



**Johnson Controls, Inc.
Performance Contract**

PERFORMANCE CONTRACT

This Performance Contract (this "Agreement") is made this _____ day of _____, 2025 between:

PARTIES

JOHNSON CONTROLS, INC. ("JCI")
35 ARKAY DRIVE, SUITE 100
HAUPPAUGE, NY 11788

and

NORTHPORT-EAST NORTHPORT UNION FREE SCHOOL DISTRICT
("Customer" or the "District")
158 LAUREL AVENUE
NORTHPORT, NY 11768

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/energy efficient measures (the "Improvement Measures" or "ECMs") described therein; and

WHEREAS, Customer is authorized and empowered under applicable Laws to enter into this Agreement, and has taken necessary action under applicable Laws to enter into this Agreement; and

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

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

- 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). Prior to the commencement of the Work, JCI shall provide the Engineer of Record with a list of sub-contractors that JCI intends to use for the project for approval by the Customer and the Engineer of Record.

JCI will install the Equipment identified on Schedule 1 of this Agreement (Work) and provide services detailed on Schedule 1 and Schedule 2 of this Agreement (Services). JCI shall supervise and direct the Work and Services and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work and M&V Services under this Agreement. JCI shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work and Services.

2. AGREEMENT DOCUMENTS: In addition to the terms and conditions of this Agreement, the following Schedules, Attachments and Appendices are incorporated into and shall be deemed 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
- Attachment 4 – Customer's Request for Proposals ("RFP")
- Attachment 5 – Contract between Customer and John A. Grillo Architect, PC
- Attachment 6 – JCI proposal in response to Customer's RFP
- Attachment 7 – Detailed Energy Audit
- Attachment 8 – Customer's AHERA Report and asbestos ceiling tile surveys
- Attachment 9 – Pro Forma Cash Flow "12-September-2025"
- Attachment 10 – General Conditions

3. ARCHITECT OF RECORD. The Customer has identified John A. Grillo Architect PC (JAG) as the certified Architect of Record (the "Architect" or "Engineer") to provide architectural/engineering services in connection with the Work to be performed by JCI ("Architectural/Engineering Services"). The fees and total compensation for such Architectural/Engineering Services shall be \$459,978 and shall be paid by JCI to the Architect in accordance with the terms of the contract between the Customer and John A. Grillo Architect PC as attached hereto at Attachment 6 and as set forth in Schedule 4 hereof. The Architect's fees are included in the Total Project Benefits and shall be covered by the Guaranteed Savings in all respects. Both JCI and Customer agree and acknowledge that the Architect owes its/his/her professional obligations and duties, including duties of care to the Customer. The Architect 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 will coordinate all Work and activities under this Agreement with the Architect.

JCI will issue payment as set forth herein and in Attachment 5.

4. NOTICE TO PROCEED; SUBSTANTIAL COMPLETION; M&V SERVICES. Pursuant to 8 NYCRR §155.20, this Agreement is subject to the approval of the Commissioner of Education of the State of New York. After receipt of written approval from the New York State Education Department ("SED"), and after Customer has secured financing subject to Section 32 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 a form acceptable to 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 Architect execute a Certificate of Substantial Completion in the form attached hereto at Attachment 3.

Substantial Completion shall be achieved when the following items are completed by JCI and approved by Customer and the Architect:

- a. A written acknowledgement by the Customer that all of the Improvement Measures have been installed by JCI and completed to the satisfaction of the Customer and the Architect;
- b. A written acknowledgment by the Customer of receipt of manuals and training provided by JCI under the Agreement;
- c. A written acknowledgement by the Customer of the warranty start date and warranty period;
- d. The receipt of a punch list of items remaining to be completed by JCI;
- e. A written acknowledgement by the Customer of receipt of warranties, release of liens, and proof of payment to subcontractors; and,
- f. JCI is responsible for obtaining fire marshal approval, if such is required for this Project. JCI shall be responsible for any costs related to its failure to secure such approval.

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 for all ECMs and shall continue throughout the Guarantee Term, subject to earlier termination of the Assured Performance Guarantee as provided herein. Customer acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services in accordance with Schedule 4, (iii) fails to fulfill any of Customer's responsibilities necessary to enable JCI to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this Agreement, the Assured Performance Guarantee shall automatically terminate.

- 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 reasonable 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 proposal 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 may 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. 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 may be made as a result of any failure to grant such access, subject to the mutual written agreement of the parties. JCI shall be required to perform its Work between the hours of 2:30 p.m. to 11:00 p.m. and outside the hours of the school day at any given school location, Monday through Friday on school days when the buildings are open and shall further not interfere with any special events being held any such school location. During the summer, JCI shall be required to perform its work between the hours of 7:00am and 3:30pm Monday through Friday with no interruption to the District's operations, including its educational, administrative, business, special events and summer operations. All schedules must be approved by the District and its Architect in writing prior to commencing any work. Any work which will interfere with the District's operations and/or which is to be performed when the District's facilities are in operation shall be performed on evenings and weekends. Additionally, JCI shall conduct its Work during hours that are in compliance with federal, state, county or local, laws, rules, regulations, codes and ordinances. Provided that Customer allows JCI continuous access to the applicable facilities during normally scheduled custodial shifts, all costs incurred by the District, including overtime costs for District personnel, to make the facilities available during evening and weekends (Saturday and Sunday) shall be borne by JCI. The District reserves the right to determine what work will interfere with its operations and said determination shall be final. In addition, all overtime work that may be necessary must be pre-approved in writing by the Customer's Superintendent and the Assistant Superintendent. JCI shall be solely responsible for all costs associated with its failure to obtain such prior written approval. The Customer reserves the right to reject the use of any proposed subcontractors.

