

PROJECT DEVELOPMENT AGREEMENT BETWEEN

The City of Elliot Lake
45 Hillside Drive North
Elliot Lake, Ontario, P5A 1X5

AND

Johnson Controls Canada L.P.
56 Leek Crescent
Richmond Hill, Ontario, L4B 1H1

The purpose of this Project Development Agreement (PDA) is to confirm the intent of Johnson Controls Canada Limited Partnership (JCCLP) and the City of Elliot Lake (Customer) to develop and subsequently implement an Energy Performance Contract (EPC) for the Centennial Arena in Elliot Lake. This PDA will provide the basis of the scope of the EPC, the obligations of both parties, the financial metrics to be met, the intended outcomes and timeline.

This agreement is in accordance with the Johnson Controls Sourcewell Contract #070121-JHN and Canoe Procurement Group of Canada.

1. Scope of Services

It is the Parties' mutual understanding this Project Development Agreement will:

- a. Provide for the development of the Facility Improvement Measures (FIMs) at the Arena; that may be funded from energy savings, operational savings, carbon cost savings or capital avoidance, as well as, any utility rebates/ incentive programs and/ or Provincial and Federal incentive programs leveraged to help offset the cost of the project;
- b. Provide for the full design (100%) of structural repair of the primary wood elements and structural rehabilitation of the arena. This will include the restoration design of the timber elements including the roof design and concrete foundation assessment and the analysis, design and drafting of the frost wall and wall foundation. The scope of work will also include the specification of the exterior wall insulation and sheathing system, specification of the new roofing system and roof insulation (eave closures), the specification for new/repair of the flat roofing over the arena lobby area and specification of exterior door systems, exterior and interior lighting fixtures;
- c. Provide for a review of the existing air handling units system, dehumidification systems and the natural gas radiant heating system to ensure the systems operate to meet the appropriate indoor design conditions for the arena;
- d. Assist the Customer in arranging for project financing, as required;
- e. Utilize the Customer's most current utility consumption data along with other supporting utility/operational data, as necessary;

- f. Utilize the Customer’s most recent design drawings, CAD files, structural and building assessment reports, as necessary;
- g. Complete necessary field measurements and data collection to support the proposed performance guarantees; and
- h. Lead to the execution of an EPC between JCCLP and Customer for the implementation of the proposed project provided that the Customer elects, in its sole discretion, to implement one or more proposed FIMs.

In undertaking the work under this Agreement, JCLLP represents and warrants that; (i) it has the skills and expertise and is fully qualified to perform the work within the time specified in this Agreement, (ii) the work shall be done in a good and proficient manner and JCCLP will conform to high professional standards, (iii) it will comply with all applicable laws, and (iii) the Deliverables will not infringe the industrial or intellectual property rights of others.

2. Development Schedule

It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others to work diligently under their direction to achieve the Milestone Schedule identified herein:

Milestone*	Completion Date
Parties enter into the PDA	February, 2024
JCCLP Commences project	February, 2024
JCCLP requests pertinent Customer Documents and Data to execute the development, and arranges for site visits	March, 2024
JCCLP conducts on-site analysis to confirm engineering design and assumptions	March, 2024
Customer makes final decision on which FIMs to implement	<*>
JCCLP prepares preliminary savings calculations and design documentation for review with customer	March, 2024
JCCLP meets with sub-contractors on-site to develop construction costs	March, 2024
JCCLP and Customer conduct M&V workshop	April, 2024
JCCLP and Customer conduct construction workshop	April, 2024
JCCLP and Customer conduct financial workshop	April, 2024
Form of financing established for the project	April, 2024
Form of contract established between JCCLP & Customer	April, 2024
JCCLP makes binding offer to Customer	April, 2024
Customer reviews offer and JCCLP makes final offer per Customer comments	May, 2024
Council approves project	May, 2024
Project Financing and Contract executed	May, 2024

*These milestones may be modified by subsequent work plans mutually agreed upon by both parties.

3. Deliverables

During the term of this Agreement and upon completion of the project development, JCCLP shall deliver to the Customer:

- a. A written description of each FIM proposed to be implemented;
- b. A financial pro forma cash flow documenting the proposed project in respect of which sensitivity analysis may be conducted according to which FIMs are selected by Customer. The pro forma will include applicable annual costs and savings that affect the project outcome such as financing, energy, water, sewer, labor, carbon, maintenance, utility rebates and incentives, capital costs, etc;
- c. The services and deliverables described in Section 2;
- d. A preliminary schedule for implementation of the project;
- e. A summary of the Measurement & Verification plan, including proposed IPMV protocols, such as Option A, B, C, or D that will be used for each FIM;
- f. Structural Stamped Drawings for the timber restoration work of the roof; and
- g. Estimated project cost is projected to be in the range of \$5.0 million to \$6.0 million.

