased basis through written agreement (task order) between the CITY and CONTRACTOR.

The CITY shall provide facility information in order for the CONTRACTOR to calculate the compensation for a given phase's IGA in accordance with the following format.

Facility Name	Facility Type	Address	Gross Square Footage
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The Report shall contain detailed projections of energy and cost savings to be obtained at the Facility(s) as a result of the installation of the recommended ECMs. The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facility(s) (i.e., accurate marginal cost for each unit of savings at the time the audit is performed; documented material and operational costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility(s) compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs). The Report shall outline projects which:

- Fund the facility improvements utilizing energy, operational, maintenance, and capital cost avoidance savings over a maximum period of 20 years per FL State Statute 489.145.
- Develop ECMs which will lower the CITY's operating costs and/or improve facility operating conditions.

Allowable project savings and funding are as follows:

- Electrical consumption (kWh), Electrical Demand (kW, on- and off-peak), Potable water consumption (kgal or ccf), Sewer consumption (kgal or ccf), Reclaimed usage (kgal), Natural gas consumption (Therms), and Chilled Water (ton-hours) and associated fees and taxes
- Utility marketing, distribution, and/or delivery costs
- CITY material/commodity costs
- Outside Maintenance Labor Costs
- Existing contract cost savings throughout the project term or other cost savings attributable to the CITY's behavioral modifications, facility operating schedule or efficiency plan
- Escalation rates for utilities and commodities shall be the greater of 3% annually or the actual utility rates
- Escalation rates for maintenance and material shall be the greater of 3% annually or the Consumer Price Index (CPI)
- Utility rate structure adjustments (rate category change)
- Deferred maintenance reduction and/or emergency repair costs
- Capital Improvement Budget funds, capital contribution funds, and/or offset of future CITY costs
- Utility Provider and/or State or Federal rebates or grants

The Report shall clearly describe how utility tariffs were used to calculate savings for all ECMs. The Report shall describe the CONTRACTOR's plan for installing or implementing the ECMs in the Facility(s), including all anticipated costs associated with such installation and implementation. The primary purpose of the Report is to provide an engineering and economic basis for negotiating an Energy Performance Contract between the CITY and the CONTRACTOR; however, the CITY shall be under no obligation to negotiate such a contract.

The CONTRACTOR shall perform the following tasks in performing the IGA and preparing the Report:

A. Collect General Facility(s) Information

The CONTRACTOR shall collect general Facility(s) information such as: size, age, construction type, condition and general use of the Facility(s). The CONTRACTOR shall also collect and summarize Facility(s) utility cost and consumption data for the most recent 36 month period. The CONTRACTOR shall evaluate the impact on utility cost and consumption of any energy initiatives currently being installed or currently planned to be installed by the CITY in the Facility(s) which will remain separate from the Energy Performance Contract throughout the duration of that agreement for those ECMs under consideration.

The CITY shall make available (or cause its energy suppliers to make available) all records and data concerning utility usage and billed amounts for the Facility(s) for the most current 36 month period, if available, including: Utility records; occupancy information; descriptions of any changes in the structure of the Facility(s) or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility(s); any comfort problems, code deficiencies and description of energy management procedures presently utilized. The CITY shall also make available a record of any energy, water, and operational related improvements or modifications that have been installed during the past three years, or are currently being installed or are currently planned to be installed by the CITY in the Facility(s) separate from the Energy Performance

Contract throughout the duration of that agreement. The CITY shall also make available copies of drawings, equipment logs and maintenance work orders to the CONTRACTOR. (See Exhibit 1)

B. Analyze Existing Systems and Equipment

The CONTRACTOR shall compile a condition assessment (e.g. good, fair, poor) based on a physical inspection of the major electrical, mechanical, and plumbing systems at the Facility(s) for the development of a recommended ECM list, including:

1. Cooling systems and related equipment;
2. Heating and heat distribution systems;
3. Automatic temperature control systems and equipment;
4. Air distribution systems and equipment;
5. Outdoor ventilation systems and equipment;
6. Kitchen and associated dining room equipment, if applicable;
7. Exhaust systems and equipment;
8. Hot water systems;
9. Electric motors 5 HP and above, transmission and drive systems;
10. Interior and exterior lighting;
11. Laundry equipment, if applicable;
12. Building Envelope;
13. Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.; and,
14. Other major energy, water, wastewater systems and/or systems/conditions which impact operational costs and budgeting of the CITY, if applicable.