No drinking of alcoholic beverages, smoking or use of controlled substances is permitted on the grounds. JCI shall ensure that none of its employees, agents, consultants, or its Subcontractors' employees, agents, and/or consultant's report to the site impaired by alcohol or controlled substances. JCI bears the responsibility of determining if its employees, or its subcontractors', employees are in any way impaired and whether the safety of the public, the employees of JCI and its subcontractors, the Owner, Architect, or Construction Manager if any, are jeopardized. Each contractor shall provide drinking water for its own employees. JCI's employees, representatives, agents and consultants, and all of its subcontractors' employees, representatives, agents and consultants at the site are to refrain from using indecent language. All doing so will be removed from the site. Artwork or decoration found on vehicles belonging to Contractor or Subcontractor employees parked on or near the school property which contain indecent language or pictures shall either be covered or removed from the location.

- 7. PERMITS, TAXES, AND FEES.** JCI shall be responsible for obtaining all building permits and related permit fees associated with the Work and Services. Customer represents that it will cooperate with JCI and provide JCI with appropriate documentation that Customer is not obligated to pay any taxes associated with this Agreement. JCI shall pay any applicable sales, consumer, use, and other similar taxes and shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper

execution. The Customer shall be responsible for securing any necessary approvals, or easements required for 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 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. JCI 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.

- 8. WARRANTY.** JCI warrants that materials and equipment furnished by JCI will be of good quality and new and of recent manufacture, unless otherwise required or permitted by the Agreement documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work and M&V Services will conform to the requirements of the Agreement Documents. Work not conforming to these requirements including substitutions not properly approved and authorized may be considered defective.

If within two (2) years following Substantial Completion (except where longer periods of time are specified in Schedule 1 and/or the Detailed Energy Audit or provided for in any manufacturer's warranties or special warranties issued or obtained following the commencement of the Work, in which case such longer periods shall apply) any of the work is found to be not in accordance with the requirements of the Agreement, JCI shall correct it promptly after receipt of written notice from the District and/or the Architect to do so, unless the District has previously given JCI a written acceptance of such condition. This period of two (2) years shall be extended with respect to portions of JCI's work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of such work. The obligation set forth hereunder shall survive acceptance by the District of the work, and/or termination of JCI's agreement with the District. The District shall give such notice within a reasonable period of time after discovery of the condition.

Upon written notice from the Customer, JCI shall repair or replace the defective Work as determined by Customer and its Architect or re-perform defective Services in consultation with JCI and to the satisfaction of the Customer, as long as Customer provides written notice to JCI within two (2) years following Substantial Completion except where longer periods of time are specified in Schedule 1. These warranties do not extend to any Work that has been abused, altered, misused, or repaired by the Customer or third parties without the supervision and/or prior written approval of JCI, except in the case of an emergency; or if JCI serial numbers or warranty date decals have been removed or altered. If any Work is altered or repaired in an emergency, Customer will notify JCI immediately of such alterations or repairs. The Customer must promptly report any failure of the Equipment to JCI in writing. All replaced Equipment or parts remain Customer's property.

Customer understands that JCI is a provider of services under this Agreement. JCI shall not be considered a merchant or a vendor of goods. If JCI installs or furnishes a piece of equipment under this Agreement, and that equipment is covered by a warranty from the manufacturer, JCI will transfer the benefits of that manufacturer's warranty to Customer if this Agreement with Customer terminates before the equipment manufacturer's warranty expires.

JCI further warrants that the design, engineering, and installation services it performs will be performed consistent with good engineering practices and that all Work performed by JCI is warranted to be free from defects in materials and workmanship for a period of two (2) years from the date of execution of the Certificate of Substantial Completion by Customer. Any manufacturers' warranties which exceed this two (2) year period shall be assigned to Customer to the extent allowed by the manufacturer. The warranty provided in this Agreement shall be in addition to and not in limitation of any other warranty required by the contract documentation or otherwise prescribed by law. JCI shall procure and deliver to the District, no later than the date claimed by JCI as the date of final completion, all normal and special warranties required by the contract documents.

Prior to the commencement of the Work and issuance of the final cash flow statement as set forth herein, JCI shall be fully responsible for reviewing any and all existing warranties of equipment, fixtures and appurtenances

located at the Customer's facilities, including but not limited to roofs, windows, doors, and boilers that may be directly and/or indirectly impacted by the work performed under the Agreement and any amendment to the Agreement to verify that the Work will not void any such existing warranties. In the event that its review uncovers a potential issue, JCI will notify the Customer in writing and the parties will agree upon a resolution. JCI shall coordinate with the existing manufacturers, including the roofing manufacturers for all roof PV installations, and have a pre-inspection of the equipment and/or materials performed prior to installation of any ECM, including the PV system. Further, JCI shall comply with all roof manufacturer, boiler, window, door manufacturers and other manufacturer warranty(ies) continuation procedures and will be responsible for all fees, inspections and additional materials to maintain the roof warranty(ies) or any other warranty(ies) that is directly and/or indirectly impacted by the work performed under the Agreement and any amendment. All inspections must be coordinated with the Customer and its Architect. Pre-inspection shall occur during the SED review phase. In the event that said work has any negative impact on the validity of any warranty, as determined by the applicable manufacturer(s), the Customer in its sole discretion shall have the right to terminate the Agreement or to reduce the scope of Work as necessary to achieve a positive cash flow for Customer during the term of the Agreement. In the event that the work proceeds as authorized by the manufacturer and said work is not installed in accordance with any manufacturer's requirements as set forth in the manufacturers' pre-inspection, JCI shall be full responsible for performing the necessary work to achieve the requirements of the manufacturer(s) for purposes of maintaining the existing warranties. JCI shall coordinate all pre and post installation inspections with the Customer's Architect of Record. In addition, all pre-inspection and post-inspection costs shall be borne solely by JCI. Notwithstanding the foregoing, if JCI (a) proceeds with any work that will impair or nullify any existing warranty(ies) and (b) the Customer has not been notified in writing of the potential issue and agreed to the performance of such work, JCI shall be fully liable for the warranty(ies). Upon completion of the work/services of the Agreement and any amendment thereto, JCI shall be fully responsible for reviewing and informing Customer of all warranties for equipment installed and/or replaced during the installation.

