

PERFORMANCE CONTRACT

This Performance Contract (this "Agreement") is made this 7th day of October, 2020 between:

PARTIES

JOHNSON CONTROLS, INC. ("JCI")
6 AERIAL WAY
SYOSSET, NY 11791

and

EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT ("Customer")
149 DAYTON AVENUE
MANORVILLE, NEW YORK 11949

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 authorized and empowered under applicable Laws (as defined below) to enter into this Agreement, subject to the approval of the Commissioner of Education, and has taken all necessary action under applicable Laws to enter into this Agreement; and

WHEREAS, Customer has selected JCI to perform the Work in accordance with the provisions of Customer's request for proposal (the "RFP") and 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.** JCI shall perform the Work set forth in Schedule 1. After the Work is Substantially Complete (as defined below) and the Certificate of Substantial Completion is executed by Customer, the Engineer of Record (as defined below in paragraph 3) and JCI, JCI shall provide the assured performance guarantee (the "Assured Performance Guarantee") and the measurement and verification services (the "M&V Services") set forth in Schedule 2 (Assured Performance Guarantee). Customer shall make payments to JCI for the Work and the M&V Services in accordance 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 – Assured Performance Guarantee
 - 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; Certificate of Final Completion

3. **ENGINEER OF RECORD.** The Customer has identified ECG Engineering, P.C. as the certified Engineer of Record (Engineer) to provide engineering services in connection with the Work to be performed by JCI (Engineering Services). The fees and total compensation for such Engineering Services shall be \$875,417 and are the sole responsibility of JCI. Both JCI and Customer agree and acknowledge that the Engineer owes its/his/her professional obligations and duties, including duties of care to JCI and the Customer. The Engineer shall remain free from any financial interest in the Agreement which conflicts with the proper completion of its/his/her responsibilities under this Agreement and which conflicts with its/his/her responsibilities and duties to the Customer. JCI shall indemnify and hold the Customer harmless from any and all claims made against the Customer by the Engineer for fees and/or compensation for Engineering Services.
4. **NOTICE TO PROCEED; SUBSTANTIAL COMPLETION; M&V SERVICES.** This Agreement shall become effective upon, and the parties' obligations hereunder are contingent upon, written approval of the Commissioner of Education of the State of New York and the Customer's ability to secure financing, financing terms and/or other payment methods acceptable to the Customer at its sole discretion. After receipt of written approval from the New York State Education Department ("NY SED"), and after Customer has secured financing in accordance with Paragraph 31 of this Agreement, the Customer shall issue a Notice to Proceed, a form of which is attached hereto as Attachment 1 and which is in form acceptable to NY SED. JCI shall commence performance of the Work within ten (10) business days of receipt of Customer's Notice to Proceed, and shall achieve Substantial Completion of the Work by the Substantial Completion date, which shall be the date on which Customer and Engineer execute a Certificate of Substantial Completion substantially in the form attached hereto as Attachment 3.

For purposes of this Agreement, "Substantial Completion" means that JCI has provided sufficient materials and services to permit Customer to operate the Improvement Measures. The M&V Services shall commence on the first day of the month following the month in which Customer executes a Certificate of Substantial Completion and shall continue throughout the M&V Services Period, subject to earlier termination of the Assured Performance Guarantee as provided herein and in Schedule 2. The final completion date shall be the date when all Work is completed, including punch list items, as evidenced by the execution of the Certificate of Final Completion by Customer, JCI and the Engineer.

5. **DELAYS AND IMPACTS.** If JCI is delayed in the commencement, performance, or completion of the Work and/or M&V Services 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 (as defined 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 and payment terms, and the Assured Performance Guarantee shall be made, subject to the mutual written agreement of the parties.
6. **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 and M&V Services. JCI shall not perform the Work where it would impact and/or disrupt classes or student activities in progress, except as agreed to in writing by the parties. 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 and provide the M&V Services. An equitable adjustment in the time for performance, price and payment terms, and Assured Performance Guarantee shall be made as a result of any failure to grant such access, where such failure is inconsistent with the terms of this paragraph, subject to mutual written agreement of the parties.
7. **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 or the M&V Services, 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.

8. **WARRANTY.** JCI will perform the Work in a professional, workman-like manner. JCI will promptly re-perform any non-conforming Work for no charge, as long as Customer provides written notice to JCI within one (1) year following the date of the Certificate of 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 the date of the Certificate of 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. 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, which approval shall not be unreasonably withheld. 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.
9. **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.
10. **SAFETY; COMPLIANCE WITH LAWS.** JCI shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and M&V Services. Each of JCI, its subcontractors and agents, 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.
11. **ASBESTOS-CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS.**

Asbestos-Containing Materials: Neither party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials ("ACM"). Consistent with applicable Laws, Customer shall supply JCI with any information in its possession relating to the presence of ACM in areas where JCI undertakes any Work or M&V Services that may result in the disturbance of ACM. It is JCI's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Customer shall 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 or M&V Services in the facility that could disturb ACM. If either Customer or JCI becomes aware of or suspects the presence of ACM that may be disturbed by JCI's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other. As between Customer and JCI, JCI shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable Laws and addressing the impact of its disturbance before JCI continues with its Work or M&V Services, unless Customer had actual knowledge that ACM was present and failed to inform JCI of the presence of such ACM, in which case (i) Customer shall be responsible at its sole expense for remediating areas impacted by the disturbance of the ACM, and (ii) Customer shall resume its responsibilities for the ACM after JCI's remediation has been completed.

Other Hazardous Materials: JCI shall be responsible for removing or disposing of any Hazardous Materials (as defined below) that it uses in providing Work or M&V Services ("JCI Hazardous Materials") and for the remediation of any areas impacted by the release of JCI Hazardous Materials. For other Hazardous Materials that may be otherwise present at Customer's facilities ("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 or M&V Services. If either Customer or JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with JCI's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other. 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, unless JCI had actual knowledge that Non-JCI Hazardous Materials were present and acted with intentional disregard of that knowledge, in which case (i) JCI shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Non-JCI Hazardous Materials, (ii) the Environmental Indemnity paragraph set forth below shall not apply and (iii) Customer shall remain responsible at its sole expense for the removal of Non-JCI Hazardous Materials that have not been released and for releases not resulting from JCI's performance of the Work or M&V Services. For purposes of this Agreement, "Hazardous Materials" means 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 Law 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 mold and lead-based paint and specifically excludes ACM. JCI shall have no obligations relating to the identification, abatement, cleanup, control, removal, or disposal of mold, regardless of the cause of the mold.

Environmental Indemnity: To the fullest extent permitted by Law, Customer shall indemnify and hold harmless JCI and JCI's subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, 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 the Customer's use, or the storage, release, discharge, handling or presence of ACM, mold (actual or alleged and regardless of the cause of such condition) or Non-JCI Hazardous Materials on, under or about the facilities, or Customer's failure to comply with this Section 11.

12. CHANGE ORDERS.

Unless agreed to by the Customer in writing, JCI will not be entitled to any change orders for work or materials that are necessary to install and/or operate any equipment set forth in Schedule 1. There will be no change orders issued for additional work due to omissions or errors in the plans, specifications and/or drawings for the Project. JCI will review the plans, specifications and drawings prior to construction to ensure that all necessary work and materials are included.

Notwithstanding the above, the parties, 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 price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee, shall be equitably adjusted in accordance with the Change Order. Such adjustments shall be determined by mutual agreement of the parties. Any contract changes must be submitted, together with all supporting documentation to the NY SED for review and approval. JCI may delay performance 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 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, or a Force Majeure event occurs, price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee, shall be equitably adjusted by mutual written agreement of the parties. Claims for equitable adjustment may be asserted in writing within a reasonable time from the date a party becomes aware of a change to the Work by written notification. Failure to promptly assert a request for equitable adjustment, however, shall not constitute a waiver of any rights to seek any equitable adjustment with respect to such change.

13. 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.

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.

14. INSURANCE.

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the contractor hereby agrees to effectuate the naming of the District as an Additional Insured on the contractor's insurance policies, except for workers' compensation and N.Y. State Disability insurance.
2. The policy naming the District as an Additional Insured shall:
 - (a) Be an insurance policy from an A.M. Best A- rated or better insurer, licensed to conduct business in New York State. A New York licensed and admitted insurer is strongly preferred. The decision to accept non-licensed and non-admitted carriers lies exclusively with the District and may create significant vulnerability and costs for the District.
 - (b) State that the organization's coverage shall be primary and non-contributory coverage for the District, its Board, employees and volunteers.
 - (c) Additional insured status shall be provided by standard or other endorsements that extend coverage to the District for on-going operations (CG 20 38) and products and completed operations (CG 20 37). The decision to accept an endorsement rest solely with the District. A completed copy of the endorsements must be attached to the Certificate of Insurance.
3. (a) The certificate of insurance must describe the services provided by the contractor (e.g., roofing, carpentry or plumbing) that are covered by the liability policies.
 - (b) Reserved.
 - (c) A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/15) must be included with the certificates of insurance. There shall be no exclusions on Items G through L on this Form.
4. The contractor agrees to indemnify the District for applicable deductibles and self-insured retentions.
5. Minimum Required Insurance:
 - a. Commercial General Liability Insurance
 - \$1,000,000 per Occurrence/ \$2,000,000 Aggregate
 - \$2,000,000 Products and Completed Operations
 - \$1,000,000 Personal and Advertising Injury
 - \$100,000 Fire Damage
 - \$10,000 Medical Expense
 - The general aggregate shall apply on a per-project basis.

b. Reserved

c. Automobile Liability

\$1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.

d. Workers' Compensation and NYS Disability Insurance

Statutory Workers' Compensation (C-105.2 or U-26.3); and NYS Disability Insurance (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. A person seeking an exemption must file a CE-200 Form with the state. The form can be completed and submitted directly to the WC Board online.

e. Builder's Risk

Must be purchased by the contractor to include interest of the Owner and Contractor jointly in a form satisfactory to the owner. The limit must reflect the total completed value – all material and labor costs and provide coverage for fire, lightning, explosion, extended coverage, vandalism, malicious mischief, windstorm, hail and/or flood.

f. Umbrella/Excess Insurance

\$5 million each Occurrence and Aggregate for general construction and no work at elevation (1 story – 10 feet) or project values less than or equal to \$1,000,000.

\$10 million each Occurrence and Aggregate for high risk construction, work at elevation (>1 story or 10 feet) or project values greater than \$1,000,000.

Umbrella/Excess coverage shall be on a follow-form basis.

6. Contractor acknowledges that failure to obtain such insurance on behalf of the District constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the District. The contractor is to provide the District with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work.
7. Sub-contractors are subject to the same terms and conditions as stated above and submit same to the District for approval prior to start of any work.
8. In the event the Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, the Contractor shall indemnify, defend, and hold harmless the District, its Board, employees and volunteers from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation provided in the Contract.

15. INDEMNIFICATION. The Customer shall indemnify, defend and hold harmless JCI, its employees, agents, and assigns from and against all third party claims, actions, damages, liabilities, and expenses, including reasonable attorneys' fees, arising out of or related to this Agreement to the extent such claims, actions, damages, liabilities and expenses are caused by the negligence or intentional misconduct of the Customer, its employees, agents, officers, Board of Education members, and/or assigns. JCI shall indemnify, defend and hold harmless the Customer, its employees, agents, officers, directors, Board of Education members and/or assigns against any and all third party claims, suits, actions, fines, charges, penalties, costs, damages, losses, liabilities and expenses, including reasonable attorneys' fees, arising out of or related to this Agreement to the extent caused by the negligence or intentional misconduct of JCI's employees, agents, officers, subcontractors, and/or assigns. JCI shall also indemnify and hold harmless the Customer, its employees, agents, officers, directors, Board of Education members, and/or assigns against all loss, damages, liabilities, and expenses, including attorneys' fees, arising out of or related to any claims of patent infringement and any claims of construction or materialman's lien made by any subcontractor or materialman. A condition precedent to any obligation of a party to indemnify the other pursuant to this Section shall be for the indemnified party to promptly advise the indemnifying party of the claim pursuant to the notice provision of this Agreement.

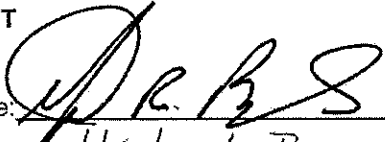
In the event that any materials or resources provided by JCI pursuant to this Agreement are found to infringe upon any patent rights of any third party ("Intellectual Property Infringement"), JCI shall have the option to i) make the product non-infringing, ii) replace the infringing product, or iii) on return of the equipment JCI will refund amounts paid by Customer to Vendor for the infringing product less depreciation over a three (3) year period. The foregoing indemnification by JCI shall not apply where: (1) Intellectual Property Infringement is based on the combination of products or services provided by JCI hereunder in combination with any other products or services; (2) Intellectual Property Infringement is based on a use of the products or services provided by JCI hereunder that is contrary to the ordinary use intended by JCI; or (3) Customer fails to use the latest updates provided by JCI.