4. Project Determinants

Project Determinants in the table below will be used by JCCLP and the Customer to determine the economic merit of the project; the values can change at any time throughout development as better information is made known. However, for the purposes of determining whether JCCLP has met the success criteria identified in Paragraph 3 “Deliverables”, the values indicated herein will be used upon completion of development to make such determination. Each party has a duty to inform the other of changes to any of the values indicated in a timely manner that may affect the success of the project.

	Determinant	Value	Unit
1	Project Term	15	years
2	Interest rate		% per year
3	Customer capital contribution	TBD	To be determined – if applicable
4	Electric escalation	3	% per year
5	Natural gas escalation	3	% per year
6	Carbon Tax escalation	\$15	\$ per year
7	Electric energy (blended)	\$0.15	\$/kwh
8	Natural gas	\$0.32	\$/m ³
9	Carbon tax	\$0.12	\$/m ³
10	Water	N/A	\$/m ³
11	Sewer	N/A	\$/m ³

12	Non-guaranteed incentives and rebates	to be determined	\$ each, included where permitted by law
14	Capital Cost Avoidance	to be determined	\$ each
15	Operational Savings	to be determined	\$ per year
16	Maintenance Savings	to be determined	\$ per year

5. Customer Priority FIMs

JCCLP will provide Facility Improvement Measures (FIMs) that are essential to creating a project that meets the Customer’s financial buying criteria. Examples of such FIMs may include but are not be limited to FIMs such as lighting retrofits and control system modifications. Normally, in addition to those FIMs which are essential to creating a project that will deliver cost and operating efficiencies, JCCLP can include other FIMs that help the Customer to achieve certain other desired results, such as building improvements or implementing improvements from the Customer’s deferred maintenance budget.

Listed herein is a list of potential FIMs identified by the Customer as priority measures (Customer Priority FIMs). The Customer Priority FIMs are listed in priority order in terms of importance to the Customer achieving its objectives. JCCLP and the Customer acknowledge that JCCLP will include in its proposals as many of the Customer Priority FIMs listed as possible while still meeting achieving the criteria listed in the Deliverables paragraph. The Customer acknowledges that the project may or may not include all of the Customer Priority FIMs listed. JCCLP will meet regularly with the Customer to review and discuss all FIM’s proposed, accepted and rejected and allow the Customer to ask for and/or request FIM’s for consideration as the project progresses. All accepted and rejected FIM’s will be agreed to by JCCLP and the Customer acting reasonably.

Centennial Arena

- Lighting Retrofit and Lighting Controls
- Domestic Hot Water Retrofits
- Recommissioning and Upgrade Controls
- Sustainable Ice Rink
- Weather Stripping

6. Records and Data

During the project development, the Customer will make reasonable commercial efforts to provide to JCCLP upon its request, accurate and complete data concerning current: equipment performance data if available; costs; budgets; facilities requirements; future projected loads; facility operating requirements; collective bargaining agreements; etc.

JCCLP will provide a separate document with a formal request for the required records or data shortly after touring the Customer facilities. The Customer shall make commercially reasonable efforts to provide that information within 5 to 10 days of request.

7. Preparation of Implementation Contract

JCCLP will deliver a well advanced draft of the contemplated EPC and the Financing Agreement if applicable. JCCLP and Customer shall work diligently during the project development to complete and populate contract documents. The form of the documents will vary depending on Customer requirements, Provincial statute where applicable and JCCLP requirements, but where appropriate and acceptable to Customer, shall utilize JCCLP standard documents.

8. Acceptance

The Customer shall have no obligation to enter into a EPC with JCCLP. The Customer shall become owner of the Deliverables, upon payment, and may do with it as they so wish, provided in the event JCCLP is not involved in the EPC phase, use of the Deliverables shall be at Customer's risk and without liability to JCCLP. If the Customer raises questions or concerns with respect to the Deliverables, the Owner, acting reasonably, need not accept the Deliverables until such questions or concerns are resolved to the satisfaction of the Customer. The Customer shall issue a statement of acceptance once the Customer has accepted the Deliverables.

