

CITY COUNCIL AGENDA
TUESDAY, SEPTEMBER 27, 2022, 7:00 P.M.
CITY COUNCIL CHAMBERS- HURLEY BUILDING
205 SALTONSTALL ST.
VIRTUAL: <https://us06web.zoom.us/j/85999209422>

City Council: **Bob Palumbo, Mayor**
 Nick Cutri, Councilmember Ward I
 Dan Unrath, Councilmember Ward II
 Karen White, Councilmember Ward III
 Erich Dittmar, Councilmember Ward IV
 Sim Covington, Councilmember-at-Large
 Thomas Lyon, Councilmember-at-Large
 Renée Sutton, Councilmember-at-Large
 Steve Uebbing, Councilmember-at-Large

John Goodwin, City Manager
Erin VanDamme, City Clerk
David Hou, Corporation Counsel

- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Public Hearings:**
- 4. Review of Community Core Values:**
As residents, city staff and appointed & elected officials of the City of Canandaigua, our decisions and actions will be guided by these core values: Responsive; Participatory Governance; Caring & Respect; Integrity; Heritage; Stewardship; and Continuous Improvement.
- 5. Approval of Minutes:** **NA**
- 6. Recognition of Guests:**
- 7. Committee Reports:**
- 8. Resolutions:**

Resolution #2022-061: **A Resolution Authorizing a Contract with Johnson Controls, Inc for Biosolids Improvements Project at the Water Resource Recovery Facility**

- 9. Ordinances:**
- 10. Local Laws:**
- 11. Manager's Report:**
- 12. Appointments:**
- 13. Miscellaneous:**
- 14. Adjournment**

RESOLUTION #2022-061

A RESOLUTION APPROVING PROJECT DEVELOPMENT AGREEMENT FOR IMPROVEMENTS AT THE WATER RESOURCE RECOVERY FACILITY

WHEREAS, the City contracted with Johnson Controls, Inc to develop a turnkey project to make improvements at the Water Resource Recovery Facility to update the forty-year-old facility while also furthering the City's sustainability and environmental initiatives; and

WHEREAS, the project was developed and includes solids handling improvements via the conversion from anaerobic digestion to a ThermoAer ATAD System, influent pump replacement, LED lighting upgrade and building envelope weatherization at total cost of \$28,783,033; and

WHEREAS, the City Council authorized a bond for this project via Resolution #2022-049 authorizing up to \$30,000,000 to finance the project; and

NOW, THEREFORE, BE IT RESOLVED, that City Council hereby authorizes the City Manager to execute the attached installation agreement, in substantially the same form as attached hereto, with Johnson Controls, Inc.

ADOPTED this 27th day of September, 2022.

ATTEST:

Erin Van Damme
City Clerk

INSTALLATION CONTRACT

This Installation Contract (this "Agreement") is made this [REDACTED] day of September, 2022 by and between JOHNSON CONTROLS, INC. ("JCI") and THE CITY OF CANANDAIGUA ("Customer").

RECITALS

WHEREAS, Customer desires to retain JCI to perform the work specified in Schedule 1 – Scope of Work (the "Work"), pursuant to the terms and conditions contained in this Agreement; and

WHEREAS, both Customer and JCI are authorized to, and have taken all necessary steps to enter into this Agreement;

WHEREAS, Customer has selected JCI to perform the Work after it determined JCI's proposal was the most advantageous to Customer in accordance with all applicable procurement and other Laws; and

WHEREAS, this Agreement is in accordance with JCI Sourcewell agreement #070121-JHN.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

AGREEMENT

- 1. SCOPE OF THE AGREEMENT.** JCI shall perform the scope of work set forth in Schedule 1 – Scope of Work.
- 2. AGREEMENT DOCUMENTS:** In addition to the terms and conditions of this Agreement, the following Schedules are incorporated into and shall be deemed an integral part of this Agreement:

Schedule 1 – Scope of Work

Schedule 2 – Customer Responsibilities

Schedule 3 – Contract Sum - Payment Terms and Conditions

Attachment 1 – Form of Notice to Proceed

Attachment 2 – Form of Certificate of Substantial Completion

Attachment 3 – Form of Certificate of Final Completion

Attachment 4 – Lighting Detail Dated 08/01/2022

Attachment 5 – Design Drawings Dated June 2022, Design Revision 2, Dated 8/01/22

Attachment 6 – Design Technical Specification Manual Dated 8/01/22

Attachment 7 – Utility (Rochester Gas and Electric) Electric Drawing 1/1 dated 6/24/22