The analysis shall address the following considerations:

- a. The loads, efficiencies or hours of operation for each system (where Facility(s) operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings appropriate measurements are required unless waived by the CITY); and
- b. Current operating condition for each system.

The CONTRACTOR shall conduct interviews with Facility(s) operation and maintenance staff regarding the Facility(s)'s mechanical systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates

The CONTRACTOR may, where practical and cost-effective based upon the ECMs under consideration, analyze loading, usage and/or hours of operation for all major end uses representing more than 5% of total Facility(s) consumption including, but not limited to:

1. Lighting
2. Heating
3. Cooling
4. HVAC motors (fans and pumps)
5. Plug load
6. Kitchen equipment
7. Other equipment
8. Miscellaneous

Where loading and/or usage are highly uncertain, the CONTRACTOR shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the CITY. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment. The CONTRACTOR shall consult with Facility(s) staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

Baseline Development: The CONTRACTOR shall develop the CITY's Baseline model as part of the Audit. The CONTRACTOR and the CITY shall mutually agree on the Baseline model prior to final contract (EPC) approval by the CITY. Where practical and cost-effective based upon the ECMs under consideration, the Baseline model shall represent pre-existing energy consumption for all end uses within the Facility(s). Straight-line calculations in accordance with industry standards may be utilized for water conservation measures, lighting conservation measures or for ECMs where the anticipated impact on utility or budgetary costs are less than 10%. Operational savings and any capital cost avoidance savings shall be calculated in accordance with F.S. 489.145.

Where appropriate, the Baseline model shall be developed with a whole-facility simulation approach using one of the following commercially-available energy simulation software packages:

- Carrier HAP
- Trane TRACE
- Retscreen 4
- eQuest
- DOE-2 and variations

The CONTRACTOR shall use the same energy simulation software to develop the projected energy cost savings that was used to develop the Baseline. Projected energy consumption must be modeled using the same weather data and operating conditions as the established Baseline model.

The Baseline model shall reflect all energy-related effects of the current design features of the Facility(s) such as, but not limited to, quantity and type of glass, facility orientation with respect to the physical site, overall wall and roof thermal resistance values, ventilation air requirements, humidity level, occupancy, and actual operating schedules. The Baseline model shall incorporate the energy-related effects of all renovations and/or modifications to the building envelope, internal spaces, and energy-consuming systems subsequent to the date of original construction.

The Baseline model shall be developed in accordance with recommendations and methods promulgated by professional societies and governmental organizations, i.e. industry standards, such as:

- *The Federal Energy Management Program's M&V Guidelines: Measurement and Verification for Federal Energy Management Projects v.3.0*
- *The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE)*
- *International Performance Measurement and Verification Protocol January 2012*

Baseline Calibration: The Baseline model shall be developed and calibrated with the assistance of utility bill data for no less than the immediately preceding 36-month period in order to develop an energy baseline model that is suitable for CITY consideration. A detailed description of all existing Baseline conditions, development methods, calibration procedures, adjustments, and assumptions for each facility must be provided.

D. Develop List of Potential ECMs

The CONTRACTOR shall:

1. Identify and propose potential ECMs for installation or implementation at the Facility(s), including water conservation measures;
2. Estimate the cost, savings and life expectancy of each proposed ECM;
3. Specify Facility(s) operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs;
4. Provide analysis methodology, supporting calculations and assumptions used to estimate savings, which shall be based on the life cycle cost calculations described in section 255.255 of the Florida Statutes. Parties may reduce financing amount by grants, rebates, or capital funding. However, pursuant to Florida Statute 489.145 (4)(j), grants, rebates, or capital funding shall not be applied to life cycle cost calculations;
5. Calculate projected energy cost savings as the difference between Baseline energy, water, and operational costs and the costs that are expected to result from the proposed ECMs;
6. Provide access to the computer simulation program and all inputs and assumptions used if requested by the CITY;
7. Provide a preliminary commissioning plan for the proposed ECMs;
8. Provide detailed calculations for any rate savings proposals;
9. Provide detailed supporting calculations for any proposed maintenance or other operational savings;
10. Estimate any environmental costs or benefits of the proposed ECMs (e.g., disposal costs, avoided emissions, water conservation); and
11. Comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis for all proposed ECMs.

