

from County and shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

3. **Termination.** This Agreement can be terminated upon mutual written agreement of the parties or with 30 days written notice to the other party by personal delivery or registered or certified mail, return receipt requested.
4. **Maximum Compensation.** JCI's rates shall be calculated at the rates set forth in the attached Exhibit A. The total maximum compensation cost for the performance of Services for the 2 year term, as described in Exhibit A, is one-hundred seventeen thousand, seven hundred eighty dollars and 00/100 cents (**\$117,780.00**). In no case shall the amount paid by County under the Agreement or this Addendum exceed the total maximum compensation without an approved change order.
5. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
6. **Insurance.** Prior to commencement of Service, JCI shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. JCI shall provide certified copies of insurance endorsements and/or policies if requested by County. JCI shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services.
 - A. JCI shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - i. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - ii. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 - iii. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - iv. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 - B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of JCI shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
 - C. If required coverage is written on a claims-made basis, JCI warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended

discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.

- D. JCI shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
 - E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
 - F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the JCI.
6. **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
7. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
8. **Confidential Information.** JCI expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by JCI shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. **The terms and conditions of the Agreement are not proprietary or confidential information.**
9. **Performance Warranty.** JCI warrants to County that JCI has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and JCI will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
10. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless JCI or any other party for any reason are hereby deleted. **JCI shall Indemnify and defend county against all third party losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from damage to persons, including bodily injury, disease, or death or to tangible property to the extent caused by the negligent or intentional act, error or omission of JCI or its agents, servants or employees.**
12. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

13. **Certain State Law Requirements for Contracts.** For purposes of section 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Contractor hereby verifies that ISS and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- A. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- B. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.
- C. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code.

14. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

15. **Human Trafficking.** By signature below, JCI acknowledges that Fort Bend County is opposed to human trafficking and that no County Funds will be used in support of services or activities that violate human trafficking laws.

16. **Conflict.** In the event there is a conflict between this Addendum and Exhibit A, this Addendum controls to the extent of the conflict. Should there be any conflict between this Addendum and the terms and conditions of Sourcewell Contract #070121.

17. **Understanding, Fair Construction.** By execution of this Addendum, the Parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the non-drafting party.

{EXECUTION PAGE FOLLOWS}

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all Parties by and through the Parties or their agents or authorized representatives. All Parties hereby acknowledge that they have read and understood this Addendum and the exhibits hereto. All Parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

KP George

Date

ATTEST:

Laura Richard

JOHNSON CONTROLS, INC.

DocuSigned by:
Matthew Singleton
46E926B1675B49F...

Authorized Agent – Signature

Matthew Singleton
Authorized Agent- Printed Name

Area General Manager
Title

3/30/2023
Date

AUDITOR’S CERTIFICATE

I hereby certify that funds in the amount of \$117,780.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: Project Development Agreement

EXHIBIT A

Project Development Agreement Between Fort Bend County and JCI



Project Development Agreement

PROJECT DEVELOPMENT AGREEMENT BETWEEN

Fort Bend County
301 Jackson St.
Richmond, TX 77469

AND

Johnson Controls, Inc.
8323 N. Eldridge Pkwy
Houston, TX 77041

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

The parties intend to use Sourcewell (contract # 070121-JHN) or other JCI awarded cooperatives to fulfill the Contract requirements.

1. Overview

Johnson Controls has performed, in tandem with Fort Bend County, a preliminary evaluation of the Fort Bend County Facilities Assessment. Based on JCI's review, the potential reduction in utility and operational avoided costs annually will generate a substantive amount of savings to materially reduce the cost of upgrades over a performance contract period up to 20 years. These avoided costs are expected to offset the annual debt service cost of the total project, as per Texas Local Government Code 302.

2. Scope of Work

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

Provide for the development of facility improvements at the facilities listed below (non-exhaustive list) that will fund themselves out of energy and operational savings as well as future capital cost avoidance over a period of up to 20 years.

Attachment 1 includes a preliminary list (non-exhaustive) of those Improvements that will be investigated for the following buildings:

Central appraisal district
Hobby Boys and Girls
Juvenile Probation
Vehicle Maintenance
Juvenile Detention
Mustang Community Center
Justice Center
Animal Services buildings
36 Park and Ride
Morton Street
Kitty Hollow
George Family Development Center
Jake Dove Juvenile
Road & Bridge Bldgs. (Admin., Beechnut, Pane Lane, and Dairy Ashford)

Fifth Street Boys and Girls Community Center
Rosenberg Boot Camp Juvenile
Narcotics/Patrol
Auto Theft
CSCD Fresno
Vocational buildings
Sienna Annex
Recycling Center
Medic 1
IDC shop
Needville Annex JP
Drainage buildings
Jail East & West Towers

3. Records and Data

During the Study, Customer will furnish to JCI upon its request, accurate and complete data concerning current costs, budgets, facilities requirements, future projected loads, facility operating requirements, collective bargaining agreements, etc. JCI will provide a separate document with the required information and Customer shall make every effort to provide that information within 5 days of the request.

4. Preparation of Implementation Contract

Along with the other Scope of Work required under this Agreement, JCI will develop the framework of the subsequent Implementation Agreement and the Financing Agreement, if applicable. These Agreements shall be co-developed by JCI and Customer during the PDA process. These documents will vary dependent on the Customer desired structure, but, where possible, shall be standardized JCI documents for most expedient delivery.

5. Price and Payment Terms

Customer agrees to pay to JCI the sum of **\$117,780** (one-hundred seventeen thousand, seven-hundred and eighty) within 60 days after the delivery to the Customer of the documentation described under paragraph 1 of this Agreement. However, Customer will have no obligation to pay this amount if:

- JCI and the Customer enter into the implementation Agreement (outlined in Section 4) within 60 days after the delivery to the Customer of the documentation described under item 2 of this Agreement. Costs for the Study will be transferred to the total cost of the implementation Agreement and be subject to the payment terms outlined in the Agreement.

6. 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 the following timeline:

- Signed Project Development Agreement (PDA) – **March 15, 2023**
- JCI to complete Project Development, and provide firm costs – **June 16, 2023**
- Approve Contract – **July 28, 2023**
- Substantial Completion of Construction – **August 30, 2024 (14 months)**

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

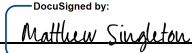
7. Miscellaneous Provisions

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

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

JOHNSON CONTROLS, INC.

By: Matthew Singleton

Signature:  _____

Title: Area General Manager

Date: 3/15/2023

FORT BEND COUNTY

By: _____

Signature: _____

Title: _____

Date: _____

ATTACHMENT 1

Potential improvement measures (non-exhaustive list) to be investigated in the Project Development are as follows:

1. Priority Measures at various facilities:
 - a. Interior and exterior lighting upgrades to LED
 - b. HVAC improvements, large and small mechanical
 - c. Chillers / Cooling towers
 - d. Building Automated Systems