- 3. COMMENCING WORK; SUBSTANTIAL COMPLETION.** This Agreement shall become effective on the date of the last signature on the signature page below. JCI shall commence performance of the Work within ten (10) business days of receipt of Customer's Notice to Proceed, the form of which is attached hereto as Attachment 1, and is anticipated to achieve Substantial Completion of the Work by June 28, 2024. Upon the project reaching Substantial Completion, the Customer shall execute a Certificate of Substantial Completion in the form attached hereto as Attachment 2. For purposes of this Agreement, "Substantial Completion" means the point in time where the Customer may utilize the Work for its intended purpose with only minor elements remaining uncompleted. JCI is anticipated to achieve Final Completion by no later than 60 days after Substantial Completion. Upon final completion of the Work, the Customer shall execute a Certificate of Final Completion in the form attached hereto as Attachment 3.
- 4. ACCESS; CUSTOMER RESPONSIBILITIES.** Customer shall provide JCI, its subcontractors, and its agents reasonable and safe access to all facilities and properties in Customer's control where the Work is to be performed. Customer further agrees to assist JCI, its subcontractors, and its agents to gain access to facilities and properties that are not controlled by Customer but are necessary for JCI to complete the Work. An equitable adjustment in the time for performance and price and payment terms shall be agreed upon between JCI and the Customer as a result of any failure to grant such access. In addition, Customer shall fulfill the obligations set forth in Schedule 2 – Customer Responsibilities.

- 5. DELAYS AND IMPACTS.** If JCI is delayed or impacted in the commencement, performance, or completion of the Work by causes beyond its control and without its fault, including but not limited to inability to access property; concealed or unknown conditions encountered at the project, differing from the conditions represented by Customer in the plan or other written information provided by Customer to JCI or otherwise disclosed by Customer to JCI prior to the commencement of the Work; a Force Majeure Event (as defined below) condition; delays incurred by utilities; delays incurred by regulatory permitting agencies; failure by Customer to perform its obligations under this Agreement; or failure by Customer to cooperate with JCI in the timely completion of the Work, JCI shall provide written notice to Customer of the existence, extent of, and reason for such delays and impacts. Under such circumstances, an equitable adjustment in the time for performance, price, scope and payment terms shall be agreed upon between JCI and the Customer.
- 6. COMPENSATION.** In consideration of JCI's performance of the Work, Customer shall pay JCI the lump sum amount of \$28,783,033 ("Contract Sum"). The terms and conditions relating to the payment of the Contract Sum from Customer to JCI shall be as provided in Schedule 3 attached hereto. The Contract Sum set forth in this Agreement is based upon the Agreement being fully executed by September 30, 2022, with Customer's issuance of the Notice to Proceed on or before November 14, 2022. In the event that the Notice to Proceed is not issued on or before such date, JCI may adjust the Contract Sum to reflect any increase in prices for materials, products and installation, and shall provide Customer with documentation evidencing the same. The parties shall execute an amendment to this Agreement to document the new contract sum.
- 7. PERMITS, TAXES, AND FEES.** Unless expressly included as an obligation of JCI in Schedule 1 attached hereto, Customer shall be responsible for obtaining all building permits, licenses, approvals, permissions and certifications, including but not limited to, all zoning and land use changes or exceptions required for the provision of the Work or the ownership and use of the facility improvement measures. Unless included as part of the Work, JCI shall not be obligated to provide any changes to or improvement of the facilities or any portion thereof required under any applicable building, fire, safety, sprinkler or other applicable code, standard, law, regulation, ordinance or other requirement. Customer shall be responsible for and shall pay when due all assessments, charges and sales, use, property, excise, or other taxes now or hereafter imposed by any governmental body or agency upon the provision of the Work. Customer shall also be responsible for real or personal property taxes relating to equipment or material included in the Work. Any fees, taxes, or other lawful charges paid by JCI on account of Customer shall become immediately due from Customer to JCI.
- 8. WARRANTY.** JCI will perform the Work in a professional, workman-like manner. JCI will promptly re-perform any non-conforming Work for no charge, as long as Customer provides written notice to JCI within one (1) year following Substantial Completion or such other period identified in Schedule 1. If JCI installs or furnishes goods or equipment under this Agreement, and such goods or equipment are covered by an end-user warranty from their manufacturer, JCI will transfer the benefits of such warranty to Customer. The foregoing remedy with respect to the Work, together with any remedy provided by goods or equipment manufacturers, shall be Customer's sole and exclusive remedies for warranty claims. Customer agrees that the one (1) year period following Substantial Completion, or such other period identified in Schedule 1, shall be a reasonable time for purposes of submitting valid warranty claims with respect to the Work. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE PROVIDED BY JCI. This warranty does not extend to any Work that has been abused, altered, or misused, or repaired by Customer or third parties without the supervision or prior written approval of JCI. Except with respect to goods or equipment manufactured by JCI and furnished to Customer hereunder, for which JCI shall provide its express written manufacturer's warranty, JCI shall not be considered a merchant or vendor of goods or equipment. JCI makes no and specifically disclaims all representations or warranties that the Work, products, or software will be secure from cyber threats, hacking or other similar malicious activity or will detect the presence of, or eliminate, prevent, treat, or mitigate the spread, transmission, or outbreak of COVID-19 or any other pathogen, disease, virus or other contagion.
- 9. CLEANUP.** JCI shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, JCI shall remove all waste materials, rubbish, tools, installation equipment, machinery, and surplus materials.
- 10. SAFETY; COMPLIANCE WITH LAWS.** JCI shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. Both JCI and Customer shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (collectively, "Laws") in connection with its performance hereunder.