9. CLEANUP. JCI shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work on a daily basis and, upon completion of the Work, JCI shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials and shall clean up the Work, including any dust from the materials, and surrounding areas to the reasonable satisfaction of the Customer. In the event that JCI fails to clean up the Work and the surrounding areas, upon twenty-four (24) hours written notice to JCI, the Customer will have the same cleaned. All reasonable costs associated with such clean up shall be back charged to JCI.

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. JCI 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: JCI shall be responsible for the abatement, cleanup, control, removal or disposal of asbestos-containing materials ("ACM") as identified in the Agreement, attachments and appendices and all abatement directly or indirectly necessary as a result of the Scope of Work undertaken by JCI. JCI hereby represents and warrants that it has reviewed the Customer's AHERA Report, asbestos ceiling tile surveys and any and all other testing results or documentation related to such materials that have been provided to JCI by Customer and shall ensure that its subcontractors review said Report, surveys and other documentation. ACM removal, abatement or clean-up identified therein or in the attached schedules or Attachments and Appendices hereof is being undertaken as part of the Agreement. JCI shall cause to be performed such removal/abatement and clean-up in accordance with all applicable Federal, State and local laws, codes, rules, regulations and ordinances. JCI shall be fully responsible for the failure of JCI and/or its subcontractors to perform the Work in accordance with said requirements. JCI shall defend and hold harmless Customer, its officers, trustees, and employees from any and all actions, claims, costs, causes of action, damages, fines, fees, penalties, suits of any kind arising directly or indirectly from the performance of ACM related work and shall further cause its subcontractors to defend and hold harmless Customer, its officers, trustees, and employees from any and all actions, claims, costs, causes of action, damages, fines, fees, penalties, suits of any kind arising directly or indirectly from the performance of ACM related work. Customer shall provide in writing, and JCI and its subcontractors must review and become familiar with, the Customer's Asbestos Management Plan, AHERA Report, ceiling tile surveys and any other resting results or documentation provided to JCI. If JCI becomes aware

of or suspects the presence of ACM that has not previously been identified in Customer's AHERA Report, the Customer's asbestos ceiling tile surveys, and other testing results or documentation set forth above and 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, and the parties shall meet to discuss how to proceed. Customer may request that JCI provide a calculation of the cost of enclosing, removing, encapsulating or otherwise abating such ACM in the areas in which Work or M&V Services are to be performed in accordance with applicable code, laws, rules, regulations, ordinances and guidelines. Upon receiving said calculation, the parties will meet and mutually agree upon how to proceed, including but not limited to the following options: (i) arranging to have said ACM abated at the Customer's cost; or (ii) Customer paying JCI to cause such ACM to be abated; and/or (iii) reducing/revising the scope of work to include additional ACM abatement subject to review and approval of SED.

Other Hazardous Materials: JCI shall be solely responsible for abating, removing or disposing of any Hazardous Materials (as defined below) associated with the Work or M&V Services ("JCI Hazardous Materials") and for the remediation of any areas impacted by the release of JCI Hazardous Materials. All costs for said abatement, disposal and/or removal of JCI Hazardous Materials, including all necessary and required testing, are solely the responsibility of JCI. 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 other than those Non-JCI Hazardous Materials already identified by Customer and JCI in writing as part of this Agreement, it shall promptly stop the Work or M&V Services in the affected area and notify the other. 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, polychlorinated biphenyls or mercury. "Hazardous Materials" specifically includes mold. Should JCI and/or its subcontractors become aware of the presence of Non-JCI Hazardous Materials that may be disturbed by JCI's Work or M&V Services, JCI shall promptly notify Customer, and the parties shall meet to discuss how to proceed. Customer may request that JCI provide a calculation of the cost of remediating such Non-JCI Hazardous Materials in the areas in which Work or M&V Services are to be performed in accordance with applicable code, laws, rules, regulations, ordinances and guidelines. Upon receiving said calculation, the parties will meet and mutually agree upon how to proceed, including but not limited to the following options: (i) arranging to have said Non-JCI Hazardous Materials remediated at the Customer's cost; or (ii) Customer paying JCI to cause such Non-JCI Hazardous Materials to be remediated; and/or (iii) reducing/revising the scope of work to include additional ACM abatement subject to review and approval of SED.

Unless caused by the negligence or misconduct of JCI or its subcontractors JCI shall not be responsible for any 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 Customer's storage, release, discharge, handling or presence of mold or Non-JCI Hazardous Materials on, under or about the facilities, or Customer's failure to comply with this Section 11. Notwithstanding the foregoing, JCI shall indemnify and hold harmless the District from any and all liability associated with the removal, abatement and/or disposal of asbestos containing and hazardous materials undertaken by JCI, its employees, agents, representatives or its subcontractors or agents pursuant to this Agreement.

JCI shall coordinate any asbestos/hazardous material testing and sampling with the Customer's Environmental Consultant. All costs associated with such testing/sampling shall be the responsibility of JCI.

12. CHANGE ORDERS. 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 written agreement of the parties and shall be subject to the availability of funds and written approval of the Board of Education for Customer, the Architect, SED and leasing company, if necessary. Any Change Order will not be considered effective until it is signed by an authorized representative of each party and the Architect. Upon written consent of the Customer, JCI may delay performance of Work subject to the Change Order until adjustments arising out of the Change Order are clarified and agreed upon.

If concealed or unknown conditions are encountered at the project, differing from the conditions represented by Customer in the proposal documents or otherwise disclosed by Customer to JCI prior to the commencement of the Work, price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee, shall be equitably adjusted subject to the availability of funds and written approval of the Board of Education, the Architect and SED.

13. TITLE TO THE EQUIPMENT. Title to all completed or partially completed work at the job site, all materials to be used in connection with the work, and all materials delivered to and/or stored at said job site which are intended to become a part of the completed work covered by this Agreement shall be in the name of the Customer. Notwithstanding the foregoing, and prior to acceptance of the completed work by the Customer, JCI shall be liable for all loss of or damage to said completed work, partially completed work, materials furnished by JCI, and/or materials or equipment furnished by others, the custody of which has been given to JCI, arising from any cause other than those against which the Customer herein undertakes to carry insurance. In the event of loss or damage from cause other than those against which the Customer undertakes to carry insurance, JCI shall replace or repair the said work or materials at its own cost and expense, to the complete satisfaction of the Customer and its Architect.

