

RESOLUTION NO. _____

RESOLUTION FIXING DATE FOR A MEETING ON THE AUTHORIZATION OF A LOAN AGREEMENT AND THE ISSUANCE OF NOT TO EXCEED \$4,600,000 GENERAL OBLIGATION CAPITAL LOAN NOTES OF THE CITY OF CRESCO, STATE OF IOWA (FOR ESSENTIAL CORPORATE PURPOSES), AND PROVIDING FOR PUBLICATION OF NOTICE THEREOF

WHEREAS, it is deemed necessary and advisable that the City of Cresco, State of Iowa, should provide for the authorization of a Loan Agreement and issuance of General Obligation Capital Loan Notes, to the amount of not to exceed \$4,600,000, as authorized by Sections 384.24A and 384.25, of the Code of Iowa, for the purpose of providing funds to pay costs of carrying out essential corporate purpose project(s) as hereinafter described; and

WHEREAS, the Loan Agreement and Notes shall be payable from the Debt Service Fund; and

WHEREAS, before a Loan Agreement may be authorized and General Obligation Capital Loan Notes, issued to evidence the obligation of the City thereunder, it is necessary to comply with the provisions of the Code of Iowa, as amended, and to publish a notice of the proposal and of the time and place of the meeting at which the Council proposes to take action for the authorization of the Loan Agreement and Notes and to receive oral and/or written objections from any resident or property owner of the City to such action.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CITY OF CRESCO, STATE OF IOWA:

Section 1. That this Council meet in the Council Chambers, City Hall, 130 N. Park Place, Cresco, Iowa, at 5:30 P.M., on the 20th day of February, 2023, for the purpose of taking action on the matter of the authorization of a Loan Agreement and issuance of not to exceed \$4,600,000 General Obligation Capital Loan Notes, for essential corporate purposes, the proceeds of which notes will be used to provide funds to pay the costs of the opening, widening, extending, grading, and draining of the right-of-way of streets, highways, avenues, alleys and public grounds; the construction, reconstruction, and repairing of any street or bridge improvements; the acquisition, installation, and repair of sidewalks, pedestrian overpasses and underpasses, trails, storm sewers, sanitary sewers, water service lines, street lighting, and traffic control devices, and the acquisition of any real estate needed for any of the foregoing purposes, including for the 7th Street West Reconstruction and the Downtown Crosswalk Reconstruction projects; and the acquisition, construction, reconstruction, extending, remodeling, improving, repairing and equipping all or part of the water utility, including those costs associated with the water tower rehabilitation project.

Section 2. To the extent any of the projects or activities described in this resolution may be reasonably construed to be included in more than one classification under Subchapter III of Chapter 384 of the Code of Iowa, the Council hereby elects the "essential corporate purpose"

classification and procedure with respect to each such project or activity, pursuant to Section 384.28 of the Code of Iowa.

Section 3. The Clerk is authorized and directed to proceed on behalf of the City with the negotiation of terms of a Loan Agreement and the issuance of General Obligation Capital Loan Notes, evidencing the City's obligations to a principal amount of not to exceed \$4,600,000, to select a date for the final approval thereof, to cause to be prepared such notice and sale information as may appear appropriate, to publish and distribute the same on behalf of the City and this Council and otherwise to take all action necessary to permit the completion of a loan on a basis favorable to the City and acceptable to the Council.

Section 4. That the Clerk is hereby directed to cause at least one publication to be made of a notice of the meeting, in a legal newspaper, printed wholly in the English language, published at least once weekly, and having general circulation in the City. The publication to be not less than four clear days nor more than twenty days before the date of the public meeting on the issuance of the Notes.

Section 5. The notice of the proposed action to issue notes shall be in substantially the following form:

(To be published between: January 31, 2023 and February 15, 2023)

NOTICE OF MEETING OF THE CITY COUNCIL OF THE
CITY OF CRESCO, STATE OF IOWA, ON THE MATTER OF
THE PROPOSED AUTHORIZATION OF A LOAN
AGREEMENT AND THE ISSUANCE OF NOT TO EXCEED
\$4,600,000 GENERAL OBLIGATION CAPITAL LOAN NOTES
OF THE CITY (FOR ESSENTIAL CORPORATE PURPOSES),
AND THE HEARING ON THE ISSUANCE THEREOF

PUBLIC NOTICE is hereby given that the City Council of the City of Cresco, State of Iowa, will hold a public hearing on the 20th day of February, 2023, at _____ 5:30 P.M., in the Council Chambers, City Hall, 130 N. Park Place, Cresco, Iowa, at which meeting the Council proposes to take additional action for the authorization of a Loan Agreement and the issuance of not to exceed \$4,600,000 General Obligation Capital Loan Notes, for essential corporate purposes, to provide funds to pay the costs of the opening, widening, extending, grading, and draining of the right-of-way of streets, highways, avenues, alleys and public grounds; the construction, reconstruction, and repairing of any street or bridge improvements; the acquisition, installation, and repair of sidewalks, pedestrian overpasses and underpasses, trails, storm sewers, sanitary sewers, water service lines, street lighting, and traffic control devices, and the acquisition of any real estate needed for any of the foregoing purposes, including for the 7th Street West Reconstruction and the Downtown Crosswalk Reconstruction projects; and the acquisition, construction, reconstruction, extending, remodeling, improving, repairing and equipping all or part of the water utility, including those costs associated with the water tower rehabilitation project. Principal and interest on the proposed Loan Agreement will be payable from the Debt Service Fund.

At the above meeting the Council shall receive oral or written objections from any resident or property owner of the City to the above action. After all objections have been received and considered, the Council will at the meeting or at any adjournment thereof, take additional action for the authorization of a Loan Agreement and the issuance of the Notes to evidence the obligation of the City thereunder or will abandon the proposal to issue said Notes.

This notice is given by order of the City Council of the City of Cresco, State of Iowa, as provided by Sections 384.24A and 384.25 of the Code of Iowa.

Dated this _____ day of _____, 2023.

City Clerk, City of Cresco, State of Iowa

(End of Notice)

PASSED AND APPROVED this 6th day of February, 2023.

Mayor

ATTEST:

City Clerk

Immanuel Lutheran Church

Reflecting God's Love

Immanuel Lutheran Church
 563-547-2108
 Facebook: Immanuel Lutheran Cresco
 305 2nd Ave W, Cresco IA 52136-1513
 www.immanuelcresco.com
 Office@ImmanuelCresco.com

January 18, 2023

Dear Cresco City Hall/Water Department

Today, January 18, 2023 we were visited by Drew Zahasky and Jason Miller who happen to notice that water was running from the church sump pump and down the street. When they came in and asked if we were aware of this (we were not); they showed me where the valve and water meter were and they verified that the sump pump was stuck. They turned off the water line running to that sump pump and the water meter then stopped the high rate of "usage".

We are asking that you see it in your means to forgive some of the cost of this sewage cost due to mechanical error on the part of the church as no water ran into the Sanitary Sewer, but ran straight onto the street.

We appreciate your consideration in this matter. If you should have any further questions, please feel free to contact Kenny Hebrink, Immanuel Lutheran Church Properties Board Chairman at 563-203-7515.

Thank you again for your consideration.
 Respectfully,

Erindy M. Yslas

Cindy M. Yslas
 ILC Office Administrator

ACCOUNT NUMBER 8056001 STATUS Active

NAME IMMANUEL LUTHERAN CHURCH
 PROPERTY 305 2ND AVE W

SV SERIAL # MULTIPLIER DIGITS INS DATE SERV DATE LOCATION NOTE

SE 42003355 1.00000 9
 WA 42003355 1.00000 9 10001 D1

BILL DATE	SERV READ DATE	PREV	EST	BILL	CONS	CHARGE
1/31/2023	SE 1/20/2023	449498	417544	31954	305.48	284.84
12/31/2022	SE 12/19/2022	417544	415939	1605	15.34	
11/30/2022	SE 11/18/2022	415939	409346	6593	63.03	284.84
10/31/2022	SE 10/20/2022	409346	407365	1981	18.94	
9/30/2022	SE 9/20/2022	407365	405525	1840	17.59	12.00
8/31/2022	SE 8/19/2022	405525	401029	4496	42.58	
7/31/2022	SE 7/20/2022	401029	398008	3021	28.88	
6/30/2022	SE 6/20/2022	398008	395925	2083	19.14	0.00
5/31/2022	SE 5/20/2022	395925	393835	2090	19.21	
4/30/2022	SE 4/20/2022	393835	392238	1597	14.66	
3/31/2022	SE 3/21/2022	392238	390686	1552	14.26	
2/28/2022	SE 2/21/2022	390686	388836	1850	17.00	
1/31/2022	SE 1/20/2022	388836	387700	1136	13.79	

0.12

15.34
 63.03
 18.94
 17.59
 42.58
 28.88
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 19.21
 14.66
 17.00
 13.79
 284.84
 284.84
 12.00
 23.76
 0.00
 305.48
 23.76
 0.02
 PDSS. Credit 281.74

 ACCOUNT NUMBER 7079205 STATUS Active
 NAME SHADY OAKS
 PROPERTY 701 S ELM ST

SV SERIAL # MULTIPLIER DIGITS INS DATE SERV DATE LOCATION NOTE

SE 35735816 1.00000 9 8/18/2022
 WA 35735816 1.00000 9 8/18/2022 10001 D1

BILL DATE	SERV READ DATE	PRES	PREV EST	BILL CONS	CHARGE
1/31/2023	SE 1/20/2023	3288560	3171570	116990	1118.42
12/31/2022	SE 12/19/2022	3171570	2949690	221880	2121.17
11/30/2022	SE 11/18/2022	2949690	2871880	77810	743.86
10/31/2022	SE 10/20/2022	2871880	2818610	53270	509.26
9/30/2022	SE 9/20/2022	2818610	2770030	48580	464.42

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 1 548.66 +
 2 094.57 *

Jan 31
0002
Credit

Dec 31
0002
Credit

↑
 Total for two billing cycles

Cresco Park LLC

3340B Annapolis Lane N
Plymouth, MN 55447
1/31/2023

Hello Cresco City Works,

I hope everyone is well and the enjoying the winter. I am writing today to request some forgiveness on the sewer charges for "house meter" for Shady Oak trailer park at 701 S Elm St. for the service period of 11/18/23 to 12/19/23 as well as the dates of 12/20/23 to 1/30/23. It was discovered that the pipe leading into Lot 6's meter was broken and leaking out affecting the use. I provided a picture and invoice for the repair from Gosch's Plumbing. Please let me know what else you need to allow this to be approved.

