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AGREEMENT

THIS AGREEMENT made by and between the Osceola County Board of County Commissioners, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and Johnson Controls, Inc., hereinafter referred to as "JCI"as evidenced by the signatures affixed below.

WITNESSETH:

WHEREAS, the COUNTY issued an Request for Proposal (RFP#00-135-RP) to select a qualified energy service company to monitor the current energy performance of selected County owned facilities and evaluate the performance of same; and

WHEREAS, on _________, 2001, at its regularly scheduled meeting, the Osceola County Board of County Commissioners duly awarded negotiating rights to JCI in connection with RFP#00-135-RP; and

WHEREAS, JCI is willing and able to provide and perform all such professional services in accordance with the provisions, conditions and terms hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree that a Contract shall hereby exist between the parties and consist of the following:

1. SCOPE OF SERVICES

JCI shall evaluate and monitor the current energy performance of those County facilities more particularly described in Exhibit "A," attached hereto and made part hereof, in accordance with the standards set forth in the Scope of Investment Grade Energy Audit and Report attached hereto as Exhibit "B," and made part hereof. (Thoughout Exhibit "B," JCI is referred to as ESCO.)

2. TERM

The term of this agreement shall commence with the date same is executed by the parties hereto and shall expire upon the execution of an Energy Performance Agreement, between the parties, or three (3) years after execution, which ever comes first.

3. NOTICE TO PROCEED

A written Notice to Proceed (NTP) will be issued, by the COUNTY, following the execution of this Agreement. JCI shall only be authorized to commence work after issuance of said NTP. Thereafter, JCI shall commence work promptly and shall carry out all such services as may be required hereunder in a continuous, diligent and forthright manner.

4. PAYMENT TERMS

Upon receipt of the report generated by JCI, pursuant to Section 1 of this agreement, the County shall pay JCI $25,000.00, in accordance with the Prompt Payment Act, Florida Statute, Section 218.70. If the parties hereto reach an agreement regarding use of the energy performance strategies, proposed by JCI, the amount due in connection with this agreement shall become void and the new agreement, between the parties, will reflect the cost of any and all services performed or to be performed by JCI.

JCI warrants that no individual, corporation, partnership, or the like, has been employed or retained to solicit or secure this Agreement for a commission, percentage, brokerage fee or contingent fee, except for bona fide employees or bona fide companies engaged by JCI for the purpose of securing business. Upon breach of this warranty, the COUNTY shall, in its sole discretion, have the right to terminate this Agreement, without any obligation to pay the above stated payment amount to JCI or to negotiate an Energy Performance Agreement with JCI. Should the COUNTY decide not to terminate this Agreement, it may deduct said commission, percentage, brokerage fee or contingent fee from the above stated payment amount.

5. ENERGY PERFORMANCE AGREEMENT

If the County determines that utilization of the energy performance recommendations, made by JCI, will be advantageous to the County, the parties hereto shall negotiate, in good faith, the terms of an Energy Performance Agreement. If the parties are unable to successfully negotiate such an agreement, the County will be responsible for paying JCI the amount specified in Section 3 of this agreement. In addition to successful negotiations, the execution of an Energy Performance Agreement, between the parties, shall be subject to County fund availability.

6. INDEPENDENT CONTRACTOR/LICENSES

JCI will perform all services, required by this agreement, as an independent contractor and not as an employee or agent of the COUNTY. JCI further agrees to obtain and maintain, throughout the term of this Agreement, and any amendments hereto, all licenses as required to do business in the State of Florida and the County of Osceola, including, but not limited to, licenses required by any State Boards, or other governmental agencies, responsible for regulating and licensing the professional services provided and performed by JCI pursuant to this Agreement.

7. STANDARD OF SERVICE

JCI agrees to provide and perform the services set forth in this Agreement, or any

Amendments hereto, in a professional manner, according to industry standards, and in accordance

with the laws, statutes, ordinances, codes, rules, regulations and policies, of any governmental agencies which may regulate, or have jurisdiction over the professional services to be provided and/or performed by JCI, pursuant to this Agreement.

