GILROY UNIFIED SCHOOL DISTRICT
Gilroy, California

Agreement for Professional Services

This Agreement ("Agreement") is entered into by and between the GILROY UNIFIED SCHOOL DISTRICT ("District") and **Johnson Electronics** ("Contractor"). District and Contractor are the "Parties" and each, a "Party."

RECITALS

Whereas, District is authorized by Section 53060 of the *California Government Code*, and Board Policy 3600, to contract with independent contractors for the furnishing of special services and advice concerning financial, economic, accounting, engineering, legal, administrative and other matters and

Whereas, the District requires other consultant to render certain professional Services described below; and

Whereas, Contractor represents that it is specially trained, licensed, experienced and competent in performing, and is willing and able to perform, the Services required by District.

Now, therefore, for good and valuable consideration, and pursuant to the terms and conditions of this Agreement, the Parties agree as follows:

1. **Services.** The Contractor agrees to perform those services for **The Brownell Middle School Modernization Project – Intrusion Alarm Design and Installation.** The Contractor's proposal dated December 30, 2019 (the "Proposal") is incorporated herein by reference; provided, however, that to the extent any services, terms or provisions of the Proposal conflict with this Agreement or **Exhibit A** the terms of Exhibit A shall govern first, then the terms of this Agreement, then the Proposal. The Services include meetings with District staff and review of previous technical documentation. If engineering services are rendered hereunder, the services include but are not limited to, meetings with District staff, review of technical documentation, plan check and inspection services, if appropriate and included, and completion of any reports or documentation described on the exhibits hereto.

Contractor represents and warrants that it (i) is an independent contractor; (ii) if it is incorporated or otherwise formed outside the State of California, it is registered or has legal right to provide services within California; (iii) has the qualifications, experience, and facilities necessary to properly perform the Services in a thorough, competent and professional manner; (iv) has specially trained, experienced and competent personnel to perform the Services; and (v) shall faithfully, competently and to the best of its ability, experience and talent perform all Services.

2. **Term**. Subject to earlier termination as provided below, this Agreement shall remain in effect from the date signed by District, as indicated in the signature page, to and including **June 30, 2021** (the "Term"). This Agreement may be extended only by amendment, signed by the Parties, prior to the expiration of the Term.

3. **Performance**. Contractor shall commence work on **January 17, 2020** and shall complete the Services within the Term pursuant to the schedule agreed-upon by the Parties. Contractor offers to provide the Services with the due diligence and timeliness necessary to accomplish the work within the required time. Failure to complete any of the Services pursuant to that schedule shall be deemed a default as provided below.

In the performance of the Services, Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required under this Agreement.

4. **Compensation**. Subject to any limitations set forth below or elsewhere in this Agreement, District agrees to pay Contractor the amounts specified in **Exhibit B** "Compensation". The total Compensation, including reimbursement for actual expenses, shall not exceed *Seventy-Seven Thousand Five Hundred Twenty-Eight* Dollars ($77,528), unless additional compensation is approved in writing by District.

5. **Required Documents**. Contractor shall not commence work under this Agreement until it has completed, signed and submitted this Agreement and the documents and Certificates identified by District on **Exhibit C**.

6. **Method of Payment; Expenses**. Payment of undisputed amounts due for Services actually completed to the satisfaction of the District will be made within sixty (60) days after District receives a satisfactory invoice from Contractor. Invoices shall not include any Services previously paid by District and must be in form and content satisfactory to the District. No compensation will be paid for any Services or work not approved by the District under this Agreement. No final payments shall be authorized until all reports have been rendered to and approved by the District.

District shall not be liable to Contractor for any costs or expenses incurred by Contractor except to the extent pre-approved in writing by District and verified and supported by adequate records satisfactory to the District. Materials required to complete the Services shall be provided by Contractor, except as otherwise specified in a writing signed by District and Contractor concurrently with or after the delivery of this Agreement.

7. **Incorporation of Recitals, Exhibits and Attachments**. All exhibits and attachments to this Agreement, including any "required documents" specified above, are incorporated as if fully set forth herein as are all other documents incorporated by reference (including the Proposal) but all such documents are subordinate to this Agreement and in the event of inconsistency or conflict this Agreement controls unless otherwise specified in a writing signed by the District.

8. **Indemnification.** To the fullest extent permitted by law and in conformity with California Civil Code Section 2782.8, Contractor agrees that it will indemnify, defend and hold Contractor, Contractor's Representative, members of District's Board of Trustees, directors, officers, employees, agents and authorized volunteers (the "Indemnitees") entirely harmless from all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, its officers, employees, consultants, subconsultants or agents.

