
**PROJECT DEVELOPMENT AGREEMENT
BETWEEN**

**City of Coachella
53-990 Enterprise Way
Coachella, CA 92236**

AND

**Johnson Controls, Inc.
5770 Warland Drive, Suite A
Cypress, CA 90630**

The purpose of this Project Development Agreement (PDA) is to confirm the intent of the City of Coachella and Johnson Controls, Inc. (JCI) to develop an Energy Efficiency and Utility Conservation Project pursuant to California Government Code 4217.10. This PDA will provide the basis of the scope of the project, the obligations of both parties, the technical and financial requirements to be met and the intended outcome and timeline.

1. Scope of Services

It is the Parties' mutual understanding that this Project Development Agreement is for the purpose of development of a Final Proposal and pre-construction services, to be delivered to City of Coachella, for review and approval of the scope of work. The analysis will include, but is not limited to the following items:

- a. Develop the potential list of Facility Improvement Measures (FIMs) for the City:
 - i. Street Lighting Retrofit to Light Emitting Diode (LED) Technology
 - ii. Interior and Exterior Lighting Upgrade Light Emitting Diode (LED) Technology
 - iii. Park and Recreation Lighting Upgrades
 - iv. Ball Field Lighting Installation
 - v. Plug Load Management
 - vi. Solar Photovoltaic (Solar PV) Systems at all warranted sites
 - vii. Additional scope items identified as advantageous to the City of Coachella
- b. Identify potential rebates or incentives for each of the measures.
- c. JCI will develop a financial analysis.
- d. JCI will assist the City in arranging and securing project financing and/or available grants.

2. Deliverables

The deliverables for this evaluation will include a Guaranteed Savings Performance Agreement along with a final Facility Improvement Measure (FIM) savings analysis. The list of FIMs will include an investment and economic benefits for the bundled project and program. Before the Matrix is completed, JCI will conduct a series of workshops and/or meetings with Staff to review the project and assure this is a collaborative effort.

Deliverables for this evaluation will include the following:

- a. Installation Performance Agreement with a firm guaranteed maximum price for the work and guaranteed energy and utility savings for the City to approve.
- b. A detailed scope of work for each FIM proposed to be implemented will be included in the Performance Agreement Document.
- c. A financial Cash Flow documenting the proposed project. The Cash Flow will include applicable annual costs and savings, revenues and/or other financial benefits that affect the project outcome such as, but

not limited to financing, energy, water, sewer, and associated ongoing operational/maintenance savings and efficiencies.

- d. A schedule for implementation of the project.
- e. A summary of the proposed Measurement & Verification plan that will be used to measure the performance for each FIM.
- f. Detailed analysis of potential funding sources to include (but not limited to) Tax Exempt Lease Purchase (TELP), **Power Purchase Agreement (PPA)**, **Johnson Controls Contingent Financing Program**, **JCI Sponsored "Infrastructure as a Service" Funding** as well California State and Federal Funding Mechanisms.

3. Financial Metrics

It is the Parties' mutual understanding that this Project Development Agreement will include the evaluation of multiple project financing options for the City to review and ultimately approve. The project financing options will conform to the guidelines set forth in California Public Resource Code 25008; California Government Code Chapter 3.2. Energy Conservation Agreements, Section 4217.10-4217.18.

Project Determinants in the table below will be used by JCI and the City to determine the economic merit of the project, the values can change at any time throughout development as better information is made known. However, for the purposes of determining whether or not JCI has met the success criteria identified in Paragraph 2 "Deliverables", the values indicated herein will be used upon completion of development to make such determination. Each party has a duty to inform the other of changes to any of the values indicated in a timely manner that may affect the success of the project.

- Final financial cash flow must be at least revenue neutral to the City
- Average annual utility escalation rate is 3%
- Average annual water rate increase of 3%
- Operational Savings Percentage annual increase of 3%
- Planned Service Agreement (PSA) or Measurement and Verification annual percentage increase of 3%
- Any applicable rebates and grants are estimates and subsequently not guaranteed.

4. 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:

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|------------------|---|
| • March 2020 | City to Approve Project Development Agreement (PDA) |
| • April 1, 2021 | JCI to Start project design analysis |
| • May 1, 2021 | JCI to Commence Communications With City Financial Staff and Advisors on Funding Options and Opportunities. |
| • June 1, 2021 | Workshop 1 - Scope of Work, Cost, Financing |
| • July 1, 2021 | Workshop 2 - Review Agreement and Measurement and Verification plan |
| • July 15, 2021 | JCI to submit Installation Agreement |
| • July 28, 2021 | City Approves Final Project Agreement |
| • August 1, 2021 | JCI Commences Project Installation |

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

5. Price and Payment Terms

Should JCI meet the above criteria and the City does not proceed with the Performance Agreement, the City will be responsible for paying all costs associated with in this PDA within 90 calendar days.

Total JCI Cost for Project Development:	\$100,000.
Total Due if Energy Project is not implemented with JCI:	\$60,000.