8. INSURANCE

(1) JCI shall not commence any work, in connection with this Agreement, until it has obtained the types of insurance as specified hereunder, and such insurance has been approved by the County's Risk Management Department. JCI shall maintain in full force and effect, throughout the term of this Agreement and all extensions hereof, a policy, of comprehensive general liability insurance, with a company duly authorized to engage in the business of issuing such a policy in Florida, in the amount of at least $1,000,000.00 per occurrence with $2,000,000.00 aggregate, which names the COUNTY as a co-insured. Said policy shall cover any losses and claims occurring or arising in the installation, maintenance, and/or operation of the shelters constructed hereunder.

(2) JCI shall take out and maintain during the life of this Agreement and all extensions hereof, Workers' Compensation Insurance, for all of it's employees, performing work, pursuant to this Agreement and in case any work is sub-let, JCI shall require any and all subcontractors to provide Worker's Compensation Insurance, for all of their employees, unless such employees are protected under the coverage provided by JCI. Such insurance shall comply fully with Florida Workers' Compensation Law. Throughout the term of this Agreement and any amendments hereto, JCI shall supply the COUNTY with appropriate insurance certificates. The COUNTY may, at any time, and from time to time, request from JCI, assurances in the form of a certificate from the insurer, that such insurance policy is in effect. JCI shall appropriately respond within ten (10) calendar days from receipt of such request. The COUNTY shall be exempt from, and in no way, liable for any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of JCI and/or and sub-contractor providing such insurance.

9. INDEMNIFICATION

(1) JCI agrees to be liable for any and all damages, losses, and expenses incurred, by the COUNTY, caused by errors, omissions, negligence, and/or delay(s) of JCI, or any of its employees, agents, sub-contractors or the like, while performing and furnishing services, as required under this Agreement, or any Amendments hereto.

(2) JCI agrees to indemnify, defend and hold the COUNTY harmless for any and all claims, suits, judgments or damages, losses and expenses, including but not limited to, court costs, expert witnesses, consultation services, and attorney's fees, caused by any errors, omissions, negligence, and/or delay(s), of JCI, or any of its employees, agents, sub-contractors or the like, while performing services, as required under this Agreement, or any Amendments hereto.

10. ASSIGNMENT

JCI shall not assign or transfer any of its rights, benefits or obligations set forth hereunder. Nor, shall JCI sub-contract any of its service obligations hereunder, to third parties, without prior written approval of the COUNTY. Such approval shall not be unreasonably withheld; however, the COUNTY shall have the right to withhold approval without cause.

11. CONFLICT OF INTEREST

JCI represents that it presently does not have an interest, and shall not acquire an interest, either directly or indirectly, which would cause a conflict, in any manner, with its performance of the services required hereunder. JCI further represents that it shall not employ, or otherwise engage, an individual having any such conflict of interest, for performance of the services required hereunder.

12. TERMINATION

This Agreement may be terminated, by the COUNTY or JCI, with or without cause, given thirty (30) days, written notice, to the other party, as required under the Notice provision of this Agreement. If JCI is adjudged bankrupt or insolvent, if it makes a general assignment for the benefit of its creditors, if a trustee or receiver is appointed for JCI or for any of its property or if it files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or other similar laws, the COUNTY may, without prejudice to any other right or remedy, and after giving JCI written notice, terminate this Agreement without any further obligation to the COUNTY.

13. APPLICABLE LAW AND VENUE

This Agreement shall be governed by the Ordinances of Osceola County, the laws, rules, and
regulations of the State of Florida, both procedural and substantive, along with any applicable Federal statutes, rules and/or regulations. The venue for any and all litigation, arising under this Agreement, shall lie in Osceola County, Florida.

14. REMEDIES

Any remedy, herein conferred upon any party, is not intended to be a waiver of any other remedy and each remedy shall be in addition to every remedy given hereunder or at law, in equity, by statute or otherwise. A single or partial exercise of any right, power, or remedy hereunder, by any party, shall not preclude any other party from the further exercise thereof.

15. WAIVER

Waiver by the COUNTY, of a breach of any provision of this Agreement, by JCI, shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

16. MAINTENANCE OF RECORDS

JCI shall maintain adequate records, and supporting documentation, applicable to all services, work, information, expenses, costs, invoices and materials, provided and performed, pursuant to the requirements of this Agreement. JCI must include these record keeping requirements in any of the contracts, it enters into, with any party providing services pursuant to this Agreement. Said records and documentation shall be retained by JCI for a minimum of three (3) years from the date of natural expiration or termination of this Agreement.