Warm regards,

Derek Dittmer
Managing Partner - Cresco Park LLC
M: 320-309-2180
crescoparkllc@gmail.com



Cresco Park LLC

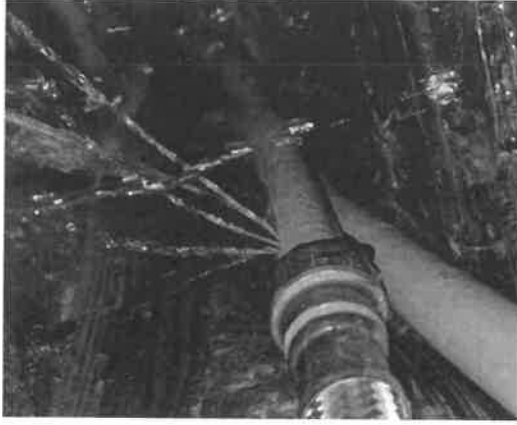
3340B Annapolis Lane N
Plymouth, MN 55447
1/26/2023

Hello Cresco City Works,

I hope everyone is well and the enjoying the winter. I am writing today to request some forgiveness on the sewer charges for lot 6 in 701 S Elm St. for the service period of 11/18/23 to 12/19/23. As well as the dates of 12/20/23 to 1/23/23 when the pipe was discovered and leak mitigated. After the bill was so high in Nov/Dec invoice it was discovered, there was a massive water leak under the tenant's trailer. The problem is being resolved by the owner and I provided a picture take by the tenants. Please let me know what else you need to allow this to be approved.

Warm regards,

Derek Dittmer
Managing Partner - Cresco Park LLC
M: 320-309-2180
crescoparkllc@gmail.com



Cresco Park LLC

3340B Annapolis Lane N
Plymouth, MN 55447

Hello Cresco City Works,

I hope everyone had a great holiday and start to their new year. It has been a pleasure working with and getting to know your wonderful city, we look forward to a long relationship. I am writing today to request forgiveness on the sewer charges for lot 27 between the days of Dec 20th, 2022 and January 27th, 2022. There was a massive water leak caused by frozen pipes. The water was shut off on December 27th once the cause of the leak was determined. None of this water was deposited into the sewer instead it created a small pond in the lot. The problem is being resolved with the trailer owner, myself and Gosch's Plumbing. Please let me know what else you need to allow this to be approved.

Warm regards,

Derek Dittmer
Managing Partner – Cresco Park LLC
M: 320-309-2180
crescoparkllc@gmail.com

ACCOUNT NUMBER	7070403	STATUS	Active			
NAME	WILLOW COURTYARD					
PROPERTY	700 S ELM ST					
SV SERIAL #	MULTIPLIER	DIGITS	INS DATE	SERV DATE	LOCATION	NOTE
SE 87769100	1.00000	9		8/18/2022		
WA 87769100	1.00000	9	8/30/2019	8/18/2022	10001	DI
BILL DATE	SERV READ DATE	PREV	EST	BILL CONS	CHARGE	
1/31/2023	SE 1/20/2023	2008200	1844700	163500	1563.06	
12/31/2022	SE 12/19/2022	1844700	1800410	44290	423.41	
11/30/2022	SE 11/18/2022	1800410	1761190	39220	374.94	
10/31/2022	SE 10/20/2022	1761190	1722570	38620	369.21	
9/30/2022	SE 9/20/2022	1722570	1683170	39400	376.66	

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WEMARK LUXURY RENTALS
 16001 Saint Ave, Cresco, IA 52186
 Cell 563.980.8579(Carla) or 563.419.7054(Aaron)
 Email: carla@wemark.com

01/30/2023

City of Cresco
 130 N Park Place
 Cresco, IA 52186

To Whom It May Concern:

I am writing to request a review of our water/sewer bill for the house located at 506 3rd St SW, Cresco, IA 52186.

On Thursday January 26, 2023, we received a phone call from the City of Cresco about excessive water usage at this location.

Upon inspection of the location we found a water leak in an upstairs bathroom, it appeared to have been leaking for quite some time. Water was leaking thru the ceilings and the basement had 4 plus inches of water in it. The house had been unoccupied for approximately 6weeks.

Drew Zahasky and Jason Miller were present at the house upon inspection of the leak.

The water in the basement will need to be pumped out. That being said, we feel the water did not go into the sewer system. There for we are asking your consideration in giving a credit on that account for the sewer usage.

Thank You,



Aaron Weimark

ACCOUNT NUMBER 7121007 STATUS Inactive
 NAME WEMARK LUXURY RENTALS LLC (563)737-2206
 PROPERTY 506 3RD ST SW

SY SERIAL # MULTIPLIER DIGITS INS DATE SERV DATE LOCATION NOTE

SE 34580632 1.00000 7 4/01/2016
 WA 34580632 1.00000 7 4/01/2016 10001 D1

BILL DATE	SERV READ DATE	PRES	PREV EST	BILL CONS	CHARGE
1/31/2023 SE	1/23/2023	888491	752172	136319	1303.21
12/31/2022 SE	12/19/2022	752172	745878	6294	60.17
11/30/2022 SE	11/18/2022	745878	738931	6947	66.41
10/31/2022 SE	10/20/2022	738931	731067	7864	75.38
9/30/2022 SE	9/20/2022	731067	722586	8481	81.08
8/31/2022 SE	8/19/2022	722586	714332	8254	78.91
7/31/2022 SE	7/20/2022	714332	705712	8620	82.41
6/30/2022 SE	6/20/2022	705712	696226	9486	87.18
5/31/2022 SE	5/20/2022	696226	686363	9663	90.54
4/30/2022 SE	4/20/2022	686363	678769	7594	69.79
3/31/2022 SE	3/21/2022	678769	678769	7594	13.79
2/28/2022 SE	2/21/2022	678769	678769	757	13.79
1/31/2022 SE	1/20/2022	678769	678012	757	13.79

012

733.14

733.14

12.00

Avg

61.10

1.303.21

61.10

012

Pass Credit

1.242.11

13.79

13.79

69.79

90.54

87.18

82.41

78.91

81.08

75.38

66.41

60.17

RESOLUTION NUMBER _____

RESOLUTION DIRECTING NOTICE TO BIDDERS AND NOTICE OF PUBLIC HEARING ON PROPOSED PLANS, SPECIFICATIONS, FORM OF CONTRACT, AND ESTIMATE OF COST OF CONSTRUCTION OF 500,000 GALLON TOROELLIPSE EXTERIOR REPAINT WITH CONTAINMENT, WET INTERIOR REPAINT, AND MISCELLANEOUS REPAIRS, IN AND FOR THE CITY OF CRESCO, IOWA, AND THE TAKING OF BIDS FOR SAID IMPROVEMENTS

Council Member _____ introduced the following Resolution entitled “Resolution Directing Notice to Bidders and Notice of Public Hearing on Proposed Plans, Specifications, and Estimate of Cost of Construction of 500,000 Gallon Toroellipse Exterior Repaint with Containment, Wet Interior Repaint, and Miscellaneous Repairs, in and for the City of Cresco, Iowa, and the Taking of Bids for Said Improvements” and Council Person _____ seconded said Motion. Following discussion, a roll call vote was requested by Mayor and said roll call resulted as follows:

Ayes: _____
Nays: _____
Absent: _____

Thereupon, the Mayor declared said Resolution duly adopted.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CRESCO, STATE OF IOWA:

That Dixon Engineering, Inc, are hereby ordered and directed to prepare and file with the Clerk detailed plans and specifications for the construction of 500,000 Gallon Toroellipse Exterior Repaint with Containment, Wet Interior Repaint, and Miscellaneous Repairs.

BE IT FURTHER RESOLVED that the Engineers are hereby ordered and directed to prepare and file with the Clerk a Notice to Bidders and form of contract for the Construction of 500,000 Gallon Toroellipse Exterior Repaint with Containment, Wet Interior Repaint, and Miscellaneous Repairs.

PASSED AND APPROVED THIS 6TH DAY OF FEBRUARY, 2023.

