

**MASTER ENERGY SERVICES AGREEMENT
BETWEEN**

**City of Milwaukee
200 W. Wells Street
Milwaukee, WI 53202**

AND

**Johnson Controls, Inc.
507 E Michigan Ave.
Milwaukee, WI 53202**

The purpose of this Master Energy Services Agreement (Agreement) is to confirm the intent of Johnson Controls, Inc. (JCI) and the City of Milwaukee (City) to develop Energy Savings Performance Contract(s) (Project). This Agreement will provide the basis of the scope of the Project, the obligations of both parties, the intended outcomes and timeline. This structure will allow the City to review and approve individual Energy Conservation Measure (ECM) Projects, on a case-by-case basis, as change orders to this Master Energy Services Agreement. JCI and the City agree as follows:

1. Term

This Agreement is for a term of five (5) years with the option to extend for up to three (3) additional one (1) year periods (maximum of 8 years) per RFP 99-2023 Request For Proposals, Energy Savings Performance Contract.

- 1.1** City may terminate this Agreement at any time for any reason by giving at least thirty (30) days' written notice to JCI. If City terminates this Agreement as provided in this paragraph, JCI will be paid for those services actually and satisfactorily rendered, or goods actually and satisfactorily delivered.
- 1.2** If either party fails to fulfill in a timely and proper manner any of its obligations or violates any of the provisions of this Agreement, the non-breaching party shall have the right to terminate this Agreement. The non-breaching party shall notify the breaching party of its intent to terminate by giving the breaching party written notice at least five (5) business days before the effective date of the termination and identifying the alleged deficiencies in the breaching party's performance, and shall give the breaching party thirty (30) days to cure such deficiencies prior to termination. If City terminates this Agreement in accordance with this paragraph, all deliverables completed by JCI as of the date of termination shall, at the option of City, become property of City consistent with the provisions of Article 4 of this Agreement. Notwithstanding the foregoing, JCI shall not be relieved of liability to City for damages sustained by City by virtue of any breach of the Agreement, and City shall retain its remedies under law.

2. Scope of Services

It is the Parties' mutual understanding that this Agreement will identify the anticipated outcomes of the Project, if implemented, the roles and responsibilities of each party in developing a preliminary Project Pro-Forma, as well as the requirements necessary for the parties to enter into a subsequent formal contract to implement the Project. It is both Parties' mutual understanding that this initial Project will include the facilities and infrastructure as listed below. Other City facilities and infrastructure can be added by change order to this Master Energy Services Agreement:

- DPW Field HQ, 3850 N 35th St, Milwaukee, WI 53216
- Central Repair Garage, 2142 W Canal St, Milwaukee, WI 53233
- Police Department District 3, 2333 N 49th St, Milwaukee, WI 53210

The Agreement will provide for the development of ECMs at the listed City's facilities that will provide energy savings, operational savings, and capital cost avoidance. Where possible the Project will assist the City by providing additional improvements to reduce the City's deferred maintenance backlog or desired ECMs not affordable otherwise. The ECMs of focus for this Project are listed below:

- **HVAC:** Evaluate and identify existing HVAC equipment upgrades to maximize efficiency and life-cycle improvements.

- Chilled Water system
- Hot Water Heating Boiler system
- HVAC Air Handling Units and Roof Top Unit (RTU) system
- Garage Heating system
- **Solar:** Evaluate and identify possible solutions for Solar PV
- **EV charging station:** Evaluate and identify possible solutions for EV charging solutions. Notwithstanding the above listed facilities, the EV charging station scope may be evaluated at additional or alternate City facilities upon mutual agreement
- **Temperature Controls and Building Automation System (BAS)** Evaluate and identify opportunities for BAS upgrades and integration of buildings to existing BAS. Evaluate upgrades to related HVAC equipment and conversion of pneumatic temperature controls to Direct Digital Controls (DDC)
- **LED Lighting Conversion:** Evaluate and identify possible interior and exterior LED lighting upgrades along with integrated technologies that can be part of a SMART building environment (example daylight harvesting sensors)
- **Water conservation:** Evaluate and identify possible water improvements throughout the City's building (e.g. toilets, sinks, urinals, showers, etc.)
- **Building Envelope:** Evaluate and identify possible building envelope improvements that directly impact building efficiency.
- **OpenBlue Enterprise Manager (OBEM):** Evaluate and identify OBEM modules of value including Energy Management (collect, analyze and display information for utility meters), Green Hub (public-facing display of sustainability and conservation data), Net Zero Advisor (used to monitor GHG emissions for Scope 1 and 2)
- **Green Job Training:** Evaluate and identify possible training solutions for City employees, recruitment of future City employees, and training and employment opportunities for the broader community.