City of Coachella will have no obligation to pay if:

- a. City of Coachella enters into the Installation Agreement with JCI within 60 days after City of Coachella has received the documentation described in this Agreement. The costs for the development will be transferred to the total cost of the Installation Agreement.
- b. In the event that Johnson Controls is unable to meet the financial criteria mutually agreed upon as described in Paragraph 3 "Financial Metrics" and cannot offer the City of Coachella a Financially Viable project.

6. Records and Data

During the development, City of Coachella will furnish to Johnson Controls upon its request, accurate and complete data concerning the most recent three years of utility billing invoices, utility representative contact information, as-built construction documents, audited financial statements, the current year's budget, current utility costs, budgets, facility operating requirements, future projected loads, collective bargaining Agreements. Johnson Controls will provide a separate document with the required information and City of Coachella shall make every effort to provide that information within a reasonable time. Johnson Controls shall be entitled to modify the milestone schedule in this PDA if the requested information is not provided in a timely manner.

7. Preparation of Implementation Agreement

Along with the other Scope of Work required under this Agreement, Johnson Controls will develop the framework of the subsequent Agreements. These Agreements shall be co-developed by Johnson Controls and City of Coachella during the Project Development Agreement phase. These documents will vary dependent on City of Coachella desired structure and legal counsel review, but where possible shall be standardized Johnson Controls documents for most expedient delivery.

8. Indemnity

Johnson Controls and City of Coachella agree that the parties shall each be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of the parties, their officers, agents, directors, and employees. To the extent permitted by law, Johnson Controls and City of Coachella agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their officers, agents or employees or any negligent act or omission by their officers, employees or agents.

9. Disputes

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation may be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at the time, except as modified herein, if the parties elect to at the time the dispute arises. In that event, all disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual Agreement of the parties. Judgment may be entered upon the award in the highest State or Federal court having jurisdiction over the matter. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of this dispute.

10. Confidentiality

This Agreement creates a confidential relationship between JCI and Customer. Both parties acknowledge that while performing this Agreement, each will have access to confidential information, including, but not limited to, systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development, and other information relating to the other party ("Proprietary Information"). Except as authorized in writing, both parties agree to keep all Proprietary Information confidential. JCI may only make copies of Proprietary Information necessary for performing its services. Upon cessation of services, termination, or expiration of this Agreement, or upon either party's request, whichever is earlier, both parties will return all such information and all documents, data and other materials in their control that contain or relate to such Proprietary Information.

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

Notwithstanding the foregoing confidentiality provisions, JCI acknowledges that the City is a California municipality and is subject to the California Public Records Act as found under the California Government Code Section 6250 et seq. City shall provide JCI no less than six (6) days' prior written notice of City's intent to disclose any of JCI's Proprietary Information pursuant to a request for disclosure and/or copying under the California Public Records Act. If JCI disagrees with City's decision to disclose JCI's Proprietary Information, JCI will respond in writing within forty-eight (48) hours of receipt of such written notice from the City informing the City of JCI's course of action including, but not limited to, seeking a protective order. If JCI fails to initiate seeking a protective order within two days of City's receipt of JCI's notification to City, City shall be permitted to comply with the demand to disclose the Proprietary Information. If JCI does initiate seeking such a protective order, the City shall cooperate with, and shall not oppose, JCI in obtaining such protective order, provided, however, that JCI agrees to assume all out-of-pocket legal costs related to the matter incurred by the City including, but not limited to, any reasonable attorney's fees. So long as the City complies with the provisions of notification set forth in this section, the City shall not be liable for, and JCI hereby releases City from, any liability for any damages arising from any release of Proprietary Information to a requestor of such information, and such release includes the representation of the City.

11. 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 Agreement and all matters arising out of or relating to it shall be governed by and construed in accordance with the laws of the State of California. The parties hereby irrevocably consent to the jurisdiction of the state courts located in Riverside County, California, in any action arising out of or relating to this Agreement, and waive any other venue to which either party might be entitled by domicile or otherwise.

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reimbursement for all out-of-pocket costs and expenses, including without limitation, reasonable attorney's fees.

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force and effect and are not affected or impaired in any way.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency, employment, or fiduciary relationship or partnership between the parties or to impose any such obligation or liability upon either party. Neither party shall have any right, power of authority to enter into any Agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other party.

Without limiting the generality of the foregoing paragraph, neither this Agreement, nor any duties or obligations under this Agreement, nor the intentions or expectations of either party shall create an employment relationship between City and JCI for any purpose. JCI shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City. JCI shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by JCI are employees, agents, contractors or subcontractors of JCI and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against JCI by any such employees, agents, contractors or subcontractors, or any other person, resulting from performance of this Agreement.

This Agreement does not and is not intended to confer any rights or remedies upon any party other than the parties to this Agreement.

This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

All notices required or permitted under this Agreement shall be in writing and shall be deemed given on the date sent if delivered by hand or by email with an attachment in a portable document format (.pdf) or similar file format, on the next business day if sent by overnight courier, or on the third business day if sent by United States mail, postage prepaid, to each party at its address shown on Page 1 of this Agreement (or at such other address as a party may specify by notice under this section).

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: Scott Avirett

Signature: _____

Title: Area Vice President, West Building
Efficiency

Date: _____

City of Coachella

By: William B. Pattison, Jr.

Signature: _____

City Manager

Title:

Date: _____