



Lisa Monbleau <lmonbleau@laceytownship.org>

Log 23-643

Date Due 9-7

Fwd: OPRA request - Various email attachments as noted below

1 message

Veronica Laureigh <lanceyclerk@laceytownship.org>

Thu, Aug 31, 2023 at 11:33 AM

To: Lisa Monbleau <lmonbleau@laceytownship.org>, Amy McGuckin <clerk@laceytownship.org>

RECEIVED
AUG 29 2023

LACEY TOWNSHIP
MUNICIPAL CLERK

Thank you

Veronica Laureigh
Municipal Clerk/Administrator
Township of Lacey
818 Lacey Road
Forked River, NJ 08731
609-693-1100, ext. 2200
Fax: 609-693-0526
laceyclerk@laceytownship.org
www.laceytownship.org

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----- Forwarded message -----

From: **Regina Discenza** <opra+request-50768-59e20994@requests.opramachine.com>

Date: Tue, Aug 29, 2023 at 3:49 PM

Subject: OPRA request - Various email attachments as noted below

To: OPRA requests at Lacey Township <lanceyclerk@laceytownship.org>

Clerk
Admin

Dear Lacey Township,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested:

Please send electronically the email attachment/s from Feb 27th, 2023 email with Brenda McIntyre and Veronica Laureigh (Noted pre-development MOU). Also March 27th, 2023 attachment between Brenda McIntyre and Veronica Laureigh titled New Municipal Bldg.

The April 6, 2023 attachment between Brenda McIntyre and Veronica Laureigh also titled New Municipal Bldg. Attachment on April 10th, 2023 Pre-Development Agreement Final Draft. April 12th, 2023 attachment noted Executed PDA between Jenn Abbott and Veronica Laureigh. April 13th, 2023, Update LFB and Proposals, Barbara Geary and Veronica Laureigh. Attachment noted as Updated Financial Goals attachment Veronica Laureigh dated June 8th, 2023. August 3rd, 2023 Veronica Laureigh attachment noted as Lacey Township Affordability Workshop and Reviews- Calendar hold. Aug 23, 2023 Jenn Abbott and Veronica Laureigh attachment noted as Pre-Committee Meeting -Affordability Workshop Agenda.

Any questions about this request, please do not hesitate to contact me.

Thank you.

Yours faithfully,

Regina Discenza, Forked River, NJ 08731

I emailed this.
Lm
9-5-23

Please deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-50768-59e20994@requests.opramachine.com

Is laceyclerk@laceytownship.org the wrong address for OPRA requests to Lacey Township? If so, please contact us using this form:

OPRA LOG

The table below identifies the records that being denied in whole or in part as well as the legal basis for each denial, as is required by N.J.S.A. 47:1A-6.

List of all records responsive to OPRA request (include the number of pages for each record).	If records are disclosed with redactions, give a general nature description of the redactions.	If records were denied in their entirety, give a general nature description of the record.	List the legal explanation and statutory citation for the denial of access to records in their <u>entirety</u> or <u>with redactions</u>
April 6, 2023	N.A.	N.A.	N.A.
April 10, 2023	N.A.	N.A.	N.A.
April 12, 2023	N.A.	N.A.	N.A.
April 13, 2023	N.A.	This email contains inter-agency communications which are subject to the Inter-agency ACD exception and discuss the process by which the Township intends to submit a pending application to Treasury. The discussions contained therein are deliberative and advisory addressing potential requirements and avenues for submission. Further the proposals which are referenced as attachments and	N.J.S.A. 47:1A-1.1 - Inter/intra agency advisory, consultative, or deliberative material; see also <u>ACD exception, Educ. Law Ctr. v. N.J. Dep't of Educ.</u> , 198 N.J. 274 (2009); <u>Ciesla v. N.J. Dep't of Health & Senior Serv., et als</u> , 429 N.J. Super. 127 (App. Div. 2012); <u>Libertarians for Transparent Gov't v. Gov't Records Council</u> , 453 N.J.

		requested pursuant to the August 29, 2023 OPRA request pertain to active contractual negotiations which are not finalized.	Super. 83 (App. Div.), certif. denied 233 N.J. 484 (2018). N.J.S.A. 47:1A-1.1 if disclosed would create an unfair competitive advantage as the records pertain to active negotiations. N.J.S.A. 47:1A-1.1 active contractual negotiations.
June 8, 2023	N.A	This correspondence pertains to an active discussion between contracting parties regarding financial figures, budget, revenue potential and contractual variables as it relates to an active contractual negotiation.	N.J.S.A. 47:1A-1.1 if disclosed would create an unfair competitive advantage as the records pertain to active negotiations.
August 23, 2023	N.A.	Proposed executive session discussion pertaining to active contractual negotiations.	N.J.S.A. 47:1A-1.1 - Inter/intra agency advisory, consultative, or deliberative material; see also <u>ACD exception, Educ. Law Ctr. v. N.J. Dep't of Educ.</u>, 198 N.J. 274 (2009); <u>Ciesla v. N.J. Dep't of Health & Senior Serv., et als</u>,

			429 N.J. Super. 127 (App. Div. 2012); <u>Libertarians for Transparent Gov't v. Gov't Records Council</u>, 453 N.J. Super. 83 (App. Div.), certif. denied 233 N.J. 484 (2018). N.J.S.A. 47:1A-1.1 if disclosed would create an unfair competitive advantage as the records pertain to active negotiations.
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Veronica Laureigh <laceyclerk@laceytownship.org>

Lacey Twp-New Municipal Building

1 message

Brenda McIntyre <bmcintyre@dmmlawfirm.com>

Thu, Apr 6, 2023 at 1:48 PM

To: "Jenn.Abbott@jci.com" <Jenn.Abbott@jci.com>

Cc: "laceyclerk@laceytownship.org" <laceyclerk@laceytownship.org>, "skennis@laceytownship.org" <skennis@laceytownship.org>, "tmcdonald@laceytownship.org" <tmcdonald@laceytownship.org>, Christopher Connors <cconnors@dmmlawfirm.com>, Jerry Dasti <JDasti@dmmlawfirm.com>

Please see the attached regarding the above matter; thank you.

Brenda McIntyre

Legal Assistant to Jerry J. Dasti, Esq.

609-971-1010 Ext. 265

bmcintyre@dmmlawfirm.com

**DASTI, MURPHY, McGUCKIN, ULAKY & CONNORS**

620 West Lacey Road

Forked River, NJ 08731

609-971-1010 / 609-971-7093 (Fax)

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Toms River, NJ 08753

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forkedriver@dmmlawfirm.com

The highest compliment our clients can give us is to refer us to your friends and family. Please don't keep us a secret.

IMPORTANT NOTICE: The information contained in this e-mail transmission is intended for the personal and confidential use of the designated recipient named above. This message is intended for the recipient only. If the reader of this message is not an intended recipient or the agent of the intended recipient, YOU ARE HEREBY NOTIFIED that you have received this communication in error, and that any review, distribution, or copying of this message is prohibited. If you received this communication in error, please notify the sender immediately.

Thank you. Please consider the environment before printing this email.

3 attachments

 **Abbot 4-6-23.pdf**
169K

 **Abbot 3-28-23.pdf**
58K

 **BASIS OF DESIGN WORDING.docx**
15K

DASTI, MURPHY, McGUCKIN, ULAKY & CONNORS

Jerry J. Dasti †
Gregory P. McGuckin
Robert E. Ulaky ∞†
Christopher J. Connors
Timothy J. McNichols ‡
Martin J. Buckley
Kelsey A. McGuckin-Anthony
Thomas E. Monahan π
Patrick F. Varga

πCertified Civil Trial Attorney
∅Certified Municipal Court Law Attorney
∞Member, National Academy of Elder Law Attorneys
†NJILGA Municipal Law Diplomate
ΩMember of NJ and FLA Bar
‡Member of NJ and P.A. Bar
ΔMember of NJ and NY Bar

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Of Counsel
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Toms River Office:
506 Hooper Avenue
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F 732-349-1590

Sea Girt Office:
2150 Highway 35, Suite 250
Sea Girt, NJ 08750
P 732-295-3000
F 732-349-1590

April 6, 2023

GL-30818

Via Email

Jenn Abbot, Director of Business Development
Public Private Partnerships
Johnson Controls, Inc.