14. 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; and
- (b) Customer's proper legal, tax, accounting, or credit rating agency treatment relating to this Agreement.

15. INSURANCE.

A. Prior to commencing the Work, JCI shall provide a certificate of insurance with JCI showing the insurance coverage required below, and JCI shall maintain such insurance in full force and effect at all times until the Work and Services have been completed, in the following amounts:

COVERAGES	LIMITS OF LIABILITY
Errors & Omissions Policy	\$5,000,000.00 each claim \$5,000,000.00 aggregate
Workmen's Compensation Insurance or self-insurance, including Employer's Liability	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. 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. \$1,000,000 each accident, disease each employee and disease policy limit
Commercial General Liability Insurance, including Contractual, Premises and Operations, independent Contractors, products and Completed operations, CGL Broad Form Endorsement, Personal Injury, contractual liability, with an endorsement to the effect that	\$5,000,000 per Occurrence \$5,000,000 Aggregate with coverage for sexual misconduct

aggregate limits, in any, shall apply to each location at which the contractor performs work. Policy must include NYS Labor Law 240/241 coverage. Contractor may be required to provide a full and complete copy of the policy to satisfy insurance requirements.

Products – Completed/Operations Personal & Advertising Injury

Fire Damages (any one fire)
Medical Expenses (any one person)

Owners Contractors Protective (OCP) Insurance

\$2,000,000
\$1,000,000

\$100,000
\$10,000

For projects less than or equal to \$1,000,000 and work on 1 story (10 feet) only; \$1 million per occurrence, \$2 million aggregate with the District as the Named Insured.

For projects greater than \$1,000,000 and/or work over 1 story (10 feet); \$2 million per occurrence, \$4 million aggregate with the District as the Named Insured.

For all projects where General Liability, Auto and Umbrella/Excess Coverage is with non-licensed and non-admitted carriers in New York State; \$2 million per occurrence, \$4 million aggregate with the District as the named Insured.

The District will be the Named Insured on OCP Policies. There will be no Additional Insureds on any OCP Policies.

Commercial Automobile Liability Insurance

\$5,000,000 Combined
Single Limit for owned, hired, borrowed and non-owned motor vehicles.

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 over the Auto Liability and General Liability coverages

Installation floater insurance

Amount sufficient to repair or replace the work. The Customer must be listed as a loss payee on this policy.

Asbestos/Lead Abatement/Pollution Liability Insurance

\$2,000,000 per occurrence/ \$2,000,000 aggregate, including products and completed operations. Such insurance shall name the District as an additional insured and include coverage for the subcontractor's operations

including, but not limited to, removal, replacement, enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third party liability claims for bodily injury, property damage and cleanup costs. If a retroactive date is used, it shall predate the inception of the Agreement. If motor vehicles are used for transporting hazardous materials, the Energy Performance Contractor and its environmental subcontractors shall provide pollution liability broadened coverage (ISO endorsement CA 9948 or CA 01 12), as well as proof of MC90. Coverage shall fulfill all requirements set forth herein and shall extend for a period of three (3) years following acceptance by the District of the Certificate of Completion.

\$1,000,000 per occurrence/\$2,000,000 aggregate for the testing and other professional acts of the Contractor performed under the Contract with the District.

Testing Company Errors and Omissions

The above limits may be obtained through primary and excess policies.

Coverages shall be maintained without interruption from the date of commencement of the Work and for three (3) years following the completion of the contract.

- B. The insurance required to be procured by JCI pursuant to paragraph A of this section shall be purchased from and maintained by an insurance carrier licensed and admitted to conduct business in the State of New York, with an A. M. Best rating of "A" or better. The Commercial General Liability and Automobile Liability coverage shall be primary and non-contributory coverage for the Owner, its Board, employees, and volunteers with a waiver of subrogation in favor of the Owner. There will be no coverage restrictions and/or exclusions involving New York State Labor Law statutes or gravity related injuries. No policies containing escape clauses or exclusions contract to the Owner's Interest will be accepted.
- C. JCI must submit the Certificate of Insurance to the Customer for its approval prior to the commencement of any work as well as any endorsement required by this Agreement. A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/15) must be included with the certificates of insurance. For any "Yes" answers on items G through L on this Form-additional details must be provided in writing. Policy exclusions may not be accepted. All insurance coverage to be provided by JCI pursuant to paragraph A of this section shall include a cancellation pursuant to the terms of the policy(ies). Insurance coverage to be provided by the Energy Performance Contractor pursuant to this section shall include a cancellation notice to the District of at least thirty (30) days.
- D. The certificate of insurance must describe the services provided by JCI (e.g., roofing, HVAC work, etc.) that are covered by the liability policies. JCI shall provide a copy of the declaration page of the liability and umbrella/excess policies with a list of endorsements and forms and shall further provide a copy of the policy endorsements and forms. There will be no coverage restrictions and/or exclusions involving New York State Labor Law statutes or gravity related injuries. No policies containing escape clauses or exclusions contrary to the Owner's interests will be accepted.
- E. All commercial general and automobile liability insurance coverage to be provided by JCI shall include the Customer, its Board of Education, employees, authorized volunteers, committee members and student teachers,

and its Architect and Construction Manager as additional insureds on the policy(ies) with respect to operations performed for Customer by or on behalf of JCI. Additionally, the insurance coverage to be provided by JCI pursuant to paragraph A of this section shall state that JCI's coverage shall be the primary coverage for JCI's work. Additional insured status will be provided by both ISO additional insured endorsement CG 2033 and CG 20 37 or equivalent. In the event that any of the insurance coverage to be provided by JCI to the Customer contains a deductible or self-insured retention, JCI shall indemnify and hold the Customer, Architect, Consultant or Sub-Consultants and agents and employees of Customer, Architect, Consultant or Sub-Consultants harmless from the payment of such deductible or self-insured retention, which deductible/self-insured retention shall in all circumstances remain the sole obligation and expense of JCI. JCI shall further indemnify and hold the Customer, Architect, Consultant or Sub-Consultants and agents and employees of Customer, Architect, Consultant or Sub-Consultants harmless from any self-insured retentions.