BY: _____
Mayor David J Brenno

ATTEST: _____
City Clerk Michelle Elton

Separate sealed Bids are solicited for the following project:

Project Name: **City of Cresco, Iowa**
 500,000 Gallon Toroellipse
 Exterior Repaint with Containment
 Wet Interior Repaint
 And Miscellaneous Repairs

Note: This project name is to be understood to include the entire scope of project as defined and detailed by these specifications and Contract Documents.

Separate sealed bids will be received by the Owner and then publicly opened and read aloud at:

Bids Sent To: **City of Cresco City Hall, 130 N. Park Place, Cresco, IA 52136**
Bid Opening Date: **February 27, 2023**
Bid Opening Time: **2:00 P.M. (local time)**
Bid Opening Site: **City of Cresco, 130 N. Park Place, Cresco, IA 52136**

The Bid Requirements and Contract Documents may be examined at the following locations:

Master Builders of Iowa	Construction Update	Construction Association
221 Park St.	645 32 nd Ave. SW	43636 Woodward Ave.
Des Moines, IA 50309	Cedar Rapids, IA 52404	Bloomfield Hills, MI 48302

At the CITY HALL, at the OFFICE of the ENGINEER and at the OFFICE of Drew Zahaskey, Water Superintendent.

Printed copies, Electronic copies, or Documents on Flash drives with the Bidding Documents may be obtained from the office of DIXON ENGINEERING, INC., 1104 Third Avenue, Lake Odessa, Michigan, 48849 (Issuing Office).

For further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders, and if applicable Supplemental Instructions to Bidders, that are included in the Bidding Requirements.

Note 1: The Engineer assumes no responsibility to supply Builders Exchanges and similar plan review rooms with all addenda issued. An attempt will be made to do so; however, only registered plan holders will be notified by email of expected or late term addendum with short preparation times.

Note 2: Prequalification of BIDDERS – Iowa law prohibits the Prequalification of bidders on municipally funded projects for public works. DIXON's Prequalification program, its requirements and its disqualification conditions will remain in effect, but Bidders not prequalified will still be allowed to submit bids with no disadvantage. Bidders not prequalified

will go through the same review as Prequalified Contractors previously completed. The review will require more time between Bid and recommendation or non-recommendation of Bidder. Prequalification shortens the time between Bid and Recommendation only.

SCHEDULE and LIQUIDATED DAMAGES

The Contractor is to abide by the following schedule:

The Contractor has the option to perform the work in the Spring of 2023 or the Fall of 2023

Spring Schedule:

Commence work on or after April 15, 2023.

Substantial Completion by June 27, 2023, including cure and disinfection time.

Fall Schedule:

Commence work on or after August 14, 2023.

Substantial Completion by October 27, 2023, including cure and disinfection time.

The tank may be out-of-service a maximum of 60 days.

Liquidated damages are applicable and begin after 60 days out-of-service or after Substantial Completion date whichever is the earlier date. Liquidated damages at \$1,250/calendar day is to apply after this date. Ready for Final Payment Date is to be thirty (30) days after date Substantial Completion Date based on out-of-service days or scheduled Substantial Completion, or as adjusted by Change Order; or actual Substantial Completion if earlier. Liquidated damages after Ready for Final Payment Date of \$250/day is to apply. Liquidated damages are cumulative if damages from Substantial Completion and Ready for Final Payment overlap. In addition, Special Damages, fines, or Set-offs may also apply per Bid/Agreement Form.

SCOPE of WORK

Tank Information:

The structure is a 500,000 gallon toroellipse elevated water storage tank with an estimated low-water level of 108 ft. located at 524 8th Avenue East in Cresco, Iowa.

The work includes:

Exterior: Abrasive blast clean to a SSPC-SP6 commercial standard within containment. Apply a four (4) coat zinc epoxy urethane fluoropolymer system.

Wet Interior: Abrasive blast clean to a SSPC-SP10 near-white metal standard. Apply a three (3) coat zinc epoxy system. Apply a polyurethane caulk to the roof lap seams.

Pit Piping: Abrasive blast clean to a SSPC-SP6 commercial standard. Apply a two (2) coat epoxy system.

Foundation: Repair spalls. Abrasive blast clean and apply a two (2) coat epoxy system.

Mixer: Install a mechanical mixer.

Cathodic Protection: Install an impressed current cathodic protection system.

Repairs:

- 1) Install riser manway.
- 2) Install a gasket on the wet interior roof hatch and on the bolted painter's hatch.
- 3) Install a new wet interior roof hatch.

- 4) Install a cover over the balcony hatch.
- 5) Overflow discharge modification.
- 6) Adjust the loose sway rods.
- 7) Remove the pin from the fall prevention device.
- 8) Install a wet interior ladder.
- 9) Install a roof/sidewall platform.
- 10) Install a roof handrail with a painter's railing.
- 11) Install bowl rigging couplings.
- 12) Replace the aviation light bulbs.
- 13) Cap the electrical conduit.
- 14) Balcony drain holes.
- 15) Install a sample tap on the fill/draw pipe.

MISCELLANEOUS

- A. Contractor may need to remove fence or a fence section for set-up of containment perimeter. Fence to be reinstalled after work has been completed. Condition of fence to be equal to the original fence, or better. Quality for reinstallation is solely at the discretion of the Owner unless pictorial documentation is completed by the Contractor.
- B. The power lines attached to the structure will be removed prior to the start of the project. The Owner will coordinate removal with the utility.
- C. The antenna owners will temporarily remove the antennas and cables prior to the start of the project.
- D. Due to supply chain issues, the Owner reserves the right to require that the Contractor is to have all of the required coating for the project delivered to the site or to the Owner's storage facility prior to the tank being taken out-of-service and commencement of the project.

ADDITIONAL PROJECT SPECIFIC REQUIREMENTS

- A. IOWA Code 73A.21 – Reciprocal resident bidder and resident labor force preference by state, its agencies, and political subdivisions – penalties; applies to all government funded infrastructure projects. This is informational only and compliance is the Contractor's responsibility:
 - i. If the Bidder's home state AND governmental subdivision does not have any Bidder preference laws (ex. 5% preference to local Bidder) then this law has no effect, it is a reciprocal law.
 - ii. If the Bidder's home state has a Preference Act such as IL where if unemployment exceeds 5% all Contractors are required to use 90% local residents as their labor force. Those Contractors will be required by the reciprocity to use a work force 90% of which are residents of IA.

RESOLUTION NUMBER _____

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER
INTO A 60-MONTH SERVICE SOLUTION AGREEMENT WITH JOHNSON
CONTROLS FIRE PROTECTION LP FOR THE CRESCO FITNESS CENTER**

The City Council of the City of Cresco met in regular session on February 6, 2023 at 5:30 P.M. Council Member _____ moved the adoption of the foregoing Resolution Authorizing the Mayor to enter into a 60-month fire alarm and sprinkler inspection and maintenance SERVICE SOLUTION AGREEMENT for the Cresco Fitness Center with Johnson Controls Fire Protection LP. Council Member _____ seconded said motion. A roll call vote was requested by the Mayor and said roll call vote resulted as follows:

Ayes: _____

Nays: _____

Absent: _____

Thereupon, the Mayor declared said Resolution duly passed and announced that the 60-month fire alarm and sprinkler inspection and maintenance SERVICE SOLUTION AGREEMENT, between the City of Cresco and Johnson Controls Fire Protection LP is approved and that the Mayor is authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS 6th DAY OF FEBRUARY, 2023.

BY: _____
Mayor David J. Brenno

ATTEST: _____
City Clerk Michelle Elton

John Streitenberger
john.streit@jci.com
(866) 275-5189

Thank you for the courtesy and cooperation extended to me during my recent visit and subsequent discussions regarding your life safety service needs. Enclosed is a proposal for your review that will cover all your various needs including:

- **Fire Alarm Inspections and Maintenance - to ensure that your system is operating at peak performance**
- **Sprinkler Inspections - making sure that should a fire occur; the sprinkler system will be ready to put out the flames**
- **Suppression - to periodically review the fire extinguishers so that employees can utilize a fully operational tool in the event of an emergency**

Our Johnson Controls solutions will provide you with

- **Potential insurance discounts**
- **Peace of Mind**
- **Reliable software and hardware**
- **Award winning support services**
- **Code compliance**

I invite you to review the attachments enumerating some of the key benefits. I will be available to answer any of your questions regarding the solutions. I can be reached at (866) 275-5189 or via email at: john.streit@jci.com. Please contact me when you are ready to move forward so I can begin scheduling your inspections.

Sincerely,
John Streitenberger
Inside Customer Care Representative



SERVICE SOLUTION

Customer #: 259864
CRESCO WELLNESS CENTER
Date: 14-Sep-22
Proposal #: CPQ-297323
Term: 1-Dec-22 to 30-Nov-27
External Contract #: 80793495 R04-JUN-2022
Subscription ERP #:

Billing Customer:
 Cresco Fitness Center
 316 3rd Ave E

 CRESCO, IA 52136-1410

Service Location:
 Cresco Fitness Center
 316 3rd Ave E,
 Cresco, IA 52136-1410

Johnson Controls Fire Protection LP
Sales Representative:
 John Streitenberger
 14200 E Exposition Ave
 Aurora CO 80012-2540
 john.streit@jci.com
 (866) 275-5189

INVESTMENT SUMMARY

(Service Solution Valid for 45 Days)

SERVICE/PRODUCT DESCRIPTION	QUANTITY	FREQUENCY	INVESTMENT
		CRESCO WELLNESS CENTER	\$1,521.74
SYSTEM-FA-SMPLX 4004/4005			
SIMPLEX 4004/4005 SYSTEM		Est. First Inspection: January	
		FIRE ALARM ESSENTIAL SERVICE OFFER Total:	\$1,521.74
Total Price with Sales Tax \$1,628.26			

To the extent applicable, Johnson Controls has included an estimate for all state and local sales tax for this quote. The actual sales tax due will be calculated and billed upon issuance of an invoice, unless a valid exemption and/or resale certificate is received by Johnson Controls.