E. Establish Measurement & Verification Methods

Measurement & Verification of cost savings shall be performed using a methodology from the *International Performance Measurement and Verification Protocol January 2012* and account for actual savings as required in Florida Statute 489.145(3)(d)(2). Actual savings are to be measured against the Baseline in the CONTRACTOR's Annual Reconciliation. The CONTRACTOR shall state which of the following Measurement & Verification methods will be used in the

CONTRACTOR's Annual Reconciliation, and the City Auditor or City Designee shall agree to the exact Measurement & Verification method for each audit on an individual ECM basis and stipulate in the Audit. Furthermore, Degree Day and related data sources shall be identified and agreed to in the audit document:

- Option A: Retrofit Isolation : Key Parameter Measurement. Measurement of Key Variables may be short term or continuous, depending on ECM.
- Option B: Retrofit Isolation : All Parameter Measurement. Measurements of All Variables may be short term or continuous, depending on ECM.
- Option C: Whole Facility : For projects where weather explains variation in usage, changes in the facility outside of the contract are not expected, and savings are at least 10% of the impacted meter, a Whole Facility or Utility meter approach may be considered.
- Option D: Calibrated Simulation. This Option may be considered when a model can be calibrated to the utility bills.

F. Provide Cost and Fee Estimates

The CONTRACTOR shall provide detailed estimates of all costs and fees associated with the installation and implementation of the ECMs including:

1. Engineering/design costs
2. CONTRACTOR/vendor estimates for individual ECM material and labor unit costs
3. CONTRACTOR construction management fees for the project
4. Overhead and profit
5. Commissioning costs for individual ECMs
6. Contingency costs
7. Initial training costs
8. Annual service fees including:
 - Measurement and verification
 - Maintenance
 - Performance monitoring
 - Ongoing training services

G. Select Final Recommended ECMs, Report & Draft Implementation Contract

The CONTRACTOR shall, in consultation with the CITY, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility(s) and deliver (1) electronic copy of the report and associated appendices (equipment data, calculations, specifications, drawings) in .PDF format and a draft implementation contract in editable format such as Microsoft Word.

Article 4. Compensation. CITY agrees to pay to CONTRACTOR the sum for a given phase (task order) within sixty (60) days after the delivery to the CITY of the documentation described in Article 1 of this Contract. However, CITY will have no obligation to pay this amount if:

1. CONTRACTOR and the CITY enter into the Energy Performance Contract within sixty (60) days after the delivery of the documentation described under Article 1 of this Contract to the CITY. Costs for the Report will be transferred to the total cost of the Energy Performance Contract and be subject to the payment terms outlined in the Energy Performance Contract.
2. The project benefits do not offset the cost of the overall project with a payback period of 20 years or less. Project benefits shall include, but not be limited to utility cost avoidance, negotiated

utility rate reductions, operating and maintenance cost avoidance, capital cost avoidance and utility revenue increases.

As per State Law and the RFP, this Agreement may be amended to include additional Facilities and associated ECMs as outlined in Section 4, Description of Services & Deliverables, of the RFP through a written agreement between CONTRACTOR and the CITY, which shall, among other things, e.g. project timeline, amend the compensation to CONTRACTOR for the additional development costs incurred as a result of scope of work additions. Written agreement for such additional Facilities can be performed through an existing investment grade audit agreement or via a separate standalone agreement.

The compensation to the CONTRACTOR for the services performed under the investment grade audit agreement shall be based upon the categories of work described in the table below.

Category A - This price is applicable to a scope of work for a given project phase where the aggregate gross square footage (GSF) for the selected facilities is \geq 500,000.

Category B - This price is applicable to a scope of work for a given project phase where the aggregate gross square footage (GSF) for the selected facilities is $<$ 500,000. Audit fees shall be calculated individually by facility and aggregated for the total audit fee.

Category C - This price category is applicable for third-party consulting services for specialized or ad hoc services where it is necessary for the CONTRACTOR to acquire services of third party vendors such as a consultant or subcontractor. The services which may be included under this category include, but are not limited to, creation of design documents by architects or engineers, certified indoor air quality or airflow testing, ground penetrating radar, or emerging technologies where third party subject matter expertise is required, such as micro-grid, fuel cell, etc.