- F. JCI acknowledges that its failure to obtain or keep current the insurance coverage required by paragraph A of this section shall constitute a material breach of contract and subjects JCI to liability for damages the Customer sustains as a result of such breach. This indemnity obligation is in addition to any other indemnity obligation provided in the Agreement. In addition, JCI shall be responsible for the indemnification to the Customer of any and all costs associated with such lapse in coverage, including but not limited to reasonable attorney's fees.
- G. JCI assumes responsibility for all injury or destruction of JCI's materials, tools, machinery, equipment, appliances, shoring, scaffolding, false and form work, and personal property of JCI's employees. Any policy of insurance secured covering JCI or Subcontractors leased or hired by them and any policy of insurance covering JCI or Subcontractors against physical loss or damage to such property shall include an endorsement waiving the right of subrogation against the Customer for any loss or damage to such property.
- H. The Customer, in its sole discretion, may adjust and settle a loss with JCI's insurance carrier.
- I. JCI waives all rights against the Customer, its board, officers, agents and employees for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any insurance policy procured or other property insurance applicable to JCI's work.
- J. If motor vehicles are used for transporting hazardous materials, shall provide pollution liability broadened coverage (ISO endorsement CA 9948) as well as proof of MC90. Coverage shall fulfill all requirements set forth herein and shall extend for a period of three (3) years following acceptance by the Customer of the Certificate of Completion. In the event that JCI engages an environmental subcontractor for removal, replacement, enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, JCI shall require said environmental subcontractor to provide the hazardous material liability insurance as described herein.
- K. In addition to the coverages required and under the same terms and requirements of such coverages, JCI shall require its environmental subcontractor to provide hazardous material liability insurance as follows: \$2,000,000/each claim/\$2,000,000 aggregate, including products and completed operations. Such insurance shall name the Customer and its Architect as an additional insured and include coverage for the subcontractor's operations including, but not limited to, removal, replacement, enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third party liability claims for bodily injury, property damage and cleanup costs. If a retroactive date is used, it shall predate the inception of the Agreement. If motor vehicles are used for transporting hazardous materials, JCI's environmental subcontractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948) as well as proof of MC90. Coverage shall fulfill all requirements set forth herein and shall extend for a period of three (3) years following acceptance by the Customer of the Certificate of Completion.
- L. Before commencement of its work, JCI shall obtain and pay for such insurance as may be required to comply with the provisions outlined under the Agreement. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment. In addition, all insurance coverage and certificates are subject to the review and approval of the District's insurance carrier. At the District's request, JCI shall provide a copy of the declaration

page of the Commercial General liability and policy with a list of endorsements and forms. If requested, JCI will provide a copy of the Commercial General Liability policy endorsements and forms.

- M. Under no circumstance, shall JCI limit its liability to the amount of its primary general comprehensive policy limits.
- N. Customer is not responsible for any loss or damage whatsoever to property of JCI or JCI's subcontractors, including vandalism.
- O. JCI's subcontractors are subject to the same terms and conditions contained in this Paragraph 15 and all of its subparagraphs; provided that subcontractors shall carry appropriate insurance coverages and limits of liability adjusted to the nature of subcontractors' operations; and provided further that Errors and Omissions coverage may be satisfied by JCI. JCI shall require each of its subcontractors to provide the insurance set forth herein and the same must be submitted to the Customer by Certificate of Insurance for approval prior to the start of any work by any subcontractor. JCI shall require that its subcontractors name the District as an additional insured on all policies in the manner set forth herein. In the event that JCI fails to require its subcontractors to carry such insurance and a claim is made or suffered, JCI shall indemnify, defend, and hold harmless the District, Engineer, Consultants, and Sub-Consultants, Board, officers and their agents and employees 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 in this Agreement, including attachments and appendices.

16. INDEMNIFICATION.

To the fullest extent permitted by applicable Law, JCI agrees to defend, indemnify and hold the District, its Board, officers, employees, agents, representatives and assigns, harmless from and against any and all claims, liabilities, actions, judgments, losses, costs, damages or expenses (including reasonable attorneys' fees) suits, actions or damages ("claims") arising by reason of bodily injury, death or damage to property to the extent caused by the negligence, misconduct or wrongful act of JCI, its officers, agents, subcontractors or employees.

JCI shall indemnify and hold harmless the District, its board, officers, employees, agents, representatives and assigns against any and all claims, actions, damages, liabilities, and expenses, including reasonable attorney's fees as determined by court order, arising out of or related to JCI's obligations under this Agreement for any claims of patent infringement and any claims of construction or materialman's lien made by any subcontractor or materialman.

JCI shall indemnify and hold harmless the District, its board, officers, employees, agents and assigns from and against all claims, actions, damages, liabilities and expenses, including reasonable attorney's fees, arising out of or related to JCI's, its officers, employees, agents, representatives, or its subcontractor's breach of performance of this Agreement.

This paragraph 16 shall survive termination of this Agreement.

17. PAYMENT AND PERFORMANCE BOND.

- A. JCI shall, prior to the commencement of construction, deliver to the Customer Performance and Payment Bonds in a sum equal to the contract amount with sureties licensed by the State of New York and satisfactory to the Customer, conditioned upon the faithful performance by JCI, for the implementation of the Improvement Measures, such bonds to be in such form of AIA Document A312, as modified, and shall contain such provisions as are reasonably satisfactory to the Customer. The Performance and Payments Bonds shall apply only to the Installation Period, as defined in Schedule 2. Such bonds shall not apply to the Assured Performance Guarantee. A rider including the following provisions shall be attached to each Bond:
 - 1. Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Agreement Documents. Such addition, alteration, change, extension of time, or other modification of the Agreement Documents, or a forbearance on the part of either the Customer or JCI to the other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.