Note: Additional ECMs and buildings can be evaluated if agreed upon by both parties.

The City will provide the following to JCI as a part of the Agreement:

- a. City's most recent 36 months of utility bills and data (electricity, gas and water), covering the time period from March 1st 2021 to March 31st 2024.
- b. Access to site drawings and plans
- c. Operational and Capital expenses for the last 3 years and as planned for the next 5 years related to infrastructure and equipment listed above.

3. Development Schedule

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 to achieve the Milestone Schedule identified herein:

Milestone*	Complete Date
Agreement approved by Public Works Committee, if necessary	3/27/2024
Agreement approved by Common Council and executed	4/9/2024
Project kickoff and JCI Commences on-site development work <ul style="list-style-type: none"> •City provides pertinent documents and data to execute the development •JCI provides contract form for City review 	4/10/2024
Bi-weekly progress review meetings	Ongoing
Project Workshops: <ul style="list-style-type: none"> •Measurement and Verification (M&V) •ECM Review Workshop •Financial Workshop •Legal Workshop 	6/18/2024

City legal review of contract terms and conditions completed	6/25/2024
Substantial completion progress review with City	7/15/2024
Draft Energy Savings Performance Contract (Implementation Contract) due for City review	7/30/2024
JCI completes RFP for Tax Exempt Lease Purchase (TELP) providers, if requested by City	8/6/2024
City staff completes final review and approval of Implementation Contract	8/15/2024
City completes Project funding decision and contract preparation	8/15/2024
Implementation Contract and Project funding approved by Public Works Committee, if necessary	9/11/2024
Implementation Contract and Project funding approved by Finance and Personnel Committee, if necessary	9/18/2024
Implementation Contract and Project funding approved by Common Council and executed	9/24/2024
Implementation begins	10/1/2024

*These milestones may be modified by subsequent work plans mutually agreed upon by both parties.

4. Deliverables

Upon completion of the project development, JCI shall deliver to the City a firm Energy Savings Performance Contract (Implementation Contract) including the following information:

- A written description of each ECM proposed to be implemented;
 - Design of new systems, equipment options and cost to implement
 - Detailed Scope of Work, equipment sizing, schematics for Johnson Controls managed RFP's for equipment and install (Note: City will have right to determine equipment brands and technologies)
- Base year energy consumption calculation (energy measurements)
- Energy and operational savings and deferred maintenance calculations
- Information on available incentives and grants – FOE, PSC, Inflation Reduction Act
- Financial, legal and measurement & verification workshops
- Cost and description of ongoing services provided by JCI and jointly developed with the Client to maintain equipment and systems installed by JCI.
- A financial pro forma cash flow documenting the proposed Project;
- A preliminary schedule for implementation of the Project;
- A summary of the Measurement & Verification plan, including proposed IPMV protocols, such as Option A, B, C, or D that will be used for each ECM;
- A firm contract (Implementation Contract) by JCI to implement the project.

All deliverables listed above are City's exclusive property, provided JCI shall retain ownership of copyrights and all other underlying intellectual property of JCI associated with the deliverables. City has the right to use the deliverables for any purpose without additional compensation to JCI, provided in the event City uses the deliverables without JCI involvement in the Implementation Contract or on another project contemplated beyond the scope of the Project, such use shall be without risk and liability to JCI and City shall defend, indemnify, and hold JCI harmless for liability, claims, and damages arising out of such use.

4.1 Standard of Care. JCI shall, as an independent contractor and not as an employee of City, perform the services set forth in the Agreement. JCI agrees that the Services shall be performed in accordance with generally accepted professional practices and in a manner consistent with the customary level of care and skill exercised under similar conditions by members of JCI's profession practicing in Wisconsin. Performance of the Services shall conform to all applicable federal, state and local laws and regulations.

5. Records and Data

During the project development, the City will furnish to JCI upon its request, accurate and complete data concerning current: equipment performance data if available; costs; budgets; facilities requirements; future projected loads; facility operating requirements; collective bargaining agreements; etc. JCI will provide a separate document with a formal request for the required data shortly after touring the City facilities. The City shall make every effort to provide that information within 14 days of request.

5.1 Confidentiality. In this Agreement, “Documents” means are all reports, studies, analysis, memoranda, information, records, and related data and materials created as a result of this Agreement, including but not limited to items provided to JCI in accordance with section 3 (scope of services), all deliverables in section 4, and records and data in section 5.