RE: Lacey Township - New Municipal Building

Dear Ms. Abbot:

Thank you for joining in the conference call on Tuesday. I attach a copy of my letter to you dated March 28, 2023 which included the proposed language modification to Paragraph 2 on Page 2 of the proposed Agreement. If acceptable, please make the change and forward it to our office after it is executed by the representatives of Johnson. We will present it to the Township Committee for consideration and approval thereafter.

It appears we may miss the April 13, 2023 meeting of the Township Committee unless this is done quickly.

As an aside, I suspect that we may want to have an understanding, after the conference call Tuesday, where the application process is now situated, based upon the work that you have done and will continue to do. If we can have a general date by which we can presume the application will be submitted to Treasury, that would be most helpful.

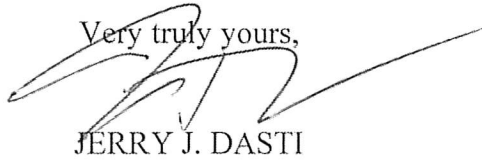
Jenn Abbot, Director of Business Development

April 6, 2023

Page 2

Thank you for your anticipated cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "JERRY J. DASTI", with a long horizontal flourish extending to the right.

JERRY J. DASTI

JJD: bm

Encl.

cc: Veronica Laureigh, Township Clerk/Administrator-via email
Steven Kennis, Deputy Mayor-via email
Tim McDonald, Mayor-via email
Casey Parker-via email
Christopher Connors, Esquire-via email

DASTI, MURPHY, McGUCKIN, ULAKY & CONNORS

Larry J. Dasti +

A Professional Corporation

066 1

2. BASIS OF DESIGN. Project Co shall submit draft design criteria for the Project, which sets forth, among other things, the objectives; square footage; desired programming, including administrative offices, police headquarters, municipal courts and council chambers; design standards; performance criteria; exclusivity obligations; preliminary affordability models; and information relating to the Project (“Draft Design Criteria”). Draft Design Criteria will be jointly reviewed and evaluated by Project Co and Township over the course of a 60-day workshopping period (“Workshopping Period”) to determine whether changes to the Draft Design Criteria may be necessary or advisable. The parties agree that no fees shall be owed by the Township during the finalization of the draft design, other than if the Township unilaterally terminates the project in accordance with Paragraph 11 herein. The Draft Design Criteria, as ultimately finalized by Township and Project Co pursuant to the Workshopping Period, shall be hereinafter referred to as the “Basis of Design.” As part of its review and evaluation of the Draft Design Criteria and the Basis of Design pursuant to this Section 2, Project Co shall notify Township if Project Co reasonably anticipates the Draft Design Criteria or the Basis of Design require amendments to the scope of the Pre-Development Services provided in this Agreement (or, by extension, amendments to any of the Project development deadlines or budgets provided under this Agreement).



Veronica Laureigh <laceyclerk@laceytownship.org>

Lacey Township - JCI Pre Development Agreement - Final Draft

1 message

Jenn Abbott <jenn.abbott@jci.com>

Mon, Apr 10, 2023 at 1:00 PM

To: Veronica Laureigh <laceyclerk@laceytownship.org>, Jerry Dasti <jdasti@dmmlawfirm.com>

Cc: Christopher Mullen <christopher.mullen@jci.com>

Veronica –

Attached is the final turn of the document. This incorporates the changes Jerry recommended with a few minor adjustments. It also updated the schedule of payments to show they are cumulative. Our counsel recommended this for clarity purposes.

We are excited to get moving!

Jenn

Jenn Abbott

Director of Business Development

Public Private Partnerships

Johnson Controls, Inc.

Jenn.Abbott@jci.com

314.413.4717

**JCI-Lacey Township- Pre-Development Agreement- Lacey Township.DOCX**

57K

AGREEMENT FOR PRE-DEVELOPMENT SERVICES

This AGREEMENT FOR PRE-DEVELOPMENT SERVICES ("Agreement") is entered into as of the [] day of [], 2023 ("Effective Date") by and between Johnson Controls, Inc. and/or its affiliate ("Project Co") and the Township of Lacey ("Township"). Hereinafter, each of the foregoing may be individually referred to as a "Party" and collectively as the "Parties".

RECITALS:

A. WHEREAS, Township desires to replace its current municipal facility and design and build an all-encompassing municipal facility to include Township administrative offices, police headquarters, municipal court, and council chambers in addition to a separate recreational complex ("Facility") that has the ability to be scaled to size pursuant to a Public-Private Agreement and other contract documents as described herein (the "Project");

B. WHEREAS, on or about the 13th day of May, 2021, Township received an unsolicited proposal from Johnson Controls Inc. ("JCI") for the Project;

C. WHEREAS, at a public hearing held on the 10th day of November, 2022, pursuant to the Public-Private-Partnership Law, N.J.S. 40:A-11-52.1.a, *et seq.* ("P3 Law"), Township determined that JCI was the Township's choice to be the private developer for the development, construction, financing, operation and 30-year maintenance of the Facility on Township owned property designated as Block 1837 Lot 3 on the official tax map of Lacey Township based on the Township's scoring of predetermined evaluation criteria (N.J.A.C. 17:49-6.3(c)(1)) and other considerations as permissible by applicable regulations (N.J.A.C. 17:49-6.3(c)(2));

D. WHEREAS, on the 10th day of November, 2022, Township passed Resolution 2022-310 selecting JCI as the designated private entity to serve as the developer for the Project;

E. WHEREAS, on or about the 17th day of November, 2022, Township determined that the Project was in the best interest of the public and authorized representatives of Township to negotiate a proposed public-private-partnership agreement with JCI;

F. WHEREAS, pursuant to the P3 Law, Township may enter into a public-private partnership agreement with JCI and/or its affiliate(s) to deliver the Project;

G. WHEREAS, Township desires to engage Project Co to assist Township in the design and build of the Project by (1) providing Pre-Development Services described in Section 3 below, (2) delivering the Project through a Public-Private Agreement to be negotiated pursuant to Section 4 below, and (3) delivering facility maintenance services for the Project through the Public-Private Agreement, all in accordance with the Basis of Design (as determined pursuant to Section 2 below);

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby agree as follows:

1. RECITALS. The Recitals above are incorporated herein by reference.

2. BASIS OF DESIGN. Project Co shall submit draft design criteria for the Project, which sets forth, among other things, the objectives; square footage; desired programming, including administrative offices, police headquarters, municipal courts and council chambers; design standards; performance criteria; exclusivity obligations; preliminary affordability models; and information relating to the Project (“Draft Design Criteria”). Draft Design Criteria will be jointly reviewed and evaluated by Project Co and Township over the course of a 60-day workshopping period (“Workshopping Period”) to determine whether changes to the Draft Design Criteria may be necessary or advisable. The Parties agree that, subject to Section 11 of this Agreement, no payment shall be owed by Township to JCI during the finalization of the Draft Design Criteria. The Draft Design Criteria, as ultimately finalized by Township and Project Co pursuant to the Workshopping Period, shall be hereinafter referred to as the “Basis of Design.” As part of its review and evaluation of the Draft Design Criteria and the Basis of Design pursuant to this Section 2, Project Co shall notify Township if Project Co reasonably anticipates the Draft Design Criteria or the Basis of Design require amendments to the scope of the Pre-Development Services provided in this Agreement (or, by extension, amendments to any of the Project development deadlines or budgets provided under this Agreement).

3. PRE-DEVELOPMENT SERVICES. Township hereby engages Project Co, and Project Co hereby accepts the engagement from Township, to provide the services set forth in this Section 3 and assist Township in connection with the Project, all in accordance with the Basis of Design and the terms of this Agreement (the “Pre-Development Services”). The Pre-Development Services, as further detailed in **Exhibit 1**, shall include all tasks as they relate to the New Jersey Office of Public Finance application submittal required under N.J.A.C. 17:49-6.5 (“Treasury Submission”); coordination meetings between the Township and Project Co, its consultants, subcontractors, and agents; site and geotechnical surveying; civil site plan preparation, which includes all required permit submissions; select engineering for long lead items; and the other services set forth in this Section 3.

