

Settlement and Release Agreement

This Full Settlement and Release Agreement (“Agreement”) is made and entered into as of this 1st day of November, 2017, by and between (a) Floyd County School District (“School District”) on the one hand, and Johnson Controls, Inc. (“JCI”) on the other. These entities are referred to collectively as “the Parties.”

I. Recitals

WHEREAS, this Agreement is the product of mutual negotiation and compromise between the School District and JCI;

WHEREAS, the Parties acknowledge that the consideration provided under this Agreement is sufficient to support the releases provided under this Agreement;

WHEREAS, the Parties deny any and all wrongdoing and deny that they engaged in any improper acts; and

WHEREAS, the Parties wish to avoid the time and expense of litigation;

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. Consideration.

1. Upon execution of the Agreement by the Parties, on or before November 3, 2017, JCI shall pay the School District a lump-sum amount of two million, three hundred thousand dollars (\$2,300,000).
2. JCI shall also provide the following in-kind services and discounts to the School District:
 - a. Within thirty (30) days of the execution and delivery of this Agreement, JCI shall consult with the School District and review the operation and maintenance of the HVAC systems at three (3) school facilities to be identified by FCSD and provide a recommended plan for upgrades to allow the systems to improve the performance and control of the HVAC systems. If the School District elects to implement any of the recommendations proposed by JCI, the School District shall bear the expense of any such materials or services that it orders from JCI.
 - b. For two (2) years following the execution and delivery of this Agreement, JCI shall provide sixteen (16) hours of on-site technical support per month for HVAC and security systems collectively, at no charge on a schedule to be developed by the School District and JCI. The Parties agree that to the extent

sixteen hours are not utilized in a particular month, such unused hours may accumulate in subsequent months up to a maximum of forty-eight cumulative rollover hours during the two-year period.

- c. For two (2) years following the execution and delivery of this Agreement, JCI shall provide an annual allowance of twenty-five thousand dollars (\$25,000) for repair parts and a separate annual allowance of twenty-five thousand dollars (\$25,000) for JCI personnel deployed for repairs outside of the scheduled technical support identified in paragraph b. of this subsection.
- d. For two (2) years following the execution and delivery of this Agreement, JCI shall allow the School District to purchase parts and systems at the same price extended by JCI to the General Services Administration, as amended by the General Services Administration from time to time during that two (2) year period.
- e. All purchases of services and parts from JCI, including the annual allowances set forth in subsections b–d, above, shall include JCI’s standard Terms and Conditions at the time of the sale or service and contain a binding arbitration provision in the event of any dispute.

C. No Admission of Liability. The Parties agree that this Agreement shall not in any way be construed as an admission of any liability or wrongdoing whatsoever. The Parties enter into this Agreement solely for the purpose of resolving this matter economically and to avoid the expense and uncertainties of litigation. The Parties expressly deny any violation of any federal, state or local statute, ordinance, rule, regulation, policy, order, contract, or other law.

D. Advice of Counsel. The Parties have carefully read this Agreement. The Parties have been represented by counsel in connection with the drafting and approval of this Agreement, and such counsel has advised them on the terms, conditions and effects of this Agreement. The Parties fully understand all terms, consequences, and ramifications of entering into this Agreement.

E. No Drafting Presumption. This Agreement shall be construed as if each party participated equally in its negotiation and drafting.

F. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties. This Agreement merges and supersedes all prior discussions, negotiations, understandings, and agreements among or between the Parties, other than written agreements and warranties regarding work already performed by JCI for the School District. The Parties shall not be bound by any condition, definition, warranty, right, duty, or covenant other than as expressly stated in this Agreement, or as subsequently set forth in a written document signed by the Parties. The provisions of this Agreement, including this Paragraph, may be modified or waived only in a writing signed by the party to be charged. The Parties specifically agree that no party shall be bound by any failure to respond or object to a written or

oral communication from the other party that purports to impose or confirm any obligation not expressly set forth in this Agreement.

G. Representations and Warranties. The Parties represent and warrant that they each possess full authority to enter into this Agreement and that the undersigned have full authority to execute this Agreement on their behalf.

H. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on each party's successors, assigns, heirs, administrators, representatives, and trustees.

I. Costs of Litigation. The Parties agree that each Party will bear its own expenses, costs, and attorneys' fees relating in any way to this Agreement, and anything else encompassed by or referred to in this Agreement.

J. Severability. If any part or provision of this Agreement is determined to be unenforceable, the Parties intend and agree that the remaining provisions shall not be affected by such determination.

K. Choice of Law. The Parties agree that Georgia law shall govern this Agreement, as well as any action or dispute arising out of or relating to this Agreement. This Paragraph shall apply notwithstanding any choice of law rules to the contrary.

L. Non-Disparagement. The Parties agree not to directly or indirectly make any untruthful, malicious, or defamatory statements, allegations, comments or communications (whether written, oral, electronic, or otherwise) with regard to the School District or JCI, including their facilities, properties, officers, employees, members, partners, managers, agents, affiliated businesses, products or services. The Parties further agree not to encourage or instigate any such untruthful, malicious, or defamatory statements, allegations, comments or communications to be made by others.

M. Non-Waiver. If any party fails to enforce any term or condition of this Agreement, such failure shall not constitute a waiver of that party's right to enforce that or any other provision in the future.