- 16. LIMITATION OF LIABILITY.** NEITHER JCI NOR CUSTOMER WILL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, PUNITIVE, EXEMPLARY DAMAGES, 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, THE M&V SERVICES, OR OTHERWISE. WITHOUT LIMITING JCI'S EXPRESS OBLIGATIONS UNDER THE ASSURED PERFORMANCE GUARANTEE, JCI'S LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE TOTAL CONTRACT PRICE SET FORTH ON SCHEDULE 4. Nothing in this provision shall be construed to limit the recovery for compensatory or actual damages suffered by Customer resulting from JCI or its subcontractors' and/or agents' grossly negligent, reckless or intentional acts or omissions, provided, however, that actual damages shall not include consequential damages. If this Agreement covers fire safety or security equipment, Customer understands that JCI is not an insurer regarding those services, and that JCI shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to prevent a casualty loss. 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.
- 17. FORCE MAJEURE.** JCI shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, or failure to perform under this Agreement caused in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is an event beyond the reasonable control of JCI, foreseeable or unforeseeable, including, without limitation, acts of God, severe weather, declared or undeclared natural disasters, acts or omissions of any governmental authority including change in applicable law, epidemics, pandemics, disease, viruses, quarantines or other public health risks and/or responses, strikes, lock-outs, labor shortages or disputes, fires, explosions or other casualties, thefts, vandalism, civil disturbances, riots, war, terrorism, power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation. If JCI's performance is delayed, impacted, or prevented by a Force Majeure Event or, its continued effects, JCI shall be excused from performance under the Agreement. If JCI is delayed in achieving any scheduled milestones due to a Force Majeure Event, JCI will be entitled to extend such milestones by the amount of time JCI was delayed as a result of such event, plus additional time to overcome the effect of the delay, as mutually agreed to in writing by the parties, such mutual agreement not to be unreasonably withheld. If the Force Majeure Event directly or indirectly increases JCI's cost to perform, Customer and JCI shall discuss and mutually agree in writing regarding any reimbursement for such increased costs.
- 18. JCI'S PROPERTY.** All schematics, test equipment, software and associated media which are owned by JCI and furnished or used by JCI personnel and/or JCI subcontractors or agents at the installation site, but which are not incorporated into the ECMs described in Schedule 1 – Scope of Work, 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 and/or M&V Services is proprietary and subject to the provisions of any software license agreement associated with such software. Any such software shall be provided to Customer in accordance with Schedule 1 – Scope of Work. All data generated as a result of the M&V Services shall be the property of the Customer.

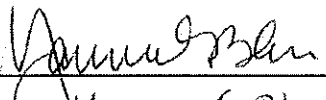
19. **DISPUTES.** JCI and Customer will attempt to settle any controversy, dispute, difference, or claim between them concerning the performance, enforcement, or interpretation of this Agreement (collectively, "Dispute") through direct discussion in good faith. Neither JCI nor Customer will file a lawsuit against the other until not less than sixty (60) days have passed since such direct discussions. JCI and Customer may mutually agree to mediation or other form of alternative dispute resolution.
20. **GOVERNING LAW.** This Agreement and the construction and enforceability thereof shall be interpreted in accordance with the laws of the state of New York.
21. **MODIFICATIONS.** Additions, deletions, and modifications to this Agreement may be made upon the mutual agreement of the parties in writing.
22. **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 JCI's consent, approval, satisfaction or determination shall be required or permitted under this Agreement, and this Agreement does not expressly state that JCI 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. Whenever JCI's cooperation is required by Customer in order to carry out Customer's obligations hereunder, JCI agrees that it shall act in good faith and reasonably in so cooperating with Customer and/or Customer's designated representatives or assignees. 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 or M&V Services.
23. **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.
24. **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.
25. **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.
26. **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.
27. **COMPLETE AGREEMENT.** It is understood and agreed that 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.

- 28. **HEADINGS.** The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.
- 29. **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.
- 30. **NOTICES.** All notices or communications related to this Agreement shall be in writing and shall be deemed served if and when sent by facsimile or mailed by certified or registered mail: to Johnson Controls, Inc. at the address listed on the first page of this Agreement, ATTN: Regional Solutions Manager, with a copy to Johnson Controls, Inc., ATTN: General Counsel – Building Efficiency Americas, 507 East Michigan Street, Milwaukee, Wisconsin, 53202; and to Customer at the address listed on the first page of this Agreement.
- 31. Pursuant to the New York Energy Law 9-103(2), this contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract. Pursuant to 8 NYCRR §155.20, this Agreement shall not be executory until the written approval of the Commissioner of Education of the State of New York is obtained.

EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT

Signature: 
 Printed Name: Michael Byrnes
 Title: President, Board of Education
 Date: OCT 08 2020

JOHNSON CONTROLS, INC.

Signature: 
 Printed Name: Marneka G. Blase
 Title: VP Field Ops.
 Date: 9/30/2020

SCOPE OF WORK

1. **SUMMARY OF WORK:** The following summarizes the Work to be provided by JCI under this Agreement, as further defined below:

ECM #	Proposed Measure	Eastport - South Manor Jr. Sr. HS	Dayton Ave School	Eastport Elementary School	South Street School	Tuttle Ave Elementary School
ECM 1	Lighting - Interior Retrofit	x	x	x	x	x
ECM 2	Lighting - Exterior Retrofit	x	x		x	x
ECM 3	Building Envelope - Weatherization	x	x	x	x	x
ECM 4.1	Energy Management System - Temperature Setback			x		
ECM 4.2	Energy Management System - Demand Controlled Ventilation	x	x	x	x	
ECM 4.3	Energy Management System - Relief Hood, EF & Kitchen Hood Controls		x	x	x	
ECM 5	Energy Efficient Motors Replacement	x	x			
ECM 6	Heating System - Pipe and Valve Insulation	x	x	x	x	
ECM 7	Cooling System - Chiller Replacement	x				
ECM 8	Refrigeration Compressor Controllers		x	x		x
ECM 9	Energy Efficient Transformers	x	x		x	
ECM 10	Renewable Energy- Photovoltaic Generation	x	x	x	x	x
ECM 11	Energy Management System - Re-Commissioning					x
ECM 12	Plug Load Controllers	x	x	x	x	x
ECM 13	Vending Machine Controllers	x	x		x	
ECM 14	Heating System - DHW Replacement	x				
ECM 15	AC Compressor Controllers	x	x	x	x	

GENERAL

The following scope of work is included in this Agreement and shall be provided by JCI:

ECM 1: Lighting – Interior Retrofit

Johnson Controls will furnish and install energy efficient LED lighting in specified areas in the facilities listed in the Line by Line by retrofitting the existing fixture with new lamps and/or ballasts or by replacing with new lighting fixtures. Please refer to the detailed lighting survey in Attachment 4 for the retrofit type and locations. The work will occur at Eastport-South Manor Jr-Sr High School, Dayton Avenue School, Eastport Elementary School, South Street School and Tuttle Avenue Elementary School

Demolition and Removal Work

Existing lamps, ballasts and fixtures associated with the above-referenced scope of work will be removed and properly disposed according to applicable, laws, rules and regulations in effect at the time of SED approval of the Agreement.

New Installation Work

Johnson Controls will furnish necessary materials, labor and necessary equipment to complete the above Interior LED Retrofits. No reconfiguration of lighting systems is included. No repair, replacement, or upgrade of existing indoor or exterior emergency and/or egress lighting system is included unless otherwise noted in the Scope of Work.

Exclusions:

1. Repair or replacement of defective equipment, other than the equipment specifically described in the ECM description. Johnson Controls will identify the location of defective equipment and notify Customer in writing.
2. Repair or upgrades required to rectify existing lighting or electrical system code violations unless specifically described in this scope of work. Johnson Controls will identify the location of the existing violation and notify Customer in writing.

ECM 2: Lighting – Exterior Lighting

Johnson Controls will install energy efficient LED lighting in specified areas in the facilities listed in Line by Line either by retrofitting the existing fixture with new lamps and ballasts or by replacing with new lighting fixtures. Please refer to the detailed lighting survey in Attachment 4 for the retrofit type and locations. The work will occur at Eastport-South Manor Jr-Sr High School, Dayton Avenue School, Eastport Elementary School, South Street School and Tuttle Avenue Elementary School

Demolition and Removal Work

Existing lamps, ballasts and fixtures associated with the above-referenced scope of work will be removed and properly disposed according to applicable, laws, rules and regulations in effect at the time of SED approval of the Agreement.

New Installation Work

Johnson Controls will furnish necessary materials, labor and necessary equipment to complete the above exterior LED Retrofits.

Exclusions:

1. Existing poles shall be used. Repair of wiring to or within existing poles is not included in this scope of work. Customer is responsible
2. Repair or replacement of defective equipment, other than the equipment specifically described in the ECM description. Johnson Controls will identify the location of defective equipment and notify Customer in writing.

Schedule 1

3. Repair or upgrades required to rectify existing lighting or electrical system code violations unless specifically described in this scope of work. Johnson Controls will identify the location of the existing violation and notify Customer in writing.

ECM 3: Building Envelope Improvements - Weatherization

Johnson Controls shall perform the following weatherization scope. Doors shall be weather-stripped, and caulking be applied around structural leakage. Cracks and openings within the building envelope will be sealed properly to prevent the rate of infiltration. New weather-stripping is to be of aluminum mill finish with a grey, brown or white gasket..

Eastport-South Manor Jr-Sr High School

- 1 Single Door Weather-stripping
- 3 Overhead Doors Weather-stripping
- 158' Roof-wall Connection Air Sealing with polyurethane foam
- 2815' Soffit Connection Sealing with Thermax board and 2 component foam

Dayton Avenue School

- 13 Single Door Weather-stripping
- 12 Double Door Weather-stripping
- 50 Rooftop Ventilator Air Sealing with polyurethane foam
- 405' Roof-wall Connection Air Sealing with polyurethane foam

Eastport Elementary School

- 12 Single Doors Weather-stripping
- 18 Double Doors Weather-stripping
- 1 Overhead Doors Weather-stripping
- 23 Seal Parameter of Damper to Plenum Roof Penetrations with weatherproof sealant & Lubricate Dampers
- 9 Wind Resistant Air Conditioner Covers
- 139 Seal Parameter of Snap Trip to Frame/Opening Window Caulking
- 513' Roof-wall Connection Air Sealing with polyurethane foam

South Street School

- 9 Single Doors Weather-stripping
- 7 Double Doors Weather-stripping
- 28 Seal Parameter of Damper to Plenum Roof Penetrations with polyurethane foam & Lubricate Dampers
- 788' Roof-wall Connection Air Sealing with polyurethane foam

Tuttle Avenue School

- 11 Single Doors Weather-stripping
- 13 Double Doors Weather-stripping
- 485' Roof-wall Connection Air Sealing with polyurethane foam
- 1070' Exterior Soffit Caulking with weatherproof sealant

Exclusions:

1. Repair or replacement of existing exterior doors and windows is excluded in this scope of work other than as described in the scope of work. If any doors are found to be inoperable, or windows are found to be broken, JCI will report the deficiency to the customer for repair or replacement prior to JCI retrofitting the seals.

Schedule 1

2. Repair or replacement of existing brick or other masonry materials/systems is excluded in this scope of work.
3. Repair or replacement of existing attic space including rafters, ceiling, or roof areas.
4. Modifications required to due to existing code violations, including but not limited to the Americans with Disabilities Act (ADA) and egress, are the responsibility of the Customer.
5. Cutting, patching, and painting is excluded.
6. The scope of work does not include the repair or installation of any structural systems.

ECM 4.1: Energy Management System - Temperature Setback

Johnson Controls shall upgrade Energy Management Systems at Dayton Avenue School, Eastport Elementary School, South Street School, and Tuttle Avenue Elementary School as outlined below. The existing Carrier system at Eastport-South Manor Jr-Sr High School shall remain and not be upgraded.

Supervisory Controllers

- Provide new web-enabled (JCI FX-80 Niagara N4) platform network supervisory controller for each impacted building. All new and existing points scheduled for migration shall be incorporated in the new supervisory network. Incorporate all functionality of existing systems and additional sequences as required to meet savings guarantee. Provide alarming and trending as specified in SED submittal.
- Network supervisory controllers shall be integrated into a temperature control network running on existing remote server at owner-specified location.
- Owner IT department to provide addresses and permissions for integration to site LAN

DDC Retrofit

Convert and migrate the existing pneumatic controls on equipment listed below to new JCI FX DDC control, including electronic end-devices

This includes the following points and sequences:

- Economizer control, including outdoor air change-over on cooling equipment.
- Supply fan start/stop & status monitoring
- Control of Heating & Cooling coils
- Freeze protection
- Remote set point control via BMS front-end
- Warm-up/Cool-down

The following table lists the pneumatic controls scheduled for DDC Conversion.

Building	Location/ Room #	Pnumati c Tstat	Unit Ventilator (Pneumatic)	Radiator Classroom/ Office	Fan Coil Unit	Radiator Hall / Storage
Eastport Elementary	131	1	1	1		
Eastport Elementary	132	1	1	1		
Eastport Elementary	133	1	1	1		
Eastport Elementary	135	1	1	1		
Eastport Elementary	134	1	1	1		
Eastport Elementary	136	1	1	1		

Schedule 1

Building	Location/ Room #	Pnumati c Tstat	Unit Ventilator (Pneumatic)	Radiator Classroom/ Office	Fan Coil Unit	Radiator Hall / Storage
Eastport Elementary	108 Guidance	2			4	
Eastport Elementary	111	3	1	1	3	
Eastport Elementary	2nd Fl Corridor	1				1
Eastport Elementary	Stairwell	1				1
Eastport Elementary	235	1	1	1		
Eastport Elementary	236	1	1	1		
Eastport Elementary	Stairwell	1				1
Eastport Elementary	234	1	1	1		
Eastport Elementary	233	1	1	1		
Eastport Elementary	232	1	1	1		
Eastport Elementary	231	1	1	1		
Eastport Elementary	230	1	1	1		
Eastport Elementary	201	1	1	1		
Eastport Elementary	1st Fl Corridor	1				1
Eastport Elementary	Lobby	1				2
	Total	24	15	15	7	6

FX Software Package:

JCI will provide the District with a Johnson FX Server software package that allows single point access to the BMS system. The FX Server also provides for long term storage of alarms and data trends.