11. HAZARDOUS MATERIALS. JCI shall be responsible for removing or disposing of any Hazardous Materials (as defined below) that it uses in providing Work (“JCI Hazardous Materials”) and for the remediation of any areas impacted by the release of JCI Hazardous Materials. For other Hazardous Materials that may be otherwise present at Customer’s facilities (“Non-JCI Hazardous Materials”), Customer shall supply JCI with any information in its possession relating to the presence of such materials if their presence may affect JCI’s performance of the Work. If either Customer or JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with JCI’s Work, notification shall be provided to the other party and the Work shall be ceased in the affected area. As between Customer and JCI, except as expressly set forth in Schedule 1, Customer shall be responsible at its sole expense for removing and disposing of Non-JCI Hazardous Materials from its facilities and the remediation of any areas impacted by the release of Non-JCI Hazardous Materials. For purposes of this Agreement, “Hazardous Materials” means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under applicable Law relating to or addressing public or employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, or polychlorinated biphenyls, including specifically mold and lead-based paint.

JCI shall have no obligations relating to the identification, abatement, cleanup, control, removal, or disposal of mold.

To the fullest extent permitted by Law, Customer shall indemnify and hold harmless JCI and JCI’s subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from the Customer’s use, or the storage, release, discharge, handling or presence of Non-JCI Hazardous Materials on, under or about the facilities.

The following items are specifically excluded from this Agreement: emerging contaminants in landfill leachate, including but not limited to, pharmaceutical, microplastics, and per- and polyfluoroalkyl substances (PFAS) (“Emerging Contaminants”); and the handling, disposal or removal of hazardous substances or Emerging Contaminants in landfill leachate, equipment, materials, or the environment.

12. CHANGE ORDERS. The parties, without invalidating this Agreement, may request changes in the Work to be performed under this Agreement, consisting of additions, deletions, or other revisions to the Work (“Change Orders”). The price and payment terms and time for performance shall be equitably adjusted in accordance with a Change Order, as mutually agreed upon by the parties. JCI may delay performance until adjustments arising out of the Change Order are clarified and agreed upon. Any Change Order must be signed by an authorized representative of each party.

13. INSURANCE. JCI shall maintain insurance in amounts no less than those set forth below in full force and effect at all times until the Work has been completed, and shall provide a certificate evidencing such coverage promptly following Customer’s request therefor.

COVERAGES	LIMITS OF LIABILITY
Workmen’s Compensation Insurance or self insurance, including Employer’s Liability	Statutory
Commercial General Liability Insurance	\$5,000,000 Per Occurrence \$5,000,000 Aggregate
Comprehensive Automobile Liability Insurance	\$5,000,000 Combined Single Limit

The above limits may be obtained through primary and excess policies, and may be subject to self-insured retentions.

Customer shall also maintain insurance coverage, of the types and in the amounts customary for the conduct of its business, throughout the term of this Agreement.

14. INDEMNIFICATION. To the fullest extent permitted by applicable Law, each party shall indemnify the other with respect to any third party claim alleging bodily injury, including death, or tangible property damage, but only to

the extent such injury or damage is caused by the negligence or willful misconduct of the indemnifying party. Notwithstanding the above, Customer shall indemnify and hold JCI and its officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, related to or arising out of (a) any noncompliance by Customer with currently applicable or future regulatory obligations, (b) conditions not identified or accounted for in the "ATAD and Leachate Pretreatment Feasibility Report for the City of Canandaigua, NY WRRF" by MRB Group (MRB Feasibility Report), or (c) the presence, handling, disposal, release or removal of Non-JCI Hazardous Materials or Emerging Contaminants in or from landfill leachate, equipment, materials, or the environment. A condition precedent to any obligation of a party to indemnify the other pursuant to this Section 14 shall be for the indemnified party to promptly advise the indemnifying party of the claim pursuant to the notice provision of this Agreement.

