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**PROJECT DEVELOPMENT AGREEMENT  
BETWEEN**

**City of Coalinga  
155 West Durian Ave.  
Coalinga, CA 93210**

**AND**

**Johnson Controls  
3451 West Ashlan Ave.  
Fresno, CA 93722**

The purpose of this Project Development Agreement ("PDA") is to confirm the intent of the City of Coalinga ("Customer") to select Johnson Controls ("JCI") to develop an Energy Services Project pursuant to California Government Code 4217.10-4217.18. Subject to the City securing the required land at the water filtration plant, this PDA will provide the basis of the scope, schedule, and deliverables of the PDA as well as the obligations of both parties, and the financial criteria representing the intended outcome of the project.

**1. Scope of Services**

The scope of services of this PDA shall include:

- a. Project development, including engineering cost and savings estimates, the following facility Improvement measures (FIMs):
  - i. Water Filtration Plant Solar PV
  - ii. Wastewater Treatment Plant Solar PV
  - iii. Battery Energy Storage and/or Back up Generation to increase the resiliency of the Water Filtration Plant
- b. JCI will provide the following additional services associated with these FIMs:
  - i. Obtaining from PG&E an interconnection pre-application report for each site (qty. 2)
  - ii. Identification of potential rebates or incentives
  - iii. Project financial analysis
  - iv. JCI will assist and provide financial variables to the City Financial Advisor. An independent financial Proforma will be provided by the City Financial Advisor based on the information provided by JCI.
- c. JCI will provide additional engineering services associated with acquisition of land at the Water Filtration Plant:
  - i. Prepare a Phase 1 Environmental Site Assessment
  - ii. Conduct a Geotechnical Study
  - iii. Prepare Lot Line Adjustment
  - iv. Prepare Annexation Process Discussion with City Planner and County involvement
- d. JCI will provide additional engineering services associated with land at the Wastewater Treatment Plant:
  - i. Prepare a Phase 1 Environmental Site Assessment
  - ii. Conduct a Geotechnical Study

**2. Deliverables**

At the completion of services provided under this Agreement, Johnson Controls shall deliver the following ("Deliverables"):

- a. An Energy Savings Performance Contract (ESPC) which sets forth:
  - i. Scope of Work of the FIMs
  - ii. Guaranteed energy savings and the proposed measurement and verification plan
  - iii. Customer responsibilities
  - iv. Total price of the work

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- b. Input values (FIM costs, savings, etc.) required to develop a pro-forma cash flow projection for the proposed project that meets the financial criteria outlined in this Agreement. The pro-forma cash flow projection will be developed by Customer's municipal financial advisor using these inputs.

### 3. Financial Criteria

For the purpose of clearly defining the project's outcome and for efficiently guiding the effort to provide the services of this PDA, Customer and JCI agree that the Financial Criteria used to evaluate this project shall be as presented in this section. These values may be changed, upon mutual agreement of Customer and JCI, at any time as more accurate information becomes known. However, for the purposes of determining whether or not JCI has met the financial criteria identified in Section 2 "Deliverables", the values indicated herein will be used to make such determination.

- Average annual utility escalation rate is 5%
- Average annual water rate increase be at least of 3% for the first 5 years
- Operational Savings Percentage annual increase of 4%
- Planned Service Agreement (PSA) or Measurement and Verification annual percentage increase of 3%
- Any applicable rebates and grants are estimates and subsequently not guaranteed

The scope of the proposed project shall include the combination of the evaluated Facility Improvement Measures (FIMs) that satisfy, as a combination of FIMs and not necessarily individually, the Financial Criteria most advantageously for Customer. As a result, some FIMs may or may not be developed and some FIMs may or may not be included in the scope of the proposed project.

### 4. 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:

- November 5, 2020                      City to Approve PDA
- December 18, 2020                  25% progress meeting
- January 29, 2021                      75% progress meeting
- February 19, 2021                    90% progress meeting
- March 26, 2021                        JCI to submit Installation Agreement
- May 18, 2021                          City to Approve Installation Agreement

These timeframes may be modified by subsequent work plans approved by all parties.

### 5. Price and Payment Terms

Customer agrees that JCI will incur significant cost by providing the services required by this Project Development Agreement and that all reasonable, actual, project development costs incurred will be included in the Total Price of the Work in the Energy Savings Performance Contract.

However, if JCI proposes a project that meets the Financial Criteria, and the Customer does not enter into the Energy Savings Performance Contract within sixty (60) days after JCI submits the deliverables of this PDA, the Customer shall promptly pay JCI in the amount of **\$148,000** as reasonable compensation for services provided under this PDA.

The Customer shall have no obligation to pay JCI for services performed as part of this Project Development Agreement if:

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1. JCI and the Customer enter into the Energy Savings Performance Contract for the proposed project within 60 days after JCI provides the Deliverables of the PDA; or
  2. JCI is unable to propose a project that meets the financial criteria of this PDA.

