

CONTRACT

This Contract (this "Agreement") is made this **18th day of March, 2023** between:

PARTIES

JOHNSON CONTROLS, INC. ("JCI")
5770 Warland Dr. Suite A
Cypress, CA 90630

and

MIRACOSTA COMMUNITY COLLEGE DISTRICT ("Customer")
1 Barnard Drive
Oceanside, CA 92056

RECITALS

WHEREAS, Customer desires to retain JCI to perform the work specified in Schedule 1 (Scope of Work) hereto (the "Work") relating to the installation of the improvement measures (the "Improvement Measures") described therein; and

WHEREAS, Customer is a public agency under the provisions of California Government Code section 4217.10 et seq. pertaining to energy conservation contracts and Customer is authorized and empowered to enter into this Agreement under the authorizations, exemptions, and terms as provided by statute, including but not limited to section 4217.12 of the California Government Code.

WHEREAS, Customer has made the necessary determination and taken such necessary actions under applicable Law to enter into this Agreement, including public bidding and procurement rules, and this Agreement is a valid and binding obligation.

WHEREAS, Customer has selected JCI to perform the Work after it determined JCI's proposal was the most advantageous to Customer in accordance with all applicable procurement and other Laws.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

AGREEMENT

- 1. SCOPE OF THE AGREEMENT.** The recitals of this Agreement are incorporate herein and made part of this Agreement. The Work set forth in Schedule 1 is summarized as: (i) design and engineering of photovoltaic solar generating equipment and systems at the District's Community Learning Center ("CLC Solar") and San Elijo campus ("San Elijo Solar"); (ii) installation of the CLC Solar and San Elijo Solar; and (iii) interconnection of the CLC Solar and San Elijo Solar to San Diego Gas & Electric ("SDGE") electrical transmission infrastructure. After the Work is Substantially Complete (as defined below), the parties shall execute the Certificate of Substantial Completion. Customer shall make payments to JCI for the Work with Schedule 4 (Price and Payment Terms).
- 2. AGREEMENT DOCUMENTS:** In addition to the terms and conditions of this Agreement, the following Schedules are incorporated into and shall be deemed an integral part of this Agreement:

Schedule 1 – Scope of Work

Schedule 2 – Energy Savings Forecast

Schedule 3 – Customer Responsibilities

Schedule 4 – Price and Payment Terms

Attachment 1 – Notice to Proceed

Attachment 2 – Change Order

Attachment 3 – Certificate of Substantial Completion

Attachment 4 – Certificate of Final Completion

Schedule 5 – Special Conditions

Schedule 6 – Performance Bond

- 3. NOTICE TO PROCEED; SUBSTANTIAL COMPLETION.** This Agreement shall become effective on the date of the last signature on the signature page below. JCI shall commence performance of the Work within ten (10) business days of receipt of Customer's Notice to Proceed, a form of which is attached hereto as Attachment 1, and shall achieve Substantial Completion of the Work by the Substantial Completion date, which shall be the date on which Customer executes a Certificate of Substantial Completion substantially in the form attached hereto as Attachment 3.

For purposes of this Agreement, "Substantial Completion" means that the Improvement Measures have been installed, the Improvement Measures operate as intended and SDGE has executed interconnection agreements with the District for the CLC Solar and the San Elijo Solar.

- 4. DELAYS AND IMPACTS.** If JCI is delayed or impacted in the commencement, performance, or completion of the Work by causes beyond its control and without its fault, including but not limited to inability to access property; concealed or unknown conditions encountered at the project, differing from the conditions represented by Customer in the bid documents or otherwise disclosed by Customer to JCI prior to the commencement of the Work; a Force Majeure Event (as defined in Paragraph 16 below) condition; failure by Customer to perform its obligations under this Agreement; or failure by Customer to cooperate with JCI in the timely completion of the Work, JCI shall provide written notice to Customer of the existence, extent of, and reason for such delays and impacts. Under such circumstances, an equitable adjustment in the time for performance, price, scope and payment terms shall be made.
- 5. ACCESS.** Customer shall provide JCI, its subcontractors, and its agents reasonable and safe access to all facilities and properties in Customer's control that are subject to the Work. Customer further agrees to assist JCI, its subcontractors, and its agents to gain access to facilities and properties that are not controlled by Customer but are necessary for JCI to complete the Work. An equitable adjustment in the time for performance, price and payment terms, shall be made as a result of any failure of third parties or Customer to grant such access.
- 6. PERMITS, TAXES, AND FEES.** Unless otherwise specified in Schedule 3 (Customer Responsibilities), JCI shall be responsible for obtaining all building permits required for it to perform the Work. Unless otherwise specified in Schedule 1 (Scope of Work), Customer shall be responsible for obtaining all other permits, licenses, approvals, permissions and certifications, including but not limited to, all zoning and land use changes or exceptions required for the provision of the Work or the ownership and use of the Improvement Measures. JCI shall not be obligated to provide any changes to or improvement of the facilities or any portion thereof required under any applicable building, fire, safety, sprinkler or other applicable code, standard, law, regulation, ordinance or other requirement unless the same expressly regulates the installation of the Improvement Measures. Without limiting the foregoing, JCI's obligations with respect to the Work is not intended to encompass any changes or improvements that relate to any compliance matters (whether known or unknown) that are not directly related to the installation of the Improvement Measures or which have been imposed or enforced because of the occasion or opportunity of review by any governmental authority. Customer shall be responsible for and shall pay when due all assessments, charges and sales, use, property, excise, or other taxes now or hereafter imposed by any governmental body or agency upon the provision of the Work, implementation or presence of the Improvement Measures, the use of the Improvement Measures or payments due to JCI under this Agreement, other than taxes upon the net income of JCI. Customer shall also be responsible for real or personal property taxes relating to equipment or material included in the Improvement Measures. Any fees, taxes, or other lawful charges paid by JCI on account of Customer shall become immediately due from Customer to JCI.
- 7. WARRANTY.** JCI warrants to the Customer that (i) the Work and all materials and equipment incorporated therein conform to requirements of this Agreement; (ii) all materials and equipment incorporated into the Work are new, of good quality and of the most suitable grade and quality for the purpose intended, and (iii) all Work

and workmanship shall be of good quality, free from faults and defects and in conformity with the requirements of the Agreement. JCI will promptly repair, replace or otherwise correct any work which is not in compliance with the foregoing warranty any non-conforming Work for no charge, as long as Customer provides written notice to JCI within one (1) year following Substantial Completion or such other period identified in Schedule 1. If JCI installs or furnishes goods or equipment under this Agreement, and such goods or equipment are covered by an end-user warranty from their manufacturer, JCI will transfer the benefits of such warranty to Customer. The foregoing remedy with respect to the Work, together with any remedy provided by goods or equipment manufacturers, shall be Customer's sole and exclusive remedies for warranty claims. Customer agrees that the one (1) year period following Substantial Completion, or such other period identified in Schedule 1, shall be a reasonable time for purposes of submitting valid warranty claims with respect to the Work. These exclusive remedies shall not have failed of their essential purpose so long as JCI transfers the benefits of any goods or equipment end-user warranty to Customer and remains willing to re-perform any non-conforming Work for no charge within the one (1) year period described above or such other period identified in Schedule 1. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE PROVIDED BY JCI. JCI does not guaranty that any Improvement Measures will perform in accordance with the manufacturer's specifications over the term of this Agreement, other than with respect to the limited warranty applicable to equipment actually manufactured by JCI, or if the performance failure is related to failure of the Work to conform to the warranties set forth herein, each as described above. Customer's sole remedy for failed or non-performing Improvement Measures not related to JCI's workmanship is to pursue claims under any manufacturer's warranty claims then in effect. This warranty does not extend to any Work that has been abused, altered, or misused, or repaired by Customer or third parties without the supervision or prior written approval of JCI. Except with respect to goods or equipment manufactured by JCI and furnished to Customer hereunder, for which JCI shall provide its express written manufacturer's warranty, JCI shall not be considered a merchant or vendor of goods or equipment.

8. CLEANUP. JCI shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, JCI shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

9. SAFETY; COMPLIANCE WITH LAWS. JCI shall be responsible for initiating, implementing, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. JCI shall be responsible for all fees, costs, expenses or charges to initiate, implement maintain and/or supervising safety precautions and programs without adjustment of the Price. JCI is responsible for safety and security of all personal property of JCI or subcontractors at the Premises. JCI is solely responsible for the risk of loss, theft, damage or destruction of such personal property. Each of JCI and Customer shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (collectively, "Laws") in connection with its performance hereunder.

