

Brookings School District 05-1

HS Boiler Replacement Project 24



October 9, 2024

Johnson Controls
3413 S Gateway Blvd
Sioux Falls, SD 57106

Submitted by:
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TEAM.
OUR
TIME.**

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3413 Gateway Blvd.
Sioux Falls, SD 57106

Brookings School District 05-1
Dr. Summer Schultz, Superintendent
Mr. Keith Fodness, Facilities Director
Brookings, SD 57006

October 9, 2024

Dear Dr. Schultz and Mr. Fodness,

Johnson Controls, Inc. is pleased to partner with the Brookings School District on this Project Development Agreement (PDA) for boiler replacement and steam to hot water conversion. As part of this PDA, deliverables responsible by JCI are as follows:

- ✓ **A written description of each FIM proposed to be implemented (part of PDA).**
- ✓ **A formalized proposal including total cost of project in accordance with Sourcewell Cooperative Purchasing stipulations (this document).**
- ✓ **60% Engineered Design Package (package to be sent electronically)**
- ✓ **A preliminary schedule for implementation of the project (included in this document).**

We are proud of our existing working relationship with the Brookings School District. We are confident that you will find our approach is flexible, efficient and effective. Through this partnership, we will *mutually identify* options that best meet your long-term goals and financial criteria while addressing your immediate needs.

Following are some of the **capabilities unique to Johnson Controls, Inc.:**

- We are the manufacturer, distributor, installer and servicer of our products.
- Full spectrum capabilities from design and engineering, procurement, installation and maintenance following the project.
- Local service capabilities (Brookings truck based) to ensure that the systems operate at peak performance and efficiency.
- Johnson Controls provides a guaranteed end-result versus a project.
- A local team with over 100 years of experience *dedicated* to implementing projects of this magnitude.

Your approval will authorize Johnson Controls to continue in the process of executing this project. Our staff is committed to supporting your efforts to improve and maintain its facilities for years to come.

Sincerely,

Jay Nelson

Your Local Johnson Controls Project Team:

Jay Nelson - Account Sales Representative - 5 years with JCI

- Jay will be the primary point of communication with the customer and lead the team through development of the project.

Travis Pawlowski - Lead Project Manager –16 years with JCI – 25 years in HVAC Industry

- Travis has overall responsibility for project design, engineering, and installation. Travis has managed the successful implementation of over 230 projects in South Dakota and North Dakota. Travis’ experience and track record for customer satisfaction are unequaled.

Terry Holland – Project Manager – 2 Years with JCI – 30 years General Contractor

- Terry oversees the day-to-day operations of the project. He is responsible for subcontractor coordination and communication with the customer through regular progress meetings. He will be the primary point of contact on the execution of the project.

Anthony Kauk – Local Service Provider – 12 years with JCI

- Anthony provides mechanical maintenance and repair services to the Watertown, SD and surrounding areas. Jesse is a resident of Watertown, SD and has been a trusted partner in service.

Randy Johnson – Mechanical Team Lead - 24 years with JCI

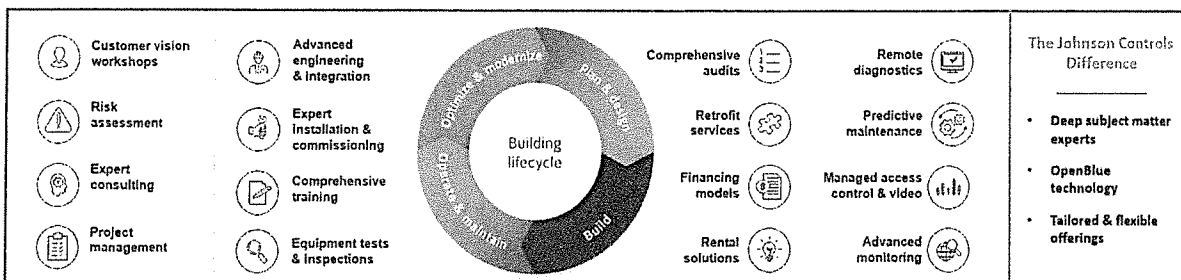
- Randy provides mechanical expertise, training, maintenance and repair services to South Dakota.