The Contractor's obligation to indemnify does not include the obligation to defend actions or proceedings brought against the Indemnitees but rather to reimburse the Indemnitees for attorney's fees and costs incurred by the Indemnitees in defending such actions or proceedings brought against the Indemnitees to the extent such actions or proceedings arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, its officers, employees, consultants, subconsultants or agents, but not to the extent of loss, injury, death or damage caused by the negligence or willful misconduct of District or of other third parties for which the Contractor is not legally liable.

9. **Insurance**. Prior to commencing any Services, Contractor shall obtain, and shall maintain in full force and effect during the Term, the following insurance policies, with at least the coverage amounts indicated below:

(1) To the extent applicable to Contractor and the Services, **Commercial General Liability**($1,000,000 per occurrence; $2,000,000 general aggregate) **and Automobile Liability Insurance** ($1,000,000) protecting from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments in connection with performance of the Services. (Form CG 0001 and CA 0001, or equivalent).

(2) If Contractor employs any person to perform the Services, **Workers' Compensation Insurance** in conformance with all applicable statutory limits; **Employers' Liability Insurance** ($1,000,000 per accident or disease).

(3) If Contractor is providing professional Services, **Professional Liability (Errors and omissions) Insurance** ($1,000,000 per claim), as appropriate to the Contractor's profession.

a. **Certificates and Endorsements**. All insurance certificates shall be subject to approval by District as to form and content. With the exception of professional liability, if any, policies shall be written on an occurrence form. The coverage (except for Worker's Compensation, Professional Liability or Employer's Liability insurance) shall be primary and policies or endorsements shall name District, its Board members, officers, employees, agents and representatives as additional insureds. A clause stating that "At least thirty (30) days prior written notice of cancellation, suspension or reduction" and "At least ten (10) days notice of cancellation for non-payment" will be given to District is needed.

b. Contractor shall not perform any Services until after all required coverage has been obtained and provided to and approved by District. Contractor shall not allow any subcontractor to commence any work under this Contract until the Contractor confirms and verifies that the subcontractor has met the minimum insurance requirements specified herein. The procuring and maintaining of any required insurance coverage shall not in any manner limit or be construed to limit Contractor's liability hereunder.

10. **Termination**. This Agreement may be terminated at any time by mutual agreement of the Parties or by either Party as follows:

a. District may terminate, with or without cause, at any time by giving thirty (30) days written notice of termination to Contractor and compensating Contractor only for Services satisfactorily rendered to the date of termination; or

b. Contractor may terminate for cause upon thirty (30) days written notice of termination to District, if District fails to cure within the time reasonably agreed-upon by the Parties; or

c. District may terminate for cause upon written notice and opportunity for Contractor to cure as specified on the notice. "Cause" shall include (i) material violation of any term or requirement of this Agreement; (ii) any act by Contractor that exposes the District to liability to others, including but not limited to liability for personal injury or property damage; or (iii) Contractor is adjudged bankrupt, files for bankruptcy or makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor.

If District terminates for cause, it may, at its discretion secure completion of any unfinished and/or unacceptable Services from another contractor. Contractor shall reimburse District, upon request, for any District costs in securing completion of such Services that exceed, when added to amounts paid to Contractor hereunder, the total Compensation contemplated under this Agreement. In addition, District may pursue any other remedies available at law or equity.

11. **Inspection; Acceptance**. District may, at its discretion, inspect and accept or reject any Services. Acceptance of any Service shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to indemnification and insurance provisions.

12. **Ownership; Copyright**. All data, documents and information provided, created, prepared and/or used in connection with the Services shall be the property of and returned to the District and cannot be used without District's prior written consent. All reports, specifications, documents, drawings or other materials generated constitute "works made for hire" by or for the District and the District will be the "author" and owner of all such reports under applicable copyright laws.

13. **Compliance with Laws**. Contractor shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the Term. Contractor shall obtain any and all licenses, permits and authorizations necessary to perform the Services. None of District, its board members, officials, employees or agents shall be liable, at law or in equity, as a result of any failure of Contractor to comply with this section.

Without limiting the generality of the foregoing, to the extent applicable, the ***Fingerprinting/Criminal Background Investigation Certification*** must be completed before any services are performed by Contractor.

___N/A_____
(Contractor Initials)

14. **Independent Contractor Status**. Contractor is and shall remain an independent contractor. Contractor states and affirms that it is acting as a free agent and independent Contractor, maintains a separate business address and that this Agreement is not exclusive. District is not liable or responsible to Contractor for any payments (other than the Compensation), withholding income or other taxes, salaries, benefits, loss, costs, expenses, injury or damages. Contractor shall be responsible for filing all returns and paying any income, social security or other tax levied upon or determined with respect to the payments made to Contractor pursuant to this Agreement. A 1099 tax form will be provided to Contractor for services rendered at the end of each calendar year.