10. HAZARDOUS MATERIALS.

A. JCI shall be responsible for removing or disposing of any JCI Hazardous Materials and for the remediation of any areas to the extent impacted by the release of JCI Hazardous Materials. For any Non-JCI Hazardous Materials, Customer shall supply JCI with any information in its possession relating to the presence of such materials if their presence may affect JCI's performance of the Work. It is JCI's policy to seek certification for facilities constructed prior to 1982 that no asbestos containing materials are present, and Customer shall at its own cost and expense provide such certification for buildings it owns or aid JCI in obtaining such certification from facility owners in the case of buildings that Customer does not own, if JCI will undertake Work in the facility that could disturb such asbestos containing materials. If Customer becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with Work, it will immediately provide notice to JCI. Upon such notice, or if JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with Work, JCI shall promptly stop the Work in the affected area. As between Customer and JCI, Customer shall be responsible at its sole expense for

removing and disposing of Non-JCI Hazardous Materials from its facilities and the remediation of any areas impacted by the release of Non-JCI Hazardous Materials in conformance with all applicable Laws and addressing the impact of its disturbance before JCI continues with its Work.

B. To the fullest extent permitted by Law, Customer shall indemnify and hold harmless JCI and its directors, officers, employees, agents, representatives, shareholders, affiliates, and successors and assigns, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from Customer's negligent use, storage, release, discharge, handling or presence of Non-JCI Hazardous Materials (actual or alleged and regardless of the cause of such condition) on, under or about the facilities, or Customer's failure to comply with this Article 13.

C. Definitions Applicable to this Article 13:

- i. "Hazardous Materials" – Hazardous Materials are any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under applicable Laws relating to or addressing public or employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product, or polychlorinated biphenyls. Hazardous Materials specifically includes without limitation mold, lead-based paint and asbestos containing materials.
- ii. "JCI Hazardous Materials" – JCI Hazardous Materials are any Hazardous Materials brought onto Customer's premises by JCI in providing the Work.
- iii. "Non-JCI Hazardous Materials" – Non-JCI Hazardous Materials are any Hazardous Materials located on, about or under Customer's premises, other than JCI Hazardous Materials.

11. CHANGE ORDERS. Either party, without invalidating this Agreement, may request changes in the Work to be performed under this Agreement, consisting of additions, deletions, or other revisions to the Work ("Change Orders"). The foregoing notwithstanding, the Customer may conditionally approve or reject a request of JCI to modify the Work if the requested modification is no critical or essential for the Improvement Measures to perform as intended by this Agreement. The price and payment terms, time for and performance shall be equitably adjusted in accordance with the Change Order. Such adjustments shall be determined by mutual agreement of the parties. JCI may delay performance of a Customer requested Change Order until adjustments arising out of the Change Order are clarified and agreed upon. Any Change Order must be signed by an authorized representative of each party. If concealed or unknown conditions are encountered at the Premises, materially differing from the conditions represented by soils, geotechnical or other underground facilities reports, surveys, analysis or other similar materials provided by Customer to JCI prior to the commencement of the Work, price and payment terms, and time for performance shall be equitably adjusted. Claims for equitable adjustment shall be asserted in writing within ten (10) days from the date JCI becomes aware of a change to the Work by written notification.

12. CUSTOMER FINANCING; TREATMENT; TAXES. The parties acknowledge and agree that JCI is not making any representation or warranty to Customer with respect to matters not expressly addressed in this Agreement, including, but not limited to:

- (a) Customer's ability to obtain or make payments on any financing associated with paying for the Improvement Measures, related services, or otherwise;
- (b) Customer's proper legal, tax, accounting, or credit rating agency treatment relating to this Agreement; and
- (c) the necessity of Customer to raise taxes or seek additional funding for any purpose.

- (d) The availability or applicability of any tax deductions, benefits or credits, as well as, any, grants rebates or incentives, including, but not limited to, the solar Investment Tax Credit (“ITC”) and IRC 179D. Whether and to what extent the foregoing tax deductions, benefits, credits, grants, rebates, and incentives are realized or obtained by Customer or others is a risk assumed by Customer.

Customer is solely responsible for its obligations and determinations with respect to the foregoing matters. In addition, the parties acknowledge and agree that Customer shall be responsible to comply, at its cost and expense, with all Laws that may be applicable to it relating to performance contracting, including, without limitation, any requirements relating to the procurement of goods and/or services and any legal, accounting, or engineering opinions or reviews required or obtained in connection with this Agreement.

- 13. INSURANCE.** JCI shall maintain insurance in the amounts set forth below in full force and effect at all times until the Work has been completed, and shall provide a certificate evidencing such coverage promptly following Customer’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
Comprehensive Automobile Liability Insurance	\$5,000,000 Combined Single Limit
Professional Liability	\$2,000,000 Per Claim \$4,000,000 Aggregate

The above limits may be obtained through primary and excess policies, and may be subject to self-insured retentions.

Customer shall be responsible for obtaining builder’s risk insurance coverage for the Improvement Measures and shall at all times be responsible for any loss or casualty to the Improvement Measures. Customer shall also maintain insurance coverage, of the types and in the amounts customary for the conduct of its business, throughout the term of this Agreement. The District and the District’s Board of Trustees, officers, employees and agents shall be additional named insureds to JCI’s commercial general liability insurance policy.

- 14. INDEMNIFICATION.** To the fullest extent permitted by applicable Law, JCI and Customer shall indemnify (each an “Indemnifying Party”) each other (“Indemnified Party”) for all damages, losses and expenses with respect to any third-party claims against the Indemnified Party for personal injury (including death) or tangible property damage, but only to the extent such damages, losses and expenses are caused by the negligence or willful misconduct of the Indemnifying Party in fulfilling its obligations under this Agreement. For purposes of the foregoing, Customer include the Customer’s Board of Trustees, officers, employees, agents and representatives (including the Project Inspector).

- 15. LIMITATION OF LIABILITY.** NEITHER JCI NOR CUSTOMER WILL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, PUNITIVE, EXEMPLARY, LOSS OF PROFITS OR REVENUE, LOSS OF USE, OR SIMILAR DAMAGES, REGARDLESS OF HOW CHARACTERIZED AND REGARDLESS OF A PARTY HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSSES OR RELIEF, ARISING IN ANY MANNER FROM THIS AGREEMENT, THE WORK, THE IMPROVEMENT MEASURES, THE PREMISES, OR OTHERWISE JCI’S LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED FIVE MILLION DOLLARS (\$5,000,000). The foregoing waivers and limitations are fundamental elements of the basis for this Agreement between JCI and Customer, and each party acknowledges that JCI would not be able to provide the work and services contemplated by this Agreement on an economic basis in the absence of such waivers and limitations, and would not have entered into this Agreement without such waivers and limitations.

- 16. FORCE MAJEURE EVENTS.** Neither party will be responsible to the other for damages, loss, injury, or delay caused by Force Majeure Events. As used herein, "Force Majeure Events" are unforeseen conditions that are beyond the reasonable control and without the intentional misconduct or negligence of a party, including, without limitation, severe weather, flooding, seismic disturbances, acts of God, acts or omissions of government agencies, condemnation, strikes, labor disputes, epidemics, pandemics, disease, quarantines or other public health risks and/or responses, fires, explosions or other casualties, thefts, vandalism, riots or war, acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, or electronic communications systems, changes in Laws, data breach, cyber-attacks or ransomware. If a party is delayed in achieving one or more of its schedule milestones set forth in the Agreement due to a Force Majeure Event, the affected party will be entitled to extend the relevant completion date by the number of days which actually delay the completion date of the Force Majeure Event plus additional time to overcome the effect of the delay. Force Majeure Events shall not result in adjustment of the Price.
- 17. JCI'S PROPERTY.** All materials furnished or used by JCI personnel and/or JCI subcontractors or agents at the installation site, including documentation, schematics, test equipment, software and associated media remain the exclusive property of JCI or such other third party. Customer agrees not to use such materials for any purpose at any time without the express authorization of JCI. Customer agrees to allow JCI personnel and/or JCI subcontractors or agents to retrieve and to remove all such materials remaining after installation or maintenance operations have been completed. Customer acknowledges that any software furnished in connection with the Work is proprietary and subject to the provisions of any software license agreement associated with such software.
- 18. GOVERNING LAW.** This Agreement and the construction and enforceability thereof shall be interpreted in accordance with the laws of the state where the Work is conducted.
- 19. 179D BENEFITS.** As a result of JCI's design and implementation of this Project, a federal income tax deduction under Section 179D of the Internal Revenue Code ("IRC 179D") may become available to JCI as the party primarily responsible for designing energy efficiency improvements implemented at Customer's facilities. Congress provided in IRC 179D(d)(4) for government owners, which do not pay income tax and are thus ineligible to use this deduction, to allocate the deduction to the party primarily responsible for designing the energy efficiency improvements, here JCI. Customer hereby agrees to allocate to JCI such deduction and any similar deduction enacted by Congress to replace IRC 179D. Customer shall cooperate with JCI by executing annually, during the term of this Agreement, and promptly returning to JCI, a written allocation and declaration required by IRC 179D. JCI will prepare and is responsible for the accuracy of any allocation documents and all accompanying documentation provided for Customer's execution. Notwithstanding anything to the contrary herein, Customer makes no representation concerning the availability or applicability of any such tax deduction benefits or of their ability to be allocated to or claimed by JCI. JCI assumes all risk related to such allocation and deduction.
- 20. CONSENTS; APPROVALS; COOPERATION.** Whenever Customer's consent, approval, satisfaction or determination shall be required or permitted under this Agreement, and this Agreement does not expressly state that Customer may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever Customer's cooperation is required by JCI in order to carry out JCI's obligations hereunder, Customer agrees that it shall act in good faith and reasonably in so cooperating with JCI and/or JCI's designated representatives or assignees or subcontractors. Customer shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the performance of the Work.
- 21. FURTHER ASSURANCES.** The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