SERVICE SOLUTION

This Service Solution (the "Agreement") sets forth the Terms and Conditions for the provision of equipment and services to be provided by Johnson Controls Fire Protection LP ("Company") to **CRESCO WELLNESS CENTER** and is effective **1-Dec-22** (the "Effective Date") to **30-Nov-27** (the "Initial Term"). Customer agrees that initial inspections may be performed within 45 days from the Effective Date.

PAYMENT FREQUENCY: Annual In Advance

Initials

PAYMENT TERMS: Net 30

For applicable taxes, please see Section 3 of the Terms & Conditions

PAYMENT AMOUNT: \$1,521.74 - **Proposal #:** CPQ-297323

PAYMENT SUMMARY:

CUSTOMER ACCEPTANCE: In accepting this Agreement, Customer agrees to the Terms and Conditions on the following pages and any attachments or riders attached hereto that contain additional terms and conditions. It is understood that these terms and conditions shall prevail over any variation in terms and conditions on any purchase order or other document that Customer may issue. Any changes in the system requested by Customer after the execution of Agreement shall be paid for by Customer and such changes shall be authorized in writing.

ATTENTION IS DIRECTED TO THE LIMITATION OF LIABILITY, WARRANTY, INDEMNITY AND OTHER CONDITIONS CONTAINED IN THIS AGREEMENT.

Year	Term	PSA Charges
1	12/01/2022 - 11/30/2023	\$1,521.74
2	12/01/2023 - 11/30/2024	\$1,658.70
3	12/01/2024 - 11/30/2025	\$1,807.98
4	12/01/2025 - 11/30/2026	\$1,970.70
5	12/01/2026 - 11/30/2027	\$2,148.06



SERVICE SOLUTION

Multi Year Contract Rider AGREEMENT

Acknowledgement of Multi-Year Term. Customer agrees that issuance of a Purchase Order does not amend any provision of the service agreement, including without limitation the duration/term of the service agreement. Customer agrees to issue Purchase Orders sufficient to satisfy its obligations under the multi-year service agreement. Should Customer fail to issue additional Purchase Orders, Company will still be permitted to invoice Customer for services performed, and Customer shall not dispute the validity of such invoices.

Customer Initials:

CRESCO WELLNESS CENTER

Johnson Controls Fire Protection LP

Signature: _____

Authorized Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Phone #: _____

Phone #: (866) 275-5189

Fax #: _____

Fax #: _____

Email: _____

License #: _____
(if applicable)

Date: _____

Pricing is based upon the following billing and payment terms: Invoices will be delivered via email, payment due date of NET 30, and invoices are to be paid via ACH/EFT bank transfer. Johnson Controls ACH/EFT bank transfer details will be forth coming upon contractual agreement.

This offer shall be void if not accepted in writing within thirty (30) days from the date first set forth above.

To ensure that JCI is compliant with your company's billing requirements, please provide the following information:

PO is required to facilitate billing: NO: This signed contract satisfies requirement
 YES: Please reference this PO Number: _____

AR Invoices are accepted via e-mail: YES: E-mail address to be used: _____
 NO: Please submit invoices via mail
 NO: Please submit invoices via _____

TERMS AND CONDITIONS

1. Term. The Initial Term of this Agreement shall commence on the date of this Agreement and continue for the period indicated in this Agreement. At the conclusion of the Initial Term, this Agreement shall automatically extend for successive terms equal to the Initial Term (subject to Section 3) unless either party gives written notice to the other party at least thirty (30) days prior to the end of the then-current term (each a "Renewal Term").

2. Payment and Invoicing. Unless otherwise agreed by the parties in writing, fees for Services to be performed shall be paid annually in advance. Unless otherwise agreed to by the parties, amounts are due upon receipt of the invoice by Customer. Invoices shall be paid by Customer via electronic delivery via EFTACH. Invoicing disputes must be identified in writing within 21 days of the invoice date. Payments of any disputed amounts are due and payable upon resolution. Payment is a condition precedent to Company's obligation to perform Services under the Agreement. Work performed on a time and material basis shall be at the then-prevailing Company rate for material, labor, and related items, in effect at the time supplied under this Agreement. Customer acknowledges and agrees that timely payments of the full amounts listed on invoices is an essential term of this Agreement and Customer's failure to make payment in full when due is a material breach of this Agreement. Customer further acknowledges that if there is any amount outstanding on an invoice, it is material to Company and will give Company, without prejudice to any other right or remedy, the right to, without notice: (i) suspend, discontinue or terminate performing any Services and/or withhold further deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or suspend Company's obligations under 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. Company's election to continue providing future services does not, in any way diminish Company's right to terminate or suspend services or exercise any or all rights or remedies under this Agreement. Company shall not be liable for any damages, claims, expenses, or liabilities arising from or relating to suspension of Services for non-payment. In the event that there are exigent circumstances requiring services or the Company otherwise performs Services at the premises following suspension, those services shall be governed by the terms of this Agreement unless a separate contract is executed. If Customer disputes any late payment notice or Company's efforts to collect payment, Customer shall immediately notify Company in writing and explain the basis of the dispute. Customer agrees to pay all of Company's reasonable collection costs, including legal fees and expenses.

3. Pricing. The pricing set forth in this Agreement is based on the number of devices and services to be performed as set forth in this Agreement. If the actual number of devices installed or services to be performed is greater than that set forth in this Agreement, the price will be increased accordingly. Company may increase prices upon notice to Customer to reflect increases in material and labor costs. All stated prices are exclusive of and Customer agrees to pay any taxes, fees, duties, tariffs, false alarm assessments, installation or alarm permits and levies or other similar charges imposed and/or enacted by a government, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement. Prices in any quotation or proposal from Company are subject to change upon notice sent to Customer at any time before the quotation or proposal has been accepted. Company will provide Customer with notice of any pricing adjustments applicable to any Renewal Term no later than 45 days prior to the commencement of that Renewal Term. Unless Customer terminates the Agreement at least thirty (30) days prior to the start of such Renewal Term, the adjusted price shall be the price for the Renewal Term. Prices for products covered by this Agreement may be adjusted by Company, upon notice to Customer at any time prior to shipment and regardless of Customer's acceptance of the Company's proposal or quotation, to reflect any increase in Company's cost of raw materials (e.g., steel, aluminum) inability to secure Products, changes or increases in law, labor, taxes, duties, tariffs or quotas, acts of government, any similar charges, or to cover any extra, unforeseen and unusual cost elements.

4. Code Compliance. Company does not undertake an obligation to inspect for compliance with laws or regulations unless specifically stated in this Agreement. Customer acknowledges that the Authority Having Jurisdiction (e.g., Fire Marshal) may establish additional requirements for compliance with local codes. Any additional services or equipment required will be provided at an additional cost to Customer.

5. Limitation of Liability; Limitations of Remedy. Customer understands that Company offers several levels of protection services and that the level described has been chosen by Customer after considering and balancing various levels of protection afforded and their related costs. It is understood and agreed by Customer that Company is not an insurer and that insurance coverage shall be obtained by Customer and that amounts payable to Company hereunder are based upon the value of the services and the scope of liability set forth in this Agreement and are unrelated to the value of Customer's property and the property of others located on the premises. Customer agrees to look exclusively to Customer's insurer to recover for injuries or damage in the event of any loss or injury. Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no guaranty or warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or service was designed to detect or avert. It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its obligations under this Agreement. Accordingly, Customer agrees that Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences therefrom, which the equipment or service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or service in any respect, Company's liability for Services performed on-site at Customer's premises shall be limited to an aggregate amount equal to the Agreement price (as increased by the price for any additional work) or, where the time and material payment term is selected, Customer's time and material payments to Company. Where this Agreement covers multiple sites, liability shall be limited to the amount of the payments allocable to the site where the incident occurred. Company's liability with respect to Monitoring Services is set forth in Section 18 of this Agreement. Such sum shall be complete and exclusive. **IN NO EVENT SHALL COMPANY BE LIABLE, FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY SERVICING,**

ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE COVERED SYSTEM(S), AS HEREINAFTER DEFINED, OR ANY OF ITS COMPONENT PARTS BY CUSTOMER OR ANY THIRD PARTY. To the maximum extent permitted by law, in no event shall Company and its affiliates and their respective personnel, suppliers and vendors be liable to Customer or any third party under any cause of action or theory of liability, even if advised of the possibility of such damages, for any (a) special, incidental, consequential, punitive or indirect damages of any kind; (b) loss of profits, revenues, data, customer opportunities, business, anticipated savings or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyberattacks or failures or interruptions to network systems. The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of Company, whether direct or indirect, Company's employees, agents, officers and directors.