3.1 Design Services. The services described in this Section 3.1 shall be referred to as the “Design Services,” which shall also include the specific work items, requirements and deliverables detailed in **Exhibit 1** attached hereto. As part of these Design Services, Project Co will provide the design and assessment necessary to submit the civil and site design packages specified in **Exhibit 1**. In addition, Project Co, in coordination with its consultants, subcontractors, and agents, will advance select design for early purchase packages of the long lead items specified in **Exhibit 1**.

3.2 Facility Maintenance Plan and Price; Performance Criteria. Project Co will provide preliminary management plans, budgets and a financial pro forma for the long-term facility maintenance services to be provided for the Project, as well as the performance criteria and related performance risk allocation for the Project, for the period following substantial completion of the Project throughout the Facility Maintenance Term, as necessary to facilitate Treasury Submission.

3.3 Project Strategies. Project Co shall be responsible for, with the support of Township, (a) arranging for Project financing on acceptable terms and conditions, including all

Pre-Development Services, for which Project Co shall be compensated in accordance with this Agreement; (b) obtaining all operating entity permits and administrative/regulatory approvals as set forth in Section 3.1 and **Exhibit 1**; and (c) preparing, maintaining and updating a project financial model to reflect the overall cash flows, sources and uses (including but not limited to expected remuneration of each of Project Co and Township), project options, and overall affordability in collaboration with the Township financial advisor. Township shall be responsible for, with the support of Project Co, (d) negotiating required legal agreements between Township and third-parties for the Project and (e) providing specific revenue streams to support the financing of the Project. As a part of this Agreement, Township expects that Project Co shall fully support Township's efforts to achieve its desired outcomes as to each of its Project Strategies. Project Co shall provide such support by furnishing additional information or calculations relating to the Project as part of its Pre-Development Services throughout the term of this Agreement, including without limitation, at the time of providing its Design Services, provided, if any such support would require significant third party expense or investment of additional resources, Project Co will provide Township with advance notice and negotiate an adjustment to the scope of the Pre-Development Services and fees due hereunder prior to pursuing such work

3.4 Scheduling. Within fifteen (15) days of the Effective Date, Township and Project Co shall jointly develop a schedule for the Parties' combined responsibilities in Pre-Development Services (the "Schedule"), using as a guide the proposed Project timeline provided in **Exhibit 1**. Township acknowledges that its timely review and approval of Project Co's work and services is essential for Project Co to complete the Pre-Development Services in accordance with the Schedule. Accordingly, if Project Co shall be materially delayed in completing the Pre-Development Services as a result of (i) Township's failure to timely furnish information required by Project Co, or (ii) Township's failure to timely respond to requests for approvals of Project Co's work (in either case, an "Owner Delay"), then (a) the milestones and deadlines in the Schedule shall be reasonably adjusted to account for the Owner Delay, and (b) upon Project Co's request therefor, Township shall compensate Project Co for additional costs incurred by Project Co as a consequence of the Owner Delay ("Project Co Delay Costs"). Project Co Delay Costs shall be paid to Project Co upon financial close of the Project; provided however, if this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2, reimbursement for Project Co Delay Costs shall be due within thirty (30) days of such termination.

3.5 Negotiations. The Pre-Development Services under this Agreement shall not include any work performed pursuant to the Public-Private Agreement.

3.6 Ownership of Work Product. Provided that Township has paid all amounts due to Project Co pursuant to this Agreement, then all analyses, calculations, schematics, designs, plans, work product and other deliverables provided by Project Co to Township in connection with the Pre-Development Services (collectively, the "Work Product"), shall be the property of Township. All intellectual property rights in the Work Product shall, as between Project Co and Township, remain the property of Project Co and, provided that Township has paid all amounts due to Project Co pursuant to this Agreement, Project Co shall provide to Township a license to use such Work Product for the purposes of the Project. In the event Township uses the Work Product in connection with constructing all or a portion of the Project but does not engage Project Co pursuant to the Public-Private Agreement (as defined in Section

4.1 below), Township releases Project Co and Project Co's consultants from all claims and causes of action arising from such uses of the Work Product by Township or its agents. Notwithstanding the foregoing, all materials furnished or used by Project Co personnel and/or Project Co subcontractors or agents at the installation site in completing the Pre-Development Services, including documentation, schematics, test equipment, software and associated media remain the exclusive property of Project Co or such other third party and shall not constitute Work Product. Township shall allow Project Co personnel and/or Project Co subcontractors or agents to retrieve and to remove all such materials remaining after the completion of Pre-Development Services. Township acknowledges that any software furnished in connection with the Pre-Development Services is proprietary and subject to the provisions of any software license agreement associated with such software.

4. PUBLIC-PRIVATE AGREEMENT.

4.1 Public-Private Agreement. Immediately after the Effective Date, Township and Project Co will begin to negotiate in good faith a public-private partnership agreement ("Public-Private Agreement") for new construction, financing, and facility maintenance related thereto.

4.2 Term Sheet. The Public-Private Agreement shall not be binding upon Project Co or Township until such time as the Parties have executed and delivered the Public-Private Agreement and otherwise in accordance with its terms; provided, however, that (a) the scope of the Project shall be materially consistent with the Basis of Design and preliminary management plans, budgets and financial pro forma, as well as the performance criteria and related performance risk allocation to be developed pursuant Section 3.2 of this Agreement. The Parties' negotiations of the Public-Private Agreement shall be materially consistent with the terms and conditions identified in the term sheet delivered by Project Co within thirty (30) days of the Effective Date.

4.3 Termination of Negotiations. If, following the completion of the Pre-Development Services, the Parties' negotiations of the Public-Private Agreement are not yet complete, then, as part of Project Co's compensation under this Agreement, Township shall, for a period of one hundred and eighty (180) days, exclusively negotiate in good faith with Project Co to finalize the Public-Private Agreement for Treasury Submission; provided, however, that at any time after the conclusion of the one hundred and eighty (180) day period (but prior to the execution of the Public-Private Agreement), either Township or Project Co may provide written notice to the non-terminating Party (a "Termination Notice") indicating its desire to terminate negotiations of the Public-Private Agreement. Thereafter, Project Co and Township shall, for an additional period of thirty (30) days after the non-terminating Party's receipt of a Termination Notice, negotiate in good faith to finalize the Public-Private Agreement for Treasury Submission. If Project Co and Township have not finalized the Public-Private Agreement for Treasury Submission within such 30-day period, then (a) within ten (10) days after the end of the 30-day period, Township shall deliver to Project Co a Termination Payment (as defined below) pursuant to the Termination Payment Schedule set forth in Section 11.1; and (b) upon Project Co's receipt of the Termination Payment, this Agreement shall terminate and Project Co shall grant to Township the intellectual property license referred to in and in accordance with the provisions of Section 3.6. If Township terminates this Agreement pursuant to Sections 10.1 or 10.2 below,

then the obligation of the Parties to negotiate the Public-Private Agreement shall similarly terminate.

5. ADDITIONAL FEES FOR SERVICES; PRELIMINARY BUDGET. If Project Co reasonably determines that the Basis of Design requires a change in Project Co's scope of Pre-Development Services, then (i) the milestones and deadlines in the Schedule shall be reasonably adjusted to account for the changed scope, and (ii) upon Project Co's request therefor, Township shall compensate Project Co for additional costs incurred by Project Co as a consequence of the change in scope ("Scope Adjustment Costs"). The Scope Adjustment Costs shall be paid to Project Co upon financial close of the Project; provided however, if this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2, reimbursement for the Scope Adjustment Costs shall be due within thirty (30) days of such termination.

6. PAYMENT PROCESS. Project Co shall be compensated for its Pre-Development Services based on the schedule of values outlined in **Exhibit 1** upon financial close of the Project, as defined in the Project Agreement; provided however, if this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2, Project Co shall be compensated for its Pre-Development Services pursuant to the Termination Payment Schedule set forth in Section 11.1.