- 22. INDEPENDENT CONTRACTOR.** The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be deemed to create a partnership, joint venture, fiduciary, or similar relationship between the parties.
- 23. POWER AND AUTHORITY.** Each party represents and warrants to the other that (i) it has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder, (ii) all corporate, board, body politic, or other approvals necessary for its execution, delivery, and performance of this Agreement have been or will be obtained, and (iii) this Agreement constitutes its legal, valid, and binding obligation.
- 24. SEVERABILITY.** In the event that any clause, provision, or portion of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or materially impair the benefits intended to inure to either party under this Agreement.
- 25. COMPLETE AGREEMENT.** It is understood and agreed that this Agreement and the Schedules referenced in this Agreement contains the entire agreement between the parties relating to all issues involving the subject matter of this Agreement. No binding understandings, statements, promises or inducements contrary to this Agreement exist. This Agreement supersedes and cancels all previous agreements, negotiations, communications, commitments and understandings with respect to the subject matter hereof, whether made orally or in writing. Each of the parties to this Agreement expressly warrants and represents to the other that no promise or agreement which is not herein expressed has been made to the other, and that neither party is relying upon any statement or representation of the other that is not expressly set forth in this Agreement. Each party hereto is relying exclusively on the terms of this Agreement, its own judgment, and the advice of its own legal counsel and/or other advisors in entering into this Agreement. Customer acknowledges and agrees that any purchase order issued by Customer associated with this Agreement is intended only to establish payment authority for Customer's internal accounting purposes. No purchase order shall be considered a counteroffer, amendment, modification, or other revision to the terms of this Agreement.
- 26. HEADINGS.** The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.
- 27. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one single agreement between the parties.

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28. NOTICES. Notices under this Agreement shall be delivered by United States Mail, Certified, Return Receipt Requested with postage fully prepaid. Notices delivered by United States Mail shall be deemed effective the third (3rd) working day after the postmark date. The recipients and addresses for notices may be modified by the Parties by notice to the other. Notices shall be addressed as follows:

Johnson Controls, Inc.
Attn: Regional Solutions Manager
5770 Warland Dr., Suite A
Cypress, California 90630

Johnson Controls, Inc.
ATTN: General Counsel – Building Efficiency Americas
507 East Michigan Street
Milwaukee, Wisconsin, 53202

MiraCosta Community College District
Attn: Vice President, Administrative Services
1 Barnard Drive
Oceanside, California 92056

MIRACOSTA COMMUNITY COLLEGE DISTRICT

JOHNSON CONTROLS, INC.

Signature: _____

Signature: _____

Printed Name: Tim Flood

Printed Name: _____

Title: Vice President Administrative Services

Title: _____

Date: _____

Date: _____

SCOPE OF WORK

Scope of Work General

JCI shall furnish and install the scope of work as herein defined including the design, engineering, permitting, procurement implementation, start-up, and training as necessary for each Facility Improvement Measure (FIM). The completion of the project as described herein is based upon JCI receiving a Notice To Proceed for the project not later than **March 31, 2023**.

JCI shall provide the necessary engineering plans, calculations, and documents for permit issuance from the Division of State Architect (DSA) based on the scope of the work described in this schedule.

JCI will include the required DSA permit application fees. The Customer is responsible for Inspector of Record (IOR) fees and any testing and special inspection fees required by the DSA.

The customer acknowledges that previous permit applications that JCI was not involved with are not the responsibility of JCI.

FIM 1 Photovoltaic System

This measure is for the installation of photovoltaic (PV) systems which are connected to the existing site's electrical system and will generate electricity through the conversion of solar energy.

FIM 1 Photovoltaic System Summary			
Site	Array ID and Location	Array Size kW (DC)	Location of Electrical Point of Connection
Community Learning Center (CLC) 1831 Mission Ave Oceanside, CA	A- Roof of Main Bldg.	69.7	The main electrical service is located in the electrical room on the east side of the main bldg.
	B- South Parking Lot	<u>119.9</u> 189.6	
San Elijo Campus (SEC) 3333 Manchester Ave Cardiff, CA	A-Parking Lot single row	69.7	The main electrical service is located in the electrical room on the south-west side of the Library building
	B-Parking Lot double row	<u>301.3</u> 371.0	
Total		560.6	

The parking lot PV systems will be constructed in arrays which are mounted in configurations of solar structures as shown in Diagrams 1 and 2 below. The roof PV system for the Community Learning Center will be rack-mounted arrays on the building roof as shown in Diagram 1 below.

The scope of work for this measure includes the following:

- Design and engineering of PV systems, including required permitting from the Authorities Having Jurisdiction (AHJ), including the Division of State Architect ("DSA"), SDGE and the Coastal Commission for San Elijo Improvement Measures.
- Applications for utility interconnection from the electrical utility San Diego Gas and Electric Co including the following change of electric rate schedules:
 - Community Learning Center: From the existing TOU Plus AL TOU Commercial to rate schedule DG-R with Net Energy Metering (NEM).
 - San Elijo Campus: From the existing TOU Plus AL TOU Commercial to rate schedule DG-R with Net Energy Metering (NEM-A).

Schedule 1

- The five electric meters at the SEC are to be under Net Energy Metering Aggregation (NEM-A) with meter 6694686 serving as the primary meter and meters 6694707, 6694708, 6576300, and 6699806 being the meters receiving credit for excess solar generation.
 - Currently three meters (6694707, 6694708, 6694686) at SEC are under agreement with Constellation NewEnergy (CNE) to receive electric energy at pricing fixed per the agreement. The Customer will be responsible to either discontinue or alter the CNE agreement to allow the connection and NEM-A arrangement set forth above.
3. Installation of parking lot PV arrays on solar structures consisting of painted steel columns and beams with galvanized purlins that support the PV modules. The structure has no roof decking and thus acts as a solar mounting structure only.
 4. Solar mounting structures will have a nominal clearance height of 15'-0" at the lowest side of the sloping array. Note: if the ground below the array is slightly uneven there may be areas in which the 15'-0" clearance is reduced. Concrete abutments are included on columns located in paved areas.
 5. JCI will remove existing pole-mounted light fixtures in the areas where the new solar mounting structures will be installed and store the fixtures in accordance with Customer instructions. New LED-type lighting fixtures will be installed on the underside of the PV carport structures in sufficient quantity to match the aggregate lighting rating of the existing fixtures. The existing lighting supply circuits will be preserved, and new junction boxes, conduit, and cable as required will be installed to wire the new LED fixtures to the existing lighting circuits.
 6. Installation of PV rack-mounted arrays on the CLC main building roof consist of prefabricated system of metal racks to support the PV modules which are tilted 10 deg. from horizontal and south facing. The arrays may be a self-ballasted system that aligns loads with structural elements and does not require penetration of the existing roofing. If roof penetrations are required, the penetrations shall be warranted to be watertight and without affect to structural integrity. The roof racking system will be IronRidge or a Customer accepted equal. The foregoing shall not limit, restrict or affect other JCI warranties under the Agreement.
 7. The photovoltaic modules shall be Znshine 540W or approved Customer accepted equal. Modules are provided with a 12-year year product warranty and a 30-year limited performance warranty from the equipment manufacturer. Both warranties are provided by the manufacturer and not by JCI. JCI has no warranty obligations, responsibilities, or liabilities relating to the photovoltaic panels other than to pass through the warranties to Customer.
 8. Provide inverters by SMA or SE or equivalent as approved by JCI. SMA inverters are provided with a 10-year manufacturer warranty. SE inverters are provided with a 12-year manufacturer warranty. Both warranties are provided by the manufacturer and not by JCI. JCI has no warranty obligations, responsibilities, or liabilities other than to pass through the warranties to Customer.
 9. Installation of photovoltaic modules, electrical connections, and interconnection to the existing electrical service for the site. Including where necessary, cutting, trenching, backfilling, and patching to match existing surfaces.
 10. Data Acquisition System (DAS)
 1. Provide revenue grade metering and web-based DAS including a monitoring system manufactured by Also Energy or equal as approved by JCI.
 2. DAS shall transmit data via cellular modem.
 3. Monitoring system includes one meteorological station to monitor plane-of-array irradiance, cell temperature, and ambient temperature per site.
 4. Monitoring system includes a five-year subscription for monitoring service subject to the terms of use of the DAS provider. After the initial five-year subscription, Owner must contract to maintain the monitoring service and cellular fees.
 11. Aluminum conductors will be used where permitted by equipment listing provisions and applicable codes.
 12. JCI will only remove the existing trees which are located in the footprint area of the proposed parking lot PV arrays. The stumps will be ground level with the adjacent grade.
 13. Provide startup of new equipment in accordance with the manufacturer's written instructions.