6. Reciprocal Waiver of Claims (SAFETY Act). Certain of Company's systems and services have received Certification and/or Designation as Qualified Anti-Terrorism Technologies ("QATT") under the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002, 6 U.S.C. §§ 441-444 (the "SAFETY Act"). As required under 6 C.F.R. 25.5 (e), to the maximum extent permitted by law, Company and Customer hereby agree to waive their right to make any claims against the other for any losses, including business interruption losses, sustained by either party or their respective employees, resulting from an activity resulting from an "Act of Terrorism" as defined in 6 C.F.R. 25.2, when QATT have been deployed in defense against, response to, or recovery from such Act of Terrorism.

7. Indemnity. Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third party claims for personal injury, death, property damage or economic loss, arising in any way from any act or omission of Customer or Company relating in any way to this Agreement, including but not limited to the Services under this Agreement, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action. Customer's responsibility with respect to indemnification and defense of Company with respect to Monitoring Services is set forth in Section 18 of this Agreement.

8. General Provisions. Customer has selected the service level desired after considering and balancing various levels of protection afforded and their related costs. All work to be performed by Company will be performed during normal working hours of normal working days (8:00 a.m. - 5:00 p.m., Monday through Friday, excluding Company holidays), as defined by Company, unless additional times are specifically described in this Agreement. All work performed unscheduled unless otherwise specified in this Agreement. Appointments scheduled for four-hour window. Additional charges may apply for special scheduling requests (e.g. working around equipment shutdowns, after hours work). Company will perform the services described in the Service Solution ("Services") for one or more system(s) or equipment as described in the Service Solution or the listed attachments ("Covered System(s)"). UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY INSPECTION (AND, IF SPECIFIED, TESTING) PROVIDED UNDER THIS AGREEMENT DOES NOT INCLUDE ANY MAINTENANCE, REPAIRS, ALTERATIONS, REPLACEMENT OF PARTS, OR ANY FIELD ADJUSTMENTS WHATSOEVER, NOR DOES IT INCLUDE THE CORRECTION OF ANY DEFICIENCIES IDENTIFIED BY COMPANY TO CUSTOMER. COMPANY SHALL NOT BE RESPONSIBLE FOR EQUIPMENT FAILURE OCCURRING WHILE COMPANY IS IN THE PROCESS OF FOLLOWING ITS INSPECTION TECHNIQUES, WHERE THE FAILURE ALSO RESULTS FROM THE AGE OR OBSOLESCENCE OF THE ITEM OR DUE TO NORMAL WEAR AND TEAR. THIS AGREEMENT DOES NOT COVER SYSTEMS, EQUIPMENT, COMPONENTS OR PARTS THAT ARE BELOW GRADE, BEHIND WALLS OR OTHER OBSTRUCTIONS OR EXTERIOR TO THE BUILDING, ELECTRICAL WIRING, AND PIPING.

9. Customer Responsibilities. Customer shall regularly test the System(s) in accordance with applicable law and manufacturers' and Company's recommendations. Customer shall promptly notify Company of any malfunction in the Covered System(s) which comes to Customer's attention. This Agreement assumes any existing system(s) are in operational and maintainable condition as of the Agreement date. If, upon inspection, Company determines that repairs are recommended, repair charges will be submitted for approval by Customer's on-site representative prior to work. Should such repair work be declined, Company shall be relieved from any and all liability arising therefrom.

Customer further agrees to:

- provide Company clear access to Covered System(s) to be serviced including, if applicable, lift trucks or other equipment needed to reach inaccessible equipment;
- supply suitable electrical service, heat, heat tracing adequate water supply, and required system schematics and/or drawings;
- notify all required persons, including but not limited to authorities having jurisdiction, employees, and monitoring services, of scheduled testing and/or repair of systems;
- provide a safe work environment;
- in the event of an emergency or Covered System(s) failure, take reasonable precautions to protect against personal injury, death, and/or property damage and continue such measures until the Covered System(s) are operational; and
- comply with all laws, codes, and regulations pertaining to the equipment and/or Services provided under this Agreement.

Customer represents and warrants that it has the right to authorize the Services to be performed as set forth in this Agreement. Customer is solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply Company secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Customer and/or end user against unauthorized access. Customer is responsible to take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

10. Repair Services. Where Customer expressly includes repair, replacement, and emergency response services in the Service Solution section of this Agreement, such Services apply only to the components or equipment of the Covered System(s). Customer agrees to promptly request repair services in the event the System becomes inoperable or otherwise requires

repair. The Agreement price does not include repairs to the Covered System(s) recommended by Company as a result of an inspection, for which Company will submit independent pricing to Customer and as to which Company will not proceed until Customer authorizes such work and approves the pricing. Repair or replacement of non-maintainable parts of the Covered System(s) including, but not limited to, unit cabinets, insulating material, electrical wiring, structural supports, and all other non-moving parts, is not included under this Agreement.

11. **System Equipment.** The purchase of equipment or peripheral devices, (including but not limited to smoke detectors, passive infrared detectors, card readers, sprinkler system components, extinguishers and hoses) from Company shall be subject to the terms and conditions of this Agreement. If, in Company's sole judgment, any peripheral device or other system equipment, which is attached to the Covered System(s), whether provided by Company, Customer or a third party, interferes with the proper operation of the Covered System(s), Customer shall remove or replace such device or equipment promptly upon notice from Company. Failure of Customer to remove or replace the device shall constitute a material breach of this Agreement. If Customer adds any third party device or equipment to the Covered System(s), Company shall not be responsible for any damage to or failure of the Covered System(s) caused in whole or in part by such device or equipment.

12. **Reports.** Where inspection and/or test services are selected, such inspection and/or test shall be completed on Company's then current report form, which shall be given to Customer, and, where applicable, Company may submit a copy thereof to the local authority having jurisdiction. The report and recommendations by Company are only advisory in nature and are intended to assist Customer in reducing the risk of loss to property by indicating obvious defects or impairments noted to the system and equipment inspected and/or tested. They are not intended to imply that no other defects or hazards exist or that all aspects of the Covered System(s), equipment, and components are under control at the time of inspection. Final responsibility for the condition and operation of the Covered System(s) and equipment and components lies with Customer.

13. **Availability and Cost of Steel, Plastics & Other Commodities.** Company shall not be responsible for failure to provide services, deliver products, or otherwise perform work required by this Agreement due to lack of available steel products or products made from plastics or other commodities. In the event Company is unable, after reasonable commercial efforts, to acquire and provide steel products, or products made from plastics or other commodities, if required to perform work required by this Agreement, Customer hereby agrees that Company may terminate the Agreement, or the relevant portion of the Agreement, at no additional cost and without penalty. Customer agrees to pay Company in full for all work performed up to the time of any such termination.

14. **Confined Space.** If access to confined space by Company is required for the performance of Services, Services shall be scheduled and performed in accordance with Company's then-current hourly rate.

15. **Hazardous Materials.** Customer represents that, except to the extent that Company has been given written notice of the following hazards prior to the execution of this Agreement, to the best of Customer's knowledge there is no:

- Space in which work must be performed that, because of its construction, location, contents or work activity therein, accumulation of a hazardous gas, vapour, dust or fume or the creation of an oxygen-deficient atmosphere may occur;
- "permit confined space," as defined by OSHA for work Company performs in the United States;
- risk of infectious disease;
- need for air monitoring, respiratory protection, or other medical risk; or
- asbestos, asbestos-containing material, formaldehyde or other potentially toxic or otherwise hazardous material contained in or on the surface of the floors, walls, ceilings, insulation or other structural components of the area of any building where work is required to be performed under this Agreement.

All of the above are hereinafter referred to as "Hazardous Conditions." Company shall have the right to rely on the representations listed above. If Hazardous Conditions are encountered by Company during the course of Company's work, the discovery of such materials shall constitute an event beyond Company's control, and Company shall have no obligation to further perform in the area where the Hazardous Conditions exist until the area has been made safe by Customer as certified in writing by an independent testing agency, and Customer shall pay disruption expenses and re-mobilization expenses as determined by Company. This Agreement does not provide for the cost of capture, containment or disposal of any hazardous waste materials, or hazardous materials, encountered in any of the Covered System(s) and/or during performance of the Services. Said materials shall at all times remain the responsibility and property of Customer. Company shall not be responsible for the testing, removal or disposal of such hazardous materials.

16. **Covid-19 Vaccination.** Company expressly disclaims any requirement, understanding or agreement, express or implied, included directly or incorporated by reference, in any Customer purchase order, solicitation, notice or otherwise, that any of Company's personnel be vaccinated against Covid-19 under any federal, state/provincial or local law, regulation or order applicable to government contracts or subcontracts, including, without limitation, Presidential Executive Order 14042 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors") and Federal Acquisition Regulation (FAR) 52.223-99 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors"). Any such requirement shall only apply to Company's personnel if and only to the extent contained in a written agreement physically signed by an authorized officer of Company.

17. Other Services.

A. **Remote Service.** If Customer selects Remote Service, Company shall provide support for the Customer's system by way of education, remote assistance and triage that does not require programming changes to the Customer's panel. In addition, Remote Service does not include service to address physical damage to the system or a device; troubleshoot wiring issues; programming changes and/or relocating, re-mounting, reconnecting, or adding a device to the system. Customer understands and agrees that, while Remote Service provides for communication regarding Customer's fire alarm system to Company via the Internet, Remote Service does not constitute monitoring of the system, and Customer understands that Remote Service does not provide for Company to contact the fire department or other authorities in the event of a fire alarm. Customer understands that if it wishes to receive monitoring of its fire alarm system and notification of the fire department or other authorities in the event of a fire alarm, it must select monitoring services as a separate Service under this Agreement.