7. INSURANCE. Project Co shall continuously maintain, or shall cause to be continuously maintained by one of Project Co's consultants, throughout the term of this Agreement the insurance policies described in **Exhibit 2** attached hereto, in each case to the extent applicable to the scope of work of Project Co under this Agreement. Project Co shall deliver to Township one or more certificates of insurance evidencing such coverages, and listing Township as an additional insured under such policies (excepting worker's compensation and professional liability policies) pursuant to the issuance of additional insured policy endorsement.

8. INDEMNITY; WAIVER OF CONSEQUENTIAL DAMAGES. To the fullest extent permitted by applicable law, each Party (the "Indemnifying Party") expressly agrees to indemnify, defend and hold harmless the other Party, and its affiliates, trustees, agents, officers, employees, directors, members and permitted assigns (collectively, the "Indemnified Party") for all damages, losses and expenses with respect to any third-party claims against the Indemnified Party for personal injury (including death) or tangible property damage, but only to the extent such damages, losses and expenses are caused by the negligence or willful misconduct of the Indemnifying Party in fulfilling its obligations under this Agreement. To the extent permitted by applicable laws, neither Project Co nor Township will be responsible to the other for any special, indirect or consequential damages. These obligations shall continue after the termination of this Agreement.

9. ASSIGNMENT. Neither Project Co nor Township may assign any of its respective right, title or interest in and to this Agreement without the prior written consent of non-assigning Party. Notwithstanding the foregoing, Township acknowledges that Project Co may desire to assign Project Co's right, title and interest in and to this Agreement (a) to an affiliated entity that will ultimately develop and/or own the Project, and/or (b) in connection with obtaining third party financing for the Project, and Township hereby consents to any such assignment.

10. TERM AND TERMINATION. The term of this Agreement shall commence upon the Effective Date and shall terminate upon the first to occur of any of the following events:

10.1 Default. This Agreement may be terminated at any time by either Project Co or Township if the non-terminating Party commits an Event of Default. As used herein, an “Event of Default” shall have occurred if either Project Co or Township fails to perform any of its respective material obligations under this Agreement, the non-terminating Party provides the other Party (the “Recipient”) with written notice thereof setting forth the nature of the default, and that Recipient does not cure the failure within (i) ten (10) days in the case of a monetary default, or (ii) thirty (30) days in the case of a non-monetary default; provided, however, that if the nature of the non-monetary default is such that it cannot reasonably be cured within thirty (30) days as agreed in writing by the Parties, the Recipient may cure such default by commencing in good faith to cure such default promptly after its receipt of such written notice and prosecuting the cure of such default to completion with diligence and continuity within a reasonable time thereafter. If this Agreement is terminated pursuant to this Section 10.1, the terminating Party may pursue all claims at law or in equity against the non-terminating Party; provided, however, that Township shall not have an automatic right of set off under this Agreement and shall be obligated to pay Project Co amounts due under Section 11.1 below.

10.2 Termination for Convenience. This Agreement may be terminated by either Project Co or Township in whole or in part without cause and for its convenience upon ten (10) days’ prior written notice by the non-terminating Party. In the event of a termination for convenience by either Party, Township shall be obligated to pay Project Co amounts due under Section 11.1 below.

10.3 Public-Private Agreement. This Agreement shall terminate automatically upon the Parties’ execution of the Public-Private Agreement. The terms and conditions of the Public-Private Agreement will supersede in their entirety all submittals provided pursuant to the Pre-Development Services. If this Agreement is terminated pursuant to this Section 10.3, Project Co shall be compensated for its Pre-Development Services based on the schedule of values in **Exhibit 1** upon financial close of the Project, as defined in the Project Agreement.

11. CONSEQUENCES OF TERMINATION. If this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2 above, Township shall promptly pay to Project Co a Termination Payment pursuant to the table below; plus all other amounts allowed by this Agreement. Additional detail regarding the Milestones below is set forth in **Exhibit 1**.

	Milestone	Termination Payment to Project Co
1.	Affordability Analysis Workshop- Termination occurs after the Affordability Analysis Workshop, but prior to meeting Milestone 2, Treasury Submission.	\$243,600
2.	Treasury Submission- Termination occurs after Treasury Submission, but prior to Milestone 3, Execution of Site and Geotechnical surveying.	\$730,799

3.	Execution of Land Surveys and Geotechnical- Termination occurs after execution of the Land Surveys as listed in Exhibit 1, but prior to Milestone 4, completion and delivery of Civil and Site Plan Design for Permitting and Commission Authority Approval.	\$812,167
4.	Delivery of Civil and Site Plan Design for Permitting and Commission Authority Approval- Termination occurs after delivery of the Site and Civil Plans and permitting application submissions, but prior to Milestone 5, select engineering for long lead items and approval of the Treasury Submission.	\$1,122,904
5.	Delivery of Design for Long Lead Items- Termination occurs during review of the Treasury Submission and after engineering for long lead items is complete, but prior to execution of the Public-Private Agreement	\$1,306,334

12. CONFIDENTIALITY.

12.1 Proprietary Information. This Agreement creates a confidential relationship between Project Co and Township. Both Parties acknowledge that while performing its obligations pursuant to 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, operating models, financial models, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development, and other confidential information (as determined by commercially reasonable standards) relating to the other Party ("Proprietary Information"). Both Parties agree to use best efforts to keep all Proprietary Information confidential. Subject to Section 3.6, 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. Project Co and Township agree that neither Party shall make public announcements regarding this Agreement or the Project without mutual agreement of the Parties as to timing and content.

12.2 New Jersey Open Public Records Act. Notwithstanding the foregoing, Project Co and Township may disclose Proprietary Information to their affiliates, member institutions, subcontractors, vendors, suppliers, employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such Proprietary Information confidential. Additionally, in the event a third-party requests that Township provide documentation, evidence of payment, or correspondence between the Parties ("Requested Information") pursuant to the New Jersey Open Public Records Act ("OPRA") or New Jersey Common Law, Township shall first provide seven (7) business days' notice to

Project Co of such request. Subject to this Section 12.2 and Township's obligation to comply with the request pursuant to OPRA or New Jersey Common Law, the Requested Information shall be provided to the third-party requestor no later than the seventh (7th) day after the request. During the period prior to the release of the Requested Information, Project Co may review the request; propose redactions to the Requested Information, including but not limited to redacting Proprietary Information; notify the Township of any objection to the release of the Requested Information, including but not limited to notifying Township of Requested Information that is exempt from public access under OPRA; and take legal action, including but not limited to filing a lawsuit, to stop the release of the Requested Information.

13. MISCELLANEOUS.

13.1 Access. Township shall provide Project Co, its consultants, subcontractors, and agents reasonable and safe access to all facilities and properties in Township's control that are subject to the Pre-Development Services. Township further agrees to assist Project Co, its consultants, subcontractors, and agents to gain access to facilities and properties that are not controlled by Township but are necessary for Project Co to complete the Pre-Development Services. If Township fails to provide access pursuant to this Section 13.1, then (i) the milestones and deadlines in the Schedule shall be reasonably adjusted to account for the lack of access, and (ii) upon Project Co's request therefor, Township shall compensate Project Co for additional costs incurred by Project Co as a consequence of the lack of access ("Project Co Access Costs"). Project Co Access Costs shall be paid to Project Co upon financial close of the Project; provided however, if this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2, reimbursement for Project Co Access Costs shall be due within thirty (30) days of such termination.

13.2 Independent Contractor. Project Co, its consultants, subcontractors and agents shall perform, or cause to be performed, all development, design and other work and obligations of Project Co under this Agreement in accordance with all applicable laws, and consistent with applicable industry standards for design and workmanship where the Project is located. Project Co represents that Project Co, its agents, employees and contractors have all knowledge, experience, licenses (or other applicable governmental approvals) and other qualifications necessary and appropriate to perform the Pre-Development Services. Project Co expressly acknowledges that it is an independent contractor, that it is not the representative or agent of Township, and that Township's participation or approvals shall in no way relieve Project Co of its duties and responsibilities under applicable law and this Agreement.