<u>Facility Type</u>	<u>Price/GSF</u>	<u>Notes</u>
<i>Category A</i>		
General (All Facility Types)	\$ 0.12	Pricing shall be lump sum
<i>Category B</i>		
<u>Facility Type</u>	<u>Price/GSF</u>	<u>Notes</u>
Correctional/Judicial	\$ 0.25	Pricing shall be lump sum of the aggregate Price/GSF for selected facilities. All facilities, regardless of primary function, less than 10,000 GSF shall be calculated at the "Buildings Less than 10,000 GSF" rate.
Parks/Recreational (facility area only for costing)	\$ 0.05	
Administrative/Office Buildings/Support Facilities	\$ 0.10	
Buildings Less than 10,000 GSF	\$ 0.75	
Library	\$ 0.10	
Clinics	\$ 0.12	
Law Enforcement	\$ 0.15	
<i>Category C</i>		
<u>Activity Type</u>	<u>Unit Price &/or Man Hours</u>	<u>Notes</u>

Third-Party Consulting Services	See Exhibit 3	Per Exhibit 3
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Article 5. Timeline. It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others under their direction to work diligently, toward meeting a chronological order of events or objectives. The project timeline will be established by mutual agreement of the parties for each phase (task order) based upon the Facility(s) included and the ECMs considered. The format for the timeline for each phase shall be as follows:

- Signed Task Order for Services
- CONTRACTOR to complete Audit and provide Report
- Finalize and execute Implementation Contract
- Complete implementation and begin System operation

Article 6. Maximum Indebtedness. As required by Section 106.431, *Ordinance Code*, the CITY's maximum indebtedness for all products and services under this Contract shall be a fixed monetary amount not-to-exceed FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00).

Article 7. Term. The initial term of this Contract shall commence on the Effective Date and shall expire on February 28, 2021, unless sooner terminated by either party in accordance with the terms of the RFP.

This Contract may be renewed for up to two (2) additional one (1) year periods by (i) the CITY, in its sole discretion, upon written notice to CONTRACTOR at least sixty (60) days prior to end of the then-current term, or (ii) upon the mutual agreement of the parties.

Article 8: Standard Terms and Conditions

A. Appropriations

Obligations of the CITY shall cease immediately without penalty if in any fiscal year covered by the Contract term, the Legislature or the CITY fails to appropriate, re-appropriate or otherwise make available funds for this Contract. The CITY shall provide written notification to the CONTRACTOR of any impending change in the status of appropriations which may affect this Contract of which it has notice.

B. Patent and Copyright Responsibility

The CONTRACTOR agrees that any material or design specified by the CONTRACTOR or supplied by the CONTRACTOR pursuant to this Contract shall not knowingly infringe any patent or copyright, and the CONTRACTOR shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the CONTRACTOR in the performance of the IGA and preparation of the Report.

C. Materials, Equipment and Supplies

The CONTRACTOR shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the IGA and prepare the Report.

D. Indemnification/Insurance

CONTRACTOR shall indemnify CITY as set forth in Attachment "J" to the RFP. CONTRACTOR shall maintain throughout the life of this Contract the insurance coverages set forth in Attachment "J" to the RFP.

E. Lobbying, Integrity, and Retention of Records

Pursuant to section 216.347 of the Florida Statutes, the CONTRACTOR may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, the CONTRACTOR shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or agreements of any kind. Upon request of the Agency's Inspector General, or other authorized State official, the CONTRACTOR shall provide any type of information the Inspector General deems relevant to the CONTRACTOR's integrity or responsibility. Such information may include, but shall not be limited to, the CONTRACTOR's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The CONTRACTOR shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barm/penschedules/pensched.htm>). Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the CITY for the recovery of any funds paid by the CITY under the Contract for which adequate books, records, and supporting documents are not available to support their purported disbursement. The CONTRACTOR agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the CONTRACTOR's compliance with the terms of this or any other agreement between the CONTRACTOR and the State which results in the suspension or debarment of the CONTRACTOR. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The CONTRACTOR shall not be responsible for any costs of investigations that do not result in the CONTRACTOR's suspension or debarment.

F. Dispute Resolution

The CITY and the CONTRACTOR recognize and acknowledge that efforts should always be made to avoid or prevent disputes through effective partnering, good communications, and joint decision making, and that timely requests for clarification and for information will help ensure a better understanding of issues and problems and lead to the elimination of doubts, uncertainties, and ambiguities. Nevertheless, the CITY and the CONTRACTOR also recognize that disputes may develop between them. In such event, the Parties shall be entitled to pursue any and all remedies in equity and law.