14. Includes one initial module washing at the time of startup.
15. Provide O&M training for Owner staff. Training shall be limited to 4 hours total. Training shall include the provision of O&M manuals and warranty documentation.

General clarifications and exclusions

This project scope describes the work and services that JCI will provide to the Customer. There are certain items that are excluded from the scope of work and are listed below. The following are general clarifications and exclusions which apply to all measures. If conditions require the inclusion of these items in the scope of work, JCI and the Customer agree to negotiate a fair and equitable solution in good faith.

The completion of the project as described herein is based upon JCI receiving a Notice To Proceed for the project not later than **March 31, 2023**.

During the construction phase of the project, there may be periods when it is not possible to maintain conditions in accordance with standard levels. Included are such issues as, but not limited to: temperature, air circulation, odor control, sound level, electrical service, etc. JCI and the Customer will coordinate activities to minimize the inconvenience to occupants.

Items indicated within Schedule 1 are subject to change during final engineering and design. Any revision to the scope of the project are subject to Customer acceptance.

This scope of work will be performed within a period of 14 months after receipt of a notice to proceed, during regular business hours. Monday through Friday between the hours of 6:30 a.m. and 5:00 p.m. Overtime, premium time, or shift labor is not included in this scope of work.

Clarifications

1. JCI has excluded rock or hard digging from the scope of work (i.e., no blasting or rock removal.) It is also assumed that no caving, water intrusion, or refusal will be encountered while excavating foundations. If JCI encounters any of the above situations JCI will promptly notify the Customer and help develop a plan to mitigate or minimize the additional cost associated. All trenching to be performed by normal means (Case 580 backhoe).
2. With regards to the PV parking lot structure foundations, JCI has assumed no adverse soil conditions and that the existing soil conditions are a minimum of 2,000 psf vertical bearing pressure and 300 psf lateral bearing and are adequate to avoid the need for special measures including, but not limited to, spread footings, caissons, over-excavation, footing modifications, dewatering or pile coatings due to acidic soil conditions. In the event the soil conditions are found to be deficient JCI will promptly notify the Customer and help develop a plan to mitigate or minimize the additional cost associated.
3. JCI has not included repair, replacement, or upgrade of the Customer's or Utility Company's existing electrical equipment. Existing electrical equipment is assumed to be rated for PV connection. In the event the electrical equipment is found to be deficient for the purpose of this project, the Customer and JCI agree to negotiate in good faith to identify and implement a remedy for the issue.
4. JCI does not anticipate and does not include Americans with Disability Act (ADA) accessible parking or path of travel upgrades.
5. JCI does not anticipate California Environmental Quality Act (CEQA) requirements to apply to this project. JCI is not responsible for any studies, documentation, submissions, or required measures, either during project execution or on an ongoing basis.
6. JCI assumes no responsibility for the existing or future warranty of the single-ply roof at the CLC Main building.
7. It is assumed that the existing electrical feeds and grounding systems are fully functional and meet current codes.
8. The Customer will provide clear access to the parking lot areas of the installations.

9. No modifications or redesign of the existing electrical system is included.

[END OF SECTION]

Exclusions

1. Any work not specifically delineated within this scope of work.
2. Any work not specifically delineated within this scope of work which may be required by the DSA, Utility company, local Fire Marshall, or other third-party agency.
3. Warranty, repair, or replacement of existing systems in disrepair or not compliant to current codes (including, but not limited to, requirements of Americans with Disabilities Act (ADA) or Fire & Life Safety system requirements).
4. Remedies for encounters with unforeseen/undocumented site conditions. Building/roof structural (for rooftop PV arrays) or below-grade geotechnical soil structural upgrades (for parking lot structures). If the rooftop or below-grade structural or mechanical conditions are insufficient to support the specified solar PV arrays, JCI and the Customer agree to negotiate a fair and equitable solution in good faith.
5. Any SDGE equipment upgrades, engineering, or analysis costs.
6. Tree trimming. Nearby trees may shade the solar PV arrays. Any trimming required to maintain the generation output of the PV system is the responsibility of the Customer and shall not be provided by JCI. Shading losses are assumed to be 1.0% for the CLC arrays and 5.6% for SEC arrays.
7. PV system maintenance and module washing. The maintenance and module washing is the responsibility of the Customer upon issuance of the Notice of Substantial Completion. Soiling losses are assumed to be an average of 3.0% annually of system production.
8. JCI excludes any guarantee regarding the availability or continued existence of electric utility rates, net energy metering rates pursuant to NEM 2.0 or the Owner's ability to change rates into the future.
9. Additional costs associated with moving PV systems to a different location at each site other than those depicted herein
10. Arc flash studies or UL recertification of existing equipment.
11. Student relocation and/or temporary housing, furniture, or sensitive equipment removal and/or relocation
12. Inspection fees, laboratory or testing fees, except to the extent that inspection fees, labor or testing fees are the result of the initial test or inspection no being in compliance with the applicable standard(s).
13. Overtime and shift labor if requested by the Customer is excluded. (JCI will coordinate access and system shutdowns with Customer prior to and concurrent with construction activities)
14. Resolution of existing design, service, and or distribution conditions known or unknown.
15. Correction of any existing applicable building code violations and Federal Americans with Disabilities Act (ADA) violations identified by JCI during the execution of the Work. Such violations will be brought to the attention of the Customer for remedy.
16. Temporary power during tie-in.