13.3 Scope of Work. Project Co agrees, pursuant to the terms and conditions of this Agreement, to provide and/or arrange for the provision of design, engineering, labor, materials, equipment and other work necessary to perform the Pre-Development Services.

13.4 Limitation of Liability. In no event shall Project Co be liable to Township or any subdivision thereof under the Agreement for any damages, claims, demands, suits, causes of action, losses, costs, expenses and/or liabilities in excess of amounts due to Project Co under this Agreement, regardless of whether such liability arises out of breach of contract, guarantee or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory.

13.5 Site Investigations: Environmental Assessments. Project Co reserves the right to conduct its own environmental assessment and review prior to commencing construction of the Facility or initiating maintenance responsibilities for the Project. In connection therewith, Township will share with Project Co its assessment plan and environmental assessment reports, request a reliance letter from the party conducting such assessments, and/or share core samples with Project Co so Project Co may conduct its own analysis.

13.6 Design Work. Project Co shall cause all design and engineering work to be performed only by qualified architects, engineers, and other design professionals duly licensed and qualified to perform such work. The drawings and other design documents created under this Agreement will be prepared and sealed, as necessary, by such design professionals with "Not for Construction" designations. Project Co shall require the engineer of record for the Project to become familiar with and knowledgeable about all applicable laws, codes, ordinances, rules, regulations and statutes including local health codes and the Americans with Disabilities Act.

13.7 Liens. Provided that Township has paid Project Co any amount due pursuant to this Agreement for work that is the subject of a subcontractor's claim, and that Township has timely tendered any claim subject to this provision and permitted a response by Project Co, Project Co shall indemnify and hold harmless Township, its members and their agents and employees from and against all claims, demands, damages, losses and expenses, including, without limitation, attorneys' fees paid or incurred by Township in connection with the settlement or defense of any subcontractor claim relating to Project Co's scope of work under this Agreement. Additionally, Project Co promptly (not more than forty-five (45) days after Project Co's receipt of notice thereof) shall cause such lien or claim for lien to be formally released, bonded against or otherwise satisfied.

13.8 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. Township represents and warrants that it has full power and authority to enter into this Agreement, to execute and deliver this Agreement and to incur its obligations provided for herein, all of which have been duly authorized by all proper and necessary State of New Jersey and/or local governmental action. Township represents and warrants that no additional consent or approval is required as a condition to the validity of this Agreement.

13.9 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.

13.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and it supersedes

all prior discussions, understandings or agreements between the Parties. All Exhibits attached hereto are a part of this Agreement and are incorporated herein by reference.

13.11 Binding Upon Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

13.12 Addresses for Notices. All notices to be given by either Party to the other shall be in writing and mailed by certified mail, return receipt requested, or sent by a courier service which renders a receipt upon delivery, or sent by electronic mail, addressed as set forth below, or at such other addresses as either Party may hereinafter designate by a notice to the other. Notices are deemed delivered upon actual receipt and the signed return receipt or courier receipt shall be prime facie proof thereof. The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court shall govern.

If to Project Co:

Johnson Controls, Inc.
Attention: Claudio Andreetta
5757 N. Green Bay Avenue
Glendale, WI 53209
Claudio.W.Andreetta@jci.com

If to Township:

Lacey Township, New Jersey
Attention: Veronica Laureigh, Administrator/Clerk
818 W. Lacey Road,
Forked River, NJ 08731
laceyclerk@laceytownship.org

With Copy to:

Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors
Attention: Jerry J. Dasti
620 West Lacey Road
Forked River, NJ 08731
jdasti@dmmlawfirm.com

13.13 Construction of Agreement. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that both Township and Project Co have contributed substantially and materially to the preparation of this Agreement.

13.14 Descriptive Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning, interpretation or construction of any provisions of this Agreement.

13.15 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 include but are not limited to: acts of God; acts of government agencies; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; changes in laws; unusual disruption in supply chains or shipping delays; or unavailability of parts, materials or supplies at commercially reasonable rates.

13.16 Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of New Jersey without regard to the principles of conflicts of law. Exclusive venue for any proceeding relating to this Agreement shall be in the Superior Court of New Jersey, Law Division, Ocean County.

13.17 Disputes. Project Co and Township will attempt to settle any controversy, dispute, difference, or claim between them concerning the performance, enforcement, or interpretation of this Agreement (collectively, "Dispute") through direct discussion in good faith, but if unsuccessful, the Parties have the right to bring legal action to pursue available legal remedies. The Parties do not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution.

13.18 Waivers. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any agreement or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

13.19 Interpretation. Common nouns and pronouns and any variations thereof shall be deemed to refer to masculine, feminine, non-binary, or neuter gender, singular or plural, as the identity of the person, persons or other reference in the context requires. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party. Any reference to statutes, laws, or regulations, forms or schedules shall include the amendments, modifications, supplements, or replacements thereof. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended, modified or supplemented and not to any particular section, subsection or clause contained in this Agreement. Whenever used herein, "or" shall include both the conjunctive and disjunctive, "any" shall mean "one (1) or more," and "including" shall mean "including without limitation."

13.20 Counterparts. This Agreement may be executed in counterparts, each of which, when executed, shall be deemed an original instrument, but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement for Pre-Development Services as of the date first written above.

PROJECT CO

TOWNSHIP OF LACEY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

EXHIBITS:

Exhibit 1 Pre-Development Schedule and Services

Exhibit 2 Insurance Requirements



Veronica Laureigh <laceyclerk@laceytownship.org>

Executed PDA

1 message

Jenn Abbott <jenn.abbott@jci.com>

Wed, Apr 12, 2023 at 9:28 AM

To: Veronica Laureigh <laceyclerk@laceytownship.org>

Cc: Christopher Mullen <christopher.mullen@jci.com>

Here you go. Once you adopt the resolution can you fill out the date at the top and sign it to send back so we have it for our records as well.

Thanks,

Jenn

Jenn Abbott

Director of Business Development

Public Private Partnerships

Johnson Controls, Inc.

Jenn.Abbott@jci.com

314.413.4717

 **JCI-Lacey Township- Pre-Development Agreement- Lacey Township (004)_JCIExecuted.pdf**
787K

AGREEMENT FOR PRE-DEVELOPMENT SERVICES

This AGREEMENT FOR PRE-DEVELOPMENT SERVICES (“Agreement”) is entered into as of the [_____] day of [____], 2023 (“Effective Date”) by and between Johnson Controls, Inc. and/or its affiliate (“Project Co”) and the Township of Lacey (“Township”). Hereinafter, each of the foregoing may be individually referred to as a “Party” and collectively as the “Parties”.

RECITALS:

A. WHEREAS, Township desires to replace its current municipal facility and design and build an all-encompassing municipal facility to include Township administrative offices, police headquarters, municipal court, and council chambers in addition to a separate recreational complex (“Facility”) that has the ability to be scaled to size pursuant to a Public-Private Agreement and other contract documents as described herein (the “Project”);

B. WHEREAS, on or about the 13th day of May, 2021, Township received an unsolicited proposal from Johnson Controls Inc. (“JCI”) for the Project;

C. WHEREAS, at a public hearing held on the 10th day of November, 2022, pursuant to the Public-Private-Partnership Law, N.J.S. 40:A-11-52.1.a, *et seq.* (“P3 Law”), Township determined that JCI was the Township’s choice to be the private developer for the development, construction, financing, operation and 30-year maintenance of the Facility on Township owned property designated as Block 1837 Lot 3 on the official tax map of Lacey Township based on the Township’s scoring of predetermined evaluation criteria (N.J.A.C. 17:49-6.3(c)(1)) and other considerations as permissible by applicable regulations (N.J.A.C. 17:49-6.3(c)(2));

D. WHEREAS, on the 10th day of November, 2022, Township passed Resolution 2022-310 selecting JCI as the designated private entity to serve as the developer for the Project;

E. WHEREAS, on or about the 17th day of November, 2022, Township determined that the Project was in the best interest of the public and authorized representatives of Township to negotiate a proposed public-private-partnership agreement with JCI;