CUSTOMER FURTHER UNDERSTANDS AND AGREES THAT THE TERMS OF SECTION 18.F OF THIS AGREEMENT APPLY TO REMOTE SERVICE.

B. **Connected Fire Sprinkler Services; Connected Fire Alarm Services.** Connected Fire Sprinkler Services and Connected Fire Alarm Services each means a data-analytics and software platform that uses a cellular or network connection to gather equipment performance data about a Customer's Covered Equipment for Customer's sprinkler system or fire alarm system, as applicable, to assist JCI in advising Customer on such equipment's health, performance or potential malfunction. Connected Fire Sprinkler Services and Connected Fire Alarm Services are collectively, the Connected Equipment Services. If Customer has purchased Connected Fire Sprinkler Services and/or Connected Fire Alarm Services on any Covered Equipment, Customer agrees to allow Company to install diagnostic sensors and communication hardware ("Gateway Device") or Customer will supply a network connection suitable to enable communication with Customer's Covered Equipment in order for Company to deliver the connected services. For more information on whether your particular equipment includes Connected Fire Sprinkler Services and/or Connected Fire Alarm Services, a subscription to such services and the cost, if any, of such subscription, please see your applicable order, quote, proposal or purchase documentation or talk to your JCI sales representative. For certain subscriptions, Customer will be able to access equipment information from a mobile or smart device using the service's mobile or web app. The Gateway Device will be used to access, store, and trend data for the purposes of providing Connected Fire Sprinkler Services. Company will not use Connected Fire Sprinkler Services or the Connected Fire Alarm Services to remotely operate or make changes to Customer's Equipment. If the connection is disconnected by Customer, and a technician needs to be dispatched to the Customer site, then the Customer will pay JCI at JCI's then-current standard applicable contract regular time and/or overtime rate for such services. Company makes no warranty or guarantee relating to the Connected Fire Sprinkler Services or Connected Fire Alarm Services. Customer acknowledges that, while Connected Fire Alarm Services or Connected Sprinkler Services generally improve equipment performance and services, these services do not prevent all potential malfunction, insure against all loss or guarantee a certain level of performance and that JCI shall not be responsible for any injury, loss, or damage caused by any act or omission of JCI related to or arising from the proactive health notifications of the equipment under Connected Equipment Services. Customer understands that if it wishes to receive monitoring of its fire alarm system or sprinkler system and notification of the fire department or other authorities in the event of an alarm, it must select monitoring services as a separate Service under this Agreement. CUSTOMER FURTHER UNDERSTANDS AND AGREES SECTION 19 (SOFTWARE AND DIGITAL SERVICES) APPLY TO CONNECTED FIRE ALARM SERVICES AND CONNECTED SPRINKLER SERVICES. In the event of a conflict between these terms and the Software Terms, the Software Terms will control.

C. **Dashboards and Mobility Applications for Connected Fire Sprinkler Services and Connected Fire Alarm Services.** If Customer has purchased Connected Fire Sprinkler Services and/or Connected Fire Alarm Services, Customer may utilize Company's Dashboard(s) and Mobility Application(s), as applicable, during the term of the Agreement, pursuant to the then applicable Terms of Use Agreement. Terms for the Dashboard are located at <https://www.johnsoncontrols.com/buildings/legal/digital/general-terms>.

18. **Monitoring Services.** If Customer has selected Monitoring Services, the following shall apply to such Services:

A. **Alarm Monitoring Service.** Customer agrees and acknowledges that Company's sole and only obligation under this Agreement shall be to provide alarm monitoring, notification, and/or Runner Services as set forth in this Agreement and to endeavor to notify the party(ies) identified by Customer on the Contact/Call List ("Contacts") and/or Local Emergency Dispatch Numbers for responding authorities. Upon receipt of an alarm signal, Company may, at our sole discretion, attempt to notify the Contacts to verify the signal is not false. If we fail to notify the Contacts or question the response we receive, we will attempt to notify the responding authority. In the event Company receives a supervisory signal or trouble signal, Company shall endeavor to promptly notify one of the Contacts. Company shall not be responsible for a Contact's or responding authority's refusal to acknowledge/respond to Company's notifications of receipt of an alarm signal, nor shall Company be required to make additional notifications because of such refusal. The Contacts are authorized to act on Customer's behalf and, if so designated on the Contact/Call List, are authorized to cancel an alarm prior to the notification of authorities. Customer understands that local laws, ordinances or policies may restrict Company's ability to provide the alarm monitoring and notification services described in this Agreement and/or necessitate modified or additional services and related charges to Customer. Customer understands that Company may employ a number of industry-recognized measures to help reduce occurrences of false alarm signal activations. These measures may include, but are not limited to, implementation of industry-recognized default settings; implementation of "partial clear time bypass" procedures at our alarm monitoring center and other similar measures at our sole discretion from time to time. THESE MEASURES CAN RESULT IN NO ALARM SIGNAL BEING SENT FROM AN ALARM ZONE IN CUSTOMER'S PREMISES AFTER THE INITIAL ALARM ACTIVATION UNTIL THE ALARM SYSTEM IS MANUALLY RESET. Upon receiving notification from Company that a fire or gas detection (e.g. carbon monoxide) signal has been received, the responding authority may forcibly enter the premises. Cellular radio unit test supervision, if provided under this Agreement, provides only the status of the cellular radio unit's current signaling ability at the time of the test communication based on certain programmed intervals and does not serve to detect the potential loss of radio service at the time of an actual emergency event. Company shall not be responsible to provide monitoring services under this Agreement unless and until the communication link between Customer's premises and Company's Monitoring Center has been tested. SUCH SERVICES ARE PROVIDED WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

B. **Limitation of Liability; Limitations of Remedy.** Customer understands that Company offers several levels of Monitoring Services and that the level described has been chosen by Customer after considering and balancing various levels of protection afforded and their related costs. It is understood and agreed by Customer that Company is not an insurer and that

insurance coverage shall be obtained by Customer and that amounts payable to Company hereunder are based upon the value of the Monitoring Services and the scope of liability set forth in this Agreement and are unrelated to the value of Customer's property and the property of others located on the premises. Customer agrees to look exclusively to Customer's insurer to recover for injuries or damage in the event of any loss or injury and that Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no guaranty or warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or Services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or Service was designed to detect or avert. It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its monitoring obligations under this Agreement. Accordingly, Customer agrees that Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences therefrom, which the equipment or Service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or Service in any respect, Company's liability with respect to Monitoring Services shall be the lesser of the annual fee for Monitoring Services allocable to the site where the incident occurred or two thousand five hundred (\$2,500) dollars, as agreed upon damages and not as a penalty, as Customer's sole remedy. Such sum shall be complete and exclusive. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY SERVICING, ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE COVERED SYSTEM(S), AS HEREINAFTER DEFINED, OR ANY OF ITS COMPONENT PARTS BY THE CUSTOMER OR ANY THIRD PARTY. In no event shall JCI and its affiliates and their respective personnel, suppliers and vendors be liable to Customer or any third party under any cause of action or theory of liability, even if advised of the possibility of such damages, for any (a) special, incidental, consequential, punitive or indirect damages of any kind, including but not limited to damages; (b) loss of profits, revenues, data, customer opportunities, business, anticipated savings or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyber-attacks or failures or interruptions to network systems CUSTOMER OR ANY THIRD PARTY. COMPANY SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM THE USE, LOSS OF THE USE, PERFORMANCE, OR FAILURE OF THE COVERED SYSTEM(S) TO PERFORM. The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of Company, whether direct or indirect, and each of their employees, agents, officers and directors.

C. Indemnity, Insurance. Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third-party claims for personal injury, death, property damage or economic loss, arising in any way from any act or omission of Customer or Company relating in any way to the Monitoring Services provided under this Agreement, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action. Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies.

D. No modification. Modification to Sections 18 B or C may only be made by a written amendment to this Agreement signed by both parties specifically referencing Section 18 B and/or C, and no such amendment shall be effective unless approved by the manager of Company's Central Monitoring Center.