15. **Contractor's Books and Records**. Contractor shall maintain, and make available to District or its representatives upon request, any and all documents and records demonstrating or relating to Contractor's performance of the Services for a minimum of three years after termination or expiration of this Agreement, or longer if required by law.

16. **Confidentiality**. Contractor agrees to hold and protect confidential information of the District, including any student or personnel information, whether obtained through observations, documentation or otherwise, as strictly confidential and not disclose any part of it without the prior written permission of the District. Contractor shall not, either directly or indirectly, use any confidential District information for Contractor's own benefit. A violation of this paragraph shall be a material violation of this Agreement. The confidentiality provisions of this Agreement shall survive and remain in full force and effect beyond the termination or expiration of this Agreement.

If it appears that Contractor has disclosed (or has threatened to disclose) such confidential information in violation of this Agreement, the District shall be entitled to an injunction to restrain Contractor from such disclosures and/or from providing services to any party to whom such information has been, or is intended to be, disclosed. The District shall not be prohibited by this provision from pursuing other remedies, including a claim for loss and damages.

17. **Waiver**. Waiver of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by either party of any breach or default shall not constitute a waiver of any other provision or of any subsequent breach or violation of any provision of this Agreement. Acceptance by District of any work or services shall not constitute a waiver of any of the provisions of this Agreement.

18. **Governing Law; Venue**. This Contract shall be construed and interpreted pursuant to the laws of the State of California, without regard to any conflict of laws principles. Jurisdiction and venue shall be in the superior courts of Santa Clara County, wherein this Contract shall be deemed to have been executed and Services, Work and products furnished. Any attempt by any Party to remove venue to another jurisdiction or, unless mutually agreed in writing, to federal court, shall constitute a material breach of this Contract.

19. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes all prior agreements or understandings, whether written or oral with respect thereto.

20. **Assignment; Amendment**. Contractor obligations under this Agreement shall not be assigned by Contractor without District's prior written consent. No amendment to or modification of this Agreement shall be valid or binding unless made in writing by the Contractor and by the District.

21. **Attorney Fees**. The party prevailing in a claim, dispute, or legal proceeding to enforce or interpret this Agreement shall be entitled to recover, and the other party shall pay, reasonable attorney fees and expenses.

22. **Notices**. All notices, invoices and other information required under this Agreement shall be in writing and either personally delivered during normal business hours or sent by first-class U.S. mail (certified, return receipt requested), express delivery service, facsimile transmission, or email to the other Party, as follows:

District Representative	**Contractor Representative**
Name: Alvaro Meza	Name: Dick Johnson
Site/Department: Business Services	Title: CEO
Address: 7810 Arroyo Cir., Gilroy, CA 95020	Address: 78A Malarin St., Salinas, CA 93901
Phone: 1-669-205-4080	Phone: 831-424-6459
Fax:	Fax: 831-424-3691
Email: alvaro.meza@gilroyunified.org	Email: dick@johnson-electronics.com

Notice shall be deemed given when received, if personally delivered or faxed (evidence of successful transmission must be retained) or emailed (acknowledgement of receipt of email must be retained), or three (3) days after mailing if sent via U.S. mail. Notice of change of address must be given as required herein. Contractor invoices must include the name of the person providing the service, the service performed, the date the service was rendered and the number of hours spent on the work.

23. **Authority to Execute**. The person executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have subscribed their names to this Agreement on the dates set forth below.

GILROY UNIFIED SCHOOL DISTRICT

By: _____

Title: _____

Date: _____

JOHNSON ELECTRONICS

By: [signature]

Title: CFO

Date: 1/6/20

FOR DISTRICT OFFICE USE

Funding Code: _____

Funding Program: _____

Form approved by District Legal Counsel 05/21/2012

FOR CONTRACTOR TO COMPLETE:

License # 850025

State of incorporation or formation: CA

Type of Business Entity:

- [X] Corporation
- [ ] Individual
- [ ] Sole Proprietorship
- [ ] Partnership
- [ ] Limited Partnership
- [ ] Limited Liability Company
- [ ] Other: _____

TIN/SSN: 20-0920200

Employer Identification Number and/or Social Security Number

NOTE: The Code of Federal Regulations, Sections 6041 and 6209, require non-corporate recipients of $600.00 or more to furnish their taxpayer identification number ("EID" or "TIN"). The regulations also provide that a penalty may be imposed for failure to furnish the EID or TIN. To comply with these regulations, the District requires your EID, TIN or SSN, whichever is applicable.

EXHIBIT A
TO AGREEMENT FOR CONTRACTOR SERVICES #1920 - 100

SERVICES

I. Contractor will perform the following Services under the Captioned Agreement:
See Attached Proposal Dated December 30, 2019

II. As part of the Services, Contractor will prepare and deliver the following tangible work products to District:
See Attached Proposal Dated December 30, 2019

III. During performance of the Services, Contractor will keep District appraised of the status of performance by delivering the following status reports under the indicated schedule:

STATUS REPORT FOR ACTIVITY:	**DUE DATE**
A. Intrusion Alarm Design and Installation	
B.	
C.	
D.	