Diagram 1 – Aerial View of Community Learning Center Campus

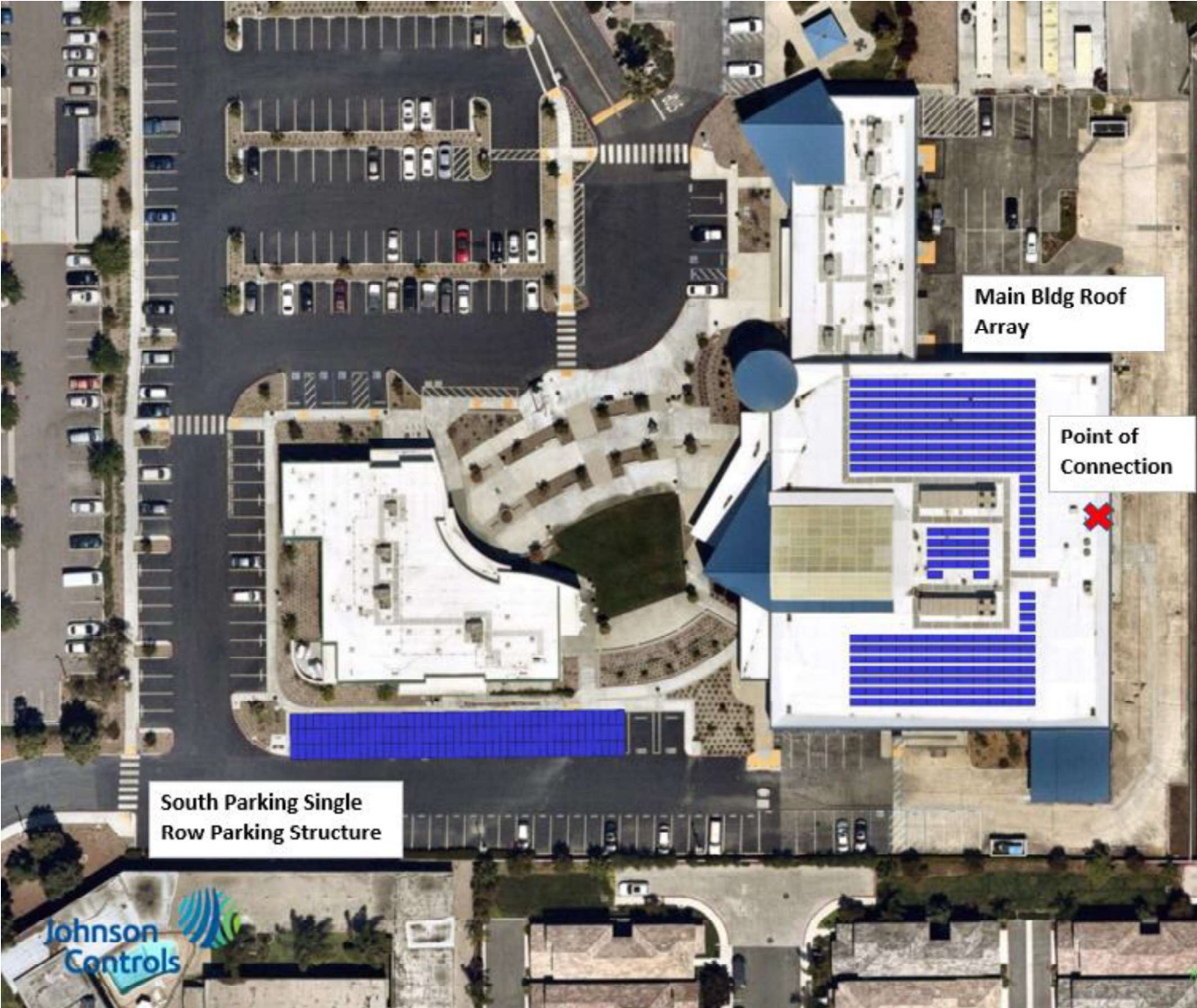


Diagram 2 – Aerial View of San Elijo Campus



ENERGY SAVINGS FORECAST

The table below depicts the Year 1 anticipated, forecasted energy savings related to the scope of work in this agreement. JCI makes no representation, warranty, or guarantee, either expressed or implied, of the forecasted savings. Any realized energy savings are dependent on circumstances and factors outside of the control and responsibility of JCI, including utility and regulatory approvals, rate schedules, and energy pricing, and for which JCI assumes no liability. Accordingly, no pre or post measurement or verification of the savings is included.

Site	Baseline Electrical Energy Use (kWh)	Baseline Electrical Energy Expense	Post Installation Electrical Energy Use (kWh)	Post Installation Electrical Energy Expense	Forecasted Electrical Energy Savings (kWh)	Forecasted Electrical Energy Savings (Percent kWh)	Forecasted Energy Savings	Forecasted Electrical Savings (Percent)
Community Learning Center	376,791	\$ 123,461	72,184	\$ 54,325	304,607	81%	\$ 69,136	56%
San Elijo Campus	729,158	\$ 187,395	172,815	\$ 90,696	556,343	76%	\$ 96,699	52%
Totals	1,105,949	\$ 310,856	244,999	\$ 145,021	860,950	78%	\$ 165,835	53%

Note: Baseline period is July 2021 to June 2022.

CUSTOMER RESPONSIBILITIES

In order for JCI to perform its obligations under this Agreement with respect to the Work, Customer shall be responsible for:

1. Providing JCI, its subcontractors, and its agents reasonable and safe access to all facilities and properties that are subject to the Work;
2. Providing for shut down and scheduling of affected locations during installation as needed to accomplish the Work;
3. Providing timely reviews and approvals of design submissions, proposed change orders, and other project documents;
4. Providing the following information, as applicable and if available, with respect to the project and project site as soon as practicable following JCI's request:
 - a. surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
 - b. geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the project site;
 - c. temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the project and enable JCI to perform the Work;
 - d. a legal description of the project site;
 - e. as-built and record drawings of any existing structures at the project site; and
 - f. environmental studies, reports and impact statement describing the environmental conditions, including hazardous conditions or materials, in existence at the project site.
5. Securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable JCI to perform the Work;
6. Providing assistance to JCI in obtaining any permits, approvals, and licenses that are JCI's responsibility to obtain as set forth in Schedule 1;
7. Obtaining any permits, approvals, and licenses that are necessary for the performance of the Work and are not JCI's responsibility to obtain as set forth in Schedule 1. Including applying for and obtaining SDG&E electric rates relating to the new PV system(s) under NEM 2.0.
8. Properly repairing and performing appropriate preventative maintenance on, all equipment and building systems affecting the Work in accordance with manufacturers' standards and specifications; including, but not limited to, the following: PV system repairs and maintenance, PV panel washing, and PV system monitoring using Data Acquisition System.
9. The Customer will be responsible to either discontinue or alter the Constellation NewEnergy agreement to allow for the connection of the San Elijo Campus under the NEM-A arrangement as set forth in Schedule 1.
10. Periodic trimming of the trees which may shade the PV arrays and reduce the performance.
11. Maintaining the annual subscription for the Data Acquisition System (DAS) and the cellular communication service for the DAS.

PRICE AND PAYMENT TERMS

Customer shall make payments to JCI pursuant to this Schedule 4.

1. Compensation. The Contract Price to be paid by Customer for the Work shall be **\$2,688,905.01**.
2. The Contract Price is allocated to San Elijo Solar and CLC Solar as follows:

	Design, Engineering and DSA approval (“Design Contract Price”	Materials/Equipment Procurement, Installation (“Construction Contract Price”)
San Elijo Solar	Two Hundred Ninety Five Thousand Five Hundred Ninety Five Dollars and Seventy One Cents (\$295,595.71)	One Million Five Hundred Thirty One Thousand Four Hundred Twenty Four Dollars and Forty Six Cents (\$1,531,424.46)
CLC Solar	One Hundred Sixty Four Thousand Eight Hundred Fifty Two Dollars and Forty Six Cents (\$164,852.46)	Six Hundred Ninety Seven Thousand Thirty Two Dollars and Thirty Eight Cents (\$697,032.38)

3. Payments of the Contract Price shall be as set forth in the Special Conditions.

NOTICE TO PROCEED

Johnson Controls, Inc.
5770 Warland Dr. Suite A
Cypress, CA 90630
ATTN: Scott Avirett

Re: Notice to Proceed for: MiraCosta Community College District Project

Dear Mr. Avirett:

This Notice to Proceed is being issued by MiraCosta Community College District ("Customer") to Johnson Controls, Inc. ("JCI") pursuant to that certain Contract entered into between Customer and JCI for the purpose of notifying JCI to commence work under such contract. The start date under this Notice to Proceed is **April 3, 2023**.

This Notice to proceed authorizes commencement of the design and engineering services described by Schedule 1 of the Agreement. A separate Notice to Proceed similar in form and substance as this Notice to Proceed will be issued authorizing JCI' s commencement of construction.

By signing and dating this Notice to Proceed, the parties hereto agree to these terms and represent and warrant they have the authority to execute this Notice to Proceed on behalf of their respective organizations.

MiraCosta Community College District

Signature: _____

Printed Name: Tim Flood

Title: Vice President Administrative Services

Date: _____

**ACKNOWLEDGED & AGREED TO:
JOHNSON CONTROLS, INC.**

Signature: _____

Printed Name: Scott Avirett

Title: General Manager- West Region

Date: _____

CHANGE ORDER

Contract dated March 18, 2023 between Johnson Controls, Inc. and Customer	Change Order No.		Date (mo/day/yr)
Customer MiraCosta Community College District			
The above referenced Contract is hereby modified to the extent described below in accordance with the Terms and Conditions of the CHANGE ORDERS section thereof.			
Scope of Work changed as follows:			
Total amount of this Change Order			\$
Total Contract amount as revised by this Change Order			\$
The time for completion is: <input type="checkbox"/> increased, <input type="checkbox"/> decreased, <input type="checkbox"/> unchanged. The new completion date resulting from this Change Order is:			(mo, day, yr)
Unless specifically changed by this Change Order, all terms, conditions and provisions of the above referenced Contract remain unchanged and in full effect.			
JOHNSON CONTROLS, INC.		CUSTOMER	
Signature:		Signature:	
Printed Name:		Printed Name:	
Title:		Title:	

CERTIFICATE OF SUBSTANTIAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("JCI")
5770 Warland Dr. Suite A
Cypress, CA 90630
ATTN: Scott Avirett

MIRACOSTA COMMUNITY COLLEGE DISTRICT ("Customer")
1 Barnard Drive
Oceanside, CA 92056

PROJECT: **MiraCosta Community College District;** Contract dated **March 18, 2023** between JCI and Customer

By executing this Certificate of Substantial Completion, Customer acknowledges the following:

- a. The work set forth in the Contract is substantially complete.
- b. Customer has received the manuals, warranty information, and training required under the Contract.
- c. The following punch list items must be completed by JCI (check as applicable):
 - punch list attached
 - punch list complete
- d. Upon completion of the punch list items, or if such punch list items are complete, JCI and Customer shall sign the Certificate of Final Completion attached hereto.