E. Customer's Duties. In addition to Customer's duty to indemnify, defend, and hold Company harmless pursuant to this Section 18:

i. Customer agrees to furnish the names and telephone numbers of all persons authorized to enter or remain on Customer's premises and/or that should be notified in the event of an alarm (the Contact/Call List) and Local Emergency Dispatch Numbers and provide all changes, revision and modifications to the above to Company in writing in a timely manner. Customer must ensure that all such persons are authorized and able to respond to such notification.

ii. Customer shall carefully and properly test and set the system immediately prior to the securing of the premises and carefully test the system in a manner prescribed by Company during the term of this Agreement. Customer agrees that it is responsible for any losses or damages due to malfunction, miscommunication or failure of Customer's system to accurately handle, process or communicate data data. If any defect in operation of the System develops, or in the event of a power failure, interruption of telephone service, or other interruption at Customer's premises of signal or data transmission through any media, Customer shall notify Company immediately. If space/interior protection (i.e. ultrasonic, microwave, infrared, etc.) is part of the System, Customer shall walk test the system in the manner recommended by Company.

iii. When any device or protection is used, including, but not limited to, space protection, which may be affected by turbulence of air, occupied airspace change or other disturbance, forced air heaters, air conditioners, horns, bells, animals and any other sources of air turbulence or movement which may interfere with the effectiveness of the System during closed periods while the alarm system is on, Customer shall notify Company

iv. Customer shall promptly reset the System after any activation.

v. Customer shall notify Company regarding any remodeling or other changes to the protected premises that may affect operation of the system.

vi. Customer shall cooperate with Company in the installation, operation and/or maintenance of the system and agrees to follow all instructions and procedures which may be prescribed for the operation of the system, the rendering of services and the provision of security for the premises.

vii. Customer shall pay all charges made by any telephone or communications provider company or other utility for installation, leasing, and service charges of telephone lines connecting Customer's premises to Company. Customer acknowledges that alarm signals from Customer's premises to Company are transmitted over Customer's telephone or other transmission service and that in the event the telephone or other transmission service is out of order, disconnected, placed on "vacation," or otherwise interrupted, signals from Customer's alarm system will not be received by Company, during any such interruption in telephone or

other transmission service and the interruption will not be known to Company. Customer agrees that in the event the equipment or system continuously transmits signals reasonably determined by Company to be false and/or excessive in number, Customer shall be subject to the additional costs and fees incurred by Company in the receiving and/or responding to the excessive signals and/or Company may at its sole discretion terminate this Agreement with respect to Monitoring services upon notice to Customer.

F. Communication Facilities.

i. Authorization. Customer authorizes Company, on Customer's behalf, to request services, orders or equipment from a telephone company, wireless carrier or other company providing communication facilities, signal transmission services or facilities under this Agreement (referred to as "Communication Company"). Should any third-party service, equipment or facility be required to perform the Monitoring Services set forth in this Agreement, and should the same be terminated or become otherwise unavailable or impracticable to provide, Company may terminate Monitoring Services upon notice to Customer.

ii. Digital Communicator. Customer understands that a digital communicator (DACT), if installed under this Agreement, uses traditional telephone lines for sending signals which eliminate the need for a dedicated telephone line and the costs associated with such dedicated lines.

iii. Derived Local Channel. The Communication Company's services provided to Customer in connection with the Services may include Derived Local Channel service. Such service may be provided under the Communication Company's service marks or service names. These services include providing lines, signal paths, scanning and transmission. Customer agrees that the Communication Company's liability is limited to the same extent Company's liability is limited pursuant to this Section 18.

iv. CUSTOMER UNDERSTANDS THAT COMPANY WILL NOT RECEIVE ALARM SIGNALS WHEN THE TELEPHONE LINE OR OTHER TRANSMISSION MODE IS NOT OPERATING OR HAS BEEN CUT, INTERFERED WITH OR IS OTHERWISE DAMAGED OR IF THE ALARM SYSTEM IS UNABLE TO ACQUIRE, TRANSMIT OR MAINTAIN AN ALARM SIGNAL OVER CUSTOMER'S TELEPHONE SERVICE FOR ANY REASON INCLUDING NETWORK OUTAGE OR OTHER NETWORK PROBLEMS SUCH AS CONGESTION OR DOWNTIME, ROUTING PROBLEMS, OR INSTABILITY OF SIGNAL QUALITY. CUSTOMER UNDERSTANDS THAT OTHER POTENTIAL CAUSES OF SUCH A FAILURE OVER CERTAIN TELEPHONE SERVICES (INCLUDING BUT NOT LIMITED TO SOME TYPES OF DSL, ADSL, VOIP, DIGITAL PHONE, INTERNET PROTOCOL BASED PHONE OR OTHER INTERNET INTERFACE-TYPE SERVICE OR RADIO SERVICE, INCLUDING CELLULAR OR PRIVATE RADIO, ETC. ("NON-TRADITIONAL TELEPHONE SERVICE")) INCLUDE BUT ARE NOT LIMITED TO: (1) LOSS OF NORMAL ELECTRIC POWER TO CUSTOMER'S PREMISES (THE BATTERY BACK-UP FOR THE ALARM PANEL DOES NOT POWER TELEPHONE SERVICE); AND (2) ELECTRONICS FAILURES SUCH AS A MODEM MALFUNCTION. CUSTOMER UNDERSTANDS THAT COMPANY WILL ONLY REVIEW THE INITIAL COMPATIBILITY OF CUSTOMER'S ALARM SYSTEM WITH NON-TRADITIONAL TELEPHONE SERVICE AT THE TIME OF INITIAL CONNECTION TO COMPANY'S MONITORING CENTER AND THAT CHANGES IN CUSTOMER'S TELEPHONE SERVICE'S DATA FORMAT AFTER THE INITIAL REVIEW OF COMPATIBILITY COULD MAKE CUSTOMER'S TELEPHONE SERVICE UNABLE TO TRANSMIT ALARM SIGNALS TO COMPANY'S MONITORING CENTERS. IF COMPANY DETERMINES IN ITS SOLE DISCRETION THAT IT IS COMPATIBLE, COMPANY WILL PERMIT CUSTOMER TO USE NON-TRADITIONAL TELEPHONE SERVICE AS THE SOLE METHOD OF TRANSMITTING ALARM SIGNALS, ALTHOUGH CUSTOMER UNDERSTANDS THAT COMPANY RECOMMENDS THE USE OF AN ADDITIONAL BACK-UP METHOD OF COMMUNICATION TO CONNECT CUSTOMER'S ALARM SYSTEM TO THE MONITORING CENTER REGARDLESS OF THE TYPE OF TELEPHONE SERVICE USED. CUSTOMER ALSO UNDERSTANDS THAT IF COMPANY DETERMINES IN ITS SOLE DISCRETION THAT CUSTOMER'S NON-TRADITIONAL TELEPHONE SERVICE IS OR LATER BECOMES NON-COMPATIBLE, OR IF CUSTOMER CHANGES TO ANOTHER NON-TRADITIONAL TELEPHONE SERVICE THAT IS NOT COMPATIBLE, THEN COMPANY REQUIRES THAT CUSTOMER USE AN ALTERNATE METHOD OF COMMUNICATION ACCEPTABLE TO COMPANY AS THE PRIMARY METHOD TO CONNECT CUSTOMER'S ALARM SYSTEM TO THE MONITORING CENTER. CUSTOMER UNDERSTANDS THAT TRANSMISSION OF FIRE ALARM SIGNALS BY MEANS OTHER THAN A TRADITIONAL TELEPHONE LINE MAY NOT BE IN COMPLIANCE WITH FIRE ALARM STANDARDS OR SOME LOCAL FIRE CODES, AND THAT IT IS CUSTOMER'S OBLIGATION TO COMPLY WITH SUCH STANDARDS AND CODES. CUSTOMER ALSO UNDERSTANDS THAT IF THE ALARM SYSTEM HAS A LINE CUT FEATURE, IT MAY NOT BE ABLE TO DETECT IF A NON-TRADITIONAL TELEPHONE SERVICE LINE IS CUT OR INTERRUPTED, AND THAT COMPANY MAY NOT BE ABLE TO PROVIDE CERTAIN AUXILIARY MONITORING SERVICES THROUGH A NON-TRADITIONAL TELEPHONE LINE OR SERVICE. CUSTOMER FURTHER UNDERSTANDS THAT THE ALARM PANEL MAY BE UNABLE TO SEIZE THE PHONE LINE TO TRANSMIT AN ALARM SIGNAL IF ANOTHER CONNECTION IS OFF THE HOOK DUE TO IMPROPER CONNECTION OR OTHERWISE.

G. Verification; Runner Service. Some jurisdictions may require alarm verification by telephone or on-site verification ("Runner Service") before dispatching emergency services. In the event that a requirement of alarm verification becomes effective after the date of this Agreement, such services may be available at an additional charge. Company shall not be held liable for any delay or failure of dispatch of emergency services arising from such verification. Where Runner Service is Indicated, such services may be provided by a third party. COMPANY WILL NOT ARREST OR DETAIN ANY PERSON.

H. Personal Emergency Response Service. If Customer has selected Personal Emergency Response Services, Customer agrees that the very nature of Personal Emergency Response Services, irrespective of any delays, involves uncertainty, risk and possible serious injury, disability or death, for which Company should not under any circumstances be held responsible or liable; that the equipment furnished for Personal Emergency Response Services is not foolproof and may experience signal transmission failures or delays for any number of reasons, whether or not our fault or under Company's control; that the actual time required for medical emergency providers to arrive at the premises and/or to transport any person requiring medical attention is unpredictable and that many contributing factors, including but not limited to such things as telephone network operation, distance, weather, road and traffic conditions, alarm

equipment function and human factors, both with responding authorities and with Company, may affect response.

19. **Limited Warranty.** COMPANY WARRANTS THAT ITS WORKMANSHIP AND MATERIAL, EXCLUDING MONITORING SERVICES, FURNISHED UNDER THIS AGREEMENT WILL BE FREE FROM DEFECTS FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF FURNISHING. No warranty is provided for third-party products and equipment installed or furnished by Company. Such products and equipment are provided with the third party manufacturer's warranty to the extent available, and Company will transfer the benefits, together with all limitations, of that manufacturer's warranty to Customer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS, SYSTEMS OR EQUIPMENT, IF ANY, SUPPORTED HEREUNDER.