IV. Contractor will utilize the following personnel to accomplish the Services:

☐ None.

☐ See attached list.

V. Contractor will utilize the following subcontractors to accomplish the Services (check one):

☐ None.

☐ See attached list.

VI. AMENDMENT

The Services, work product, and personnel, are subject to change by mutual agreement. In the absence of mutual agreement regarding the need to change any aspect of performance, Contractor shall comply with the Services as indicated above.

EXHIBIT B
TO AGREEMENT FOR CONTRACTOR SERVICES #1920 - 100

COMPENSATION

I. The following rates of pay shall apply in the performance of the Services under this Agreement:
See Attached Proposal Dated December 20, 2019

II. Contractor may utilize subcontractors as indicated in this Agreement. The hourly rate for any subcontractor is not to exceed $[N/A] per hour without written authorization from District Superintendent or his designee.

III. District will compensate Contractor for the Services performed upon approval by District of a valid and complete invoice, in form and substance acceptable to District. In connection with Services that are only partially completed at the time an invoice is paid, notwithstanding any provision of the Agreement or any other document, payment of the invoice does not constitute acceptance of the partially completed work or service. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
B. Line items for all supplies, materials and equipment properly charged to the Services.
C. Line items for all travel pre-approved by District and properly charged to the Services.
D. Line items for all subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

Unless otherwise directed by District, in writing, completed invoices are to be submitted to the attention of the Director of Purchasing and the Assistant Superintendent, Business and Fiscal Services. To be considered complete, the invoice packet shall include all back-up documentation required by District and sign-off from District staff, program manager or project manager assigned by District to supervise the Services.

IV. The total compensation for the Services shall not exceed $77,528, as provided in Section 4 of this Agreement.

EXHIBIT C
INSURANCE AND OTHER REQUIRED CERTIFICATES

See attached, copies of the following certificates (Check all required certificates):

_X__ Insurance Certificates and Endorsements

- ☐ General Commercial
- ☐ Automobile
- ☐ Professional
- ☐ Other (*specify*) _____

___ Fingerprinting/Criminal Background Certification (if potential contact with students)

___ Tuberculosis Clearance (if potential contact with students)

_X__ Worker's Compensation Certificate or Evidence of Sole Proprietorship

_X__ W-9 Form

_X__ Conflict of Interest Certification

WORKERS' COMPENSATION CERTIFICATION

(NOTE: This Certification is required for ALL services agreements and public work contracts; Not required in connection with the acquisition of manufactured items not installed by a contractor or in connection with the use of District facilities by a third party not providing services to District)

Labor Code Section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways:

- ☑ By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- ☐ By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Agreement. (In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Agreement.)

Date: 1/6/2020

Name of Contractor: Johnson Electronics

Contractor Representative Name/Title: Shawna Johnson, CFO

Authorized Representative Signature: Shawna Johnson

CONFLICT OF INTEREST CERTIFICATION; DISCLOSURE OF INTEREST

Contractor shall not make, participate in making, or use the position afforded them by this Agreement to influence, any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under California Government Code Section 87100, et seq., or otherwise.

I, the undersigned, am an authorized representative of Contractor and hereby REPRESENT and CERTIFY on Contractor's behalf that neither Contractor, nor any officer or principal of Contractor, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of District or which would in any way hinder Contractor's performance under this Agreement. Contractor further represents that in the performance of this Agreement, no person having any such interest shall be employed by Contractor as an officer, employee, agent or subcontractor without the express prior written consent of District. Contractor also agrees as follows:

a. At all times during the Term, Contractor will avoid conflicts of interest or the appearance of any conflicts of interest with the interests of District in the performance of this Agreement; and

b. If Contractor provides or prepares recommendations for the provision, acquisition or delivery of products or service; then Contractor agrees to provide full disclosure of any financial interest including but not limited to service agreements and/or remarketing agreements that may allow Contractor to materially benefit. Such disclosure may include filing with the District a Statement of Economic Interests (Form 700). Contractor shall also require all consultants or subcontractors who are involved in the making, or participation in the making, of decisions which may foreseeably have a material effect on any District financial interest to file such form with the District; and

c. In connection with Paragraph b, above, Contractor agrees to notify the Superintendent, in writing, if Contractor believes that it is a "designated employee" and should be filing financial interest disclosures, but has not been required to do so by District.

Date: 1/6/2020

Legal Name of Contractor: Johnson Engineered Systems, Inc. dba Johnson Electronics

Signature: Shawna Johnson

By (Name of signatory): Shawna Johnson

Its (Title): CFO