## **6. Records and Data**

To enable JCI to fulfill its obligations, **Customer** will furnish to JCI all data, documents, and authorizations requested that are pertinent to the scope of work. JCI will provide a separate document requesting the information and Customer shall make every effort to provide that information within a reasonable time. If the requested information is not provided in a timely manner then JCI shall be allowed to modify the schedule in this agreement.

## **7. Indemnity**

Johnson Controls and Customer agree that the parties shall each be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of the parties, their officers, agents, directors, and employees. To the extent permitted by law, Johnson Controls and Customer agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their officers, agents or employees or any negligent act or omission by their officers, employees or agents.

## **8. 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 may be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at the time, except as modified herein, if the parties elect to at the time the dispute arises. In that event, all disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. 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. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of this dispute.

## **9. Confidentiality**

This agreement creates a confidential relationship between JCI and Customer. Both parties acknowledge that while performing this Agreement, each will have access to confidential information, including, but not limited to, systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development, and other information relating to the other party ("Proprietary Information"). Except as authorized in writing, both parties agree to keep all Proprietary Information confidential. JCI may only make copies of Proprietary Information necessary for performing its services. Upon cessation of services, termination, or expiration of this Agreement, or upon either party's request, whichever is earlier, both parties will return all such information and all documents, data and other materials in their control that contain or relate to such Proprietary Information.

JCI and City understand that this is a confidential project and agree to keep and maintain confidentiality regarding its undertaking of this project. JCI shall coordinate its services only through the designated Customer representative and shall provide information regarding this project to only those persons approved by Customer. JCI will be notified in writing of any changes in the designated Customer representative.

Notwithstanding the foregoing confidentiality provisions, JCI acknowledges that the City is a California municipality and is subject to the California Public Records Act as found under the California Government Code Section 6250 et seq. City shall provide JCI no less than six (6) days' prior written notice of City's intent to disclose any of JCI's Proprietary Information pursuant to a request for disclosure and/or copying under the California Public Records Act. If JCI disagrees

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with City's decision to disclose JCI's Proprietary Information, JCI will respond in writing within forty-eight (48) hours of receipt of such written notice from the City informing the City of JCI's course of action including, but not limited to, seeking a protective order. If JCI fails to initiate seeking a protective order within two days of City's receipt of JCI's notification to City, City shall be permitted to comply with the demand to disclose the Proprietary Information. If JCI does initiate seeking such a protective order, the City shall cooperate with, and shall not oppose, JCI in obtaining such protective order, provided, however, that JCI agrees to assume all out-of-pocket legal costs related to the matter incurred by the City including, but not limited to, any reasonable attorney's fees. So long as the City complies with the provisions of notification set forth in this section, the City shall not be liable for, and JCI hereby releases City from, any liability for any damages arising from any release of Proprietary Information to a requestor of such information, and such release includes the representation of the City.

## **10. 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 Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the Customer. 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.

This Agreement and all matters arising out of or relating to it shall be governed by and construed in accordance with the laws of the State of California. The parties hereby irrevocably consent to the jurisdiction of the state courts located in Fresno County, California, in any action arising out of or relating to this Agreement, and waive any other venue to which either party might be entitled by domicile or otherwise.

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reimbursement for all out-of-pocket costs and expenses, including without limitation, reasonable attorney's fees.

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force and effect and are not affected or impaired in any way.

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency, employment, or fiduciary relationship or partnership between the parties or to impose any such obligation or liability upon either party. Neither party shall have any right, power of authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other party.

Without limiting the generality of the foregoing paragraph, neither this Agreement, nor any duties or obligations under this Agreement, nor the intentions or expectations of either party shall create an employment relationship between City and JCI for any purpose. JCI shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City. JCI shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by JCI are employees, agents, contractors or subcontractors of JCI and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against JCI by any such employees, agents, contractors or subcontractors, or any other person, resulting from performance of this Agreement.

This Agreement does not and is not intended to confer any rights or remedies upon any party other than the parties to this Agreement.

This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

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All notices required or permitted under this Agreement shall be in writing and shall be deemed given on the date sent if delivered by hand or by email with an attachment in a portable document format (.pdf) or similar file format, on the next business day if sent by overnight courier, or on the third business day if sent by United States mail, postage prepaid, to each party at its address shown on Page 1 of this Agreement (or at such other address as a party may specify by notice under this section.

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 Coalinga**

By: Scott Avirett

By: Marissa Trejo

Signature: Scott Avirett

Signature: \_\_\_\_\_

Title: Area General Manager, West Region

Title: City Manager

Date: 10/7/2020

Date: \_\_\_\_\_