Dated _____, 20____.

CUSTOMER:
Signature: _____
Printed Name: _____
Title: _____

JOHNSON CONTROLS, INC.
Signature: _____
Printed Name: Scott Avirett
Title: General Manager -West Region

CERTIFICATE OF FINAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("JCI")
5770 Warland Dr. Suite A
Cypress, CA 90630
ATTN: Scott Avirett

MIRACOSTA COMMUNITY COLLEGE DISTRICT ("Customer")
1 Barnard Drive
Oceanside, CA 92056

PROJECT: MiraCosta Community College District; Contract dated **March 18, 2023** between JCI and Customer

By executing this Certificate of Final Completion, Customer acknowledges the following:

- a. The work set forth in the Contract has been reviewed and determined by Customer to be fully complete.
- b. Customer accepts the work as complete and hereby releases JCI's obligations under any performance and payment bonds posted for the project as of the date set forth below.

Dated _____, 20____.

CUSTOMER:
Signature: _____
Printed Name: _____
Title: _____

JOHNSON CONTROLS, INC.
Signature: _____
Printed Name: Scott Avirett
Title: General Manager West Region.

**SCHEDULE 5
SPECIAL CONDITIONS**

These Special Conditions are incorporated into the Contract between Johnson Controls, Inc. ("Contractor") and MiraCosta Community College District dated **March 18 2023**. In the event of a conflict between (i) the Special Conditions and (ii) the terms and conditions of the general provisions of the Agreement and Schedules 1-4, the latter shall control.

1. PV Systems Design and Engineering; PV Systems Design Documents.

- 1.1. AOR/SEOR. The Contractor or an independent contractor to the Contractor shall serve as the Architect of Record ("AOR"), Structural Engineer of Record ("SEOR") or Design Professional of Record ("DPOR") (the AOR, SEOR and DPOR are collectively referred to herein as the "AOR") for preparation of the drawings, specifications, calculations and other similar materials necessary to complete the PV Systems design and engineering (collectively "Design Documents"). The AOR shall furnish all necessary and appropriate architectural, engineering and other professional services required for the preparation of the Design Documents that are complete, detailed and suitable to construct the PV Systems.
- 1.2. Use and Ownership of Design Documents. Provided that the District has made payments due the Contractor in accordance with the terms of the Contract, the Design Documents prepared by the AOR for the PV Systems are shall be and remain the property of the District. Subject to the District's ownership of tangible Project Documents, the copyright and other intellectual property rights in all Project Documents shall remain with the AOR and/or the Contractor. The District shall not acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are incorporated into the Design Documents.
- 1.3. Design Services Standard of Care. The Contractor and AOR shall provide and complete the Design Services: (i) using their professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar design professional services for projects of the size, scope and complexity of the Project; (iii) the terms of the Contract; and (iv) in accordance with applicable standards of care.
- 1.4. Compliance with AHJs. The Contractor and/or the AOR shall respond to and comply with all requests relating to the PV Systems or Design Documents for the PV Systems made by any AHJ with jurisdiction over any portion of the PV Systems, including without limitation, DSA and San Diego Gas & Electric.
- 1.5. Approvals/Permitting of Design Documents. The Contractor and/or AOR shall obtain, on behalf of the District, all necessary approvals or permits for the Design Documents for the Project from all AHJs with jurisdiction over any portion of the PV Systems as necessary for construction of the PV Systems, including DSA. Without adjustment of the Contract Price, the Contractor and/or the AOR shall revise the Design Documents as required by AHJs, to obtain their respective approval(s) or permit issuance. Permit application fees and other costs associated with obtain permits/approvals of the Design Documents are included in the Contract Price.

2. Design and Engineering; Design Documents. The Contractor shall complete design and engineering of the PV Systems, including development of Design Document.

2.1. Design Development Design Documents.

- 2.1.1. Contractor/AOR Preparation. Design Development phase Design Documents shall be prepared for the PV Systems which include without limitation a description of the PV Systems scope, typical construction details; equipment layouts; architectural information fixing and illustrating the size, character and quality of all components, equipment and materials and forming a part of the PV Systems. As necessary, Design Development Design Documents shall include civil, landscape, structural, and electrical drawings and specifications.
- 2.1.2. Review of 100%Completed Design Development Design Documents. The Contractor shall submit the 100% completed Design Development Design Documents to the District for review and comment. Upon the District completing review of 100% completed Design Development Design Documents, the District and Contractor shall meet and confer as necessary to establish the extent of revisions of the 100% Design Development Design Documents to be incorporated into the Construction Design

Documents.

2.2. Construction Design Documents.

- 2.2.1. Development of Construction Design Documents. Based upon the District accepted Design Development Documents, the Contractor or AOR shall prepare Construction Design Documents consisting of all Drawings and Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Project sufficient for DSA review and approval to construct.
- 2.2.2. Construction Documents Incorporation of Materials/Equipment. The Construction Design Documents shall include all materials, equipment and other products along with layouts and configurations of spaces within the PV Systems conforming to the requirements of the Contract. Subject to Schedule 1 – Scope of Work requirements, any work, services, materials, equipment, products or other tangible or intangible items/services necessary to complete the Project in accordance with the District’s requirements for the Project shall be provided or performed by the AOR without adjustment of the Contract Price hereunder.
- 2.2.3. Submittal of Construction Design Documents for Approval. Upon completing the 100% completed Construction Design Documents, the Contractor shall submit the 100% completed Construction Documents to the DSA for review. The Contractor shall concurrently submit the 100% completed Construction Design Documents to all other AHJs for review and approval to construct. The Contractor shall promptly respond to review revisions or clarifications necessary for DSA or AHJ issuance of the Construction Design Documents for construction. The Construction Design Documents approved by DSA for construction are referred to herein as the DSA Approved Documents.
- 2.2.4. DSA and AHJ Permits. The Contractor shall deliver to the District all permits for construction of the PV Systems issued by DSA and other AHJs for confirmation and verification that all required permits and approvals for construction of the PV Systems have been issued.

3. **PV Systems Construction.**

- 3.1. Construction Requirements. The Contractor shall provide all labor, materials, services and equipment necessary to furnish and install the Work in accordance with the DSA Approved Documents and requirements of other AHJs. The Contractor shall commence the Work upon the District’s issuance of Construction NTP. Issuance of the Construction NTP shall be within ten (10) days of the District’s verification that all required permits and approvals for construction have been issued. The commencement date for the Construction Contract Time shall be as set forth in the Construction NTP.
- 3.1.1. DSA and Project Inspector. Construction and of the PV Systems is subject to DSA jurisdiction and compliance with the DSA Approved Documents, DSA regulations and observations of the DSA certified Project Inspector. The Project Inspector authority over the PV Systems shall be established by law; the Contractor shall comply with directives issued by the Project Inspector. The Project Inspector is not authorized to change or modify the DSA Approved Documents.
- 3.1.2. Contractors’ License and DIR Registered Contractor. At all times during the construction of the PV Systems: (i) the Contractor shall be a Contractors State License Board licensed contractor in the C-10 Electrical classification; (ii) each Subcontractor shall be licensed by the Contractors License Board in the classification(s) required for the portion of the PV Systems construction to be completed by each Subcontractor; and (iii) the Contractor and all Subcontractors shall be registered contractors with the Department of Industrial Relations pursuant to Labor Code §1725.5.
- 3.1.3. Contractor Personnel. All personnel assigned by the Contractor and Subcontractors shall be skilled, knowledgeable and experienced in the tasks assigned. All personnel at the Site shall comply with District Board Policies and Administrative Procedures.
- 3.1.4. Contractor Bonds. Prior to commencement of construction at the Site, the Contractor shall deliver to the District a Labor & Materials Payment Bond and Performance Bond (collectively “Bonds”) in the form and content incorporated into the Contract as Schedule 5 (Performance Bond) and Schedule 6 (Labor & Materials Payment Bond). The Bonds will be accepted by the District only if: (i) the Bonds

are issued by an Admitted Surety Insurer under California law; and (ii) the Surety issuing the Bonds is AM Best rated at least A-/VII.