- 15. LIMITATION OF LIABILITY.** NEITHER JCI NOR CUSTOMER WILL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, PUNITIVE, EXEMPLARY, LOSS OF PROFITS OR REVENUE, LOSS OF USE, OR SIMILAR DAMAGES, REGARDLESS OF HOW CHARACTERIZED AND REGARDLESS OF A PARTY HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSSES OR RELIEF, ARISING IN ANY MANNER FROM THIS AGREEMENT, THE WORK, THE PREMISES OR OTHERWISE. WITHOUT LIMITING JCI'S EXPRESS OBLIGATIONS UNDER THE ASSURED PERFORMANCE GUARANTEE, JCI'S LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE AMOUNT OF THE PAYMENTS ACTUALLY RECEIVED BY JCI PURSUANT TO SCHEDULE 3. If this Agreement covers fire safety or security equipment, Customer understands that JCI is not an insurer regarding those services, and that JCI shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to prevent a casualty loss. The foregoing waivers and limitations are fundamental elements of the basis for this Agreement between JCI and Customer, and each party acknowledges that JCI would not be able to provide the work and services contemplated by this Agreement on an economic basis in the absence of such waivers and limitations, and would not have entered into this Agreement without such waivers and limitations.
- 16. FORCE MAJEURE; DELAYS.** Neither party will be responsible to the other for damages, loss, injury, or delay caused by Force Majeure Events. As used herein, "Force Majeure Events" are conditions that are beyond the reasonable control and without the intentional misconduct or negligence of a party, either foreseeable or unforeseeable, including, without limitation, severe weather, flooding, seismic disturbances, acts of God, acts or omissions of government agencies, condemnation, strikes, labor disputes, epidemics, pandemics, disease, quarantines or other public health risks and/or responses, 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, data breach, cyber-attacks, ransomware, or unavailability, delayed delivery.. If a party is delayed in achieving one or more of its schedule milestones set forth in the Agreement due to a Force Majeure Event, the affected party will be entitled to extend the relevant completion date by the magnitude of the Force Majeure Event plus additional time to overcome the effect of the delay.
- 17. INCREASED COSTS.** In the event of an increase of 5% or more in cost of any parts, materials or supplies to be used in the project between the date of the Agreement and the date of installation or a Force Majeure Event that increases the cost of the Work, an equitable adjustment in the Agreement Price shall be agreed upon between JCI and the Customer.
- 18. DISPUTES.** JCI and Customer 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, will submit any Dispute to non-binding mediation in Canandaigua, New York or by video conference, as agreed to by the parties. If the parties are unable to agree on a mediator or a date for mediation, either party may request JAMS, Inc. to appoint a mediator and designate the time and procedure for mediation. Such mediator shall be knowledgeable, to each party's reasonable satisfaction, with respect to matters concerning construction law. Neither JCI nor Customer will file a lawsuit against the other until not less than sixty (60) days after the mediation referred to herein has occurred, unless one or both parties is genuinely and reasonably concerned that any applicable statute of limitations is on the verge of expiring. JCI AND CUSTOMER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL AS TO ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR DIRECTLY OR INDIRECTLY RELATED TO THIS AGREEMENT, INCLUDING CONTRACT, TORT AND STATUTORY CLAIMS, AND EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THIS WAIVER

IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS UNDER THIS AGREEMENT.

19. **GOVERNING LAW.** This Agreement and the construction and enforceability thereof shall be interpreted in accordance with the laws of the state where the Work is conducted.
20. **CONSENTS; APPROVALS; COOPERATION.** Whenever Customer's consent, approval, satisfaction or determination shall be required or permitted under this Agreement, and this Agreement does not expressly state that Customer may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever Customer's cooperation is required by JCI in order to carry out JCI's obligations hereunder, Customer agrees that it shall act in good faith and reasonably in so cooperating with JCI and/or JCI's designated representatives or assignees or subcontractors. Customer shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the performance of the Work.
21. **FURTHER ASSURANCES.** The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement, including without limitation, providing reasonable evidence that Customer has the financial ability to pay JCI the Contract Sum.
22. **INDEPENDENT CONTRACTOR.** The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be deemed to create a partnership, joint venture, fiduciary, or similar relationship between the parties.
23. **POWER AND 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.
24. **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.
25. **COMPLETE AGREEMENT.** It is understood and agreed that this Agreement contains the entire agreement between the parties relating to all issues involving the subject matter of this Agreement. No binding understandings, statements, promises or inducements contrary to this Agreement exist. This Agreement supersedes and cancels all previous agreements, negotiations, communications, commitments and understandings with respect to the subject matter hereof, whether made orally or in writing. Each of the parties to this Agreement expressly warrants and represents to the other that no promise or agreement which is not herein expressed has been made to the other, and that neither party is relying upon any statement or representation of the other that is not expressly set forth in this Agreement. Each party hereto is relying exclusively on the terms of this Agreement, its own judgment, and the advice of its own legal counsel and/or other advisors in entering into this Agreement. Customer acknowledges and agrees that any purchase order issued by Customer associated with this Agreement is intended only to establish payment authority for Customer's internal accounting purposes. No purchase order shall be considered a counteroffer, amendment, modification, or other revision to the terms of this Agreement.
26. **HEADINGS.** The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.
27. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one single agreement between the parties.
28. **NOTICES.** All notices or communications related to this Agreement shall be in writing and shall be deemed served if and when mailed by certified or registered mail: to Johnson Controls, Inc. at 90 Goodway Drive, Rochester, N.Y. 14623, Attn: Joe Richards with a copy to Johnson Controls, Inc., ATTN: General Counsel – BSNA, 5757 N. Green Bay Avenue, Milwaukee, Wisconsin, 53209; and to Customer at 2 North Main Street, Canandaigua, N.Y. 14424.

Canandaigua WRRF Installation Project

Canandaigua WRRF Installation Project

CITY OF CANANDAIGUA

Signature: _____

Printed Name: _____

Title: _____

Date: _____

JOHNSON CONTROLS, INC.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SCOPE OF WORK

Table 1.1 summarizes the Facility Improvement Measures (FIMs) included in this Contract:

Facility Improvement Measures (FIMs)
Table 1.1

FIM-1 Solids Handling Improvements: Conversion from Anaerobic Digestion to ThermAer ATAD System
FIM-2 Influent Pump Replacement
FIM-3 LED Lighting Upgrade
FIM-4 Building Envelope - Weatherization

Facility Improvement Measures (FIMs) regarding the “Green Street Driveway Extension” and “Post-aeration blowers” were evaluated with the Customer during the design development. It was agreed with the Customer that these FIMs will be excluded from this installation contract.