2. Surety further agrees that in event of any default by the Customer in the performance of the Customer's obligations to JCI under the Agreement, JCI or Surety shall cause written notice of such default (specifying said default in detail) to be given to the Customer, and the Customer shall have thirty (30) days from time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to Lender and the Customer.
3. Surety shall be liable for the costs of litigation expenses, including but not limited to, reasonable attorneys' fees, as well as reasonable litigation expenses incurred by the District in prosecuting a claim against, or defending a claim by, either JCI or the Surety.

B. In addition to the payment and performance bond described herein, JCI shall deliver to the Customer an Energy Savings Guarantee Bond in an amount equal to 100% of the total cost of the guaranteed savings as set forth in this Agreement. The Energy Savings Guarantee Bond shall be issued for the term of the Guarantee Period as defined in Schedule 2 hereof.

C. If the financial lending institution selected by the District requires a Dual Oblige Rider, such Rider shall be subject to review and approval by the District and its legal counsel. JCI shall undertake all reasonable and necessary efforts to expedite the issuance of said Dual Oblige Rider and the required modifications to said Rider, if any.

18. REVIEW BY THE STATE EDUCATION DEPARTMENT/APPROVAL OF CONTRACT. JCI and Customer acknowledge that this Agreement is subject to 8 NYCRR 155.20 and, as such, requires the approval of the Commissioner of Education of the State of New York. This Agreement shall not be executory until Commissioner's approval is obtained. Upon receiving SED approval and building permits, state aid runs, and all necessary approvals, the cash flow for the Project will be recalculated with any revised energy savings, guaranteed utility rebates, building aid and current interest rates. If the recalculation of cash flow does not yield a positive cash flow for Customer, Customer reserves the right in its sole discretion and without any liability to JCI whatsoever, to terminate this Agreement in its entirety or reduce the scope of the Work as necessary to achieve a positive cash flow for the Customer during the term of the Agreement. Moreover, in the event that building aid for the Project is reduced and/or eliminated or, the necessary approvals referenced herein are not received or are substantially modified, Customer, in its sole discretion and without any liability to JCI whatsoever, shall have the right to terminate the Agreement or to reduce the scope of Work as necessary to achieve a positive cash flow for Customer during the term of the Agreement. Moreover, in the event that it is determined that any ECM included herein is prohibited from being included in the scope of work by SED and/or the Customer, in whole or in part, as a result of any Customer agreement or obligation, or it is determined by the Customer that it is not in its best interest to include any ECM in this project because of any Customer agreement(s) or obligation(s), in whole or in part, Customer, in its sole discretion and without any liability to JCI whatsoever, shall have the right to terminate the Agreement or to reduce the scope of Work as necessary to achieve a positive cash flow for Customer during the term of the Agreement. The Price and Payment Terms set forth at Schedule 4 of this Agreement will be adjusted by Change Order or amendment to this Agreement to reflect any necessary modifications resulting therefrom. Upon request by Customer, JCI will assist Customer in obtaining additional aid for the Project which may include SED building aid and/or rebates.

Prior to SED approval, it shall be JCI's sole responsibility to validate each Improvement Measure with Customer and gain the final approval of the savings outlined in Schedule 2. This process may include the providing of mock-ups and/or site visits as well as delivering additional presentations if necessary. Without final Customer approval of Schedule 2 and any requested mock-ups, this Agreement shall not be executory. JCI agrees to cooperate with Customer in obtaining necessary approvals, including approval by the Commissioner of Education. This shall include providing the certifications pursuant to 155.20 (d) (7) (ii), (iii) and (iv) of the Regulations of the Commissioner of Education. Notwithstanding the above, should any portion of this Agreement fail to be approved by SED, or, if the Scope of Work contained in this Agreement is not approved by SED in its entirety, Customer may, in its sole discretion, elect to terminate this Agreement. JCI shall have no remedy at law or in equity for such termination or for any costs incurred by JCI up to the effective date of termination.

In addition to the Customer's right to reduce the scope of work as set forth in this Section 18 and Section 19 herein or Customer's right to terminate this Agreement as described herein, the Customer further reserves the

right, in its sole discretion and without any liability to JCI whatsoever, to reduce the scope of work if the Customer determines that any ECM, or portion thereof, is no longer necessary or if any ECM, or portion thereof, is undertaken by the Customer as part of a capital improvement project or bond referendum project. JCI shall schedule its work with the Customer's Architect and shall be responsible for coordinating its work with any capital improvements undertaken at the District.

19. **CASH FLOW STATEMENTS.** It is understood and agreed that, at all times during the Guarantee Period, the annual savings set forth in the cash flow statements must remain positive. JCI shall provide the District with the required cash flow statements as set forth herein. Such cash flow statements shall be appended to this Agreement. The cash flow statement shall list the guaranteed rebates. All rebates shall inure to and be payable to the District. In addition, JCI shall provide the District with revised cash flow statements at the following intervals: (1) upon the New York State Education Department's approval of the Agreement and any amendment between the parties; (2) upon issuance of the State Aid report identifying the aid that will be allocated for the project; (3) upon receipt of any utility rebate or incentive; (4) upon the District's finalization of its financing of the project (the "Financing Period"); (5) prior to the commencement of any work under the Agreement and any amendments; and (6) at any other time as may be requested by the District. All revised cash flow statements shall be attached and become part of the contract documents. If the Project does not yield a positive cash flow to the District for any year of the contract term (as identified by the cash flow statements provided during the Financing Period), the District shall be permitted to reduce the scope of the Project without liability of any type so as to achieve a positive cash flow in each year of the contract term. The Project shall not commence until the District provides its written acceptance of the final cash flow statement, which must include the eligible building aid for the Project as provided by the New York State Education Department in writing and the applicable interest rate for the Project. Under no circumstance, shall the Project commence without written authorization from the District approving the final cash flow statement for the Project. In the event that JCI commences without written approval of the final cash flow statement, JCI shall be liable for any negative cash flow of the District for the entire term of the Agreement and for any other loss incurred by the District resulting from its failure to produce a positive cash flow for each year of the Project.
20. **CORRESPONDENCE.** JCI shall provide copies of all correspondence and/or other communications by and/or between it, the Architect, Consultants and/or the New York State Education Department contemporaneously with its transmission or receipt of such communications. JCI shall be responsible for assuring that the District received the transmittals and correspondence, maintaining all correspondence and turning over the same after project completion.
21. **FORCE MAJEURE.** Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence of that party. Such conditions (each, a "Force Majeure") include, but are not limited to: acts of God; acts of government officials or agencies; quarantine restrictions; pandemics; fires; explosions or other casualties; riots or war; acts of terrorism; electrical power outages; or interruptions or degradations in telecommunications, computer, or electronic communications systems.
22. **JCI'S PROPERTY.** Except as set forth in Schedule 1 – Scope of Work regarding materials to be furnished or installed as part of the Work, all materials and tools used by JCI personnel and/or JCI subcontractors or agents at the installation site, including documentation, schematics, test equipment, software and associated media, remain the exclusive property of JCI or such other third party. Customer agrees not to use such materials for any purpose at any time without the express authorization of JCI. Customer agrees to allow JCI personnel and/or JCI subcontractors or agents to retrieve and to remove all such materials remaining after installation or maintenance operations have been completed upon appointment during normal business hours. 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.
23. **GOVERNING LAW.** The Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to choice of law principles. The parties agree that the sole jurisdiction and venue for actions related to the subject matter hereof shall be the State and U.S. Federal courts in the County of Suffolk, New York. Both parties consent to the jurisdiction of such courts and waive any objections regarding venue in such courts.
24. **MODIFICATIONS.** Additions, deletions, and modifications to this Agreement may be made upon the mutual agreement of the parties in writing.