3.2. Wage Rates; Employment of Labor.

- 3.2.1. Payment of Prevailing Rates. There shall be paid each worker of the Contractor and Subcontractors engaged in the Work, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such worker. During the Work and pursuant to Labor Code §1771.4(a)(4), the Department of Industrial Relations will monitor and enforce the obligation of the Contractor and Subcontractors to pay laborers at least the Prevailing Wage Rate established for the classification of work/labor performed.
- 3.2.2. Prevailing Rate Penalty. If a worker of the Contractor or a Subcontractor is paid less than the prevailing wage rate for the work or craft provided by the worker, the Contractor and/or Subcontractor shall be subject all penalties and assessments established by the Laws.
- 3.2.3. Certified Payroll Records. The Contractor and all Subcontractors shall prepare and submit Certified Payroll Records to the Labor Commissioner in compliance with requirements established in Labor Code §1771.4, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work. The payroll records shall be certified and available for inspection in accordance with the Laws. If the Contractor and/or Subcontractor fail or refuse to produce payroll records as required by the Laws, the Contractor and/or Subcontractor shall be subject to all penalties and assessments under the Laws as a result of such failure or refusal.
- 3.2.4. Hours of Work. The Contractor and Subcontractors shall limit the hours of work by their respective workers to those permitted by the Laws. Hours of work exceeding those permitted by the Laws shall be subject to additional premium wage payments as required by the Laws. Failure of the Contractor or Subcontractors to comply with the foregoing will subject the Contractor and/or Subcontractor to all penalties and assessments under the Laws.
- 3.2.5. Apprentices. Apprentices for the Work shall be in strict conformity with applicable law, including without limitation, Labor Code §§1777.5 through 1777.7, the provisions of which are incorporated herein by this reference. The responsibility for compliance with apprenticeship requirements is solely and exclusively that of the Contractor. If the Contractor willfully fails to comply with these provisions and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall be subject to all penalties and assessments established by law.
- 3.2.6. Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide services for the Work where the services provided or to be provided requires the person to hold a valid California Contractors' license and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. Employment of any person in violation of the foregoing, will subject the Contractor to the civil penalties under California Labor Code §1021.5 and any other penalty provided by the Laws. All Subcontractors shall comply with the foregoing.

3.3. Subcontractors.

- 3.3.1. Subcontracts. Any Work performed for the Contractor by a Subcontractor shall be pursuant to a written agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 15.1 hereof, subject to the prior rights of the Surety obligated under a bond relating to the Contract. The Contractor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Contractor is a party upon request of the District.

- 3.3.2. Subcontractor DIR Contractor Registration. Subcontractors must be DIR Registered contractors. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor’s Subcontractors List. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor’s verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.
- 3.3.3. Substitution of Listed Subcontractor. Any request of the Contractor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with California Public Contract Code §4107. All costs incurred by the District, including without limitation, attorneys’ fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Construction Contract Price then or thereafter due the Contractor.
- 3.3.4. Utility Shutdown or Disruption. If completion of the Work requires shut-down or disruption of any utility service serving the Site, JCI shall provide the Customer with at least forty-eight (48) advance notice of the scheduled shut-down or disruption of a utility service. As necessary to minimize disruption to operation, use and occupancy of the Site, utility service shut-downs shall be scheduled for minimum required duration, evenings or weekends.

4. Contract Price Payments.

- 4.1. Design Contract Price. The portion of the Design Contract Price allocated for completion of design and engineering services set forth in Schedule 4 of the Contract shall be disbursed as follows:

San Elijo Campus	
Design and Engineering Phase	Portion of Design Contract Price
100% Completed Design Development Design Documents	\$ 147,797.85
100% Completed Construction Design Documents and DSA Submittal	\$88,678.72
DSA Construction Approval	59,119.14
Community Learning Center	
Design and Engineering Phase	Portion of Construction Contract Price
100% Completed Design Development Design Documents	\$ 82,426.23
100% Completed Construction Design Documents and DSA Submittal	\$ 49,455.73
DSA Construction Approval	\$ 32,970.50

Upon the Contractor’s completion of a Phase of the design and engineering services set forth above, the Contractor shall submit a billing invoice for the portion of the Contract Price allocated for the completed phase of design and engineering services.

- 4.2. Construction Contract Price. Payment of the Construction Contract Price shall be in accordance with the following:
 - 4.2.1. Construction Contract Price Breakdown. Within ten (10) days after issuance of the Construction NTP, the Contractor shall submit a “Cost Breakdown” of the Construction Contract Price for District delineating the major components of the Work review and comment. The District shall ten (10) days to review and submit comments to the Contractor for revisions of the Cost Breakdown. The Contractor shall revise the Cost Breakdown and submit the revised Cost Breakdown to the District for review acceptance. Applications for Progress Payments (“Payment Applications”).
 - 4.2.2. Payment Applications. The Contractor shall submit monthly Payment Applications, on the first (1st) working day of each month, to the District on forms approved by the District, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District’s making of

Progress Payments thereon. Estimates of the value of the Work completed shall be based on the District accepted Cost Breakdown.

- 4.2.3. Payment Application Processing. A Payment Application is “proper” only if it is submitted on the form approved by the District, with all of the information completely and accurately provided and such completed Payment Application is accompanied by: (i) the form of Verification of Certified Payroll Records Submittal to Labor Commissioner, executed under penalty of perjury by the Contractor’s Superintendent (Attachment B to this Addendum); (ii) completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §8132 of the Contractor, all Subcontractors and Material Suppliers covering the Progress Payment requested; (iii) completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §8134 of the Contractor, Subcontractors and Material Suppliers covering the Progress Payment received by the Contractor under the prior Payment Application; and (iv) a certification by the Contractor that it has continuously maintained the Record Drawings. Submittal of all of the foregoing is an express condition precedent to the District’s obligation to disburse any Progress Payment. If a Payment Application is determined by the District not to be a “proper” Payment Application, the Payment Application will be returned by the District to the Contractor (along with a written document setting forth the reason(s) why the Payment Application is not proper) as soon as is practicable after receipt of the same from the Contractor, but in no event not more than seven (7) days after the District’s receipt thereof.
- 4.2.4. Review of Payment Applications. Upon receipt of a Payment Application, the District will inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract and requirements of the DSA Approved Documents and to determine the portion of the Payment Application which is properly due to the Contractor.
- 4.2.5. Disbursement of Progress Payments.
 - 4.2.5.1. Timely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, within thirty (30) days after the District’s receipt of a proper Payment Application, the District will pay the Contractor ninety five percent (95%) of the value of the Work indicated in the Payment Application which is actually in place as of the date of the Payment Application and as verified and approved by the Project Inspector and Architect; provided, however, that the District’s obligation to disburse any Progress Payment shall be subject to the Contractor’s submission of a “proper” Payment Application as defined hereinabove. If a Payment Application is not “proper” due to the failure or refusal of the Contractor to comply with conditions precedent to the District’s obligation to disburse a Progress Payment, or incompleteness or inaccuracies in any such documents submitted, the thirty (30) day period for the District’s timely disbursement of a Progress Payment shall commence on the date that the District is actually in receipt of documents not submitted with the Payment Application, or corrections to documents with the Payment Application so as to render them complete and accurate.
 - 4.2.5.2. Untimely Disbursement of Progress Payments. Pursuant to Public Contract Code §20104.50, if the District fails to make any Progress Payment within thirty (30) days after receipt of an undisputed and proper Payment Application, the District shall pay the Contractor interest on the undisputed amount of such Payment Application equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a).
- 4.2.6. No Waiver of Defective or Non-Conforming Work. The approval of any Payment Application or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of Defective or Non-Conforming Work.
- 4.2.7. Progress Payments for Changed Work. The Contractor’s Payment Applications may include requests for payment for Changes which have been authorized and approved by the District and all other governmental agencies with jurisdiction over such Change. Except as provided for herein, no other payment shall be made by the District for Changes.