ECM 4.2 Energy Management System - Demand Controlled Ventilation

On the units listed below, demand control ventilation strategies will be employed.

Schedule 1

Building	Location	Area Served	HP
HS/MS	Roof	Auditorium	20
HS/MS	Mech Rm C	Junior High Gym	10
HS/MS	Mech Rm C	Senior High Gym	15
Dayton Ave	Mech Rm	Café	7.5
Dayton Ave	Mech Rm	Café	7.5
South Street	Mech Rm	Gym	1.5
South Street	Mech Rm	Gym	1.5
South Street	Mech Rm	Café	2
Eastport Elementary	Storage Rm	Café	5

For the systems in this section, new auto-calibrating CO2 sensors will be installed to measure the concentration of CO2 and vary the amount of outside air that is drawn into the space by modulating the outdoor and exhaust air dampers. New damper controls will be installed to interface with the existing control system. The sensors will be able to provide the building owner with a trend to show concentrations over time.

ECM 4.3 Energy Management System – Relief Hood, Exhaust Fans and Kitchen Hood Controls

Johnson Controls shall perform the following as outlined below:

Relief Dampers

- Provide DDC control for relief and gravity hoods
- Repair or replace damper assemblies as required
- Provide manually activated or schedule control to meet savings guarantee requirements
- Control is to be open/close (not proportional)

Exhaust Fans

- Provide DDC control for all non-toilet exhaust fans in the buildings listed below.
- Integrate into BMS
- Provide start/stop, status, and alarm
- Provide occupancy programming/control as per savings guarantee requirements

Kitchen Hood - Exhaust Fans

- Provide DDC control for Kitchen hood exhaust fans in the buildings listed below.
- Provide start/stop, status and alarm
- Provide local timed (4 hour) user override, with feedback to BMS
- Integrate into workstation and provide individual system graphic
- Provide alarming and trending as per project requirement

Schedule 1

Building	Roof Exhaust Fans	Kitchen Hood Exhaust Fans	Relief Dampers
Eastport ES	0	0	2
Dayton Ave	0	1	0
South Street	10	1	0
Total	10	2	2

ECM 4.1-4.3 Exclusions

1. Resolution of existing design, service, and or distribution conditions known or unknown.
2. Temporary space conditioning. Installation of controls will occur in such a way as to minimize downtime.
3. Repair or replacement of defective mechanical, controls, and electrical equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
4. 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.

ECM 5 Energy Efficient Motor Replacement

Johnson Controls shall furnish and install replacement motors listed as per the table below:

Building	Type	HP	Eff.
Eastport South Manor JR SR High School	Hot Water Pump	10	87.5
Eastport South Manor JR SR High School	Hot Water Pump	10	87.5
Eastport South Manor JR SR High School	Hot Water Pump	10	87.5
Eastport South Manor JR SR High School	Chilled Water Pump	10	87.5
Dayton Ave School	Hot Water Pump	7.5	85.5
Dayton Ave School	Hot Water Pump	7.5	85.5

The scope of work will be as follows:

- Remove and dispose of existing motors
- Provide new premium efficiency open drip-proof type motors with 1.15 safety factor
- Provide precision alignment for motors connected to pumps

Exclusions

1. Resolution of existing design, service, and or distribution conditions known or unknown.
2. Temporary space conditioning. Installation will occur in such a way as to minimize downtime.
3. Repair or replacement of defective mechanical, controls, and electrical equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
4. 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

ECM 6: Heating Distribution System - Pipe & Valve Insulation

The fiberglass pipe insulation shall be manufactured by Johns Manville or a manufacturer of equivalent type and quality (subject to Customer approval), and with PVC fitting covers where applicable. The removable insulated fiberglass pads shall be made with Silicone Impregnated Fiberglass Cloth manufactured by GLT Products or a manufacturer of equivalent type and quality (subject to Customer approval). The following table lists the items that were found to be uninsulated. Johnson Controls shall install pipe and valve insulation and/or thermal jackets on existing hot water systems to reduce heat loss according to the following table below:

Task	Dayton Avenue School	Eastport Elementary School	Eastport-South Manor Junior-Senior High School	South Street School	Total Quantity
End Cap Insulation (Units)	2	2			4
Flange Insulation (Units)	1	12	37		50
Gate Valve Insulation (Units)			6		6
Pipe Fitting Insulation (Units)				1	1
Pump Insulation (Units)	5	10	9		24
Straight Pipe Insulation (LF)			29	3	32
Strainer Insulation (Units)	7	3			10
Suction Diffuser Insulation (Units)	3		1		4
Tank Insulation (Units)				1	1
Triple Duty Valve Insulation (Units)	7	4	1		12

Exclusions:

- Resolution of existing design, service, and or distribution conditions known or unknown.
- 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.
- Repair or replacement of defective mechanical, electrical and controls equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
- Repairs/replacement of piping or components found to be corroded or rusted and unacceptable for installation other than what is specified in the Scope of Work.

ECM 7: Cooling System - Chiller Replacement

Johnson Controls shall furnish and install 2 new chillers at Eastport High School. This work entails replacing the existing 600-ton CH-1 and 300-ton CH-2 chillers with high efficiency water cooled chillers York YMC2 with same capacity, Variable Speed Drives, and R-134A refrigerant. The chillers will include Neoprene Vibration Isolators, Isolation Valves, Extended manufacturer parts and labor warranty for five (5) years and hot gas bypass to unload down to 10% capacity. The new chillers will be installed in the existing boiler room at the same place as old chillers.

Scope of Work:

- Lockout tagout the power to existing CH-1 and CH-2 at main breaker with assistance of Performance Infrastructure and School District.
- Disconnect electrical conduits from chiller.
- Valve off chilled and condenser water using existing isolation valves.
- Drain down water and disconnect chilled water and condenser water pipes from chiller.
- Recover refrigerant from system and dispose of per EPA requirements in effect at the time of contract signing.
- Disconnect refrigerant relief piping at main header.
- Dismantle and Remove existing chiller from site.
- Store and truck new chiller to site.
- Rig new chiller into place. Remove and replace doors as necessary.
- Assemble CH-1 and CH-2 onsite and charge with refrigerant.
- Reconnect refrigerant relief, chilled water, and condenser water piping to new chiller.
- Insulate new evaporator line pipe only.
- Furnish and install new circuit breaker as needed. Extend wiring as needed.
- Reconnect power to new chillers.
- Open isolation valves to restore flow to new chillers.
- Restore power at main breaker.

Exclusions:

1. Resolution of existing design, service, and or distribution conditions known or unknown.
2. 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.
3. Repair or replacement of defective mechanical, electrical and controls equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
4. Repairs/replacement of piping or components found to be corroded or rusted and unacceptable for installation other than what is specified in the Scope of Work.
5. Temporary space conditioning. Installation will occur when cooling is not expected to be required.

ECM 8: Refrigeration Compressor Controllers

Johnson Controls shall furnish and install (3) three Intelligent Control Systems ICON-2500 controllers on the existing individual compressor units located in the buildings listed below:

Location	No. of Compressors
Dayton Elementary	1
Eastport Elementary	1
Tuttle Elementary	1
Total	3

Exclusions:

1. Temporary refrigeration.

Schedule 1

2. Repair or replacement of defective mechanical, electrical and controls equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).

ECM 9: Transformer Replacement

Johnson Controls shall furnish and install new high efficiency transformers where the existing transformer is installed at the locations specified below:

Building	Room No.	Manufacturer	Model	Serial	Capacity	Notes
Eastport South Manor Junior-Senior High School	Rm 1232	Cutler-Hammer	N48M28F15A	J02M06083	15 kVA	3.6 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Rm 1319	Cutler-Hammer	N48M28F15A	J02E05959	15 kVA	3.6 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Rm 1319	Cutler-Hammer	V48M28T75EE	J02H05761	75 kVA	5.66 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Rm 1319	Cutler-Hammer	V48M28T12EE	J02G01901	112.5 kVA	6.01 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Rm 1000	Cutler-Hammer	V48M28T30EE	J02H05507	30 kVA	7.53 % IMP. PRI 480 DELTA - SEC 208Y/12
Eastport South Manor Junior-Senior High School	Rm 1001	Cutler-Hammer	V48M28T30EE	J02H05241	30 kVA	7.7 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Rm 1001	Cutler-Hammer	N48M28F33A	J02H00981	300 kVA	3 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 1	Cutler-Hammer	N48M28F75A	J02F00707	75 kVA	3.6 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 1	Cutler-Hammer	N48M28F75AEE	J03G05160	75 kVA	5.55 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 1	Cutler-Hammer	N48M28F75A	J02F00891	75 kVA	3.6 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 1	Cutler-Hammer	N48M28F75A		75 kVA	3.6 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 1	Cutler-Hammer	N48M28F75A	J02F05432	75 kVA	3.6 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 1	Cutler-Hammer	V48M28T75EE	J02G05212	75 kVA	6.06 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 1	Cutler-Hammer	V48M28T75EE	J02F05582	75 kVA	5.62 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 1	Cutler-Hammer	V48M28T75EE	J02G05213	75 kVA	5.96 % IMP. PRI 480 DELTA - SEC 208Y/120

Schedule 1

Building	Room No.	Manufacturer	Model	Serial	Capacity	Notes
Eastport South Manor Junior-Senior High School	Mech Room 2	Cutler-Hammer	V48M28T49EE	J02F00985	150 kVA	5.31 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Mech Room 3	Cutler-Hammer	V48M28T75EE	J02G05216	75 kVA	5.96 % IMP. PRI 480 DELTA - SEC 208Y/120
Eastport South Manor Junior-Senior High School	Electrical Room	Cutler-Hammer	V48M28T75EE	J02H00912	75 kVA	5.68 % IMP. PRI 480 DELTA - SEC 208Y/120
Dayton Ave	New Boiler Rm	Eaton	N48M28F45AEE	J11B00337	45 kVA	3.31 % IMP. PRI 480 DELTA - SEC 208Y/120
Dayton Ave	New Boiler Rm	Eaton	N48M28F45AEE	J11B50631	45 kVA	5.44 % IMP. PRI 480 DELTA - SEC 208Y/120
Dayton Ave	Old Boiler Rm	General Electric	9725 B 5873	EP	45 kVA	4.5 % IMP. PRI 480 DELTA - SEC 208Y/120
Dayton Ave	Kitchen Mech Room	Siemens	3F3Y030	1-S-0320P03	30 kVA	5.2 % IMP. PRI 480 DELTA - SEC 208Y/120
Dayton Ave	Admin Electric Room	Eaton	V48M28T75EE	J11B00482	75 kVA	5.19 % IMP. PRI 480 DELTA - SEC 208Y/120
Dayton Ave	Janitorial and Electric Room	EGS	ET2H45S	3911R 087	45 kVA	6.06 % IMP. PRI 480 DELTA - SEC 208Y/120
Dayton Ave	Janitorial and Electric Room	Cutler-Hammer	VM48M28T45K		45 kVA	4.98 % IMP. PRI 480 DELTA - SEC 208Y/120
South Street	Exterior by Meter	Square D	EE500T3016H		500 kVA	5.8 % IMP. PRI 480 DELTA - SEC 208Y/120

Johnson Controls will install the following scope at each location:

- Accept delivery of Transformers.
- Rigging of transformers from staging area to transformer location
- Disconnect and Remove existing transformer, including proper disposal
- Install new high efficiency transformer of same size, utilizing existing feeds and grounds.

Exclusions:

1. Resolution of existing design, service, and or distribution conditions known or unknown.
2. 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.
3. Repair or replacement of defective mechanical, electrical and controls equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
4. Repairs/replacement of wiring components found to be corroded or rusted and unacceptable for installation other than what is specified in the Scope of Work.
5. Temporary power. Installation will occur in such a way as to minimize impact.

ECM 10: Renewable Energy – Photovoltaic Electric Generation

Johnson Controls will furnish and install a total of 3,383.60 kW-DC carport/canopy photovoltaic electrical generation systems as detailed in the table below that will interconnect with the existing electrical distribution system at the associated schools.

The following table identifies the PV sizes and installation type at each location:

Building	Roof Mount (kW DC)	Carport / Canopy (kW DC)	Total (kW DC)
Eastport - South Manor Jr. Sr. HS	332.40	1695.60	2028.00
Dayton Ave School	407.60	0.00	407.60
Eastport Elementary School	128.00	242.80	370.80
South Street School	194.00	0.00	194.00
Tuttle Ave Elementary School	95.20	288.00	383.20
Total	1,157.20	2,226.40	3,383.60

Installation includes the following specifications for new Roof Ballasted Systems:

- UL Certificate
- New wiring to meet the requirements of the 2014 National Electric Code (“NEC”) as amended and updated.
- Solar Module to be 72 cell 400 watt JA Solar or equal and as approved by Customer’s Architect/Engineer and Johnson Controls.
- Inverters to be SMA or equal
- Balance of new system to meet 2014 NEC Code as amended and updated.
- Required Interconnection to building system located as per 2014 NEC Code as amended and updated lineside tap as determined by the utility(ies) having jurisdiction.
- Unirac RM, Ecofoot or equal self-ballasted racking system
- Web based dashboard for PV production for students and staff to use and access
- Weather station at each location will be installed.
- PV dashboard shall log 15-minute interval data for kW, kWh, and solar irradiance.
- Furnish and install required ballast block as per design.
- One time training for 4 hours to the District
- District to support monitoring by supplying an IT drop to a gateway location and necessary IP addresses that the District will maintain for 18 years.
- Protective slip sheet to meet roofing warranty certifications
- SED approved system design drawings

Turnkey installation includes the following specifications for Carport, Canopy Systems:

- Carport system to have a minimum height of 14 ft. in roadway areas
- Canopy system to have a minimum height of 10 ft.
- Solar Modules to be 72 cell 400-watt JA Solar or equal and as approved by Customer’s Architect/Engineer and Johnson Controls.
- Solar Inverters to be SMA or equal.
- Solar equipment to be mounted at no less than 10 ft above grade.
- Conduit work up to 10 ft. above grade will be hard wall galvanized.
- Should any new exterior switchgear be required, a 6 ft chain-link fence shall be installed with an access gate.
- New underground conduit to be PVC
- Work to conform to PSEG and regulatory or governmental agencies requirements. JCI is responsible for costs necessary to conform to these requirements.