- 25. TERMINATION.** Customer reserves the right to terminate this Agreement for any reason, or no reason whatsoever, upon thirty (30) days written notice to JCI. In the event of such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all reports and services due to the Customer must be completed by JCI, its employees, and/or agents within thirty (30) days of the termination date. Customer shall pay to JCI all undisputed amounts due for Work satisfactorily completed up to the date of termination.
- 26. WAGE AND HOURS PROVISIONS.** This is a public work contract covered by Article 8 of the Labor Law. Neither JCI's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, JCI and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Accordingly, JCI and each of its subcontractors shall comply with Prevailing Wage Rates as issued by the State of New York Department of Labor for the location and duration of this Project and shall comply with all requirements governing its payments to its employees as set forth in section 220 et. seq. of the New York State Labor Law. JCI must submit the required certified payrolls with its requests for payment. The Customer will not make any payment to JCI unless the completed certified payrolls are submitted to the Customer. JCI further represents and warrants that JCI and its subcontractors are properly registered within the New York State Department of Labor as required by section 220-i of New York Labor Law.
- 27. CONSENTS; APPROVALS; COOPERATION.** Whenever Customer's consent, approval, satisfaction or determination shall be required or permitted under this Agreement, and this Agreement does not expressly state that Customer may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever Customer's cooperation is required by JCI in order to carry out JCI's obligations hereunder, Customer agrees that it shall act in good faith and reasonably in so cooperating with JCI and/or JCI's designated representatives or assignees or subcontractors. Customer shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the performance of the Work or M&V Services.
- 28. 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.
- 29. INDEPENDENT CONTRACTOR.** JCI is an independent contractor in all respects with regard to this Agreement. Nothing contained in this Agreement shall be deemed to create a partnership, joint venture, fiduciary, or similar relationship between the parties. Nothing in this Agreement shall be construed as reserving to Customer any right to exercise any control over or to direct in any respect the conduct or management of business or operations of JCI on the Customer's property. The entire control or direction of such business and operations shall be in and shall remain in JCI, subject only to JCI's performance of its obligations under this Agreement. Neither JCI nor any person performing any duties or engaged in any Work on the Customer's property on behalf of JCI shall be deemed an employee or agent of Customer. Nothing in this Section shall be deemed to be a waiver of the Customer's right to use its property. Customer and JCI are independent of one another and shall have no other relationship relating to or arising out of this Agreement. Neither party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other party.
- 30. NOTICE/SERVICE OF PROCESS.** In addition to the methods of service allowed by the New York State Civil Practice Law & Rules ("CPLR"), the parties hereby consent to service of process upon them by registered or certified mail, return receipt requested. Service hereunder shall be complete upon a party's receipt of process or upon the sending party's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The parties must promptly notify each other, in writing, of each and every change of address to which service of process can be made. Service by a party to the last known address of the other party shall be sufficient.
- 31. COMPLIANCE WITH LAW.** JCI shall comply with and obtain, at its expense, all licenses and permits required by Federal, State and local laws, rules, regulations and ordinances in connection with the installation of the Improvement Measures. To the extent that JCI agrees to perform operations and/or maintenance of specified Improvement Measures or other equipment, it shall comply with and obtain, at its expense, all licenses and

permits which may be required by Federal, state and local laws, rules, regulations and ordinances in connection with the operation and/or maintenance of such specified Improvement Measures. In the event that JCI cannot procure any such license or permit in light of a requirement that Customer is required to do so, Customer will procure the same at JCI's cost and expense. JCI shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (collectively "Laws") in connection with its performance hereunder.