FIM 1 Solids Handling Improvements: Conversion from Anaerobic Digestion to ThermAer ATAD System

This scope of work will provide for improvements to the Customer’s Water Resource Recovery Facility (WRRF), as detailed in Attachment No. 5 and 6 – Design Drawings and Technical Specifications.

Below is a brief summary of the type of retrofit scopes that are included for the work:

- Conversion of the four (4) anaerobic digesters to (2) aerobic digesters using the Autothermal Thermophilic Aerobic Digestion (ATAD) system and (2) leachate Storage Nitrification Denitrification Reactors (SNDR), including pumps, blowers, nozzles, and all associated electrical and appurtenances.
- Installation of concrete equipment pads, supplied process equipment, controls, and instrumentation.
- Installation of new biogas filter, scrubber, and foundation including excavation, trenching, and backfill.
- Demolition of existing digester pumps, piping, valves, gas safety equipment, controls, and appurtenances.
- Demolition of existing biogas compressors, piping, and appurtenances.
- Demolition of existing digester Boiler No. 1 and related water piping, gas piping, flue stack and controls.
- Modification of existing leachate feed system to feed the new ATAD system. Installation of two (2) aspirating mixers in the existing leachate holding tank.
- Installation of one (1) gravity belt thickener for leachate thickening and one (1) rotary drum thickener for thickening waste secondary sludge and primary sludge, including chemical conditioning systems.
- Removal, refurbishment, and reinstallation of digester covers including lining.
- Partial Digester Building roof replacement including asbestos remediation of northeast small roof (~400 ft2) prior to new roof installation.
- Repurposing existing Sludge Loading Dock as a new chemical room.
- Construction of new Sludge Loading Dock structure and driveway.
- Construction of new Electrical Room in the Digester Building.
- Demolition of the existing concrete containment basin and construction of the new concrete containment basin on the mezzanine for the new thickening equipment.
- Installation of power conduit to location of future Green Street truck entrance gate.
- Installation of electrical voltage optimization unit downstream of new utility provided plant power transformer.
- Disconnection and removal of existing 2,000 amp outdoor electrical switchboard with installation of new incoming service equipment, including new 3,000 amp switchboard and electrical ductbank.

- Preparation of the site for the installation of electrical Utility (Rochester Gas & Electric (“RG&E”)) provided power transformer. Site preparation shall include concrete vault/pad and under/above ground conduiting from vault location to new Utility installed power pole. Utility to provide, transport and rig new transformer onto vault/pad, install and terminate power wiring conductors from new pole to line-side of transformer. Utility will demolish, and remove from the site, the abandoned Utility owned transformer and poles. Refer to Attachment 7. Utility fees (\$20,921.66) will be paid by JCI.
- Replacement of existing digester building electrical panel HVP-5 and MCC-7.
- Installation of new lighting fixtures for digester building newly defined electrical, chemical and sludge loading rooms, and basement area.
- Software modifications to extend the existing plant SCADA system to new ATAD and leachate holding tank aspirating mixers. Two (2) new SCADA system workstation PC’s (Dell Optiplex 7090 or equivalent) and two (2) 27” LED display monitors will be provided.
- Draw-down and emptying of the four (4) digester tanks and one (1) leachate holding tank in preparation of tank modification work. Included as part of this process is the dewatering and transport/disposal of 800 wet tons of sludge to offsite landfill facility. In the event this process requires more, or less, than 800 tons of transport/disposal, JCI and Customer agree that the price to be paid for the Work set forth on Schedule 3 shall be adjusted based on review of actual landfill dumping receipts. Any such adjustments shall be documented in a Change Order executed by the parties.

Design Document Clarifications:

The following items take precedence over the Design Documents (Attachment 4 and 5):

1. Indoor and outdoor process water piping shall be schedule 10, 304 stainless-steel.
2. Process air piping shall be schedule 10, 304 stainless-steel.
3. Digester cover pipe penetrations shall be schedule 10, 316 stainless-steel.
4. Drawing G-1, 30” SN46 FRP Off gas underground FRP piping shall be substituted with either HDPE SDR 17 or class 150 cement lined ductile. Above ground piping shall be FRP or class 150 cement lined ductile.
5. Drawing M-4, quantity of four (4) 12” dual vac. relief valve sets shall be substituted with four (4) single vac. relief valves Growth model 1200A-12-155-T0Z.
6. Work Item C15, New Sidewalk and Pavement Construction, is not included in the Scope of Work.
7. Work Item C24, New Electric Chain Link Gate Installation, is not included in the Scope of Work.
8. Electrical Add Alternate #3, Light Pole Relocation, is not included in the Scope of Work.

Exclusions:

1. The existing digester covers were reviewed for condition by the manufacturer in 2021 and found to be in adequate condition. No digester cover structural modifications are included in the scope of work.
2. Structural modifications and repairs of the four (4) digester tanks.
3. Responsibility for perceived revenue lost due to any potential delays incurred by Utility for the power transformer installation.
4. Utility fees beyond the \$20,921.66 indicated in above work scope.
5. Customer is responsible for any cost incurred by JCI due to RG&E delays that delay completion of the Work. JCI will receive an equitable adjustment to the Agreement Price to compensate for increased costs incurred as a result of delay(s).
6. Supply of leachate and/or chemicals for the ATAD and SNDR operation.