Any legal or equitable action arising out of or relating to this Contract shall be brought in the appropriate state court in Duval County, Florida, and not elsewhere, and shall be governed by Florida law.

Notwithstanding any provision to the contrary, neither Party shall be excluded from recovering any special, consequential, or punitive damages.

G. Personnel

All CONTRACTOR employees, subcontractors, or agents performing work under this Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the CONTRACTOR shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the CITY. The CITY may conduct, and the CONTRACTOR shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the CONTRACTOR. The CITY may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the CITY's security or other requirements. Such approval shall not relieve the CONTRACTOR of its obligation to perform all work in compliance with the Contract. The CITY may reject and bar from any Facility for cause any of the CONTRACTOR's employees, subcontractors, or agents.

The CONTRACTOR, together with its agents, subcontractors, officers and employees, shall have and always retain under the Contract the legal status of an independent CONTRACTOR, and in no manner shall they be deemed employees of the CITY or deemed to be entitled to any benefits associated with such employment. During the term of the Contract, the CONTRACTOR shall maintain at its sole expense those benefits to which its employees would otherwise be entitled by law, including health benefits and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide the CITY with certification of such insurance upon request. The CONTRACTOR remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

H. Compliance with Applicable Law

In performing this Contract, the CONTRACTOR shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, the CONTRACTOR shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination. The CITY may cancel the Contract if the CONTRACTOR refuses to allow public access to all records made or received by the CONTRACTOR in conjunction with the Contract unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1) of the Florida Statutes.

I. Waivers

No right of either party hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

J. Assignment

Neither Party may assign this Contract without the prior written consent of the other Party, which shall not be unreasonably withheld.

K. Capacity to Contract

Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective Party to the Contract. The CONTRACTOR warrants that it is in good standing and legally authorized to transact business in Florida. The CONTRACTOR warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the CONTRACTOR's ability to satisfy its Contract obligations. The CONTRACTOR warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The CONTRACTOR shall immediately notify the CITY in writing if its ability to perform is compromised in any manner during the term of the Contract.

L. Confidential Information

Each Party may have access to confidential information made available by the other Party (see particularly, but not exclusively, subsection 119.07(ee) and section 119.071 of the Florida Statutes). Each Party shall protect such confidential information in the same manner as it protects its own confidential information of like kind. Disclosure of any confidential information received by the CITY will be governed by the Public Records Act, chapter 119 of the Florida Statutes.

M. Convicted or Discriminatory Vendors

A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list: submitting a bid on a contract to provide any goods or services to a public entity; submitting a bid on a contract with a public entity for the construction or repair of a public building or public work; submitting bids on leases of real property to a public entity; being awarded or performing work as a CONTRACTOR, supplier, subcontractor, or consultant under a contract with any public entity; and, transacting business with any public entity in excess of the Category Two threshold amount (\$35,000) provided in section 287.017 of the Florida Statutes.

An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a CONTRACTOR, supplier, sub-contractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

Article 9. Notices. All notices under this Contract shall be in writing and shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

As to the CITY:

Jim Lange
Public Buildings Division
555 West 44th Street
Jacksonville, Florida 32208

As to the CONTRACTOR:

Mary-Suzanne Powell
Johnson Controls, Inc.
6600 Congress Avenue
Boca Raton, Florida 33487

Either Party may change its point of contact by written notice to other Party's then-current designated contact, and such change shall not constitute a formal amendment to this Contract. Furthermore, project contracts shall be established for each phase (task order) in this format as outlined in Exhibit 2.

Article 10. Contract Managers. Each Party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the Party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, CITY'S Contract Manager is Jim Lange (904.255.4340 (o); 904.476.3288 (c); 904.630.5415 (F); jlange@coj.net), and the CONTRACTOR'S Contract Manager is Mary-Suzanne Powell (954.538.7893 (o); 786.452.2862 (c); 904.733.3335 (f); marysuzanne.powell@jci.com). Each Party shall provide prompt written notice to the other Party of any changes to the Party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

Article 11. Entire Contract. This Contract constitutes the entire agreement between the parties hereto for the IGAs to be performed and Reports to be furnished by the CONTRACTOR. No statement, representation, writing, understanding, agreement, course of action or course of conduct made by either party or any representative of either party which is not expressed herein shall be binding. CONTRACTOR may not unilaterally modify the terms of this Contract by affixing additional terms to materials delivered to the CITY (e.g., "shrink wrap" terms accompanying or affixed to a deliverable) or by including such terms on a purchase order or payment document. CONTRACTOR acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

Article 12. Amendments. All changes to, additions to, modifications of, or amendments to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

Article 13. Counterparts. This Contract and all amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Article 14. Severability. If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.