Schedule 1

- Carport/Canopy Racking system, including hardware and module mounting hardware to be engineered carport/canopy structure to support PV modules.
- New members and hardware are galvanized steel with Columns and Top Beams hot dipped to ASTM A123 and purlins pre-galvanized to a G140 minimum. Module hardware is stainless steel.
- New member connections shall be bolted. No on-site welding shall be required or undertaken without the prior written permission of the District and its Architect.
- Parking lot restoration in affected areas to be saw cut and hot patched to match existing surface conditions.
- Columns to be set directly on concrete piers with chemical anchors or wet set anchor bolts.
- Temporary fencing, barricades or storage trailers necessary to secure site included
- Disposal of soil/spoil created from the foundation installation is included. JCI shall undertake necessary soil testing and properly dispose of soil at its cost and expense in accordance with all applicable laws, rules, regulations and codes .
- Grounding hardware for modules and racking
- Module grounding to be per module manufacturer's installation instructions.
- Base design includes pre-punched holes in the purlin for wire management.
- Electrical Underwriters Certificate included
- Electrical installation to be installed as per the NEC 2014 code, as amended and updated.
- Electrical conduit will be installed outside of concrete piers and/or baseplates.
- JCI will provide a web-based dashboard for PV production for students and staff to use and access.
- District to support monitoring by supplying an IT drop to a gateway location and all necessary IP addresses that the District will maintain for 18 years.
- SED approved system design drawings to be provided by the Customer's Architect of Record

In the event that any of the building roofs, parking lots are determined to be unsuitable for roof mounted, carport, canopy PV arrays, Johnson Controls will attempt to move the arrays or portions of the arrays to another location that is suitable at any of the other buildings outlined above, subject to all necessary review and approvals.

If during the design phase the architect / engineer of record, ECG, encounter structural issues, geo-tech issues, drainage issues, septic system issues with any parking lots and walkways, JCI shall relocate the problem areas of solar arrays to a different location in order to maintain the 3,383.60 kW DC of total system size.

In the event that any of the proposed locations are determined to not be a viable option, the scope of work for this ECM shall be reduced subject to Customer's written approval by amendment and the costs associated with the reduced scope shall be credited to the Customer. The guaranteed savings shall also be adjusted accordingly by a formal written amendment to the Agreement. All adjustments require Customer's written approval and must maintain a positive cash flow as set forth in the contract documents.

The weather station monitoring is included through dashboard for 10 years as long as the internet IP address is maintained. The weather station includes a pyranometer at each location, one at each of the 5 schools. The irradiance value will be trended and logged into the cloud for 10 years. At the end of the 10 years, the Customer can elect to renew the monitoring service at an additional cost.

Power to the building will be temporarily shut down by the utility for up to four (4) hours during the tie-in. Co-ordination with the District will be required at the time of the tie-in per the Agreement.

Electrical Upgrades: As part of this measure, Johnson Controls will also eliminate the meter serving the field house and the ballfield and tie the existing load to existing building meter(s) to fully utilize the production from the photovoltaics.

Exclusions:

1. Resolution of existing design, service, and or distribution conditions known or unknown.
2. 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.

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3. Temporary power during tie-in.
4. Repair or replacement of defective electrical equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
5. JCI does not anticipate and has not included any hard digging (I.E. no blasting or rock removal). All trenching to be performed by normal means (Case 580 backhoe). Should additional means of excavation be required then JCI shall notify the Owner to mitigate or address at additional cost.
6. The scope of work does not include the repair or installation of any structural systems.

ECM 11: Energy Management System – Re-Commissioning

Johnson Controls shall perform the following scope of work at Tuttle Avenue School:

- Verify sequence of operations conforms to owner's requirements.
- Stroke end devices and verify operation of control devices.
- Calibrate and document devices which prove defective or unreliable and provide report.
- Provide written documentation of system design sequence of operation for utilization of operating staff.
- Provide training on system sequence of operations user interface.

Exclusions:

1. Resolution of existing design, service, and or distribution conditions known or unknown.
2. 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.
3. Repair or replacement of defective mechanical, electrical and controls equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).

ECM 12 Plug Load Controllers

Johnson Controls shall furnish and install plug load management controllers that will gain control of specified plug load equipment listed below. The system will use an existing Wi-Fi network that will communicate to an energy management user interface. Through the user interface, equipment shall be monitored, scheduled and turned on / off. In areas where no Wi-Fi connection exists, plugs shall be programmed with the intended schedule for the equipment.

Building	Copier	Window AC	Water Fountain	Large Coffee Maker
Eastport South Manor Junior-Senior High School	8	0	17	3
Dayton Avenue School	1	0	9	0
Eastport Elementary	2	11	4	0
South Street Elementary	2	1	2	0
Tuttle Elementary	1	0	8	2
Total	14	12	40	5

Following is the scope of work for the plug load controllers:

- Provide plug load control devices as per final schedule of outlets
- Install and connect devices
- Load and configure software one time on an owner designated head custodian PC
- Start, test, and checkout the system

Exclusions:

1. Repair or replacement of defective plug load equipment, and the electrical distribution system and components (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).

ECM 13: Vending Machine Controllers

Johnson Controls shall furnish and install (13) thirteen vending machine controllers, VM170, on the districts vending machines as outlined below:

Building	Amount
Eastport South Manor Junior-Senior High School	9
South Street Elementary	2
Dayton Avenue Elementary	2
Total	13

Exclusions:

1. Repair or replacement of defective vending machines, and the electrical distribution system and components (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).

ECM 14: Heating System – Domestic Hot Water (DHW) Replacement

Johnson Controls shall remove existing hot water heaters and furnish and install (2) new high-efficiency hot water heaters. The new DHW will be installed in the existing boiler room at the same place as old DHW.

Johnson Controls shall furnish and install the following scope of work for this measure:

(1) RBI DOMINATOR SERIES DW750:

- 750 MBH Input
- 2 Stage
- 85% Efficient
- Bronze Headers
- Finned Copper Tube Heat Exchanger – 2 Pass
- Mounted & Wired Flow Switch
- FM Compliant Gas Train
- Sealed Combustion Chamber
- Mounted ASME Relief Valve
- Pump Delay Control

(1) RBI DOMINATOR SERIES DW1050:

- 1050 MBH Input
- 4 Stage
- 85% Efficient

- Bronze Headers
- Finned Copper Tube Heat Exchanger – 2 Pass
- Mounted & Wired Flow Switch
- FM Compliant Gas Train
- Sealed Combustion Chamber
- Mounted ASME Relief Valve
- Pump Delay Controls

Exclusions:

1. Resolution of existing design, service, and or distribution conditions known or unknown.
2. 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.
3. Repair or replacement of defective mechanical, electrical and controls equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
4. Repairs/replacement of piping or other components found to be corroded or rusted and unacceptable for installation other than what is specified in the Scope of Work.

ECM 15: Air Conditioning Compressor Controllers

Johnson Controls shall furnish and install (21) twenty-one Intelligent Control Systems ICON-2400 controllers on the existing individual compressor units located in the buildings listed below:

Location	No. of Compressors
Eastport South Manor Junior-Senior High School	2
Dayton Ave	5
South Street School	10
Eastport Elementary School	4
Total	21

Building	Location	Equipment Type	Manufacturer	Model Number	Serial Number	Compressor Data
Eastport South Manor Junior-Senior High School	Roof	Make-up	Carrier	48EJD038	610P8	x2: 25.6 RLA each
Dayton Ave	Roof	RTU	Carrier	38AUZA12A0W5A0A0A0	1711G20061	30.1 RLA
Dayton Ave	Outside Gym	AHU	Mcquay	ALPO155S27-ER10	STNU010800130	x2: 12.5 RLA each
Dayton Ave	Outside Gym	AHU	Mcquay	ALPO155S27-ER10	STNU010800130	x2: 12.5 RLA each

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Building	Location	Equipment Type	Manufacturer	Model Number	Serial Number	Compressor Data
South Street School	Roof	RTU	JCI	J07ZJC00C2DZZ50002 A	N1F2867799	x2: 11.9 RLA each
South Street School	Roof	RTU	JCI	J07ZJC00C2DZZ50002 A	N1F2867799	x2: 11.9 RLA each
South Street School	Roof	RTU	JCI	J07ZJC00C2DZZ50002 A	N1F2867799	x2: 11.9 RLA each
South Street School	Roof	RTU	JCI	J08ZJC00E2DZZ50001 A	N1F2867955	x2: 12.2 RLA each
South Street School	Roof	RTU	JCI	J08ZJC00E2DZZ50001 A	N1F2867955	x2: 12.2 RLA each
Eastport Elementary School	Roof	RTU	Trane			X1
Eastport Elementary School	Roof	RTU	Trane			X1
Eastport Elementary School	Roof	RTU	Trane			X1
Eastport Elementary School	Roof	RTU	Carrier			X1

Exclusions:

1. Repair or replacement of defective mechanical, electrical and controls equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
2. Resolution of existing design, service, and or distribution conditions known or unknown.
3. 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.

ASSURED PERFORMANCE GUARANTEE

A. Certain Definitions. For purposes of this Agreement, the following terms have the meanings set forth below:

Annual Project Benefits are the portion of the projected Total Project Benefits to be achieved in any one year of the Guarantee Period.

Annual Project Benefits Realized are the Project Benefits actually realized for any one year of the Guarantee Period.

Annual Project Benefits Shortfall is the amount by which the Annual Project Benefits exceed the Annual Project Benefits Realized in any one year of the Guarantee Period.

Annual Project Benefits Surplus is the amount by which the Annual Project Benefits Realized exceed the Annual Project Benefits in any one year of the Guarantee Period.

Baseline is the mutually agreed upon data and/or usage amounts that reflect conditions prior to the installation of the Improvement Measures as set forth in Schedule 2 Exhibit 6 below.

Guarantee Period will commence on the first day of the next month following the Substantial Completion date and will continue for eighteen (18).

M&V Services means the services performed to monitor and report the performance relative to the guarantee defined in the Assured Performance Guarantee set forth in Schedule 2.

M&V Services Period will commence on the first day of the next month following the date of the Certificate of Substantial Completion and will continue for three (3) years, subject to earlier termination as provided in this Agreement.

Installation Period is the period beginning on JCI's receipt of Customer's Notice to Proceed and ending on the commencement of the Guarantee Period.

Measured Project Benefits are the utility savings and cost avoidance calculated in accordance with the methodologies set forth in Schedule 2 Exhibit 2 below.

Project Benefits are the Measured Project Benefits plus the Operational and Maintenance Project Benefits to be achieved for a particular period during the term of this Agreement.

Total Project Benefits are the projected Project Benefits to be achieved during the entire term of this Agreement.

B. Guarantee Details

The following Exhibits are attached and made part of this Schedule 2, Section B:

Table 2.1.1: Exhibits Summary

Exhibit 1	Total Project Benefits
Exhibit 2	Measurement and Verification Methodologies
Exhibit 3	Measured Project Benefits
Exhibit 4	Operational Cost Avoidance and Guaranteed Rebate Project Benefits
Exhibit 5	Change in Use or Condition
Exhibit 6	Baseline Calculations and Utility Rates
Exhibit 7	Primary Operations Schedules Pre & Post Retrofit
Exhibit 8	Measurement and Verification Services

I. Total Project Benefits

Subject to the terms and conditions of this Agreement, JCI and Customer agree that Customer will be deemed to achieve a total of \$756,990 in Operational and Maintenance Cost Avoidance, \$158,940 in rebates and JCI guarantees that Customer will achieve a total of \$21,080,471 in Measured Project Benefits during the term of this Agreement, for Total Project Benefits of \$21,996,401, as set forth in the Total Project Benefits table below.

Total Project Benefits

Year	Utility Cost Avoidance* Measurable Savings	Operations & Maintenance Cost Avoidance**	Energy Rebate- Non-Recurring Savings	Total Guaranteed Project Benefits
Implem.	\$0	\$0	\$0	\$0
1	\$984,502	\$42,055	\$158,940	\$1,185,497
2	\$1,004,192	\$42,055		\$1,046,247
3	\$1,024,276	\$42,055		\$1,066,331
4	\$1,044,762	\$42,055		\$1,086,817
5	\$1,065,657	\$42,055		\$1,107,712
6	\$1,086,970	\$42,055		\$1,129,025
7	\$1,108,710	\$42,055		\$1,150,765
8	\$1,130,884	\$42,055		\$1,172,939
9	\$1,153,501	\$42,055		\$1,195,556
10	\$1,176,571	\$42,055		\$1,218,626
11	\$1,200,103	\$42,055		\$1,242,158
12	\$1,224,105	\$42,055		\$1,266,160
13	\$1,248,587	\$42,055		\$1,290,642
14	\$1,273,559	\$42,055		\$1,315,614
15	\$1,299,030	\$42,055		\$1,341,085
16	\$1,325,010	\$42,055		\$1,367,065
17	\$1,351,511	\$42,055		\$1,393,566
18	\$1,378,541	\$42,055		\$1,420,596
Totals	\$21,080,471	\$756,990	\$158,940	\$21,996,401

*Utility Cost Avoidance is a Measured Project Benefit. Utility Cost Avoidance figures in the table above are based on anticipated increases in unit energy costs as set forth in the table in Section VI below.