All of the Documents are confidential and JCI agrees that it will not, without prior written approval from City, make the Documents available to any individual, agency, public body or organization except as required by the Agreement or by any applicable law or legal process, provided such confidentiality obligations related to the Documents, shall exclude: (a) information in the possession of the party receiving the Document or information (the “Recipient”) before its receipt from the party disclosing the Document or information (“Disclosing Party”) including as part of Recipient’s own development process, without obligation of confidentiality; or (b) is or becomes available to the public through no fault of Recipient; or (c) is independently developed by the Recipient without reference to or use of the Disclosing Party’s confidential information; or (d) is received from the Recipient in good faith from a third party without a known obligation of confidentiality. Upon City’s request, JCI shall deliver all Documents to City and then destroy all copies of the Documents, whether in written, electronic or other form or media, in a commercially reasonable manner, provided JCI shall be entitled to retain one copy of the Documents for professional, compliance and legal purposes subject to the confidentiality obligations herein, and shall certify in writing to City that all Documents have been returned to City and destroyed in a commercially reasonable manner at no cost to City. JCI shall comply with all City’s directions regarding the return and/or destruction of the Documents within fourteen (14) days. JCI shall notify City if it has knowledge of an unauthorized acquisition or use of the Documents as soon as possible, but no later than within one (1) business day of such knowledge.

5.2 Public Records Law. JCI understands that City is bound by the Wisconsin Public Records Law, Wis. Stat. §19.21, et. seq. Pursuant to Wis. Stat. §19.36(3), City may be obligated to produce, to a third (3rd) party, the records of JCI that are “produced or collected” by JCI under this Agreement (“Records”). JCI is further directed to Wis. Stat. §19.21, et. seq., for the statutory definition of Records subject to disclosure under this paragraph, and JCI acknowledges that it has read and understands that definition. Irrespective of any other term of this Agreement, JCI is obligated to: (1) retain Records for seven (7) years from the date of the Record’s creation, and (2) produce such Records to City if, in City’s determination, City is required to produce the Records to a third (3rd) party in response to a public records request. JCI’s failure to retain and produce Records as required by this paragraph shall constitute a material breach of this Agreement, and JCI must defend and hold City harmless from liability due such breach.

6. Preparation of Energy Savings Performance Contract (Implementation Contract)

JCI will prepare and submit to City an Implementation Contract to implement the improvements and operational efficiency measures, procedures, and services identified in the Deliverables section that could reduce the City’s overall operating expense and improve operating conditions in the system. JCI and City shall work diligently during the project development to complete and populate contract documents. The Implementation Contract shall be prepared on standard JCI contract forms, copies of which will be made available to the City. The Implementation Contract shall provide a written savings guarantee in accordance with the enabling legislation.

The Implementation Contract will comply with City of Milwaukee Small Business Enterprise Program (SBE), apprenticeship and Residence Preference Program (RPP) requirements. Subject to further negotiation in the Implementation Contract, the project goal is expected to be 25% SBE and 40% RPP. When JCI issues bids for equipment and services, the City will be notified and will have the opportunity to share bid package information with interested

local contractors to encourage local business participation. The Implementation Contract will be compliant with federal contracting requirements of the Inflation Reduction Act of 2022 where applicable.

7. Project Development Cost and Payment Terms

The City agrees to pay JCI the sum of \$95,000 payable within 60 days after JCI provides the Deliverables identified herein. However, the City will have no obligation to pay this amount if JCI and the City enter into an Implementation Contract within 60 days after JCI provides the Deliverables. Costs for project development will be transferred to the total cost of the Implementation Contract and be subject to the payment terms outlined in that contract. The City shall pay the amount indicated if the City elects not to implement a project with JCI.

8. Indemnity

JCI shall indemnify, defend, and hold City harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, for any third party injury, loss, or damage for personal injury, including death, and damage to tangible property, caused by the intentional misconduct or the negligent act or omission of JCI, its directors, employees, agents, and subcontractors. To the extent consistent with Wis. Stat. §§ 893.80 and 895.46(1)(a), City agrees to hold harmless JCI, its officers, agents, directors, and employees, from all third party claims, demands, or suits for personal injury, including death, and damage to tangible property, including all legal costs and attorney's fees, resulting from the intentional misconduct of City's employees, or any negligent act or omission by City's employees or agents, while acting in the scope of employment. Nothing in this provision shall be construed as a waiver by City of any immunity or defense provided by statutory or common law. Neither JCI nor the City will be responsible to the other for any special, indirect, or consequential damages.