- 4.2.8. Materials or Equipment Not Incorporated Into the Work. No Progress Payments will be made for materials or equipment not incorporated into the Work at the time a Payment Application is submitted.
- 4.2.9. Title to Work. The Contractor warrants that title to all Work covered by a Payment Application will pass to the District no later than the time of payment.
- 4.2.10. Final Payment.
- 4.2.10.1. Application for Final Payment. After the Final Completion is achieved, the Contractor shall submit an Application for Final Payment on such form as approved by the District. The Final Payment shall include the remaining balance of the Construction Contract Price and Retention previously withheld by the District, less offsets and deductions thereto.
- 4.2.10.2. Conditions Precedent to Disbursement of Final Payment. Submittal of the following are express conditions precedent to disbursement of the Final Payment: (i) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §§8136 or 8138, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (ii) Operations and Maintenance manuals, separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work and other close-out requirements set forth in the DSA Approved Documents; (iii) the Record Drawings; and (iv) written evidence of the Contractor's filing of the DSA Final Verified Report.
- 4.2.10.3. Disbursement of Final Payment. Provided that the Contractor has complied with all conditions precedent to disbursement of the Final Payment, within sixty (60) days following submittal of the Application for Final Payment, the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.
- 4.2.11. Waiver of Claims. The Contractor's acceptance of the Final Payment is a waiver and release by the Contractor of any and all claims against the District for compensation in connection with the Contractor's performance under the CMAS Contract and this Addendum.
- 4.2.12. Claims Asserted After Final Payment. Except and to the extent of any claims excluded from the Final Payment Conditional or Unconditional Waiver and Releases, any stop payment notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, Material Supplier, laborer or others in connection with or for Work is the sole and exclusive responsibility of the Contractor who shall indemnify, defend and hold harmless the Indemnified Parties from and against any claims, demands or judgments arising or associated therewith, including without limitation attorneys' fees.
- 4.2.13. Withholding of Payments. The District may withhold and retain the Construction Contract Price, in whole or in part, on account of: (i) uncorrected Defective or Non-Conforming Work; (ii) failure of the Contractor to make payments when due laborers, Subcontractors or Material Suppliers; (iii) claims filed or reasonable evidence of the probable filing of claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the District may be liable or responsible including, without limitation, Stop Payment Notice Claims; (iv) reasonable doubt that the Contract can be completed for the then unpaid balance of the Contract Price; (v) tax demands filed in accordance with California Government Code §12419.4; (vi) other claims, penalties and/or forfeitures for which the District is required or authorized to retain funds otherwise due the Contractor, including any amounts due from the Contractor to the District under the Contract Documents; or (vii) the Contractor's failure to perform any of its obligations under the Contract Documents, its default under the Contract Documents or its failure to maintain adequate progress of the Work. In addition to the foregoing, the District shall not be obligated to process any Payment Application, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion

thereof, given by the District, Project Inspector, Architect or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by the Contractor. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld.

- 4.2.14. Payments to Subcontractors. The Contractor shall pay all Subcontractors on account of Work performed by Subcontractors in accordance with the terms of their respective subcontracts and pursuant to Business & Professions Code §7108.5 and Public Contract Code §7201.

5. Disputes

- 5.1. Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and the Contractor arising out of or related to, in any manner, the Contract or the Work, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.

5.2. Dispute/Claims Resolution.

- 5.2.1. Public Contract Code §9204 Claims Resolution Procedures. Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code §9204 ("Section 9204") provided, however, that the Contractor's initiation of Section 9204 procedures is expressly subject to the Contractor's prior full and timely compliance with requirements and procedures of the Contract Documents relating to procedures for resolution of claims, change orders, disputes and other matters in controversy under the Contract Documents.

- 5.2.2. Government Code Claim Requirements. Pursuant to Government Code §930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Contractor, whether on behalf of itself or a Subcontractor, against the District for money or damages, including without limitation claims or portions thereof remaining in dispute after completion of the Section 9204 procedures ("Claims") are deemed a "suit for money or damages" and shall be subject to the provisions of Government Code §§945.4, 945.6 and 946 ("Government Code Claims Process"). An express condition precedent to the Contractor's initiation of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings pursuant to the following is the Contractor's compliance with the Government Code Claims Process, including without limitation, presentation of the claim, demand, dispute, disagreement or other matter in controversy between the Contractor and the District seeking money or damages to the District and acted upon or deemed rejected by the District in accordance with Government Code §900, et seq.

- 5.2.3. Section 20104.4 Dispute Resolution Procedures; Claims Less Than \$375,000. Any Claims, or portion thereof, in dispute after completion of the Section 9204 non-binding dispute resolution procedures and the Government Code Claims Process which is equal to or less \$375,000 shall be resolved in accordance with the civil action procedures established in Public Contract Code §20104.4. Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to Section 9204 procedures shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

5.2.4. Binding Arbitration of Claims Exceeding \$375,000.

- 5.2.4.1. AAA Arbitration. Any Claim, or portion thereof in dispute after completion of the Section 9204 procedures and the Government Code Claims Process which exceeds \$375,000 and any other claims, disputes, disagreements or other matters in controversy between the District and the Contractor arising out of, or related, in any manner, to the Contract, or the interpretation, clarification or enforcement thereof shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association ("AAA") and in accordance with the Construction Industry Arbitration Rules of the in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the AAA closest to the Site.

- 5.2.4.2. Demand for Arbitration. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand

for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Contractor, in which case an appropriate severance order shall be issued by the Arbitrator(s).

- 5.2.4.3. Discovery. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.
- 5.2.4.4. Arbitration Award. The award rendered by the Arbitrator(s) ("Arbitration Award") shall be final and binding upon the District and the Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.
- 5.2.4.5. Arbitration Fees and Expenses. The expenses and fees of the Arbitrator(s) shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party. By this arbitration provision, the District and the Contractor acknowledge and agree that neither shall recover from the other any attorneys' fees associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the CMAS Contract or Work.
- 5.2.5. Limitation on Arbitrator. The Superior Court for the State of California for the County in which the Project Site is situated has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) the Contractor has failed to satisfy all conditions precedent to commencement or maintenance of an arbitration proceeding; (v) waiver of the right to compel arbitration; or (vi) grounds exist for the revocation of the arbitration agreement.

[END OF SECTION]

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Surety and Johnson Controls, Inc., as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **MIRACOSTA COMMUNITY COLLEGE DISTRICT** (“the Obligee”) for payment of the penal sum of Two Million Two Hundred Twenty Eight Thousand Four Hundred Fifty Six Dollars and Eighty Four Cents (\$2,228,456.84) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as MiraCosta Community College District; Contract dated _____, 20__ between JCI and Customer.

WHEREAS, the Principal, has entered into an agreement with the Obligee for performance of the Work; the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work of the Contract Documents.

NOW THEREFORE, if the Principal promptly, fully and faithfully performs each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time; and if the Principal indemnifies and saves harmless the Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications, and amendments, thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Obligee's rights hereunder. The Surety hereby waives notice from the Obligee of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

If the Obligee terminates the Contract due to the Principal's breach or default of the Principal's obligations thereunder, within twenty (20) days after written notice from the Obligee to the Surety of the Principal's breach or default of the Contract Documents and Obligee's termination of the Contract, the Surety shall notify Obligee in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense (“the Notice of Election”); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

If the Surety fails to issue its Notice of Election to Obligee within the time provided for hereinabove, the Obligee may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be jointly and severally liable to the Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion of the Work exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligee upon the Principal's failure of performance or default under the Contract Documents shall be limited to the penal sum hereof, which shall be deemed to include

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the costs or value of any Changes to the Work which increases the Contract Price. If suit or other proceeding is brought upon this Bond by the Obligee, the Surety and Principal shall be jointly and severally liable for payment to the Obligee of all costs, expenses and fees incurred by the Obligee therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ____ day of _____, 20 ____ by their duly authorized agent or representative.

Johnson Controls, Inc.
(Bidder/Principal Name)

By: _____
(Signature)

(Typed or Printed Name)

Title: _____

(Attach Notary Public Acknowledgement of Principal's Signature)

(Surety Name)

By: _____
(Signature of Attorney-In-Fact for Surety)

(Typed or Printed Name of Attorney-In-Fact)

(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)

Contact name, address, telephone number and email address for notices to the Surety

(Contact Name)

(Street Address)

(City, State & Zip Code)

(_____) _____ (_____) _____

Telephone Fax

(Email address)

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Surety and Johnson Controls, Inc., as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **MIRACOSTA COMMUNITY COLLEGE DISTRICT** (“the Obligee”) for payment of the penal sum of Two Million Two Hundred Twenty Eight Thousand Four Hundred Fifty Six Dollars and Eighty Four Cents (\$2,228,456.84) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as MiraCosta Community College District; Contract dated _____, 20__ between JCI and Customer.

WHEREAS, the Principal, has entered into an Agreement with the Obligee for performance of the Work, the Agreement and all other Contract Documents set forth therein are incorporated herein by this reference and made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment: (i) to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work; (ii) of amounts due under the Unemployment Insurance Code for work or labor performed under the Contract; and (iii) of amounts required to be deducted, withheld and paid to the Employment Development Department from wages of the employees of the Principal and its Subcontractors under Section 13020 of the Unemployment Insurance Code with respect to work and labor under the Contract then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term “Claimant” shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §9100, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event that suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys’ fees pursuant to California Civil Code §9554.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work

[CONTINUED NEXT PAGE]

to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20__ by their duly authorized agent or representative.

Johnson Controls, Inc.
(Bidder/Principal Name)

By: _____
(Signature)

(Typed or Printed Name)

Title: _____

(Attach Notary Public Acknowledgement of Principal’s Signature)

(Surety Name)

By: _____
(Signature of Attorney-In-Fact for Surety)

(Typed or Printed Name of Attorney-In-Fact)

(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact’s Signature.)

Contact name, address, telephone number and email address for notices to the Surety

(Contact Name)

(Street Address)

(City, State & Zip Code)

(_____) _____ (_____) _____
Telephone Fax

(Email address)