** Operations & Maintenance Cost Avoidance figures in the table above are based on a mutually agreed fixed annual escalation rate of zero (0%) increase in labor and material cost.

Annual Measurement and Verification (M&V) Services

JCI shall provide M&V Services for a period of three (3) years starting on the first day of the month next following the date of the Certificate of Substantial Completion. Within sixty (60) days of the commencement of the M&V Services Period, JCI will calculate the Measured Project Benefits achieved during the Installation Period plus any Operations & Maintenance Project Benefits applicable to such period and advise Customer of same. Any Project Benefits achieved during the Installation Period may, at JCI's discretion, be allocated to the Annual Project Benefits for the first year of the Guarantee Period. Within sixty (60) days of each anniversary of the commencement of the Guarantee Period, for so long as the M&V Services Period is in effect, JCI will calculate the Measured Project Benefits achieved for the applicable year plus any Operations & Maintenance Project Benefits applicable to such period and advise Customer of same.

As set forth in the Certification provided by JCI to the NY State Education Department, JCI guarantees recovery of costs of the Agreement from energy savings realized by the Customer during a period of 18 years.

Customer acknowledges and agrees that if, for any reason during the agreed-upon period of M&V Services, it (i) cancels or terminates receipt of M&V Services, or (ii) cancels or terminates this Agreement, it shall be assumed, and based on the equipment continuing to operate in accordance with the specified criteria throughout the term of the Agreement, that the Annual Project Benefits will be met during each year of the Guarantee Period.

Customer further acknowledges and agrees that if, for any reason, it (i) fails to pay for M&V Services in accordance with Schedule 4 – Price and Payment Terms, (ii) fails to fulfill any of Customer's responsibilities necessary to enable JCI to complete the Work and provide the M&V Services, including but not limited to Customer's failure to operate and maintain the equipment and/or systems exactly as stipulated by JCI, or (iii) otherwise materially breaches this Agreement, JCI shall issue a written notice to the Customer stating the nature of the alleged breach and shall provide Customer with a twenty (20) day period to cure such breach. If the Customer fails to cure such breach within such twenty (20) day period, Customer acknowledges and agrees that the Assured Performance Guarantee shall automatically terminate and JCI shall have no liability thereunder.

C. Project Benefits Shortfalls or Surpluses.

- (1) During the period in which JCI is providing M&V Services, the following shall apply:
 - (a) Project Benefits Shortfalls. If an Annual Project Benefits Shortfall occurs for any one year of the M&V Services Period, JCI shall, subject to Customer's agreement, which shall not be unreasonably withheld, (a) set off the amount of such shortfall against any unpaid balance Customer then owes to JCI, (b) pay to Customer the amount of such shortfall, or (c) subject to Customer's agreement, provide to Customer additional products or services, in the value of such shortfall, at no additional cost to Customer.
 - (b) Additional Improvements. Where an Annual Project Benefits Shortfall has occurred, JCI may, subject to Customer's approval, implement additional Improvement Measures, at no cost to Customer, which may generate additional Project Benefits in future years of the Guarantee Period.
- (2) If Customer elects M&V Services over a period of time shorter than the Guarantee Period, or if Customer terminates or cancels M&V Services early as set forth above, then the following shall apply:
 - (a) If the Annual Project Benefits are met in each year during the period that M&V Services are provided, it shall be assumed (in accordance with Option A of the NEMVP, and based upon the equipment continuing to operate in accordance with specified criteria throughout the term of the Agreement) that the Annual Project Benefits will be met during each year of the Guarantee Period.
 - (b) If there is an Annual Project Benefits Shortfall in any one year during the period that M&V Services are provided and such Shortfall is the result of the equipment not operating in accordance with specified criteria, then Customer shall allow JCI access to the property to conduct repairs or make adjustments to the equipment as necessary to resolve the cause of the Shortfall. The cost of these repairs and/or adjustments shall be the responsibility of JCI. Once the cause of the Shortfall is resolved, it shall be assumed (based upon the equipment continuing to operate in accordance with the specified criteria throughout the term of the Agreement) that the Annual Project Benefits will be met during each year of the Guarantee Period. If the Shortfall continues to exist in the final year of the M&V Services Period notwithstanding the equipment operating in accordance with the

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specified criteria, JCI shall pay the amount of the remaining Shortfall to Customer for the remainder of the Guarantee Period.

- (c) If there is an Annual Project Benefits Shortfall in any one year during the period that M&V Services were provided and such Shortfall is not the result of the equipment not operating in accordance with specified criteria and has not been eliminated in the final year of the M&V Services Period, it shall be assumed that the Shortfall will occur during each year for the remainder of the Guarantee Period and JCI shall pay the Customer the amount of the Shortfall for the remainder of the Guarantee Period.
- (d) If there is an Annual Project Benefits Shortfall beyond the period that M&V Services are provided, customer must continue M&V services so JCI can continue to mitigate the shortfall. If the customer elects not to continue the M&V services, then Customer acknowledges and agrees that the Assured Performance Guarantee shall automatically terminate and JCI shall have no liability thereunder for any shortfalls.

II. Measurement and Verification Methodologies

The following is a brief overview of the measurement and verification methodologies applicable to the Improvement Measures set forth below. JCI shall use these methodologies as guidelines. These methodologies are more fully detailed in the guidelines and standards of the North American Energy Measurement and Verification Protocol (NEMVP), in connection with the provision of M&V Services hereunder.

NEMVP Option A

Potential to Perform Verification and Performance Calculation

Option A is a verification approach designed for projects where the potential to perform needs to be verified, but the actual performance (savings) can be calculated based on the results of the "potential to perform and generate savings" verification and engineering calculations. Option A involves procedures for verifying that:

- Baseline conditions have been properly defined.
- The equipment and/or systems that were contracted to be installed have been installed.
- The installed equipment/systems meet the specifications of the contract in terms of quantity, quality and rating.
- The installed equipment is operating and performing in accordance with the specifications in the contract and meeting all functional tests.
- The installed equipment/systems continue, during the term of the contract, to meet the specifications of the contract in terms of quantity, quality and rating, operation and functional performance.

The potential to perform may be verified through inspections and/or spot or short-term metering conducted immediately before and/or immediately after project installation. Annual (or some other regular interval) inspections may also be conducted to verify an ECM's continued potential to perform and generate savings. Estimated factors used in calculations are supported by historical, published, or manufacturers' data. Savings are determined by means of engineering calculations of baseline and reporting period energy use based on measured and estimated values. With Option A, actual achieved energy or cost savings are not verified; they are predicted using engineering or statistical methods that do not involve long-term measurements. Reference: NEMVP Version 1.0

Measured Energy Cost Avoidance Project Benefits from the following ECMs will be calculated using Option A:

Table 2.2.1: Option A Measures

ECM #	Energy Conservation Measure	M&V Option
1	Lighting - Interior Retrofit	A
2	Lighting - Exterior Retrofit	A
3	Building Envelope - Weatherization	A
5	Energy Efficient Motors Replacement	A
6	Heating System - Pipe and Valve Insulation	A
7	Cooling System - Chiller Replacement	A
8	Refrigeration Compressor Controllers	A
9	Energy Efficient Transformers	A
11	Energy Management System - Re-Commissioning	A
12	Plug Load Controllers	A
13	Vending Machine Controllers	A

ECM #	Energy Conservation Measure	M&V Option
14	Heating System - DHW Replacement	A
15	AC Compressor Controllers	A

ECM 1: Lighting - Fixture Retrofit

M&V Option: NEMVP-A (One Time)

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the light fixtures subject to the lighting retrofit project.

Measured Key Parameter: kW

Estimated Parameter: Standard NY SED hours of operation as set forth at Exhibit 7 of Schedule 2

Interaction: Lighting kw reduction leads to increase in heat energy usage during winter and decrease in cooling energy usage during summer. The net energy usage due interaction will be accounted during pre-retrofit and post-retrofit savings calculation.

Measuring Equipment: True-RMS Wattmeter (kw measurement) and light meter (light level measurement)

Measuring Equipment Accuracy:

True RMS Watt Meter: $\pm 3\%$ of measurement range

Light Meter: $\pm 3\%$ of measurement range

Measuring Equipment Calibration: Equipment will be quality checked for calibration at the time of measurement and documented in the M&V report.

Measurement Period: One-minute average

Measurement Frequency: One-time post-retrofit measurement. Inspection checks for remainder of M&V Services Period

Measurement and Verification Details:**Sampling Procedure:**

To reduce M&V cost, all fixtures installed will not be measured, an effective NEMVP recommended sampling method will be used. Lighting fixture types that account for greater than 10% of the total fixtures installed will be measured. Lighting fixtures will be separated to homogenous groups and sampled to achieve $\pm 20\%$ precision with 80% confidence assuming a 0.5 coefficient of variance.

Measurement Procedure:

True RMS power measurements will be taken at the light switch that energizes the circuit containing only the sampled fixtures.

Quality Check Procedure:

In order to ensure that a room is not under lit due to lighting kw reduction, a sample of light levels pre and post retrofit will be measured. This data will be compared against the ASHRAE/IES recommended light levels for each space usage type. The installation team will check the lighting installation line by line. The M&V team will quality check the line by line and take photographs of sample spaces for documentation.

Pre-Installation Activities:

Pre-retrofit lighting kw will be analyzed and listed in the lighting line by line by location and fixture type. The kw data from the line by line will be used for pre-retrofit savings calculation. Pre-kw will be sampled and measured to

validate the line by line. Light level will be quality checked.

Post-Installation Activities:

Post-kw measurements will be sampled and measured once after retrofit and will be used for remainder of the M&V Services Period. Light level will be quality checked one time. Inspection results and JCI warranty commitments will be communicated to the Customer in writing to maximize warranty benefits. Warranty claim procedure will be the responsibility of the Customer.

Formulas and run hours in the DEA will be used to calculate the savings

ECM 2: Lighting - Exterior Lighting

M&V Option: NEMVP-A (One Time)

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the light fixtures subject to the lighting retrofit project.

Measured Key Parameter: kW,

Verification Period & Frequency: One time during post-retrofit year in Customer's presence.

Measuring Equipment: True-RMS Wattmeter (kw measurement) and light meter (light level measurement)

Measuring Equipment Accuracy:

True RMS Watt Meter: $\pm 3\%$ of measurement range

Light Meter: $\pm 3\%$ of measurement range

Measuring Equipment Calibration: Equipment will be quality checked for calibration at the time of measurement and documented in the M&V report.

Measurement Period: One-minute average

Measurement Frequency: One-time post-retrofit measurement. Inspection checks for remainder of M&V Services Period

Measurement and Verification Details:

Sampling Procedure:

To reduce M&V cost, all fixtures installed will not be measured, an effective NEMVP recommended sampling method will be used. Lighting fixture types that account for greater than 10% of the total fixtures installed will be measured. Lighting fixtures will be separated to homogenous groups and sampled to achieve $\pm 20\%$ precision with 80% confidence with an assume 0.5 coefficient of variance.

Measurement Procedure:

True RMS power measurements will be taken at the panel that energizes the circuit containing only the sampled fixtures.

Quality Check Procedure:

In order to ensure that an area is not under lit due to lighting kw reduction, a sample of light levels pre and post retrofit will be measured. . This data will be compared against the ASHRAE/IES recommended light levels for each area type. The installation team will check the lighting installation line by line. The M&V team will quality check the line by line and take photographs of sample fixtures for documentation.

Pre-Installation Activities:

Pre-retrofit lighting kw uses NYSEDA values. These will be analyzed and listed in the lighting line by line by location and fixture type. The kw data from the line by line will be used for pre-retrofit savings calculation. Pre-kw will be sampled and measured to validate the line by line. Light level will be quality checked.

Post-Installation Activities:

Post-kw measurements will be sampled and measured once after retrofit and will be used for remainder of the M&V Services Period. Light level will be quality checked one time. Inspection results and JCI warranty commitments will be communicated to the customer to maximize warranty benefits. Warranty claim procedure will be the responsibility of the Customer with the. Visual inspections of a sample of fixtures will occur annually.

Formulas and run hours in the DEA will be used to calculate the savings

ECM 3: Building Envelope Improvements – Weatherization

M&V Option: NEMVP-A (One Time)

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to this building envelope improvement project.

Interaction: All thermal ECMs.

Verification Equipment: Infrared camera, thermal gun, and measuring tape

Verification Period & Frequency: One time during post-retrofit year in Customer's presence and under appropriate weather conditions as agreed to by Customer.

Pre-Installation Activities:

A digital camera will primarily be used to document the pre-retrofit conditions. An infrared camera will be used to capture the thermo graphic image of pre-retrofit thermal leaks. Linear footage of weatherization will be measured using a measuring tape.

Post-Installation Activities:

A digital camera will primarily be used to document the post-retrofit conditions. An infrared camera will be used to capture the thermo graphic image of post retrofit thermal leaks. Linear footage of weatherization will be measured using a measuring tape. Visual inspections of a sample set for the remainder of the M&V services period.