The COUNTY and its authorized agents shall, after providing reasonable notice, have the right to audit, inspect and copy all such records and documentation, as often as the COUNTY deems necessary, during the term of this Agreement, and during the three (3), year period thereafter, as required above, provided that such activity is conducted during normal business hours and at the expense of the COUNTY.

The COUNTY may use any and all information contained in the report generated by JCI, in accordance with Section 1 of this agreement, or any other information obtained from JCI, while performing its duties hereunder, in any manner which it deems to be in the best interest of the County and not inconsistent with Florida Law.

17. HEADINGS

The HEADINGS of any Articles, Sections, and/or Attachments, to this Agreement, are for convenience only and shall not be deemed to expand, limit or change any of the provisions contained herein.

18. ENTIRE AGREEMENT

This Agreement, including all attachments hereto, constitutes the entire agreement between the parties and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force and effect, whatsoever, on this Agreement.

19. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Agreement, is for any reason held invalid or unconstitutional, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

20. NOTICE AND ADDRESS OF RECORD

All notice, pursuant to this Agreement, shall be made in writing and shall be delivered through the United States Postal Service, first class mail, postage prepaid and addressed to the following addresses of record:

To the County: David Peach, Facilities Management Director
1 Courthouse Square
Kissimmee, Florida 34741

To JCI: Johnson Controls Inc.
4433 Parkbreeze Ct.
Orlando, FL 32808

Either party may change it's address of record, at any time, by written notice to the other party given in accordance with the requirements as set forth above.

21. AMENDMENTS

The covenants, terms, and provisions contained herein may be amended, altered and/or modified upon express written consent of the parties hereto. In the event of conflict between the covenants, terms, and/or provisions hereof, and any amendment(s) hereto, the latest executed amendment(s) shall take precedent.

22. ADMINISTRATIVE PROVISIONS

In the event the COUNTY issues a memorandum, letter, or other instrument, addressing the services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such a memorandum, letter or other instrument is for the COUNTY'S internal purposes only, and any and all terms, provisions, and conditions contained therein, shall in no way modify the covenants, terms and provisions of this Agreement, or any amendments hereto, and shall have no force and effect hereon.

23. ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties hereto, in the space provided, and be attested to as indicated hereafter.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective this _____ day of ______________, 2000.

OSCEOLA COUNTY, FLORIDA
Board of County Commissioners

By:______________________________ ______________________________
Chairman Date

ATTEST:

____
Clerk to the Board

JOHNSON CONTROLS, INC.

By:______________________________ ______________________________
Print:______________________________ Date
Title:______________________________

ATTEST:

____
Print:______________________________
Title:______________________________

EXHIBIT "A"
COUNTY FACILITIES

	Building	SF	
1.	Public Safety - Beaumont	10,000	
2.	Property Appraiser - Beaumont	14,200	
3.	Tax Collector's Office - Beaumont	13,300	
4.	Maintenance Shop - 2000sf under air		5,000
5.	Security - Beaumont	900	
6.	Probation Department - Drury Ave	10,000	
7.	Community Action - Romar Bldg.	4,000	
8.	Supervisor of Elections - Beaumont	9,450	
9.	Council on Aging	13,461	
10.	Sheriff's Station - Pleasant Hill Rd.	6,000	
11.	Record's Retention - Oakbridge	12,000	
12.	West 192 Sheriff Substation - Kissimmee	1,707	
13.	Simpson Road Complex - (Note 1)	293,627 *	
14.	N. Poinciana Sheriff's Substation	5,000	
15.	Road & Bridge - Kissimmee	3,440	
16.	Mosquito Control - St. Cloud	1,125	
17.	Central Library - Kissimmee	42,000	
18.	BVL Library - Kissimmee	12,162	
19.	St. Cloud Library	17,643	
20.	Poinciana Library	11,864	
21.	O-Pass / Osceola Parkway - Kissimmee	4,605	
22.	Animal Control - St. Cloud	21,800	
23.	Children's Home - Kissimmee	12,925	
24.	Child Development Center - Kissimmee	5,000	
25.	Station #10 - Holopaw VFD	2,828	
26.	Station #11 - Kissimmee Heights VFD	8,000	
27.	Station #21 - Campbell City VFD	6,000	
28.	Station #31 - Intercession City VFD	1,100	
29.	Station #40 - Pleasant Hill Rd. Const. Trlr.	1,150	
30.	Station #41 - Poinciana VFD	5,960	
31.	Station #51 - Deer Run VFD	6,100	
32.	Station #61 - Kings Point VFD	2,277	
33.	Station #62 - Shady Land VFD	3,200	
34.	Station #71 - Narcoossee VFD	1,250	
35.	Station #81 - Pine Grove Park VFD	3,200	
36.	Station #90 - Kenansville VFD	1,980	
37.	Station #91 - Yeehaw Junction VFD	2,430	
38.	Station #92 - Poinciana Blvd. - Kissimmee	16,544	
39.	Station #93 - West 192 - Kissimmee	6,000	
40.	Station #94 - Celebration	14,000	
	Total	**613,228**	**SF**