JCCLP agrees to meet weekly with the Customer to update the Customer on the progress and results related to the Deliverables. Each of JCCLP and the Customer will select a representative from their respective organizations to be the main point of contact for each other through the term of this Agreement and will provide contact information to allow for written, email and phone communication. Each party will be responsive and communicate in a timely manner with each other, acting in a commercially reasonable manner.

9. Project Development Cost and Payment Terms

JCCLP agrees to comply with the obligations of this Agreement, and to provide project development services and provide the Deliverables all as identified herein, for the price of \$275,000. Such amount is payable within 60 days after JCCLP provides the Deliverables identified herein and which Deliverables are acceptable to the Owner, acting reasonably.

Customer will have no obligation to pay this amount if: (i) JCCLP and the Customer enter into the EPC outlined in Paragraph 7 above, within 60 days after JCCLP provides acceptable Deliverables, or (ii) if the Deliverables are not provided. The price in the first paragraph of \$275,000 represents all costs for project development and providing the Deliverables, and will be transferred to the total cost of the EPC, under item (i) above, and be subject to the payment terms to be outlined in the EPC.

10. Protection of Persons and Property

Should JCCLP in the performance of this Agreement damage the Customer's property, or property adjacent to the place of the work being completed for the Customer, JCCLP shall be responsible for making good such damage at JCCLP's expense.

11. Indemnity

JCCLP will indemnify and save harmless the Customer, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses including solicitor and owner costs for third party personal injury, including death, and damage to tangible property, that the Customer may sustain, incur, suffer or be put

to at any time either before or after the expiration or termination of this Agreement, to the extent resulting from any negligent act or omission, or willful misconduct of JCCLP or of any agent, employee, officer, director or subcontractor of JCCLP pursuant to this Agreement, excepting always liability arising out of the independent negligent acts and/or omissions of the Customer.

Customer will indemnify and save harmless JCCLP, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses including solicitor and owner costs for third party personal injury, including death, and damage to tangible property that JCCLP may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, to the extent resulting from any negligent act or omission, or willful misconduct of the Customer or of any agent, employee, officer, director of the Customer pursuant to this Agreement, excepting always liability arising out of the independent negligent acts and/or omissions of JCCLP.

12. 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 CCDC Rules of Mediation and Arbitration of Construction Disputes 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 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 Provincial 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.

Notwithstanding the above, the Customer's right to terminate the Agreement shall not be subject to arbitration and only damages in such instance shall be subject to the dispute process.

13. Confidentiality

This agreement creates a confidential relationship between JCCLP 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. JCCLP 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.

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

JCCLP acknowledges and agrees that this Agreement is subject to the Municipal Freedom of Information and Protection of Privacy Act, RSO 1990, c M.56, as amended.

14. Term

This Agreement will be in force until the signing, between Customer and JCCLP of the EPC, or as otherwise terminated or concluded as per the Agreement. This Agreement will become an attachment to the EPC once executed. It is anticipated that the Deliverables will be provided to the Customer by May 31, 2024.

15. Termination

The Customer shall have the right to terminate this Agreement if JCCLP fails to perform its material obligations under this Agreement, as determined by the Customer acting reasonably.

The Customer shall have the right, in its sole discretion to terminate the Agreement on 15 days notice, upon which JCCLP will be paid for the work completed up to the time of termination detailed in the notice.

16. Safety

While undertaking the Agreement, JCCLP will adhere to all applicable laws, including the Ontario Health and Safety Act, R.S.O 1990, c. O.1, as amended, all applicable building codes, and any policies as provided by the Customer.

17. Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all parties shall constitute a full, original, and binding agreement for all purposes. Counterparts may be executed either in original or electronic form.

18. Law of the Agreement


The law of the Province of Ontario shall govern the interpretation of this Agreement.

19. 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 JCCLP and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCCLP and the Customer. Any change or modification to this Agreement will not be effective unless made in writing, and unless otherwise provided under this Agreement, executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ___ day of _____, _____.

CUSTOMER	CUSTOMER
By	By
Signature	Signature
Title	Title
Date	Date

Johnson Controls Canada LP	Johnson Controls Canada LP
By Hassaan Khan	By
Signature 	Signature
Title Area General Manager Performance Infrastructure	Title
Date February 14, 2024	Date