Formulas and values in the DEA will be used to calculate the savings

ECM 5 – Motor Replacement

M&V Option: NEMVP-A (One Time)

Verification Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to this measure

Verification Period & Frequency: One time during both pre-retrofit period and post-retrofit period.

Pre-Installation Activities:

Document with the digital camera the existing condition of the old motors.

Post-Installation Activities:

A digital camera will be used to document the post-retrofit conditions. Inspect and verify installed motors to see if they meet the specifications of the DEA in terms of quantity, quality and rating. Verify if they perform in accordance with the functional specifications in the DEA and meeting all functional tests.

Formulas and values in the DEA will be used to calculate the savings

ECM 6: Heating Distribution System - Pipe and Valve Insulation

M&V Option: NEMVP-A (One Time)

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to this Pipe and Valve Insulation project.

Verification Equipment: Thermal gun (or infrared camera) and measuring tape

Verification Frequency & Period: One time during both pre-retrofit period and post-retrofit period

Pre-Installation Activities:

A thermal gun will be used to measure surface temperatures, or an infrared camera will be used to capture the thermo graphic image of pre-retrofit thermal leaks.

Post- Installation Activities:

Accuracy of the as built will be verified (sampling will be conducted as detailed in the sampling procedure). A digital camera will be used to document the post-retrofit conditions. A thermal gun or an infrared camera will be used to verify installation. Visual inspections of a sample of insulation will occur annually.

Formulas and values in the DEA will be used to calculate the savings

ECM 7: Cooling System – Chiller Replacement

M&V Option: NEMVP-A (One Time)

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the chiller plant subject to this project.

Key Parameter: efficiency

Measuring Equipment: name plate

Measurement Frequency: One time during post-retrofit period

Pre-Installation Activities:

The efficiency of the existing chiller will be determined by the nameplate and manufactures specifications, and de-rated based on age and condition.

Post-Installation Activities:

Name plate efficiency of the new chiller will be collected and used in the calculations.

Formulas and assumptions in the DEA will be used to calculate the savings

ECM 8: Refrigeration Compressor Controllers

M&V Option: NEMVP-A (One Time)

Verification Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to the refrigeration compressor controller project.

Verification Period & Frequency: One time during both pre-retrofit period and post-retrofit period.

Pre-Installation Activities:

Document with the digital camera that the compressor controllers are not installed.

Post-Installation Activities:

A digital camera will be used to document the post- retrofit conditions. Inspect and verify the refrigeration compressor controller installation to see if they meet the specifications of the DEA in terms of quantity, quality, and rating. Verify if they perform in accordance with the specifications in the DEA and meeting all functional tests and provide start up report for each unit. An annual visual inspection of a sample of units will occur to ensure the equipment is still in place and operational.

Formulas and assumptions in the DEA will be used to calculate the savings

ECM 9: Transformers – Replacements

M&V Option: NEMVP-A (One Time)

Verification Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to the transformer replacements project.

Interaction: All Electric ECMs.

Verification Period & Frequency: One-time kW pre and post measurements.

Pre-Installation Activities:

Measure kW of a sample set of transformers that will be replaced. Measurement will be the with same loading before and after.

Post-Installation Activities:

A digital camera will be used to document the post- retrofit conditions. Inspect and verify the transformer installation to see if they meet the specifications of the DEA in terms of quantity, quality and rating. Verify if they perform in accordance with the functional specifications in the DEA and meeting all functional tests and provide commissioning report for each unit. Measure the Post kW of the same sample set of transformers from the premeasurements. Measurement will be before and after the transformer.

Formulas and assumptions in the DEA will be used to calculate the savings

ECM 11: Energy Management System - Re-Commissioning

M&V Option: NEMVP-A (short term)

Verification Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to the energy management system recommission project.

Interaction: All thermal ECMs

Verification Period & Frequency: Once after recommissioning, set up trend logs thereafter.

Pre-Installation Activities:

Sampled space temperatures have been collected.

Post-Installation Activities:

Once Recommissioning is complete, settings and operational sequence will be verified. Trend logs will be set up to monitor operations.

Formulas and assumptions in the DEA will be used to calculate the savings

ECM 12: Plug Load Controllers

M&V Option: NEMVP-A (One Time)

Verification Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to the Plug Load Management project.

Interaction: Electric ECMs

Measured Key Parameter: Operating Schedule

Measuring Equipment: M&V BERT Kit

Measuring Equipment Calibration: Equipment will be quality checked for calibration at the time of measurement and documented in the M&V report.

Verification Period & Frequency: One time two weeks prior to installation and one time two weeks after installation

Pre-Installation Activities: M&V BERT Kit will be installed on 10% of the equipment that will be controlled for a period of two weeks to establish the baseline operating schedule.

Post-Installation Activities: A digital camera will be used to document the post- retrofit conditions. Inspect and verify the BERT installation to see if they meet the specifications of the contract in terms of quantity and functionality. Once the Bert plugs are installed, schedules are established and operational; we will collect usage schedule data for two-week period and compare it to the baseline to validate savings. An annual visual inspection of a sample of units will occur to ensure the equipment is still in place and operational.

Formulas and assumptions in the DEA will be used to calculate the savings

ECM 13: Vending Machine Controllers

M&V Option: NEMVP-A (One Time)

Verification Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to this vending machine controller project.

Verification Period & Frequency: One-time post-retrofit year.

Pre-Installation Activities: Take pictures of the vending machines with no controllers.

Post Installation Activities:

A digital camera will be used to document the post- retrofit conditions. Inspect and verify the vending machine controller installation to see if they meet the specifications of the DEA in terms of quality. Verify if they perform in accordance with the functional specifications in the DEA and meeting all functional tests. An annual visual inspection of a sample of units will occur to ensure the equipment is still in place and operational.

Formulas and values in the DEA will be used to calculate the savings

ECM 14: Heating System - DHW Replacement

M&V Option: NEMVP-A

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to this Refrigerator Equipment Upgrade ECM.

Verification Period & Frequency: One time post-retrofit period. Inspection checks for rest of the Guarantee Period.

Post-Installation Activities:

The size and performance of the installed equipment as shown on the name plate will be verified against design specifications. A digital camera will be used to document the post-retrofit conditions.

Formulas and values in the DEA will be used to calculate the savings

ECM 15: Air Conditioning Compressor Controllers

M&V Option: NEMVP-A (One Time)

Verification Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to air conditioning compressor controller project.

Interaction: Electric ECMs.

Verification Period & Frequency: One time during both pre-retrofit period and post-retrofit period.

Pre-Installation Activities:

A digital camera will be used to document that a controller does not exist.

Post-Installation Activities:

A digital camera will be used to document the post-retrofit conditions. Inspect and verify the air conditioning compressor controller installation to see if they meet the specifications of the DEA in terms of quantity. Verify if they perform in accordance with the functional specifications in the contract and meeting all functional tests. An annual visual inspection of a sample of units will occur to ensure the equipment is still in place and operational.

Formulas and assumptions in the DEA will be used to calculate the savings

NEMVP Option B

Potential to Perform Verification and Continuous Performance Measurement

Option B is for projects where: i) the potential to perform and generate savings needs to be verified, and ii) actual performance during the term of the Agreement needs to be measured (verified). Option B involves procedures for verifying the same items as Option A plus actual achieved energy savings during the term of the Agreement. Performance verification techniques involve engineering calculations with metering and monitoring. Option B:

- Confirms that the proper equipment/systems were installed and that they have the potential to generate the predicted savings
- Determines an energy (and cost) savings value using measured data taken as needed throughout the M&V term.

Methods employed in this option will involve the use of short or long-term measurement of one or more variables.

Reference: NEMVP Version 1.0

Measured Project Benefits from the following Conservation Measures will be calculated using Option B:

Table 2.2.2: Option B Measures

ECM #	Energy Conservation Measure	M&V Option
4.1	Energy Management System - Temperature Setback	B
4.2	Energy Management System - Demand Controlled Ventilation	B
4.3	Energy Management System - Relief Hood, EF & Kitchen Hood Controls	B
10	Renewable Energy- Photovoltaic Generation	B

ECM 4.1: Energy Management System - Temperature Setback

M&V Option: NEMVP-B (Continuous)

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the space temperatures and unit statuses affected by the energy project.

Measured Parameter: Continuous measurement of a sample set of space temperatures, space temperature set points, outdoor air temperature, and unit statuses.

Interaction: Demand Control Ventilation (DCV)

Measuring Equipment: Energy Management System

Measurement Period: 15-minute samples

Measurement Frequency: Continuous measurement

Measurement and Verification Details:**Post-Installation Activities:**

Energy Management system will continuously monitor post-retrofit outdoor air, space temperature, and unit status. The date-time stamp will be included to differentiate occupied/unoccupied and summer/winter periods. Johnson Controls will also monitor and record the setpoint changes during the Guarantee Period.

Formulas and values in the DEA will be used to calculate the savings

ECM 4.2: Energy Management System - Demand Controlled Ventilation

M&V Option: NEMVP-B (Continuous)

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the DCV ECM affected by the energy project.

Measured Parameter: Continuous measurement of a sample set of CO2 levels and damper position

Interaction: with temperature setback and optimal start.

Measuring Equipment: Energy Management System

Measurement Period: 15-minute samples

Measurement Frequency: Continuous measurement

Measurement and Verification Details:**Post-Installation Activities:**

Energy Management system will continuously monitor post-retrofit CO2 levels, outside air temperature, and outside air damper position. The date-time stamp will be included to differentiate occupied/unoccupied and summer/winter periods.

Formulas and values in the DEA will be used to calculate the savings

ECM 4.3: Energy Management System - Relief Hood, EF & Kitchen Hood Controls

M&V Option: NEMVP-B (Continuous)

Measurement Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the Relief Hood; EF & Kitchen Hood Controls affected by the energy project.

Measured Parameter: Continuous measurement of damper open/closed status and occupancy status.

Interaction: with temperature setback and optimal start.

Measuring Equipment: Energy Management System

Measurement Period: 15-minute samples

Measurement Frequency: Continuous measurement

Measurement and Verification Details:

Post-Installation Activities:

Energy Management system will continuously monitor damper open/closed status, fan status, and occupancy status. The date-time stamp will be included.

Formulas and values in the DEA will be used to calculate the savings

ECM 10: Renewable Energy- Photovoltaic Electric Generation

M&V Option: NEMVP-B (Continuous)

Verification Boundary: Retrofit isolation – Project savings will be determined within the measurement boundary that encompasses only the items that are subject to this photovoltaic electric generation project.

Measuring Equipment: PV dashboard will be capable of logging 15-minute interval data for kW, kWh and solar irradiance.

Interaction: Electrical System

Key Parameter	Measurement Frequency	Measurement Description (including sampling plan)
Electricity Generated (kW and kWh)	Continuous	The amount of electricity generated (kW and kWh) will be verified using data from the inverter. Measurements from all the panels installed by the project will be used.
Sunshine for Normalization (Measured as irradiance (kWh/m ²))	Continuous	<p>Average expected Irradiance data for Long Island, NY is used to calculate the contract savings.</p> <p>During the Guarantee Period, the actual Irradiance will be measured using a pyrometer. The value will be totalized, and the totalized value will be recorded on an hourly basis. Data will be reviewed at least quarterly.</p> <p>The actual generated power will be normalized using the expected irradiance assumption in the contract (shown in the Table below) and the actual measured irradiance.</p>

Month	Contract Assumption for Expected Irradiance in Long Island, NY Area (kWh/m ²)
January	61.6
February	80.3
March	129.7
April	147.1
May	169.3
June	178.4
July	185.4
August	162.8
September	133.4
October	99.4
November	61.0
December	53.8
Annual	1462.2

The energy production guarantee shall assume the monthly baseline (reference) solar irradiance as shown above. On a monthly basis, the average amount of electricity produced per kWh/m² of solar irradiance will be calculated and the savings will be adjusted accordingly:

The energy production guarantee shall assume the monthly baseline (reference) solar irradiance as shown above. On a monthly basis, the average amount of electricity produced per kWh/m² of solar irradiance will be calculated and the savings will be adjusted accordingly:

$$kWh_{Adjusted} = (kWh_{measured}) \left(\frac{kWh/m^2_{contract}}{kWh/m^2_{measured}} \right) (\%RSS_{adjusted})$$

Where kWh/m² is the irradiance. The achieved dollar savings shown in Table 2.3 are based on the rates shown in Exhibit 6.

$$\%RSS_{Month} = \left(\frac{Irradiance (kWh/m^2)_{Month}}{Irradiance (kWh/m^2)_{Total}} \right)$$

$$\%RSS_{adjusted} = \sum_{1-12}^{Month} (\%RSS_{Month}) \left(\frac{Days_{Month} - (Days_{offline}) \left(\frac{Panels_{offline}}{Panels_{total}} \right)}{Days_{Month}} \right)$$

Where %RSS_{month} = Percentage of the total expected annual solar resource for that month
 Days_{month} = number of days in that month, Days_{offline} = number of days each inverter is offline
 Panels_{offline} = number of panels offline, Panels_{total} = total number of panels installed

kWh impact of any production factors that occur during the measurement period. Production factors are defined as events outside JCI control that has the effect of reducing kWh generation or failures in system operation due to maintenance that influences data collection and recording for complete and accurate data pertaining to production and weather. Other production factors include, but are not limited to, physical obstructions or interference with the solar irradiation of each array (i.e. over shadowing or shading), snow-frost-ice, utility grid outages, outages directed by the owner-customer, casualty events, Force Majeure events, theft, vandalism, equipment failure, DAS failure (lost connection or data), or utility system permit events (system disabled).