System Performance Clarifications:

1. ATAD and SNDR equipment performance will be tested against the specifications during start up and check out. Equipment performance is not guaranteed by JCI. Variances from specifications could occur and JCI will coordinate those with the equipment manufacturer during the warranty period.

FIM 2 Influent Pump Replacement

This scope of work will provide for improvements to the Customer's Water Resource Recovery Facility (WRRF), as detailed in Attachment No. 4 and 5 – Design Documents (Plans and Specifications dated August 1, 2022).

- Removal and demolition of influent building existing screw pump no. 2 and installation of new pump of same type and configuration at same location.
- Replacement of influent screw pump no. 2 lubrication system and cover plate.
- Regrouting of screw pump no. 2 trough.
- Installation of new lubrication monitoring system for three (3) screw pumps.
- Replacement of pump related existing three (3) sluice gates in the influent wet well.
- Replacement of influent wet well level float system.
- Replacement of exhaust fan in influent pump room.
- Replacement of existing raw sewage building electrical panel HVP-1 and MCC-1.
- Installation of new electrical variable frequency drives (VFD) for the (2) 96-inch screw pumps.

Exclusions:

1. Structural inspection and repairs of the influent wet well structure and influent pump room.
2. Repair or replacement of defective mechanical, controls, and electrical equipment and electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
3. Repairs to the other pumps.

FIM 3 LED Lighting Upgrade

This scope of work will provide various retrofits and replacements to the existing building and site lighting fixtures. The included work scope is detailed in contract Attachment 4 "Lighting Detail".

Below is a brief summary of the type of retrofit scopes that are included for fixtures identified in the Lighting Detail:

- Replace existing T5/T8/T12 fluorescent fixture lamps/ballast combinations with LED direct wire lamp retrofits, LED retrofit kits or new LED fixtures.
- Replace existing incandescent and CFL screw-in fixture lamps with new LED lamps.
- Install new fixture mounted or wall switch occupancy sensors. Sensors will provide for automatic lighting shut-off.
- Retrofit or replace non-LED exterior wallpack and parking lot pole fixtures with LED lighting.
- Fixture ballasts will be removed and properly disposed of.

Exclusions:

1. Replacement or retrofit of various fixture locations/types that are already LED (see Attachment 4 Lighting Detail for locations).
2. Repair or replacement of defective equipment, other than the equipment specifically described in the Lighting Detail. JCI will identify the location of any defective equipment and notify the Customer.
3. Repair, replacement or upgrades required due to rectifying existing lighting or electrical system code violations, including egress and emergency lighting violations unless specifically described in the Lighting Detail.
4. Repair or replacement of existing power wiring/raceway or switches as existing fixture power systems are assumed to be in good working order.
5. Fixture physical and electrical power switching layout changes.

Schedule 1

6. Repair or replacement of the existing exterior light poles and pole fixture mounting arms (Pole lighting retrofit includes work at fixture only).
7. Repair or replacement of power wiring feeds to exterior pole lighting. Pole mounted lighting will be checked for contact voltage. If any hazardous voltage is found, work on that pole will be stopped and the customer and/or the utility company be notified immediately to correct the fault before any work will be performed.
8. Addition of building egress lighting fixtures to bring building up to current code requirements.

FIM 4 Building Envelope - Weatherization

This scope of work will provide new weather-stripping, caulk and foam products to prevent structural leakage per the building locations and quantities listed below:

Main Building:

- Seven (7) single commercial doors shall be weather-stripped.
- Three (3) double commercial doors shall be weather-stripped.
- One (1) roll-up garage door shall be weather-stripped.
- Ten (10) roof top ventilator damper frame perimeters shall be air-sealed.

Digester Building:

- Four (4) single commercial doors to be weather-stripped.
- One (1) double commercial door to be weather-stripped.

Shop:

- One (1) single commercial door to be weather-stripped.
- Three (3) double commercial doors to be weather-stripped.
- One (1) double commercial door to be weather-stripped.

Exclusions:

1. Repair or replacement of existing exterior doors, windows and dampers is excluded in this scope of work other than as described in scope. If any doors, dampers or windows are found to be inoperable, or broken, JCI will report the deficiency to the customer for repair or replacement prior to JCI retrofitting the seals.
2. Repair or installation of brick or other masonry materials/systems.
3. Repair or installation of any structural systems.
4. Repair or replacement of existing window wall system components.
5. Modifications required to due to existing code violations, including but not limited to the Americans with Disabilities Act (ADA) and egress, are excluded.

Overall Project Notes:

1. Final engineering shall be completed post contract execution and pre-construction. The drawings and specifications may change as a result of this final engineering
2. Customer understands the work scope may impact operational and maintenance costs and Customer assumes responsibility for any increase in costs.
3. The existing Plant electric utility rate is under RG&E PSC 19 SC8 Substation service classification. As a result of Work, the service classification shall be changed to RG&E PSC 19 SC8 Secondary.
4. To the extent applicable, JCI will obtain permits as required by the City of Canandaigua building code for the Work.

