

19-0760



**Performance Contracting**  
**Project Development Agreement – Phase 2 Between**

City of La Crosse, WI  
400 La Crosse St  
La Crosse, WI 54601

AND

Johnson Controls, Inc.  
12000 W Wirth St #102  
Wauwatosa, WI 53222

The purpose of this Project Development Agreement (PDA) is to confirm the intent of Johnson Controls, Inc. (JCI) and the City of La Crosse, WI (Client) to develop a Performance Contract. This agreement will provide the basis for the obligations of both parties, the financial metrics to be met (if any) and intended outcomes and timeline. JCI and the Client agree as follows:

1. **Evaluation Study**

JCI agrees to undertake a detailed evaluation of implementing photovoltaic (PV) power generation to Client facilities and infrastructures. **This Phase 2 will include the following city facilities: City Hall, Municipal Service Center, La Crosse Center, and the main Library.** The Client agrees to provide its complete cooperation in the conduct and completion of project development. If requested, JCI will amend this agreement to also include evaluation of recommendations regarding Smart City solutions.

At a minimum, the work will include:

- Establish base year energy consumption (energy measurements)
- Design of new systems, equipment and implementation
- Detailed Scope of Work, equipment sizing, schematics for Johnson Controls managed RFP's for equipment and install
- Project cost breakdowns
- Calculate energy and operational savings and deferred maintenance
- Customer Solution Modeler tool to choose BIMs interactively
- Available incentives and grants – FOE, PSC
- Financial, legal and measurement & verification workshops
- A comprehensive plan for the ongoing support services, education and training for staff and consumers.
- Cost and description of ongoing services provided by JCI and jointly developed with the Client to maintain equipment and systems installed by JCI.
- Financial impact projection.

2. Records and Data

During the evaluation study, the Client will furnish to JCI upon its request, accurate and complete data concerning current costs, budgets, facilities requirements, future projected loads, and facility operating requirements. JCI will provide a separate document outlining the required information and the Client shall make every effort to provide that information within five days of request.

3. Preparation of Performance Contracting Project Agreement

Within thirty (30) days after the submission to the Client of the report described under paragraph 1 of this Agreement, JCI will prepare and submit to the Client a Performance Contracting Project Agreement to implement the improvements and operational efficiency measures, procedures, and services identified in the report that could reduce the Client's overall operating expense and improve operating conditions in the system. This Performance Contracting Project Agreement shall be prepared on standard JCI contract forms, copies of which will be made available to the Client. The Performance Contracting Project Agreement shall provide a written savings guarantee in accordance with the enabling legislation.

4. Price and Payment Terms

The Client agrees to pay to JCI the sum of \$39,500 within sixty (60) days after the Client has received the documentation described under paragraph 1 of this Agreement. However, the Client will have no obligation to pay this amount if the following condition is met:

JCI and the Client agree to enter into the implementation Agreement as outlined in Section 3 within sixty (60) days after the Client has received the documentation described under paragraph 1 of this Agreement. The costs for the Study will be transferred to the total cost of the implementation Contract and shall be subject to the payment terms outlined in the Contract.

5. Implementation Schedule

It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others under their direction to work diligently toward meeting the following timeline:

Commence detailed evaluation study	June 14, 2019
JCI obtains pertinent Client documents and data	June 14, 2019
JCI and Client conduct regular weekly update meetings	Ongoing
JCI and Client conduct legal, financial and M&V workshops	July 15, 2019
Client and JCI conduct monthly update meetings with Board/Council	Ongoing
Complete detailed evaluation study and present to Client	August 15, 2019
Finalize performance contract with Client	August 30, 2019
Client approves and executes performance contract with JCI	September 15, 2019
Commence implementation of performance contract	September 2019

These timeframes are preliminary and may be modified by subsequent work plans approved by the parties.

6. Disputes

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at the time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine (9) months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the parties. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter.

7. Confidentiality

JCI shall coordinate its services only through designated Client representatives and shall provide information regarding this project to only those persons approved by the Client. JCI will be notified in writing of any changes regarding the designated Client representative(s).

8. Miscellaneous Provisions

This Agreement cannot be assigned by either party without the prior written consent of the other party. This Agreement is the entire Agreement between JCI and the Client and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the Client. Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement. Client's terms and conditions (STANDARD TERMS AND CONDITIONS (Service Contracts) – October 2018) are incorporated into this PDA.

This document represents the business intent of both parties and should be executed by the parties who would ultimately be signatory to a final agreement.

JOHNSON CONTROLS, INC.	CITY OF LA CROSSE, WI
By <i>Joseph Boetsch</i>	By <i>TIMOTHY KAPPA</i>
Signature <i>[Signature]</i>	Signature <i>[Signature]</i>
Title <i>Area General Manager</i>	Title <i>MAYOR</i>
Date <i>8/19/19</i>	Date <i>JULY 30, 2019</i>