Formulas and values in the DEA will be used to calculate the savings.

III. Measured Project Benefits

Table 2.3 below defines and describes the ECMs included in this guarantee that comprise Measured Utility Cost Avoidance savings:

Table 2.3: Measured Project Benefits Summary

ECM #	Proposed Measure	Electric Savings			Thermal Savings		Total Savings
		kW	kWh/yr	\$/yr	MMBTU/yr	\$/yr	\$/yr
ECM 1	Lighting - Interior Retrofit	316	999,267	\$181,803	(2,163)	(\$23,898)	\$157,905
ECM 2	Lighting - Exterior Retrofit	0	36,056	\$4,902	-	\$0	\$4,902
ECM 3	Building Envelope - Weatherization	0	10,727	\$1,450	1,517	\$19,459	\$20,909
ECM 4.1	Energy Management System - Temperature Setback	0	9,777	\$1,352	691	\$10,933	\$12,285
ECM 4.2	Energy Management System - Demand Controlled Ventilation	0	74,693	\$9,904	5,416	\$57,749	\$67,653
ECM 4.3	Energy Management System - Relief Hood, EF & Kitchen Hood Controls	0	18,822	\$2,671	543	\$8,450	\$11,121
ECM 5	Energy Efficient Motors Replacement	13	7,815	\$1,263	-	\$0	\$1,263
ECM 6	Heating System - Pipe and Valve Insulation	0	-	\$0	373	\$3,866	\$3,866
ECM 7	Cooling System - Chiller Replacement	301	278,079	\$58,846	-	\$0	\$58,846
ECM 8	Refrigeration Compressor Controllers	0	3,858	\$524	-	\$0	\$524
ECM 9	Energy Efficient Transformers	13	101,552	\$13,910	-	\$0	\$13,910
ECM 10	Renewable Energy- Photovoltaic Generation	92	4,345,098	\$593,784	-	\$0	\$593,784
ECM 11	Energy Management System - Re-Commissioning	0	86,785	\$11,533	-	\$0	\$11,533
ECM 12	Plug Load Controllers	0	87,589	\$11,793	-	\$0	\$11,793
ECM 13	Vending Machine Controllers	0	16,853	\$2,262	-	\$0	\$2,262
ECM 14	Heating System - DHW Replacement	0	-	\$0	456	\$4,189	\$4,189
ECM 15	AC Compressor Controllers	0	56,671	\$7,755	-	\$0	\$7,755
	Totals	736	6,133,643	\$903,753	6,834	\$80,749	\$984,502

IV. Operational & Maintenance (O&M) & Rebate Project Benefits

Operational and Maintenance Cost Avoidance:

M&V Option: NEMVP-A

For measures where the baseline (or boundary) is well understood, and measure operating hours are not expected to change, only the "change in equipment performance" is needed in order to calculate the savings (or cost avoidance).

Lighting Operational Cost Avoidance is calculated by comparing the existing lamp and ballast average failure rate and replacement cost with the proposed project replacement lamp and ballast average failure rate and replacement cost. Measure operating hours are not expected to change. The average annual savings for all schools is determined to be \$27,055

Chiller Operational Cost Avoidance is calculated by comparing the cost of repair of the existing chiller versus the newly installed Chiller. The reduction in repairs of the new chiller is deemed to be the cost avoidance. The average annual savings for the chiller is determined to be \$15,000

Total Operational Cost Avoidance: \$42,055.

The O & M savings are based on the scope of work as well as discussions with the customer. Customer agrees that the O&M Project Benefits are reasonable and supportable, and that the installation of the Improvement Measures will enable Customer to take actions that will result in the achievement of such O&M Project Benefits.

Energy Rebates/Incentives:

Rebates: \$158,940

Total Rebates: \$158,940

JCI will apply for utility company rebates programs at the time of application. JCI hereby guarantees the rebate amount and if the customer receives the rebate less than the guaranteed amount then JCI will pay the difference in rebates to the Customer. JCI reserves the rights to offset an energy shortfall in one year with the excess guaranteed rebate dollars for that same year. If the rebate amount is less than the guaranteed amount in one year, JCI reserves the right to offset any rebate shortfall with excess energy savings dollars for that same year. JCI shall be responsible for assuring that said rebates/incentives are distributed to Customer. JCI anticipates the rebates will be secured during the implementation period, however, due to the program structure some of the money may be procured during Year 1. No shortfall will be paid if the total rebates matches the guaranteed amount, regardless of when they are received.

V. Changes in Use or Condition**ADJUSTMENT TO BASELINE
AND/OR ANNUAL PROJECT BENEFITS**

Customer agrees to notify JCI, within fourteen (14) days, of (i) any actual or intended change, whether before or during the M&V Services Period, in the use of any facility, equipment, or Improvement Measure to which this Schedule applies; (ii) any proposed or actual expansions or additions to the premises or any building or facility at the premises; (iii) a change to utility services to all or any portion of the premises; or (iv) any other change or condition arising before or during the M&V Services Period that reasonably could be expected to change the amount of Project Benefits realized under this Agreement.

Such a change, expansion, addition, or condition would include, but is not limited to: (a) changes in the primary use of any facility, Improvement Measure, or portion of the premises; (b) changes to the hours of operation of any facility, Improvement Measure, or portion of the premises; (c) changes or modifications to the Improvement Measures or any related equipment; (d) changes to the M&V Services provided under this Agreement; (e) failure of any portion of the premises to meet building codes; (f) changes in utility suppliers, utility rates, method of utility billing, or method of utility purchasing; (g) insufficient or improper maintenance or unsound usage of the Improvement Measures or any related equipment at any facility or portion of the premises (other than by JCI); (h) changes to the Improvement Measures or any related equipment or to any facility or portion of the premises required by building codes or any governmental or quasi-governmental entity; or (i) additions or deletions of Improvement Measures or any related equipment at any facility or portion of the premises.

Such a change or condition need not be identified in the Baseline in order to permit JCI to make an adjustment to the Baseline and/or the Annual Project Benefits. If JCI does not receive the notice within the time period specified above or travels to either Customer's location or the project site to determine the nature and scope of such changes, Customer agrees to pay JCI, in addition to any other amounts due under this Agreement, the applicable hourly consulting rate of \$150 per hour for the time it took to determine the changes and to make any adjustments and/or corrections to the project as a result of the changes, plus all reasonable and documented out-of-pocket expenses, including travel costs. Upon receipt of such notice, or if JCI independently learns of any such change or condition, JCI shall calculate and send to Customer a notice of adjustment to the Baseline and/or Annual Project Benefits to reflect the impact of such change or condition, and the adjustment shall become effective as of the date the change or condition first arose. Should Customer fail to promptly provide JCI with notice of any such change or condition, JCI may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition, subject to the Customer's agreement, which shall not be unreasonably withheld.

VI. Baseline Calculations and Utility Rates

The unit utility costs for the Baseline period are set forth below as "Base Utility Cost" and shall be used for all calculations made under this Schedule. The Base Utility Cost shall be escalated annually by the actual utility cost escalation, but such escalation shall be no less than the mutually agreed "floor" escalation rate of Two percent (2%). The Base Utility Cost for each type of utility represents the 12-month average utility costs from July 2018 through June 2019.

Table 2.4.1: Baseline Electrical Consumption Data & Rates

Building	Demand kW	Avg kW Cost	Electric Usage kWh	Usage kWh Cost	Unblended \$/kWh	Total Electric Cost
South Street School	97	\$17.28	388,800	\$55,518	\$0.14	\$75,563
Tuttle Ave Elementary School	203	\$12.86	932,400	\$123,911	\$0.13	\$155,169
Eastport Elementary School	147	\$15.79	649,500	\$89,844	\$0.14	\$117,641
Dayton Avenue School	169	\$16.51	851,400	\$116,310	\$0.14	\$149,777
Eastport-South Manor Junior - Senior High School	773	\$16.36	4,310,908	\$568,110	\$0.13	\$719,858
Totals	1,388	\$15.76	7,133,008	\$953,692	\$0.13	\$1,218,008

The above rates shown in Table 2.4.1 will be known as **Floor Electrical Rates**, for the purpose of the Assured Performance Guarantee. Beginning in year 1, the annual calculated electric rates are expected to increase every year. In the event that the annual rates are lower than the above baseline rates, the 2% escalated floor rates will be substituted for the annual calculated rate.

The Electric Rates will be averaged over the course of the one-year baseline period, as provided by customer. In turn, the Incremental Electric Rate (IER), and the Demand Rate (DR) will be averaged annually over the course of the reporting periods, as reflected on utility invoices, for equitable cost avoidance savings reporting.

The following formula will be used to calculate the current reporting period Incremental Energy Rate (IER):

FORMULA B-2

$$IER = \frac{\square TKC_{1-12}}{\square TKWH_{1-12}}$$

Where:

IER: Incremental Electrical Rate (Dollars per kWh)

$\square TKC_{1-12}$: Sum Total of Monthly Electrical Utility Costs (Dollars) for kWh included Fuel Adjustment Cost and other related Energy Charges for Months 1 Through 12 of the current reporting period.

$\square TKWH_{1-12}$: Sum Total of Monthly Electrical Incremental Use (kWh) for Months 1 Through 12 of the current reporting period.

The following formula will be used to calculate the current reporting period Incremental Demand Rate (DR):

FORMULA B-3

<p>DR = $\frac{\square \text{TKC}_{1-12}}{\square \text{TKWH}_{1-12}}$</p> <p>Where:</p> <p>DR: Demand Electrical Rate (Dollars per kW)</p> <p>$\square \text{TKC}_{1-12}$: Sum Total of Monthly Electrical Utility Costs (Dollars) for kW included Fuel Adjustment Cost and other related Energy Charges for Months 1 Through 12 of the current reporting period.</p> <p>$\square \text{TKW}_{1-12}$: Sum Total of Monthly Electrical Demand Use (kW) for Months 1 Through 12 of the current reporting period.</p>

Table 2.4.2: Baseline Gas Consumption Data & Rates

Building	Gas Usage Therms	Gas Cost	Cost per Therm
South Street School	0	\$0	
Tuttle Ave Elementary School	0	\$0	
Eastport Elementary School	0	\$0	
Dayton Avenue School	22,837	\$21,691	\$0.95
Eastport-South Manor Junior - Senior High School	80,710	\$58,615	\$0.73
Totals	103,547	\$80,306	\$0.78

The above rates shown above in Table 2.4.2 will be known as **Floor Natural Gas Rates**, for the purpose of the Assured Performance Guarantee. Beginning with year 1, the annual calculated natural gas rates are expected to increase every year. In the event that the annual rates are lower than the above baseline rates, the 2% escalated floor rates will be substituted for the annual calculated rate.

The natural gas unit costs have been averaged over the course of the one-year period. In turn, unit costs will be averaged over the course of the reporting period, as reflected on utility invoices, for equitable cost avoidance savings reporting.

The following formulas will be used to calculate the current reporting period Fuel Rate(s) for Natural Gas:

FORMULA G-1

<p>NGR = $\frac{\Sigma \text{TGC}_{1-12}}{\Sigma \text{TGU}_{1-12}}$</p> <p>Where:</p> <p>NGR: Natural Gas Rate (\$/Therm)</p> <p>$\Sigma \text{TGC}_{1-12}$: Sum Total of Monthly Gas Costs (\$)</p> <p>$\Sigma \text{TGU}_{1-12}$: Sum Total of Monthly Gas Purchased (Therms) for Months 1 Through 12 of the reporting period.</p>

Table 2.4.3: Baseline Fuel Oil Consumption Data & Rates

Building	Oil Usage (Gallons)	Oil Cost	Cost per Gallon
South Street School	14,545	\$32,238	\$2.22
Tuttle Ave Elementary School	5,591	\$11,944	\$2.14
Eastport Elementary School	23,670	\$51,857	\$2.19
Dayton Avenue School	3,253	\$7,429	\$2.28
Eastport-South Manor Junior - Senior High School	15,346	\$35,068	\$2.29
Totals	62,405	\$138,536	\$2.22

The above rates shown above in Table 2.4.3 will be known as the for the purpose of this Assured Performance Guarantee. The annual calculated FOR shall never go below the floor rate(s). For buildings that utilize both oil and gas a combined weighted average \$/MMBTU will be used in the savings calculations. In the event that the annual rates are lower than the above baseline rates, the 2% escalated floor rates will be substituted for the annual calculated rate.

The Fuel Oil unit costs have been averaged over the course of the one-year period. In turn, unit costs will be averaged over the course of the reporting period, as reflected on utility invoices, for equitable cost avoidance savings reporting.

The following formulas will be used to calculate the current reporting period Fuel Rate(s) for Fuel Oil:

FORMULA O-1

$$\text{FOR} = \frac{\sum \text{TGC}_{1-12}}{\sum \text{TGU}_{1-12}}$$

Where:

FOR: Fuel Oil Rate (\$/Gallon)

$\sum \text{TGC}_{1-12}$: Sum Total of Monthly Oil Costs (\$)

$\sum \text{TGU}_{1-12}$: Sum Total of Monthly Oil Purchased (Gallons) for Mos. 1 – 12 of the reporting period

Table 2.4.4: Baseline Fossil Fuel MMBtu Data & Rates

Building	MMBtu (Nat Gas & Oil)	Cost	\$/MMBtu
Dayton Avenue School	2,734	\$29,120	\$10.65
Eastport-South Manor Junior - Senior High School	10,196	\$93,683	\$9.19

Energy Conversion Conventions

For purposes of this Guarantee the follow fuel conversions will apply:

- 1 CCF (100 cubic feet) of Natural Gas = 103,000 Btus (British Thermal Units)
- 1 Therm of Natural Gas = 100,000 Btus
- 1 MMBtu of Natural Gas = 1,000,000 Btus
- 1 Decatherm of Natural Gas = 1,000,000 Btus
- 1 Gallon of Fuel Oil = 139,000 Btus

VII. Primary Operations Schedule Pre & Post Retrofit

Table 2.5.1: District Wide Pre and Post Temperature Schedule & District wide Operational Schedule

This Section documents the pre-retrofit and post-retrofit set points, building operation hours, equipment list, and building occupancy. The Customer understands that it needs to operate the post-retrofit building as documented in this section to achieve the guaranteed project savings.