N. Breach of Agreement. Any party that believes this Agreement has been breached shall give written notice of the breach to the alleged breaching party. The alleged breaching party shall have thirty (30) days to cure any breach. If there is any dispute as to whether the breach occurred or has been cured, representatives of the Parties shall meet in person in a good faith attempt to resolve the dispute by negotiation. This meeting will occur within forty-five (45) days of the first notification by one party of the desire to attempt to resolve the dispute. At this meeting, the representatives of the Parties shall include an individual from each Party with the requisite authority to settle the dispute. At this meeting, or in lieu of this meeting, the Parties may choose to mediate the dispute before a mutually acceptable mediator. In the event that the negotiation and/or mediation are unsuccessful, the issue shall be submitted for arbitration pursuant to the rules of the American Arbitration Association under the Commercial Arbitration Rules using a single arbitrator in Atlanta, Georgia. The prevailing party shall receive

its reasonable attorneys' fees and expenses for pursuing or defending said action. The ruling of the arbitrator shall be binding and enforceable by any court of competent jurisdiction.

O. Effective Date. The effective date of this Agreement shall be the date this Agreement is executed by all Parties.

P. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be enforceable against the party who has executed it. Photocopied, facsimile, and e-mail signatures shall be deemed as effective as original signatures.

II. Releases

A. The School District's General Release and Covenant Not to Sue. In return for the consideration described in this Agreement, the School District, on behalf of both itself, and the Floyd County Board of Education and any of its predecessors, successors, assigns, parent entities, subsidiaries, affiliates, agents, and representatives, hereby voluntarily, knowingly, irrevocably and unconditionally release, acquit, forever discharge and agree not to sue JCI and any of its predecessors, successors, assigns, parent entities, subsidiaries, affiliates, agents, representatives, partners, principals, employees, current or former, officers, or members, attorneys, insurers and assigns for any and all claims, demands, causes of action, damages, obligations, losses and expenses of whatsoever kind or nature (including any claims for reasonable attorneys' fees, frivolity penalties, sanctions, and other legal fees and expenses) arising out of any facts, situations, acts, omissions, transactions, transfers, happenings, violations, promises, contracts, or agreements which occurred or existed at any time through and including the date of this Agreement, whether or not now known or suspected or claimed, whether in law, equity or otherwise, whether in a direct or derivative nature, and whether accrued or hereafter maturing.

Further, the School District Parties agree to indemnify JCI from any claim of any insurer of the School District who asserts any subrogation or other claim against JCI arising from or related to the settlement payment by JCI to the School District..

This general release and covenant not to sue expressly includes, but is not limited to, any and all claims, damages, demands, actions or causes of action in relation to JCI.

B. JCI's General Release and Covenant Not to Sue. In return for the consideration described in this Agreement, JCI, on behalf of both itself and any of its predecessors, successors, assigns, parent entities, subsidiaries, affiliates, agents, and representatives, hereby voluntarily, knowingly, irrevocably and unconditionally release, acquit, forever discharge and agree not to sue the School District and any of their predecessors, successors, assigns, parent entities, subsidiaries, affiliates, agents, representatives, partners, principals, employees, current or former, officers, or members, attorneys, insurers and assigns for any and all claims, demands, causes of action, damages, obligations, losses and expenses of whatsoever kind or nature (including any claims for reasonable attorneys' fees, frivolity penalties, sanctions, and other legal fees and expenses) arising out of any facts, situations, acts, omissions, transactions, transfers, happenings, violations, promises, contracts, or agreements

which occurred or existed at any time through and including the date of this Agreement, whether or not now known or suspected or claimed, whether in law, equity or otherwise, whether in a direct or derivative nature, and whether accrued or hereafter maturing.

Further, JCI waives any contingent claims for contribution and subrogation against any other parties who have settled with the District Attorney, State of Georgia, or the School District or who have consented to property forfeitures with the District Attorney; however, JCI specifically reserves its right to assert claims and defenses in any subsequent proceeding involving parties other than the School District Parties. JCI expressly waives any right or claim to any of the property, monies, or other assets forfeited to the State of Georgia in Civil Action No. 15-CV-00765-JFL004, Floyd County Superior Court, or in Civil Action No. 2015-CA40901, Chattooga County Superior Court.

This general release and covenant not to sue expressly includes, but is not limited to, any and all claims, damages, demands, actions or causes of action in relation to JCI or brought on behalf of JCI.

C. Release of Unknown Claims. This Agreement is intended to and shall extend to, apply to, cover, and include all unknown, unforeseen, unanticipated, and unexpected claims and all consequences thereof, as well as those which the Parties might reasonably anticipate. The provisions of any state, federal, local, or territorial law or statute providing in substance that releases shall not extend to claims that are unknown or unsuspected to the persons executing such releases are hereby expressly waived.

III. Representations and Warranties

A. Authority to Execute. The Parties executing this Agreement hereby represent and warrant that they have the power and authority and legal right to execute and deliver this Agreement and to perform their respective obligations hereunder, and that this Agreement has been duly executed and delivered by them.

B. Voluntary and Informed Agreement. Each Party executing this Agreement represents and warrants that such Party (1) has fully and carefully read this Agreement; (2) knows and understands the contents hereof; (3) has consulted with counsel of such Party's choosing prior to executing this Agreement; and (4) makes his or her signature below voluntarily and without duress or coercion.

Floyd County School District

Signed By (please print): _____

Title: _____

Date: _____

Johnson Controls, Inc.

Signed By (please print): _____

Title: _____

Date: _____