Article 15. Other Agencies. The parties mutually agree that this Agreement to form may be utilized by the CITY or any other "Agency", as defined by F.S. 489.145 or F.S. 1013.23, to enter their own Project Development Agreement with JCI. Other agencies electing to utilize this agreement shall negotiate their specific scope, terms, conditions, and additional schedules, directly with JCI in all respects. CITY will in no way be liable for the other agency's agreement.

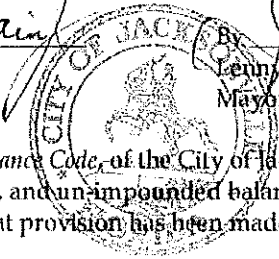
IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

Sam E. Mousa
Chief Administrative Officer
For Mayor Lenny Curry
Under Authority of
Executive Order No. 2015-05

By James R. McCain, Jr.
James McCain, Jr.
Corporation Secretary



By Lenny Curry
Lenny Curry
Mayor

In accordance with the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

[Signature]
Director of Finance
CITY Contract Number: 9572-05

Form Approved:

James R. McCain
Office of General Counsel

JOHNSON CONTROLS, INC.

By Mary-Suzanne Powell
Signature
Mary-Suzanne Powell
Type/Print Name
Area General Manager
Title

Exhibit 1 – Information Requested of the City for Investment Grade Audit Services

#	Description	Completed
1.	Utility Bills information for each site including: electricity, natural gas, water/sewer, telephone (if not VOIP) and other utilities such as fuel (fuel oil, biomass etc.), steam and chilled water/hot water, etc. as applicable -36 months required – Most recent consecutive monthly data important to analysis -Copies of bills provide both usage and cost/rates which is important to analysis	
2.	Hazardous Materials – copies of all Lead Paint surveys and Asbestos surveys. *Signed “JCI Certification regarding Asbestos- Containing Materials”	
3.	Overall facility information including: A. Specific conditioned area square footage B. Access to mechanical, electrical and architectural drawings. JCI might need to check out drawings for photocopying during project	
4.	Current Service Contract Information for equipment applicable to this project (can be discussed to identify which equipment)	
5.	Specific Information from Past 2 Year’s Operational Budget for purposes of showing savings including: A. Parts Costs (Filters, Motors, etc.) B. M&R Costs	
6.	List of deferred maintenance items and/or list of service requests and/or external service costs	
7.	3 or 5 year capital improvement plan to understand improvements already planned	
8.	Mechanical Schedules of Major Equipment (copy) & access to energy management system and trending (viewer level at minimum)	
9.	List of any major mechanical or electrical systems purchased over past 4 years for the included buildings.	
10.	Building renovation, addition or demolition plans for the included buildings within the next 5 years.	
11.	Any additional information that you think is relevant to this project.	

Exhibit 2

Phase 1 – Task Order for Services, as part of

GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES

THIS TASK ORDER for IGA Services, as part of GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES ("Contract"), is made and entered into this ___ day of _____, 201__ (the "Effective Date"), by and between the CITY OF JACKSONVILLE (the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and

JOHNSON CONTROLS, INC. (the "CONTRACTOR" or "JCI"), a Wisconsin corporation authorized to transact business in Florida and with an office at 4820 Executive Park Court, Ste. 109, Jacksonville, FL 32216.