Building Space Temperature Set points:

School/Building	Summer Inside Setpoint (F)			
	Existing Occupied	Existing Unoccupied	Proposed Occupied	Proposed Unoccupied
Eastport - South Manor Jr. Sr. HS	72	78	72	78
Dayton Ave School	72	78	72	78
Eastport Elementary School	72	78	72	78
South Street School	72	78	72	78
Tuttle Ave Elementary School	72	74	72	78

School/Building	Winter Inside Setpoint (F)			
	Existing Occupied	Existing Unoccupied	Proposed Occupied	Proposed Unoccupied
Eastport - South Manor Jr. Sr. HS	72	68	72	55
Dayton Ave School	74	68	72	55
Eastport Elementary School	74	68	73	55
South Street School	74	68	74	55
Tuttle Ave Elementary School	74	68	72	55

Baseline and Post-Retrofit Occupancy/HVAC Schedules:

Building occupancy each day:

School/Building	Existing			Proposed		
	Midnight - 8 AM	8 AM - 4 PM	4 PM - Midnight	Midnight - 8 AM	8 AM - 4 PM	4 PM - Midnight
Eastport - South Manor Jr. Sr. HS	2	8	8	2	8	8
Dayton Ave School	2	8	8	2	8	8
Eastport Elementary School	2	8	8	2	8	8
South Street School	2	8	8	2	8	8
Tuttle Ave Elementary School	2	8	8	2	8	8

Building occupancy each week:

Day	Existing					Proposed				
	Days of the week					Days of the week				
	Eastport - South Manor Jr. Sr. HS	Dayton Ave School	Eastport Elementary School	South Street School	Tuttle Ave Elementary School	Eastport - South Manor Jr. Sr. HS	Dayton Ave School	Eastport Elementary School	South Street School	Tuttle Ave Elementary School
Monday	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied
Tuesday	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied
Wednesday	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied
Thursday	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied
Friday	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied	Occupied
Saturday	Occupied	Occupied	Unoccupied	Unoccupied	Unoccupied	Occupied	Occupied	Unoccupied	Unoccupied	Unoccupied
Sunday	Unoccupied	Unoccupied	Unoccupied	Unoccupied	Unoccupied	Unoccupied	Unoccupied	Unoccupied	Unoccupied	Unoccupied

Building occupancy each month:

Month	Existing					Proposed				
	Weeks Per Month					Weeks Per Month				
	Eastport - South Manor Jr. Sr. HS	Dayton Ave School	Eastport Elementary School	South Street School	Tuttle Ave Elementary School	Eastport - South Manor Jr. Sr. HS	Dayton Ave School	Eastport Elementary School	South Street School	Tuttle Ave Elementary School
Jan	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43
Feb	4	4	4	4	4	4	4	4	4	4
Mar	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43
Apr	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29
May	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43
Jun	2	2	2	2	2	2	2	2	2	2
Jul	0	0	0	0	0	0	0	0	0	0
Aug	0	0	0	0	0	0	0	0	0	0
Sep	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29
Oct	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43
Nov	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29	4.29
Dec	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43	4.43

VIII. Measurement & Verification Services

JCI will provide the M&V Services set forth below in connection with the Assured Performance Guarantee.

1. During the Installation Period, a JCI Performance Engineer will track Measured Project Benefits. JCI will report the Measured Project Benefits achieved during the Installation Period, to Customer within 60 days of the commencement of the Guarantee Period.
2. During the M&V Services Period, within 60 days of each anniversary year of the commencement of the M&V Services Period, JCI will provide Customer with an annual report containing:
 - A. an executive overview of the project's performance and Project Benefits achieved to date;
 - B. a summary analysis of the Measured Project Benefits accounting; and
 - C. depending on the M&V Option, a detailed analysis of the Measured Project Benefits calculations.
3. During the M&V Services Period, a JCI Performance Engineer will monitor the on-going performance of the Improvement Measures, as specified in this Agreement, to determine whether anticipated Measured Project Benefits are being achieved. In this regard, the Performance Engineer will periodically assist Customer, on-site or remotely, with respect to the following activities:
 - A. review of information furnished by Customer from the facility management system to confirm that control strategies are in place and functioning;
 - B. advise Customer's designated personnel of any performance deficiencies based on such information;
 - C. coordinate with Customer's designated personnel to address any performance deficiencies that affect the realization of Measured Project Benefits; and
 - D. inform Customer of opportunities to further enhance project performance and of opportunities for the implementation of additional Improvement Measures.
4. For specified Improvement Measures utilizing an "Option A" M&V protocol, JCI will:
 - A. conduct pre and post installation measurements required under this Agreement;
 - B. analyze actual as-built information and adjust the Baseline and/or Measured Project Benefits to conform to actual installation conditions (e.g., final lighting and water benefits calculations will be determined from the as-built information to reflect the actual mix of retrofits encountered during installation).
5. For specified Improvement Measures utilizing an "Option B" M&V protocol, JCI will:
 - A. confirm that the appropriate metering and data points required to track the variables associated with the applicable Improvement Measures' benefits calculation formulas are established; and
 - B. set up appropriate data capture systems (e.g., trend and totalization data on the facility management system) necessary to track and report Measured Project Benefits for the applicable Improvement Measure.
 - C. Trend data records maintained in the ordinary course of system operation shall be used and relied upon by Johnson Controls to in connection with Project Benefit calculations. JCI will use commercially reasonable efforts to ensure the integrity of the data collected to calculate the required savings. In the event data are lost due to equipment failure, power failure or other interruption in data collection, transmission or storage, JCI will use reasonable engineering methods to estimate the impact of the lost data.

CUSTOMER RESPONSIBILITIES

In order for JCI to perform its obligations under this Agreement with respect to the Work, the Assured Performance Guarantee, and the M&V Services, 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 and/or M&V Services;
2. Providing for shut down and scheduling of affected locations during installation, including timely shutdowns of chilled water and hot water systems as needed to accomplish the Work and/or M&V Services;
3. Providing timely reviews and approvals of design submissions, proposed change orders, and other project documents;
4. Providing the following information 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. Providing assistance to JCI in obtaining any permits, approvals, and licenses that are JCI's responsibility to obtain as set forth in Schedule 1;
6. 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;
7. Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems affecting the Assured Performance Guarantee in accordance with manufacturers' standards and specifications;
8. Providing the utility bills, reports, and similar information reasonably necessary for administering JCI's obligations under the Assured Performance Guarantee within seven (7) days of Customer receipt and/or generation or JCI's request therefor;
9. Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by JCI;
10. Providing and installing utility sub-meters on all new construction and/or additions built during the Guarantee Period as recommended by JCI or, alternatively, paying JCI's applicable fees for calculating necessary adjustments to the Assured Performance Guarantee as a result of the new construction;
11. Providing and maintaining a dedicated telephone line and/or TCP/IP remote connection to facilitate remote monitoring of relevant equipment;

Schedule 3

12. Promptly notifying JCI of any change in use or condition described in Schedule 2 under section titled: " Adjustment to Baseline and/or Annual Project Benefits" or any other matter that may impact the Assured Performance Guarantee;
13. If any equipment under control is changed out, it is the responsibility of the customer to move the controls and the controls programming to the new equipment; and
14. Customer is responsible for providing room for a laydown area, parking, room for a dumpster, necessary office space.

PRICE AND PAYMENT TERMS

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

1. Total Project Costs. The total cost of the Work, including payment for JCI and the Engineer, is **\$18,383,763**. Payments (including payment for materials delivered to JCI and work performed on and off-site) shall be made to JCI as follows:

First payment due: 30% down payment, or \$5,515,129, due upon SED approval, customer's securing of acceptable financing, the issuance of the notice to proceed, and JCI has commenced the Work. Balance shall be invoiced monthly using AIA Invoice format.

Customer shall make payment to JCI against monthly invoices for work completed and approved in accordance with the agreed upon Schedule of Values. Payments will be made on a progress payment basis for work completed and accepted by the Customer and the Architect using the AIA format. JCI must attach certified payrolls to each application for payment, together with supporting documents as required by the Customer and Architect.

Payments are due upon Customer's receipt of JCI's invoice and shall be paid within thirty (30) days. Invoicing disputes must be identified in writing within twenty-one (21) days of the date of the invoice. Payment of disputed amounts are due and payable upon resolution. All other amounts remain due within thirty (30) days.

Final payment shall become due until JCI submits to the Engineer: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Customer or the Customer's property might be responsible or encumbered (less amounts withheld by Customer) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Customer, and (3) if required by the Customer, other data establishing payment or satisfaction of obligations, such as receipts, releases, and waivers of liens, claims, security interests or encumbrances arising out of the agreement, to the extent and in such form as may be designated by the Customer.

Failure to make payments when due, other than those payments to which written objection is made by Customer in good faith, will give JCI, without prejudice to any other right or remedy, the right to: (i) stop performing any Work or M&V Services, withhold deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or terminate this Agreement; and (ii) charge Customer interest on the amounts unpaid at a rate equal to the lesser of one and one half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full.

2. Payments for Architectural/Engineering Services. JCI shall be responsible for making payments directly to ECG Engineering, P.C. as set forth herein. The total fee to be paid to the Engineer is \$875,417 or 5% of construction costs for projects \$10 Million or greater, and 7% of construction costs for projects less than \$10 Million. JCI will make payments to ECG according to the following schedule:

1. 30% upon Customer signing contract with JCI
2. 30% upon submittal of plans and specifications to NYSED
3. 30% upon approval of plans and specifications to NYSED
4. 10% upon substantial completion

JCI agrees that each of the payments shall be made ECG Engineering, P.C. within 30 days of receipt of an invoice. Invoices that have not been paid by the ESCO within 45 days of receipt of such invoice shall be subject to interest at the rate of 18% per annum.

Schedule 4

JCI and customer agree that ECG Engineering, P.C., as the Engineer of Record, shall have first right of refusal to tax filings under Internal Revenue Code Section 179D. Customer agrees to execute documents and to provide additional reasonable cooperation to ECG related to tax filings under Internal Revenue Code Section 179D.

3. *M&V Services. JCI shall provide M&V services for the project from the construction period through Year 3 and shall be at no cost to the District. The Customer reserves the right to continue M&V Services beyond Year 3 and the Customer and JCI may mutually agree in writing to extend the M&V Services Period and shall mutually agree as to the price and terms for such M&V Services at that time.*

NOTICE TO PROCEED

Johnson Controls, Inc.
6 Aerial Way
Syosset, NY 11791
ATTN: Danny Haffel

Re: Notice to Proceed for Eastport-South Manor Central School District EPC

Dear Mr. Haffel:

This Notice to Proceed is being issued by Eastport-South Manor Central School District ("Customer") to Johnson Controls, Inc. ("JCI") pursuant to that certain Performance Contract entered into between Customer and JCI for the purpose of notifying JCI to commence work under such contract.

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.

EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT

Signature: 

Printed Name: Michael Byrnes

Title: President, Board of Education

Date: _____

ACKNOWLEDGED & AGREED TO:

JOHNSON CONTROLS, INC.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

CHANGE ORDER

Performance Contract dated _____, 20____ between Johnson Controls, Inc. and Customer	Change Order No.	Date (mo/day/yr)
Customer EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT		
The above referenced Performance 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 Performance 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)	
[check if applicable] Assured Performance Guarantee changed as follows:		
Unless specifically changed by this Change Order, all terms, conditions and provisions of the above referenced Performance Contract remain unchanged and in full effect.		
JOHNSON CONTROLS, INC.	EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT	
Signature:	Signature:	
Printed Name:	Printed Name:	
Title:	Title:	

CERTIFICATE OF SUBSTANTIAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("JCI")
6 AERIAL WAY
SYOSSET, NY 11791

and

EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT ("Customer")
149 DAYTON AVENUE
MANORVILLE, NEW YORK 11949

PROJECT: Eastport-South Manor central school district; Performance Contract dated ____, 20__ between JCI and Customer

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

- a. The work set forth in the Performance Contract is substantially complete.
- b. Customer has received the manuals, warranty information, and training required under the Performance 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__ .

EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT:

JOHNSON CONTROLS, INC.

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

ENGINEER:

Signature: _____

Printed Name: _____

Title: _____

CERTIFICATE OF FINAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("JCI")
6 AERIAL WAY
SYOSSET, NY 11791

and

EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT ("Customer")
149 DAYTON AVENUE
MANORVILLE, NEW YORK 11949

PROJECT: Eastport South Manor central school district; Performance Contract dated ____, 20__
between JCI and Customer

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

- a. The work set forth in the Performance 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__ .

EASTPORT-SOUTH MANOR CENTRAL SCHOOL DISTRICT:

JOHNSON CONTROLS, INC.

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

ENGINEER:

Signature: _____

Printed Name: _____

Title: _____

Lighting Line by Line