8.2 Insurance.

JCI shall maintain insurance in the amounts set forth below in full force and effect at all times until the work under this Agreement has been completed, and shall provide a certificate evidencing such coverage promptly following City's request therefor.

COVERAGES	LIMITS OF LIABILITY
Workmen's Compensation Insurance or self-insurance, including Employer's Liability	Statutory
Commercial General Liability Insurance	\$5,000,000 Per Occurrence \$5,000,000 Aggregate
Professional Liability Insurance	\$2,000,000 Per Claim and in the Aggregate
The above limits may be obtained through primary and excess policies, and may be subject to self-insured retentions.	

9. Disputes

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation prior to either party commencing any legal proceeding.

9.1 Choice of Law and Venue. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The parties agree that for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, jurisdiction and venue shall be in Milwaukee County, Wisconsin, for matters arising under state law or, should federal courts have jurisdiction, the eastern district of Wisconsin. The parties agree to submit themselves to the jurisdiction of said courts, to the exclusion of any other court that may have jurisdiction over such a dispute according to any other law.

10. Miscellaneous Provisions

10.1 This Agreement cannot be assigned by either party without the prior written consent of the other party.

10.2 This Agreement is the entire Agreement between JCI and the City and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the City.

10.3 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.

10.4 All terms in this Agreement which by their meaning are implied to survive termination shall continue in force and effect following the termination or expiration of this Agreement.

10.4 JCI shall make the Documents available to City to allow City to audit, examine, excerpt or transcribe the Documents and audit, examine, excerpt or transcribe all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract any time during normal business hours upon seven (7) business days advanced written notice, provided to the extent consistent with applicable law, for any projects executed on a lump sum or fixed price basis the financial components of the lump sum or fixed price agreement shall not be subject to audit. If federal or state grants or aids are involved in this Contract, Contractor shall make the Documents available to the appropriate federal or state agency or the United States Comptroller General to allow the appropriate federal or state agency or Comptroller General to audit, examine, excerpt or transcribe the Documents and audit, examine, excerpt or transcribe all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract any time during normal business hours upon seven (7) business days advanced written notice. Contractor shall not charge any additional fees to City, the appropriate federal or state agency, or the Comptroller General by virtue of any additional work or costs associated with the performance of Contractor's duties under this section.

10.5 JCI's work product (whether goods, services, information and communication technology services, engineering or architectural services, or construction) prepared for City pursuant to this Contract shall fully comply with, as applicable, the Americans with Disabilities Act (ADA), Sections 504 and 508 of the Rehabilitation Act of 1973 provided JCI and City may agree as to responsibilities related to ADA compliance for conditions arising out of City's existing facilities related to the Project in the Implementation Contract. If JCI is preparing work product based on specifications prepared by or on behalf of City, and JCI knows or should know based on JCI's experience in its field that such specifications are not in compliance with the ADA, JCI must notify City in writing of such non-compliance prior to commencing its work under those specifications.

10.6 It is City's policy not to discriminate against any qualified employee or qualified applicant for employment because of an individual's sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse or sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, familial status, or an individual's affiliation or perceived affiliation with any of these categories ("Protected Classes"), pursuant to Milwaukee Code of Ordinances (MCO) Section 109-9. Contractors, including JCI, and their subcontractors employing any resident of the City of Milwaukee may not discriminate against any member of the Protected Classes, and such contractors must insert this clause into any subcontracts of subcontractors employing any resident of the City of Milwaukee.

10.7 All contractor's in existence prior to 1865 contracting with City shall complete an affidavit prior to entering into a contract verifying that it has searched any and all company records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any enslaved persons or slaveholders described in those records must be disclosed in the affidavit.

10.8 JCI is an independent contractor, and neither JCI, nor JCI's officers, employees or agents are employees of City, nor are they entitled to any fringe benefits or any other benefits to which City's employees are entitled to or are receiving. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of JCI receiving payment under this Contract shall be the sole responsibility of JCI. City and JCI form no joint venture or partnership under this Agreement.

10.9 Any contract (including this Agreement) in which a member of the City of Milwaukee Common Council is an interested party shall be voidable at the sole discretion of City, and City may sue to recover any amounts paid on such contract.

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.		CITY OF MILWAUKEE	
By	David F Angello	By	
Signature		Signature	
Title	General Manager	Title	
Date		Date	