Overall Project Exclusions:

Schedule 1

1. Obtaining Plant operational permit for the above-mentioned improvements. Customer is responsible for coordinating directly with DEC for any changes required to the WRRF operational permit. JCI will not be responsible for Plant leachate receiving revenue lost due to any potential delays incurred by DEC operational permit issuance.
2. Resolution of existing design, service, building design, and or distribution conditions known or unknown.
3. Repair or replacement of defective equipment, other than the equipment specifically described in the Design Documents.
4. Repair, replacement or upgrades required due to rectify existing electrical system code violations unless specifically described in the Design Documents.
5. Existing building ventilation conditions and indoor air quality issues (if any, except where it is described in the Design Documents) are excluded from the scope and cost of this project.
6. Engineering services, studies and analysis associated with any exclusions or work clearly outside of the scope definition.
7. Unknown permits, fees or processes required by local or oversight jurisdiction and/or utilities.
8. Repairs or upgrades to bring existing systems up to code, including egress and Americans with Disabilities Act (ADA) code compliance issues.
9. Repair or replacement of existing power wiring/raceway or switches as existing fixture power systems as existing-to-remain systems are assumed to be in good working order.
10. Correction of existing applicable code violations or defective mechanical and/or electrical equipment or systems. Any identified code violations will be brought to the attention of the Customer for remedy.
11. Repairs/replacement of piping or electrical found to be corroded or rusted and unacceptable for installation of components or fittings required for installation other than what is specified in the Scope of Work.
12. Hazardous material abatement or removal, such as but not limited to asbestos, lead paint, mold/mildew, and PCB's, unless explicitly noted otherwise in scope.
13. Temporary wastewater treatment unless otherwise identified in the Scope of Work.
14. Ongoing annual fees associated with licenses and access fees.
15. Taxes.
16. Increasing the capacity of backup or emergency power systems.
17. Design of improvements necessary to address emerging contaminants in landfill leachate, including but not limited to Emerging Contaminants, or the handling, disposal or removal of hazardous substances or Emerging Contaminants in landfill leachate, equipment, materials, or the environment.

CUSTOMER RESPONSIBILITIES

In order for JCI to perform its obligations under this Agreement with respect to the Work, Customer shall be responsible for:

1. Providing JCI, its subcontractors, and its agents with reasonable and safe access to all facilities and properties that are subject to the Work.
2. Ensuring any non-JCI related construction does not interfere with this Work. Ensuring that contractor staging is accessible to JCI to complete work scopes without delay.
3. Providing for shut down and scheduling of affected locations during installation, including but not limited to timely shutdowns of boiler heating system, anaerobic digester system, influent screw pumps, and leachate receiving systems as needed to accomplish the Work.
4. Providing for standby emergency power and necessary fuel during the shutdown of existing electrical service entrance infrastructure and installation of new infrastructure, including but not limited to timely shutdowns of entrance transformer, entrance switchgear, and installation of voltage optimization unit.
5. Draining of the digester tanks and leachate tank to lowest possible level prior to start of JCI dewatering efforts.
6. Providing timely reviews and approvals of design submissions, proposed change orders, and other project documents.
7. Providing the following information with respect to the project and project site as soon as practicable following JCI's request:
 - a. Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines.
 - b. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the project site.
 - c. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the project and enable JCI to perform the Work.
 - d. A legal description of the project site.
 - e. As-built and record drawings of any existing structures at the project site.
 - f. Environmental studies, reports and impact statement describing the environmental conditions, including hazardous conditions or materials, in existence at the project site.
8. Securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable JCI to perform the Work.
9. Providing assistance to JCI in obtaining any permits, approvals, and licenses that are JCI's responsibility to obtain as set forth in Schedule 1.
10. Obtaining any permits, approvals, and licenses that are necessary for the performance of the Work and are not JCI's responsibility to obtain as set forth in Schedule 1.
11. State Pollutant Discharge Elimination System (SPDES) Permit renewal, environmental permits and DEC coordination; JCI will assist the Customer in applying for permits if so required.
12. Obtaining in a timely manner any permits, approvals, and licenses that are necessary for the replacement of the Utility transformer; JCI will assist the Customer in applying for permits if so required.

13. Yearly O&M activity and costs associated with the installed improvements. Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems.
14. Supply of leachate and chemicals for the ATAD and SNDR operation. Customer is responsible for supplying leachate to the ATAD system within the loading parameters listed in the Design Documents.
15. The performance of any existing equipment being reused as shown in the Contract Documents, including but not limited to the Belt Filter Press, is not guaranteed. Any required maintenance for reused equipment is the customer's responsibility.
16. Providing and maintaining a TCP/IP local and remote connection to SCADA and Power systems to facilitate Customer monitoring of relevant equipment.
17. Providing, free of charge, high-speed Internet connections and the required Virtual Private Network (VPN) services to the contractor, for monitoring, tuning, and making system changes to the new ATAD system.
18. Providing room for a laydown area for contractor's staging, scope materials storage, digester covers temporary placement, construction offices, parking, and dumpsters.
19. Software upgrades (such as Microsoft, Norton Antivirus, etc.) for the Customer's SCADA workstation unless otherwise noted in the scope of work.
20. Ongoing annual fees associated with licenses and access fees.