* Note 1 - Includes chillers and boilers; excludes remaining HVAC equipment.

EXHIBIT "B"

SCOPE OF INVESTMENT GRADE ENERGY AUDIT AND REPORT.

The ESCO will perform an Investment Grade Energy Audit and prepare a detailed engineering and economic report (the "Report") which specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Facilities. The Report shall contain detailed projections of energy and cost savings to be obtained at the Facilities as a result of the installation of the recommended energy conservation measures (ECMs). The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facilities which shall include but not be limited to using the accurate marginal cost for each unit of savings at the time the audit is performed; documented material and operational costs actually avoided; adjustments to the baseline to reflect current conditions at the Facilities compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs; etc. The Report shall clearly describe how utility rates were used to calculate savings for all ECMs. The Report shall describe the ESCO's plan for installing or implementing the measures in the Facilities, including all anticipated costs associated with such installation and implementation. The primary purpose of the Report is to provide an engineering and economic basis for negotiating the County-wide energy performance contract between the County and the ESCO; however, the County shall be under no obligation to negotiate such a contract.

The ESCO shall perform the following tasks in performing the Energy Audit and preparing the Report:

A. Collect General Facilities Information

The ESCO shall collect general Facilities information such as: size, age, construction type, condition and general use of the Facilities. The ESCO shall also collect and summarize Facilities utility cost and consumption data for the most recent 36-month period, providing said data is available. The ESCO shall evaluate the impact on utility cost and consumption of any energy initiatives, currently being installed or currently contemplated to be installed by the County in the Facilities, which will remain separate from the County-wide energy performance contract throughout the duration of that contract.

The County shall furnish (or cause its energy suppliers to furnish) all available records and data concerning energy and water usage for the Facilities for the most current 36 month period, if available, including: Utility records; occupancy information; descriptions of any changes in the structure of the Facilities or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facilities; any comfort problems, and a description of current energy management procedures. The County may also furnish a record of any energy related improvements or modifications that have been installed during the past three years, or are currently being installed or are currently contemplated to be installed by the County in the Facilities separate from the County-wide energy performance contract throughout the duration of that contract. The County shall also provide copies of drawings, equipment logs and maintenance work orders to the ESCO.

B. Analyze Existing Systems and Equipment

The ESCO shall compile an analysis based on a physical inspection of the major electrical and mechanical systems at the Facilities, including:

Cooling systems and related equipment
Heating and heat distribution systems
Automatic temperature control systems and equipment
Air distribution systems and equipment
Outdoor ventilation systems and equipment
Kitchen and associated dining room equipment, if applicable
Exhaust systems and equipment
Hot water systems
Electric motors 5 HP and above, transmission and drive systems
Interior and exterior lighting
Laundry equipment, if applicable
Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
Other major energy using systems, if applicable

The analysis shall address the following considerations:

1. the loads, proper sizing, efficiencies or hours of operation for each system; (Where Facilities operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings appropriate measurements are required unless waived by the County);

2. current operating condition for each system;

The ESCO shall conduct interviews with Facilities operation and maintenance staff regarding the Facilities' mechanical systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates

The ESCO shall examine the most recent 36 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging or selecting the most representative contiguous 12 months. The ESCO shall consult with Facilities staff and account for any unusual or anomalous utility bills, which may skew Base Year consumption from a reasonable representation.