- 32. NON-APPROPRIATION.** Pursuant to New York State Energy Law section 109, et. seq. and 8 N.Y.C.R.R. 155.20, this Agreement shall be executory only to the extent of the monies appropriated and available for the purposes of this Agreement, and no liability on account thereof shall be incurred beyond the amount of such monies. It is understood that neither this Agreement 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 Agreement.
- 33. ASSIGNMENT.** The parties agree not to assign, transfer, convey or sublet or otherwise dispose of this Agreement nor any duties or obligations hereunder or rights, title and interest therein or power to execute such Agreement, to any other person, firm or corporation without the previous consent in writing of the other party; provided, however, that JCI may subcontract any portion of the Work to be performed hereunder in accordance with the provisions set forth herein. JCI may not assign any monies due or to become due to it pursuant to its Agreement with Customer without Customer's prior written consent. Any such assignment shall be in a form acceptable to Customer and the financial lending institution selected by the Customer, if necessary. If JCI attempts to make such an assignment without such consent from Customer, JCI shall nevertheless remain legally responsible for all obligations under its Agreement with Customer.
- 34. SUBCONTRACTING.** JCI shall provide the Customer with a list of subcontractors that it proposes to use in meeting its obligations hereunder; however, all subcontractors must be approved by Customer in writing and in advance. JCI shall meet with the Customer and its Architect to review the list of proposed subcontractors before any work commences. Customer shall have the right to reject the use of any subcontractor in its sole discretion. Subcontractors will not be acceptable unless evidence is furnished that the proposed subcontractor has satisfactorily completed similar subcontracts as contemplated under this Agreement, and has the necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent of this Agreement. JCI and its subcontractors will be required to wear photo identification and yellow safety vests at all times while on Customer's property. JCI and its subcontractors as necessary shall attend any meetings when reasonably required during the construction of the Project. By appropriate agreement, JCI shall require each subcontractor to be bound to JCI by the terms of this Agreement and shall further require its subcontractors to procure the required insurance as set forth herein at paragraph 15.
- 35. NOTIFICATIONS OF GOVERNMENTAL ACTION - Occupational Safety and Health.** The parties agree to notify each other as promptly as is reasonably possible upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of Federal, state or local codes, laws, rule or regulation relating in any way to the undertakings of either Party under this Agreement. JCI represents and warrants that it will meet all applicable OSHA requirements applicable to this Agreement, including any required certification and training requirements for its employees and its subcontractors.
- 36. TRAINING.** JCI shall provide adequate training to Customer's employees to allow Customer or its employees to have sufficient knowledge with respect to the proper use and operation of the equipment and ECMs.
- 37. WAIVER.** The failure of either party to require compliance with any provision of this Agreement shall not affect that party's right to later enforce the same. It is agreed that the waiver by either party of performance of any other terms of this Agreement or of any breach thereof will not be held or deemed to be a waiver by that party of any subsequent failure to perform the same or any other term or condition of this Agreement or any breach thereof.
- 38. NON-DISCRIMINATION.** JCI agrees not to discriminate against any employee, or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics or marital status in accordance with applicable Federal, New York State or local laws, rules, and ordinances.

- 39. INTERNATIONAL BOYCOTT.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Agreement exceeds \$5,000, JCI, as a material condition of the Agreement, represents that neither JCI nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If JCI, or any of the aforesaid affiliates of JCI, is convicted or is otherwise found to have violated said laws or regulations under the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contractor's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. JCI shall so notify Customer within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).
- 40. NON-COLLUSION.** JCI warrants, under penalty of perjury, that its proposal was arrived at independently and without collusion aimed at restricting competition. JCI further warrants that at the time it submitted its response to the Customer's RFP an authorized and responsible person executed and delivered to the Customer a valid non-collusive, certification on JCI's behalf.
- 41. SET OFF RIGHTS.** Customer shall have all of its common law, equitable and statutory rights of setoff. These rights shall include, but not be limited to, Customer's option to withhold for the purposes of set-off any moneys due to JCI under this Agreement up to any amounts due and owing to Customer with regard to this Agreement, any other contract with Customer, including any contract for a term commencing prior to the term of this Agreement, plus any amounts due and owing to Customer for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. Customer shall exercise its set-off rights in accordance with normal Customer practices including, in cases of set-off pursuant to an audit, the finalization of such Customer audit by a State agency, its representatives, or the State Comptroller.
- 42. BOOKS; RECORDS.** JCI shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Agreement (hereinafter, collectively the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter or such longer period as may be required by applicable Law. The State Comptroller, the Attorney General, the Commissioner of Education, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Agreement, shall have access to the Records during normal business hours at an office of JCI within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. Customer shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) JCI shall timely inform an appropriate Customer official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, either party's right to discovery in any pending or future litigation.
- 43. THIRD PARTY BENEFICIARIES.** This Agreement does not create, and shall not be construed as creating, any rights or interests enforceable by any person not a party to this Agreement.
- 44. CUSTOMER POLICIES.** It is understood and agreed that JCI, its employees, agents, subcontractors and employees of such agents and subcontractors, shall adhere to Customer's policies with respect to conduct on the Customer's property as well as any and all Federal, State, and local laws, rules, ordinances, regulations, General Conditions, Customer's policies and procedures applicable to construction projects on Customer's premises, to the extent such policies are provided to JCI in writing.
- 45. 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, except as provided in Section 32 hereof.
- 46. 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.

47. **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. In the event that any of the terms of this Agreement, any schedule, attachment or appendix hereto, except for those terms of Attachment 6 which do not apply to JCI, and except for any scope of work provisions in the RFP, conflict with one another or with the terms of the Customer's RFP for District-wide implementation of Energy Conservation Measures on a Performance Contracting basis, the terms more favorable to Customer shall prevail. Notwithstanding anything to the contrary contained in the RFP or any of the other attachments or appendices hereto, there is no third-party construction manager required at this time. 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.
48. **HEADINGS.** The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.
49. **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.
50. **NOTICES.** All notices or communications related to this Agreement shall be in writing and shall be deemed served if and when mailed by certified or registered mail: to Johnson Controls, Inc. at the address listed on the first page of this Agreement, ATTN: Regional Area General Manager, Performance Infrastructure, with a copy to Johnson Controls, Inc., ATTN: General Counsel – Building Solutions, North America, 5757 North Green Bay Avenue, Milwaukee Wisconsin 53201; and to Customer by mail or certified mail at the address listed on the first page of this Agreement, addressed to the attention of the Superintendent of Schools.
51. **EXECUTION.** A copy of a signature on a facsimile and/or electronic transmission of this Agreement shall have the same force and effect as if it were an original signature.

IN WITNESS WHEREOF, the duly authorized officers or representatives of the Parties have set their hand on the date first written above with the intent to be legally bound.

Northport-East Northport Union Free School District

Johnson Controls, Inc.

Signature: Carol Taylor

Signature: D. F. Arells

Printed Name: Carol Taylor

Printed Name: David F. Arells

Title: President, Board of Education

Title: Area General Mgr

Date: _____

Date: Sept 15, 2025