Company makes no and specifically disclaims all representations or warranties that the services, products, software or third party product or software will be secure from cyber threats, hacking or other similar malicious activity, or will detect the presence of, or eliminate, treat, or mitigate the spread transmission, or outbreak of any pathogen, disease, virus or other contagion, including but not limited to COVID 19.

20. **Software and Digital Services.** Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, Company's standard terms for such Software and Software related professional services in effect from time to time at <https://www.johnsoncontrols.com/tech/terms> (collectively, the "Software Terms"). Applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, Company and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto. Notwithstanding any other provisions of this Agreement and unless otherwise agreed to by the parties in writing, the following terms apply to Software that is provided to Customer on a subscription basis (i.e., a time limited license or use right), (each a "Software Subscription"): Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the "Subscription Start Date") and will continue in effect until the expiration of the subscription term noted herein. At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a "Renewal Subscription Term"), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. To the extent permitted by applicable law, Software Subscriptions purchases are non-cancelable and the sums paid nonrefundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at JCI's then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement will be subject to additional fees based on the date such excess use began.

21. **Taxes, Fees, Fines, Licenses, and Permits.** Customer agrees to pay all sales tax, use tax, property tax, utility tax and other taxes required in connection with the equipment and Services listed, including telephone company line charges, if any. Customer shall comply with all laws and regulations relating to the equipment and its use and shall promptly pay when due all sales, use, property, excise and other taxes and all permit, license and registration fees now or hereafter imposed by any government body or agency upon the equipment or its use. Company may, without notice, obtain any required permit, license or registration for Customer at Customer's expense and charge a fee for this service. If Customer fails to maintain any required licenses or permits, Company shall not be responsible for performing the services and may terminate the services without notice to Customer.

22. **Outside Charges.** Customer understands and accepts that Company specifically disclaims any responsibility for charges associated with the notification or dispatching of anyone, including but not limited to fire department, police department, paramedics, doctors, or any other emergency personnel, and if there are any charges incurred as a result of said notification or dispatch, said charges shall be the responsibility of Customer.

23. **Insurance.** Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies.

24. **Waiver of Subrogation.** Customer does hereby for itself and all other parties claiming under it release and discharge Company from and against all hazards covered by Customer's insurance, if being expressly agreed and understood that no insurance company or insurer will have any right of subrogation against Company.

25. **Force Majeure, Exclusions.** Company shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, failure to render services, or any other failure by Company to perform an obligation under this Agreement, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of Company, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of Company. If Company's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, Company shall be excused

from performance under the Agreement. Without limiting the generality of the foregoing, if Company is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, Company will be entitled to extend the relevant completion date by the amount of time that Company was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases Company's cost to perform the services, Customer is obligated to reimburse Company for such increased costs, including, without limitation, costs incurred by Company for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by Company in connection with the Force Majeure Event.

26. **Exclusions.** This Agreement expressly excludes, without limitation, provision of fire watches; reloading of, upgrading, and maintaining computer software; making repairs or replacements necessitated by reason of negligence or misuse of components or equipment or changes to Customer's premises; vandalism; power failure; current fluctuation; failure due to non-JCI installation; lightning, electrical storm, or other severe weather; water; accident; fire; acts of God; testing inspection and repair of duct detectors, beam detectors, and UVMR equipment; provision of fire watches; clearing of ice blockage; draining of improperly pitched piping; batteries; recharging of chemical suppression systems; reloading of, upgrading, and maintaining computer software; corrosion (including but not limited to micro-bacterially induced corrosion ("MIC")); cartridges greater than 16 grams; gas valve installator; or any other cause external to the Covered System(s) and JCI shall not be required to provide Service while interruption of service due to such causes shall continue. This Agreement does not cover and specifically excludes system upgrades and the replacement of obsolete systems, equipment, components or parts. All such services may be provided by JCI at JCI's sole discretion at an additional charge. If Emergency Services are expressly included in the Service Solution, the Agreement price does not include travel expenses.

27. **Delays.** Company shall have no responsibility or liability to Customer or any other person for delays in the installation or repair of the System or the performance of our Services regardless of the reason, or for any resulting consequences.

28. **Termination.** Company may terminate this Agreement immediately at its sole discretion upon the occurrence of any Event of Default as hereinafter defined. Company may also terminate this Agreement at its sole discretion upon notice to Customer if Company's performance of its obligations under this Agreement becomes impracticable due to obsolescence of equipment at Customer's premises or unavailability of parts.

29. **No Option to Solicit.** Customer shall not, directly or indirectly, on its own behalf or on behalf of any other person, business, corporation or entity, solicit or employ any Company employee, or induce any Company employee to leave his or her employment with Company, for a period of two years after the termination of this Agreement.

30. **Default.** An Event of Default shall include (a) any full or partial termination of this Agreement by Customer before the expiration of the then-current Term, (b) failure of Customer to pay any amount when due and payable, (c) abuse of the System or the Equipment, (d) failure by Customer to observe, keep or perform any term of this Agreement; (e) dissolution, termination, discontinuance, insolvency or business failure of Customer. Upon the occurrence of an Event of Default, Company may pursue one or more of the following remedies, (i) discontinue furnishing Services, (ii) by written notice to Customer declare the balance of unpaid amounts due and to become due under this Agreement to be immediately due and payable, (iii) receive immediate possession of any equipment for which Customer has not paid, (iv) proceed at law or equity to enforce performance by Customer or recover damages for breach of this Agreement, and (v) recover all costs and expenses, including without limitation reasonable attorneys' fees, in connection with enforcing or attempting to enforce this Agreement.

31. **One-Year Limitation on Actions; Choice of Law.** For Customers located in the United States, the laws of Wisconsin shall govern the validity, enforceability, and interpretation of this Agreement, without regard to conflicts of law. For Customers located in Canada, this agreement shall be governed by and be construed in accordance with the laws of Ontario. The parties agree that any disputes arising under this Agreement shall be determined exclusively by the Ontario courts and that no action or legal proceedings of any nature shall be filed or commenced in any other court pertaining to any dispute arising out of or in relation to this Agreement. The parties also hereby waive any objection to the exclusive jurisdiction of the Ontario courts, including any objection based on *forum non conveniens*. No claim or cause of action, whether known or unknown, shall be brought against Company more than one year after the claim first arose. Except as provided for herein, Company's claims must also be brought within one year. Claims for unpaid contract amounts are not subject to the one-year limitation.

32. **Assignment.** Customer may not assign this Agreement without Company's prior written consent. Company may assign this Agreement without obtaining Customer's consent.

33. **Entire Agreement.** The parties intend this Agreement, together with any attachments or Riders (collectively the "Agreement") to be the final, complete and exclusive expression of their Agreement and the terms and conditions thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties, written or oral, and shall constitute the sole terms and conditions relating to the Services. No waiver, change, or modification of any terms or conditions of this Agreement shall be binding on Company unless made in writing and signed by an Authorized Representative of Company.

34. **Headings.** The headings in this Agreement are for convenience only.

35. **Severability.** If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement will continue to be valid as to the other provisions and the remainder of the affected provision.

36. **Electronic Media.** Customer agrees that Company may scan, image or otherwise convert this Agreement into an electronic format of any nature. Customer agrees that a copy of this Agreement produced from such electronic format is legally equivalent to the original for any and all purposes, including litigation. Customer agrees that Company's receipt by fax of the Agreement signed by Customer legally binds Customer and such fax copy is legally equivalent to the original for any and all purposes, including litigation.

37. **Legal Fees.** Company shall be entitled to recover from Customer all reasonable legal fees incurred in connection with Company enforcing the terms and conditions of this Agreement.

38. **Lien Legislation.** Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall be subject to the lien legislation applicable to the location where the work will be performed, and, in the event of conflict, the applicable lien legislation shall prevail.

39. Privacy. A. Company as Processor: Where Company factually acts as Processor of Personal Data on behalf of Customer (as such terms are defined in the DPA) the terms at www.johnsoncontrols.com/terms shall apply. B. Company as Controller: Company will collect, process and transfer certain personal data of Customer and its personnel related to the business relationship between it and Customer (for example names, email addresses, telephone numbers) as controller and in accordance with Company's Privacy Notice at <https://www.johnsoncontrols.com/privacy>. Customer acknowledges Company's Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Customer consents to such collection, processing and transfer. To the extent consent to such collection, processing and transfer by Company is mandatorily required from Customer's personnel under applicable law, Customer warrants and represents that it has obtained such consent.

40. License Information (Security System Customers): AL Alabama Electronic Security Board of Licensure 7956 Vaughn Road, PMB 392, Montgomery, Alabama 36116 (334) 264-9388: AR Regulated by: Arkansas Board of Private Investigators and Private Security Agencies, #1 State Police Plaza Drive, Little Rock 72209 (501)618-8600: CA Alarm company operators are licensed and regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA, 95814. Upon completion of the installation of the alarm system, the alarm company shall thoroughly instruct the purchaser in the proper use of the alarm system. Failure by the licensee, without legal excuse, to substantially commence work within 20 days from the approximate date specified in the agreement when the work will begin is a violation of the Alarm Company Act: NY Licensed by the N.Y.S. Department of the State: TX Texas Commission on Private Security, 5805 N. Lamar Blvd., Austin, TX 78752-4422, 512-424-7710. License numbers available at www.johnsoncontrols.com or contact your local Johnson Controls office.