The ESCO shall analyze all major end uses representing more than 5% of total Facilities consumption including, but not limited to:

lighting
heating
cooling
HVAC motors (fans and pumps)
plug load
kitchen equipment
other equipment
miscellaneous

Where loading and/or usage are highly uncertain, the ESCO shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the County. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment.

D. Develop List of Potential Energy Conservation Measures (ECMs)

The ESCO shall:

1. Identify and propose potential ECMs for installation or implementation at the Facilities, including water conservation measures.

2. Estimate the cost, savings and life expectancy of each proposed ECM.

3. Specify Facilities operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs.

4. Provide analysis methodology, supporting calculations and assumptions used to estimate savings. Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided.

5. For savings estimates using computer simulations, the ESCO shall provide access to the program and all inputs and assumptions used, if requested by the County.

6. Provide a preliminary savings measurement and verification plan for each proposed ECM.

7. Provide a preliminary commissioning plan for the proposed ECMs.

8. Provide detailed calculations for any rate saving proposals.

9. Provide detailed supporting calculations for any proposed maintenance or other operational

savings.

10. Estimate any environmental costs or benefits of the proposed ECMs. (e.g. disposal costs, avoided emissions, water conservation, etc.)

11. For all proposed ECMs, ESCO shall comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis.

E. Select Final Recommended ECMs

The ESCO shall, in consultation with the County, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facilities.

F. Cost and Fee Estimates

The ESCO shall provide detailed estimates of all costs and fees associated with the installation and implementation of the ECMs including:

engineering/design costs for individual ECMs
ESCO/vendor estimates for individual ECM hard costs
contingency costs for individual ECM hard cost
construction management fees for the project
commissioning costs for individual ECMs
initial training costs
annual service fees including:
    measurement and verification
    maintenance
    performance monitoring
    ongoing training services
    other costs/fees (specify)

G. Savings Estimates

The County has endeavored to provide the ESCO with sufficient general and specific guidance in this to develop the savings estimates for the Report. In the event questions arise as to the calculation of savings or whether certain items will be allowed as savings, the ESCO shall seek written guidance from the County. County rejection of certain calculations of savings or rejection of certain items as allowable savings in the Report shall be at the risk of the ESCO.

The following items will be allowed as savings or in the development of savings:

County material/commodity cost
Outside maintenance labor costs (if applicable)
Escalation rates of 1% for natural gas
Escalation rates of 1% for electricity
Escalation rates of 5% for water
Escalation rates of 3% for material/commodity cost savings
Escalation rates of 3% for allowable labor savings

H. Report Format

The ESCO shall prepare a report which includes:

1. An executive summary, which describes the Facilities, measures evaluated, analysis methodology, results and a summary table presenting the cost and savings estimates for each measure.

2. A discussion of measures not evaluated in detail and the explanation of why a detailed analysis was not performed.

3. A summary of all utility bills, Base Year consumption and how it was established, and end use reconciliation with respect to the Base Year including a discussion of any unusual characteristics and findings.

4. Detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues.

5. Conclusions, observations and caveats regarding cost and savings estimates.

6. Thorough appendices which document the data and all assumptions used to prepare the analysis and the how that data was collected.

I. Submission of the Report

The Report shall be completed and submitted to County within ninety (90) days of the date of execution of this Energy Audit Agreement. The County shall conduct and complete a technical review within sixty (60) days of their receipt of the Report.

J. Acceptance of the Report– If Energy Conservation Measures are Feasible.

The County shall accept the Report if the recommended ECMs are feasible. If the County determines that one or more of the recommended ECMs are not feasible, the County shall give The

ESCO written notice of any and all said objections, in detail, within thirty (30) business days of receipt of the Report. The ESCO shall, if necessary, correct the Report and submit a second draft within twenty (20) business days of said notification. The County shall have ten (10) business days from receipt of the revised Report to notify the ESCO if any objections have not been corrected. Upon such notification, the ESCO shall have fifteen (15) business days to resubmit the Report, and County shall have ten (10) business days to respond. This re-submission process may continue until the date all material concerns are resolved and the Report is accepted. Additional days may be granted by the County for report corrections, at the discretion of the County.