F. WHEREAS, pursuant to the P3 Law, Township may enter into a public-private partnership agreement with JCI and/or its affiliate(s) to deliver the Project;

G. WHEREAS, Township desires to engage Project Co to assist Township in the design and build of the Project by (1) providing Pre-Development Services described in Section 3 below, (2) delivering the Project through a Public-Private Agreement to be negotiated pursuant to Section 4 below, and (3) delivering facility maintenance services for the Project through the Public-Private Agreement, all in accordance with the Basis of Design (as determined pursuant to Section 2 below);

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby agree as follows:

1. RECITALS. The Recitals above are incorporated herein by reference.

2. BASIS OF DESIGN. Project Co shall submit draft design criteria for the Project, which sets forth, among other things, the objectives; square footage; desired programming, including administrative offices, police headquarters, municipal courts and council chambers; design standards; performance criteria; exclusivity obligations; preliminary affordability models; and information relating to the Project (“Draft Design Criteria”). Draft Design Criteria will be jointly reviewed and evaluated by Project Co and Township over the course of a 60-day workshopping period (“Workshopping Period”) to determine whether changes to the Draft Design Criteria may be necessary or advisable. The Parties agree that, subject to Section 11 of this Agreement, no payment shall be owed by Township to JCI during the finalization of the Draft Design Criteria. The Draft Design Criteria, as ultimately finalized by Township and Project Co pursuant to the Workshopping Period, shall be hereinafter referred to as the “Basis of Design.” As part of its review and evaluation of the Draft Design Criteria and the Basis of Design pursuant to this Section 2, Project Co shall notify Township if Project Co reasonably anticipates the Draft Design Criteria or the Basis of Design require amendments to the scope of the Pre-Development Services provided in this Agreement (or, by extension, amendments to any of the Project development deadlines or budgets provided under this Agreement).

3. PRE-DEVELOPMENT SERVICES. Township hereby engages Project Co, and Project Co hereby accepts the engagement from Township, to provide the services set forth in this Section 3 and assist Township in connection with the Project, all in accordance with the Basis of Design and the terms of this Agreement (the “Pre-Development Services”). The Pre-Development Services, as further detailed in **Exhibit 1**, shall include all tasks as they relate to the New Jersey Office of Public Finance application submittal required under N.J.A.C. 17:49-6.5 (“Treasury Submission”); coordination meetings between the Township and Project Co, its consultants, subcontractors, and agents; site and geotechnical surveying; civil site plan preparation, which includes all required permit submissions; select engineering for long lead items; and the other services set forth in this Section 3.

3.1 Design Services. The services described in this Section 3.1 shall be referred to as the “Design Services,” which shall also include the specific work items, requirements and deliverables detailed in **Exhibit 1** attached hereto. As part of these Design Services, Project Co will provide the design and assessment necessary to submit the civil and site design packages specified in **Exhibit 1**. In addition, Project Co, in coordination with its consultants, subcontractors, and agents, will advance select design for early purchase packages of the long lead items specified in **Exhibit 1**.

3.2 Facility Maintenance Plan and Price; Performance Criteria. Project Co will provide preliminary management plans, budgets and a financial pro forma for the long-term facility maintenance services to be provided for the Project, as well as the performance criteria and related performance risk allocation for the Project, for the period following substantial completion of the Project throughout the Facility Maintenance Term, as necessary to facilitate Treasury Submission.

3.3 Project Strategies. Project Co shall be responsible for, with the support of Township, (a) arranging for Project financing on acceptable terms and conditions, including all Pre-Development Services, for which Project Co shall be compensated in accordance with this Agreement; (b) obtaining all operating entity permits and administrative/regulatory approvals as

set forth in Section 3.1 and **Exhibit 1**; and (c) preparing, maintaining and updating a project financial model to reflect the overall cash flows, sources and uses (including but not limited to expected remuneration of each of Project Co and Township), project options, and overall affordability in collaboration with the Township financial advisor. Township shall be responsible for, with the support of Project Co, (d) negotiating required legal agreements between Township and third-parties for the Project and (e) providing specific revenue streams to support the financing of the Project. As a part of this Agreement, Township expects that Project Co shall fully support Township's efforts to achieve its desired outcomes as to each of its Project Strategies. Project Co shall provide such support by furnishing additional information or calculations relating to the Project as part of its Pre-Development Services throughout the term of this Agreement, including without limitation, at the time of providing its Design Services, provided, if any such support would require significant third party expense or investment of additional resources, Project Co will provide Township with advance notice and negotiate an adjustment to the scope of the Pre-Development Services and fees due hereunder prior to pursuing such work

3.4 Scheduling. Within fifteen (15) days of the Effective Date, Township and Project Co shall jointly develop a schedule for the Parties' combined responsibilities in Pre-Development Services (the "Schedule"), using as a guide the proposed Project timeline provided in **Exhibit 1**. Township acknowledges that its timely review and approval of Project Co's work and services is essential for Project Co to complete the Pre-Development Services in accordance with the Schedule. Accordingly, if Project Co shall be materially delayed in completing the Pre-Development Services as a result of (i) Township's failure to timely furnish information required by Project Co, or (ii) Township's failure to timely respond to requests for approvals of Project Co's work (in either case, an "Owner Delay"), then (a) the milestones and deadlines in the Schedule shall be reasonably adjusted to account for the Owner Delay, and (b) upon Project Co's request therefor, Township shall compensate Project Co for additional costs incurred by Project Co as a consequence of the Owner Delay ("Project Co Delay Costs"). Project Co Delay Costs shall be paid to Project Co upon financial close of the Project; provided however, if this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2, reimbursement for Project Co Delay Costs shall be due within thirty (30) days of such termination.

3.5 Negotiations. The Pre-Development Services under this Agreement shall not include any work performed pursuant to the Public-Private Agreement.

3.6 Ownership of Work Product. Provided that Township has paid all amounts due to Project Co pursuant to this Agreement, then all analyses, calculations, schematics, designs, plans, work product and other deliverables provided by Project Co to Township in connection with the Pre-Development Services (collectively, the "Work Product"), shall be the property of Township. All intellectual property rights in the Work Product shall, as between Project Co and Township, remain the property of Project Co and, provided that Township has paid all amounts due to Project Co pursuant to this Agreement, Project Co shall provide to Township a license to use such Work Product for the purposes of the Project. In the event Township uses the Work Product in connection with constructing all or a portion of the Project but does not engage Project Co pursuant to the Public-Private Agreement (as defined in Section 4.1 below), Township releases Project Co and Project Co's consultants from all claims and causes of action arising from such uses of the Work Product by Township or its agents. Notwithstanding the foregoing, all materials furnished or used by Project Co personnel and/or Project Co subcontractors or agents at the

installation site in completing the Pre-Development Services, including documentation, schematics, test equipment, software and associated media remain the exclusive property of Project Co or such other third party and shall not constitute Work Product. Township shall allow Project Co personnel and/or Project Co subcontractors or agents to retrieve and to remove all such materials remaining after the completion of Pre-Development Services. Township acknowledges that any software furnished in connection with the Pre-Development Services is proprietary and subject to the provisions of any software license agreement associated with such software.

4. PUBLIC-PRIVATE AGREEMENT.

4.1 Public-Private Agreement. Immediately after the Effective Date, Township and Project Co will begin to negotiate in good faith a public-private partnership agreement (“Public-Private Agreement”) for new construction, financing, and facility maintenance related thereto.

4.2 Term Sheet. The Public-Private Agreement shall not be binding upon Project Co or Township until such time as the Parties have executed and delivered the Public-Private Agreement and otherwise in accordance with its terms; provided, however, that (a) the scope of the Project shall be materially consistent with the Basis of Design and preliminary management plans, budgets and financial pro forma, as well as the performance criteria and related performance risk allocation to be developed pursuant Section 3.2 of this Agreement. The Parties’ negotiations of the Public-Private Agreement shall be materially consistent with the terms and conditions identified in the term sheet delivered by Project Co within thirty (30) days of the Effective Date.