WHEREAS, the CITY and CONTRACTOR mutually agreed to terms, conditions, and parameters set forth in the MASTER SERVICES CONTRACT BETWEEN THE CITY OF JACKSONVILLE AND JOHNSON CONTROLS, INC. FOR GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES;

NOW THEREFORE, the parties agree to develop a guaranteed energy performance contract utilizing the parameters outlined below:

Part 1: Facilities. The facilities where the IGA is to be performed are as follows:

Facility Name	Facility Square Footage (SF)
JOHN E. GOODE PRETRIAL DETENTION (JAIL) FACILITY	629,000
ED BALL BUILDING	505,444
CITY HALL AT ST JAMES	392,150
MAIN LIBRARY	351,375
POLICE MEMORIAL BUILDING	207,677
CLAUDE J. YATES BUILDING	103,628
JAKE GODBOLD CITY HALL ANNEX	60,786
Total	2,250,060

Part 2: Timeline. The timeline on which the IGA is to be performed is as follows:

- Signed Task Order for Services
- CONTRACTOR to complete Audit and provide Report
- Finalize and execute Implementation Contract
- Complete implementation and begin System operation

These timeframes may be modified by subsequent work plans approved by the parties.

Part 3: Compensation. The compensation to the CONTRACTOR for the IGA for the facilities outlined above is as follows:

<i>Category A</i>			
Facility Type	Price/GSF	Square Footage	Subtotal
General (All Facility Types)	\$ 0.12	2,250,060	\$270,007
<i>Category B</i>			
Facility Type	Price/GSF	Square Footage	Subtotal
Correctional/Judicial	\$ 0.25	N/A	\$0
Parks/Recreational (facility area only for costing)	\$ 0.05	N/A	\$0
Administrative/Office Buildings/Support Facilities	\$ 0.10	N/A	\$0
Buildings Less than 10,000 GSF	\$ 0.75	N/A	\$0
Library	\$ 0.10	N/A	\$0
Clinics	\$ 0.12	N/A	\$0
Law Enforcement	\$ 0.15	N/A	\$0
<i>Category C</i>			
Activity Type	From Exhibit 3		Subtotal
Third-Party Consulting Services	N/A		\$0
Total Compensation for Investment Grade Audit Services			\$270,007

Part 4: Project Contacts. The CITY and CONTRACTOR primary contacts for this task order for investment grade audit services are as follows:

As to the CITY:

Jim Lange
Public Buildings Division
555 West 44th Street
Jacksonville, Florida 32208

As to the CONTRACTOR:

Mary-Suzanne Powell
Johnson Controls, Inc.
6600 Congress Avenue
Boca Raton, Florida 33487

Exhibit 3 - Contract Fee Summary for Category C Activities

PART I - GENERAL					
1. Project		3. Proposal Number/ Amendment			
3. Name of Consultant		4. Date of Proposal			
PART II - LABOR RELATED COSTS					
5. Direct Labor	Hourly Rate	Estimated Hours	Estimated Cost	TOTAL	
Principal	\$76.81	0	\$0.00		
Project Manager	\$64.84	0	\$0.00		
Senior Engineer	\$52.91	0	\$0.00		
Project Engineer	\$45.33	0	\$0.00		
Engineer II	\$42.81	0	\$0.00		
Engineer I	\$37.87	0	\$0.00		
Senior Designer	\$44.61	0	\$0.00		
CADD/Computer Tech	\$30.58	0	\$0.00		
Engineering Intern	\$27.49	0	\$0.00		
Project Coordinator	\$32.31	0	\$0.00		
Secretary/Clerical	\$18.50	0	\$0.00		
TOTAL DIRECT LABOR		0 Hours		\$0.00	
6. Overhead (Combined Fringe Benefit & Administrative)			165.46%	\$0.00	
7. SUBTOTAL: Labor + Overhead (Items 5 & 6)				\$0.00	
8. PROFIT: Labor Related Costs (Item 7)			x	13.0%	\$0.00
PART III - OTHER COSTS					
9. Miscellaneous Direct Costs					
			\$0.00		
			\$0.00		
			\$0.00		
MISCELLANEOUS DIRECT COSTS SUB-TOTAL				\$0.00	
10. SUBCONTRACTS (Lump Sum)					
			\$0.00		
			\$0.00		
			\$0.00		
SUB-CONTRACT SUB-TOTAL				\$0.00	
TOTAL LUMP SUM AMOUNT (Items 5, 6, 8, 9 and 10)				\$0.00	
11. REIMBURSABLE COSTS (Limiting Amount)					
			\$0.00		
			\$0.00		
			\$0.00		
SUB-TOTAL REIMBURSABLES				\$0.00	
PART IV - SUMMARY					
TOTAL AMOUNT FOR CATEGORY C SERVICES (Lump Sum Plus Reimbursable Expenses) (Items 5, 6, 8, 9, 10 and 11)				\$0.00	