CONTRACT SUM – PAYMENT TERMS AND CONDITIONS

Customer shall make payments to JCI pursuant to this Schedule 3.

Agreement Price. The price to be paid by Customer for the Work shall be \$28,783,033 (Twenty-eight million, seven hundred eighty-three thousand, and thirty-three dollars) (the "Agreement Price").

Payments (including payment for materials delivered to JCI and work performed on and off-site) shall be made to JCI as follows:

First payment due: 15% down payment, or \$4,317,455, due upon issuance of the Notice to Proceed. Balance shall be invoiced monthly using AIA Invoice format.

The balance shall be paid by Customer based upon monthly invoices submitted by JCI for work based upon the percentage of the Project installation and equipment procurement completed and approved in the prior month in accordance with the agreed upon Schedule of Values. Payments will be made on a progress payment basis for work completed and accepted by the Customer using AIA Document G702 or equivalent form. JCI must attach certified payrolls to each application for payment, together with supporting documents as required by the Customer.

Payments are due upon Customer's receipt of JCI's invoice and shall be paid within thirty (30) days. Invoicing disputes must be identified in writing within twenty-one (21) days of the date of the invoice. Payment of disputed amounts are due and payable upon resolution. All other amounts remain due within thirty (30) days. Payment is a condition precedent to JCI's obligation to perform the Work hereunder.

Failure to make payments when due will give JCI, without prejudice to any other right or remedy, the right to: (i) stop performing any Work, withhold deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or terminate this Agreement; and (ii) charge Customer interest on the amounts unpaid at a rate equal to the lesser of one and one half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full. Customer will pay all JCI's reasonable collection costs (including legal fees and expenses).

FORM OF NOTICE TO PROCEED

Johnson Controls, Inc.
90 Goodway Drive
Rochester, N.Y. 14623
ATTN: Joe Richards

Re: Notice to Proceed for Solids Handling Improvements Project

Dear Mr. Richards:

This Notice to Proceed is being issued by City of Canandaigua, N.Y. ("Customer") to Johnson Controls, Inc. ("JCI") pursuant to that certain Installation Contract entered into between Customer and JCI for the purpose of notifying JCI to commence work under such contract.

In the event that this Notice to Proceed is delivered by Customer prior to the execution of the Installation Contract by Customer and JCI, Customer understands and expects JCI will incur significant costs and expenses in complying with this Notice to Proceed. In the event the Installation Contract is not executed by the parties, for any reason, Customer agrees to pay JCI for its costs and fees incurred in complying with this Notice to Proceed on a time and material basis. Customer also agrees JCI shall be entitled to a reasonable markup thereon for profit and overhead. Customer agrees to pay amounts billed by JCI no later than five (5) days after Customer receives JCI's payment application. JCI will continue to submit payment applications to Customer until the Installation Contract is executed. Once the Installation Contract is executed, JCI will begin submitting its payment applications to Customer in accordance with the terms and conditions set forth therein. Any amounts already paid by Customer will be credited towards the Installation Contract price.

By signing and dating this Notice to Proceed, the parties hereto agree to these terms and represent and warrant they have the authority to execute this Notice to Proceed on behalf of their respective organizations.

CITY OF CANANDAIGUA

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ACKNOWLEDGED & AGREED TO:

JOHNSON CONTROLS, INC.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("JCI")
90 Goodway Drive, Rochester, N.Y. 14623

CITY OF CANANDAIGUA ("Customer")
2 North Main Street, Canandaigua, N.Y. 14424

PROJECT: Solids Handling Improvements Project; Installation Contract dated
_____, 20__ between JCI and Customer

By executing this Certificate of Substantial Completion, Customer acknowledges the following:

- a. The work set forth in the Installation Contract is substantially complete.
- b. Customer has received the manuals, warranty information, and training required under the Installation Contract.
- c. The following punch list items must be completed by JCI (check as applicable):

- punch list attached
- punch list complete

- d. Upon completion of the punch list items, or if such punch list items are complete, JCI and Customer shall sign the Certificate of Final Completion attached hereto.

Dated _____, 20__ .

CUSTOMER:

Signature: _____

Printed Name: _____

Title: _____

JOHNSON CONTROLS, INC.

Signature: _____

Printed Name: _____

Title: _____

FORM OF CERTIFICATE OF FINAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("JCI")
90 Goodway Drive, Rochester, N.Y. 14623

CITY OF CANANDAIGUA ("Customer")
2 North Main Street, Canandaigua, N.Y. 14424

PROJECT: Solids Handling Improvements Project; Installation Contract dated
, 20 between JCI and Customer

By executing this Certificate of Final Completion, Customer acknowledges the following:

- a. The work set forth in the Installation Contract has been reviewed and determined by Customer to be fully complete.
- b. Customer accepts the work as complete and hereby releases JCI's obligations under any performance and payment bonds posted for the project as of the date set forth below.

Dated , 20 .

CUSTOMER:

Signature: _____

Printed Name: _____

Title: _____

JOHNSON CONTROLS, INC.

Signature: _____

Printed Name: _____

Title: _____