4.3 Termination of Negotiations. If, following the completion of the Pre-Development Services, the Parties’ negotiations of the Public-Private Agreement are not yet complete, then, as part of Project Co’s compensation under this Agreement, Township shall, for a period of one hundred and eighty (180) days, exclusively negotiate in good faith with Project Co to finalize the Public-Private Agreement for Treasury Submission; provided, however, that at any time after the conclusion of the one hundred and eighty (180) day period (but prior to the execution of the Public-Private Agreement), either Township or Project Co may provide written notice to the non-terminating Party (a “Termination Notice”) indicating its desire to terminate negotiations of the Public-Private Agreement. Thereafter, Project Co and Township shall, for an additional period of thirty (30) days after the non-terminating Party’s receipt of a Termination Notice, negotiate in good faith to finalize the Public-Private Agreement for Treasury Submission. If Project Co and Township have not finalized the Public-Private Agreement for Treasury Submission within such 30-day period, then (a) within ten (10) days after the end of the 30-day period, Township shall deliver to Project Co a Termination Payment (as defined below) pursuant to the Termination Payment Schedule set forth in Section 11.1; and (b) upon Project Co’s receipt of the Termination Payment, this Agreement shall terminate and Project Co shall grant to Township the intellectual property license referred to in and in accordance with the provisions of Section 3.6. If Township terminates this Agreement pursuant to Sections 10.1 or 10.2 below, then the obligation of the Parties to negotiate the Public-Private Agreement shall similarly terminate.

5. ADDITIONAL FEES FOR SERVICES; PRELIMINARY BUDGET. If Project Co reasonably determines that the Basis of Design requires a change in Project Co’s scope of Pre-

Development Services, then (i) the milestones and deadlines in the Schedule shall be reasonably adjusted to account for the changed scope, and (ii) upon Project Co's request therefor, Township shall compensate Project Co for additional costs incurred by Project Co as a consequence of the change in scope ("Scope Adjustment Costs"). The Scope Adjustment Costs shall be paid to Project Co upon financial close of the Project; provided however, if this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2, reimbursement for the Scope Adjustment Costs shall be due within thirty (30) days of such termination.

6. PAYMENT PROCESS. Project Co shall be compensated for its Pre-Development Services based on the schedule of values outlined in **Exhibit 1** upon financial close of the Project, as defined in the Project Agreement; provided however, if this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2, Project Co shall be compensated for its Pre-Development Services pursuant to the Termination Payment Schedule set forth in Section 11.1.

7. INSURANCE. Project Co shall continuously maintain, or shall cause to be continuously maintained by one of Project Co's consultants, throughout the term of this Agreement the insurance policies described in **Exhibit 2** attached hereto, in each case to the extent applicable to the scope of work of Project Co under this Agreement. Project Co shall deliver to Township one or more certificates of insurance evidencing such coverages, and listing Township as an additional insured under such policies (excepting worker's compensation and professional liability policies) pursuant to the issuance of additional insured policy endorsement.

8. INDEMNITY; WAIVER OF CONSEQUENTIAL DAMAGES. To the fullest extent permitted by applicable law, each Party (the "Indemnifying Party") expressly agrees to indemnify, defend and hold harmless the other Party, and its affiliates, trustees, agents, officers, employees, directors, members and permitted assigns (collectively, the "Indemnified Party") for all damages, losses and expenses with respect to any third-party claims against the Indemnified Party for personal injury (including death) or tangible property damage, but only to the extent such damages, losses and expenses are caused by the negligence or willful misconduct of the Indemnifying Party in fulfilling its obligations under this Agreement. To the extent permitted by applicable laws, neither Project Co nor Township will be responsible to the other for any special, indirect or consequential damages. These obligations shall continue after the termination of this Agreement.

9. ASSIGNMENT. Neither Project Co nor Township may assign any of its respective right, title or interest in and to this Agreement without the prior written consent of non-assigning Party. Notwithstanding the foregoing, Township acknowledges that Project Co may desire to assign Project Co's right, title and interest in and to this Agreement (a) to an affiliated entity that will ultimately develop and/or own the Project, and/or (b) in connection with obtaining third party financing for the Project, and Township hereby consents to any such assignment.

10. TERM AND TERMINATION. The term of this Agreement shall commence upon the Effective Date and shall terminate upon the first to occur of any of the following events:

10.1 Default. This Agreement may be terminated at any time by either Project Co or Township if the non-terminating Party commits an Event of Default. As used herein, an "Event of Default" shall have occurred if either Project Co or Township fails to perform any of its

respective material obligations under this Agreement, the non-terminating Party provides the other Party (the “Recipient”) with written notice thereof setting forth the nature of the default, and that Recipient does not cure the failure within (i) ten (10) days in the case of a monetary default, or (ii) thirty (30) days in the case of a non-monetary default; provided, however, that if the nature of the non-monetary default is such that it cannot reasonably be cured within thirty (30) days as agreed in writing by the Parties, the Recipient may cure such default by commencing in good faith to cure such default promptly after its receipt of such written notice and prosecuting the cure of such default to completion with diligence and continuity within a reasonable time thereafter. If this Agreement is terminated pursuant to this Section 10.1, the terminating Party may pursue all claims at law or in equity against the non-terminating Party; provided, however, that Township shall not have an automatic right of set off under this Agreement and shall be obligated to pay Project Co amounts due under Section 11.1 below.

10.2 Termination for Convenience. This Agreement may be terminated by either Project Co or Township in whole or in part without cause and for its convenience upon ten (10) days’ prior written notice by the non-terminating Party. In the event of a termination for convenience by either Party, Township shall be obligated to pay Project Co amounts due under Section 11.1 below.

10.3 Public-Private Agreement. This Agreement shall terminate automatically upon the Parties’ execution of the Public-Private Agreement. The terms and conditions of the Public-Private Agreement will supersede in their entirety all submittals provided pursuant to the Pre-Development Services. If this Agreement is terminated pursuant to this Section 10.3, Project Co shall be compensated for its Pre-Development Services based on the schedule of values in **Exhibit 1** upon financial close of the Project, as defined in the Project Agreement.

11. CONSEQUENCES OF TERMINATION. If this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2 above, Township shall promptly pay to Project Co a Termination Payment pursuant to the table below; plus all other amounts allowed by this Agreement. Additional detail regarding the Milestones below is set forth in **Exhibit 1**.

	Milestone	Termination Payment to Project Co
1.	Affordability Analysis Workshop- Termination occurs after the Affordability Analysis Workshop, but prior to meeting Milestone 2, Treasury Submission.	\$243,600
2.	Treasury Submission- Termination occurs after Treasury Submission, but prior to Milestone 3, Execution of Site and Geotechnical surveying.	\$730,799
3.	Execution of Land Surveys and Geotechnical- Termination occurs after execution of the Land Surveys as listed in Exhibit 1, but prior to Milestone 4, completion and delivery of Civil and Site Plan Design for Permitting and Commission Authority Approval.	\$812,167

4.	Delivery of Civil and Site Plan Design for Permitting and Commission Authority Approval- Termination occurs after delivery of the Site and Civil Plans and permitting application submissions, but prior to Milestone 5, select engineering for long lead items and approval of the Treasury Submission.	\$1,122,904
5.	Delivery of Design for Long Lead Items- Termination occurs during review of the Treasury Submission and after engineering for long lead items is complete, but prior to execution of the Public-Private Agreement	\$1,306,334

12. CONFIDENTIALITY.

12.1 Proprietary Information. This Agreement creates a confidential relationship between Project Co and Township. Both Parties acknowledge that while performing its obligations pursuant to 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, operating models, financial models, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development, and other confidential information (as determined by commercially reasonable standards) relating to the other Party (“Proprietary Information”). Both Parties agree to use best efforts to keep all Proprietary Information confidential. Subject to Section 3.6, 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. Project Co and Township agree that neither Party shall make public announcements regarding this Agreement or the Project without mutual agreement of the Parties as to timing and content.

12.2 New Jersey Open Public Records Act. Notwithstanding the foregoing, Project Co and Township may disclose Proprietary Information to their affiliates, member institutions, subcontractors, vendors, suppliers, employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such Proprietary Information confidential. Additionally, in the event a third-party requests that Township provide documentation, evidence of payment, or correspondence between the Parties (“Requested Information”) pursuant to the New Jersey Open Public Records Act (“OPRA”) or New Jersey Common Law, Township shall first provide seven (7) business days’ notice to Project Co of such request. Subject to this Section 12.2 and Township’s obligation to comply with the request pursuant to OPRA or New Jersey Common Law, the Requested Information shall be provided to the third-party requestor no later than the seventh (7th) day after the request. During the period prior to the release of the Requested Information, Project Co may review the request; propose redactions to the Requested Information, including but not limited to redacting Proprietary Information; notify the Township of any objection to the release of the Requested Information,

including but not limited to notifying Township of Requested Information that is exempt from public access under OPRA; and take legal action, including but not limited to filing a lawsuit, to stop the release of the Requested Information.

13. MISCELLANEOUS.

13.1 Access. Township shall provide Project Co, its consultants, subcontractors, and agents reasonable and safe access to all facilities and properties in Township's control that are subject to the Pre-Development Services. Township further agrees to assist Project Co, its consultants, subcontractors, and agents to gain access to facilities and properties that are not controlled by Township but are necessary for Project Co to complete the Pre-Development Services. If Township fails to provide access pursuant to this Section 13.1, then (i) the milestones and deadlines in the Schedule shall be reasonably adjusted to account for the lack of access, and (ii) upon Project Co's request therefor, Township shall compensate Project Co for additional costs incurred by Project Co as a consequence of the lack of access ("Project Co Access Costs"). Project Co Access Costs shall be paid to Project Co upon financial close of the Project; provided however, if this Agreement is terminated pursuant to Sections 4.3, 10.1 or 10.2, reimbursement for Project Co Access Costs shall be due within thirty (30) days of such termination.

13.2 Independent Contractor. Project Co, its consultants, subcontractors and agents shall perform, or cause to be performed, all development, design and other work and obligations of Project Co under this Agreement in accordance with all applicable laws, and consistent with applicable industry standards for design and workmanship where the Project is located. Project Co represents that Project Co, its agents, employees and contractors have all knowledge, experience, licenses (or other applicable governmental approvals) and other qualifications necessary and appropriate to perform the Pre-Development Services. Project Co expressly acknowledges that it is an independent contractor, that it is not the representative or agent of Township, and that Township's participation or approvals shall in no way relieve Project Co of its duties and responsibilities under applicable law and this Agreement.

13.3 Scope of Work. Project Co agrees, pursuant to the terms and conditions of this Agreement, to provide and/or arrange for the provision of design, engineering, labor, materials, equipment and other work necessary to perform the Pre-Development Services.

13.4 Limitation of Liability. In no event shall Project Co be liable to Township or any subdivision thereof under the Agreement for any damages, claims, demands, suits, causes of action, losses, costs, expenses and/or liabilities in excess of amounts due to Project Co under this Agreement, regardless of whether such liability arises out of breach of contract, guarantee or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory.

13.5 Site Investigations: Environmental Assessments. Project Co reserves the right to conduct its own environmental assessment and review prior to commencing construction of the Facility or initiating maintenance responsibilities for the Project. In connection therewith, Township will share with Project Co its assessment plan and environmental assessment reports, request a reliance letter from the party conducting such assessments, and/or share core samples with Project Co so Project Co may conduct its own analysis.

13.6 Design Work. Project Co shall cause all design and engineering work to be performed only by qualified architects, engineers, and other design professionals duly licensed and qualified to perform such work. The drawings and other design documents created under this Agreement will be prepared and sealed, as necessary, by such design professionals with “Not for Construction” designations. Project Co shall require the engineer of record for the Project to become familiar with and knowledgeable about all applicable laws, codes, ordinances, rules, regulations and statutes including local health codes and the Americans with Disabilities Act.

13.7 Liens. Provided that Township has paid Project Co any amount due pursuant to this Agreement for work that is the subject of a subcontractor’s claim, and that Township has timely tendered any claim subject to this provision and permitted a response by Project Co, Project Co shall indemnify and hold harmless Township, its members and their agents and employees from and against all claims, demands, damages, losses and expenses, including, without limitation, attorneys’ fees paid or incurred by Township in connection with the settlement or defense of any subcontractor claim relating to Project Co’s scope of work under this Agreement. Additionally, Project Co promptly (not more than forty-five (45) days after Project Co’s receipt of notice thereof) shall cause such lien or claim for lien to be formally released, bonded against or otherwise satisfied.

13.8 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. Township represents and warrants that it has full power and authority to enter into this Agreement, to execute and deliver this Agreement and to incur its obligations provided for herein, all of which have been duly authorized by all proper and necessary State of New Jersey and/or local governmental action. Township represents and warrants that no additional consent or approval is required as a condition to the validity of this Agreement.

13.9 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.

13.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and it supersedes all prior discussions, understandings or agreements between the Parties. All Exhibits attached hereto are a part of this Agreement and are incorporated herein by reference.

13.11 Binding Upon Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

13.12 Addresses for Notices. All notices to be given by either Party to the other shall be in writing and mailed by certified mail, return receipt requested, or sent by a courier service which renders a receipt upon delivery, or sent by electronic mail, addressed as set forth below, or at such

other addresses as either Party may hereinafter designate by a notice to the other. Notices are deemed delivered upon actual receipt and the signed return receipt or courier receipt shall be prime facie proof thereof. The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court shall govern.

If to Project Co:

Johnson Controls, Inc.
Attention: Claudio Andreetta
5757 N. Green Bay Avenue
Glendale, WI 53209
Claudio.W.Andreetta@jci.com

If to Township:

Lacey Township, New Jersey
Attention: Veronica Laureigh, Administrator/Clerk
818 W. Lacey Road,
Forked River, NJ 08731
laceyclerk@laceytownship.org

With Copy to:

Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors
Attention: Jerry J. Dasti
620 West Lacey Road
Forked River, NJ 08731
jdasti@dmmlawfirm.com

13.13 Construction of Agreement. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that both Township and Project Co have contributed substantially and materially to the preparation of this Agreement.

13.14 Descriptive Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning, interpretation or construction of any provisions of this Agreement.

13.15 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 include but are not limited to: acts of God; acts of government agencies; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; changes in laws; unusual disruption in supply chains or shipping delays; or unavailability of parts, materials or supplies at commercially reasonable rates.

13.16 Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of New Jersey without regard to the principles of conflicts of law. Exclusive venue for any proceeding relating to this Agreement shall be in the Superior Court of New Jersey, Law Division, Ocean County.

13.17 Disputes. Project Co and Township will attempt to settle any controversy, dispute, difference, or claim between them concerning the performance, enforcement, or interpretation of this Agreement (collectively, "Dispute") through direct discussion in good faith, but if unsuccessful, the Parties have the right to bring legal action to pursue available legal remedies. The Parties do not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution.

13.18 Waivers. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any agreement or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

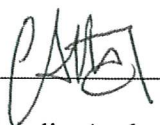
13.19 Interpretation. Common nouns and pronouns and any variations thereof shall be deemed to refer to masculine, feminine, non-binary, or neuter gender, singular or plural, as the identity of the person, persons or other reference in the context requires. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party. Any reference to statutes, laws, or regulations, forms or schedules shall include the amendments, modifications, supplements, or replacements thereof. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended, modified or supplemented and not to any particular section, subsection or clause contained in this Agreement. Whenever used herein, "or" shall include both the conjunctive and disjunctive, "any" shall mean "one (1) or more," and "including" shall mean "including without limitation."

13.20 Counterparts. This Agreement may be executed in counterparts, each of which, when executed, shall be deemed an original instrument, but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement for Pre-Development Services as of the date first written above.

**PROJECT CO (JOHNSON
CONTROLS, INC.)**

TOWNSHIP OF LACEY

By:  _____

By: _____

Name: Claudio Andreetta _____

Name: _____

Its: Executive Director, Public-Private
Partnerships

Its: _____

EXHIBITS:

Exhibit 1	Pre-Development Schedule and Services
Exhibit 2	Insurance Requirements