Eric Hermans – Technical Team Lead - 22 years with JCI

- Eric provides technical expertise, training, maintenance and repair services to South Dakota.

Shane Christensen – Branch Operations Manager – 23 years with JCI

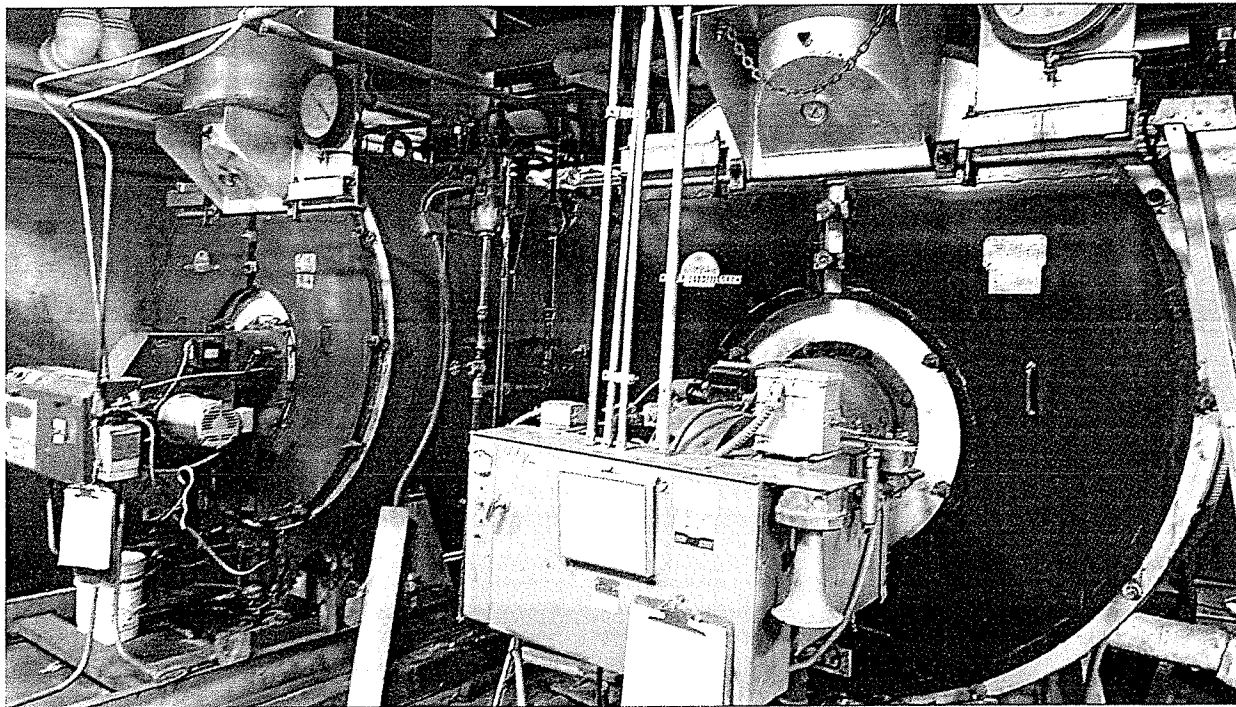
Bryan Lund – Branch Service Manager - 18 years with JCI



1. Feasibility and Scoping of Needs

FIM #1 - Brookings High School Steam to Hot Water Conversion

Much of the existing high school is heated via an aged and inefficient steam boiler system. This boiler system is made up of two (2) 8,375 MBH nameplate-rated low-pressure steam boilers, an aged boiler feed system with limited chemical treatment, and a condensate return system that runs through the building back to the boiler room. Inside the boiler room, roughly half of the steam capacity is converted to hot water through heat exchangers and is pumped through the building to various hot water air handling units, radiant heating equipment, and other types of terminal heating units. The other half of the steam utilized in the building is mostly consumed at air handling units which use steam directly for heating. The main power source for the boiler room is an aged electrical switchboard. A large majority of this critical infrastructure appears to be original to the 1965 construction of the school. This places all this equipment past its useful life, and in some instances, such as the boiler system, the equipment is more than twice its ASHRAE life expectancy.



FIM #1 Replacement Steam to Hot Water HVAC Equipment – Scope of Work

Work to include conversion of all steam equipment to hot water. This includes replacement of air handler steam coils, steam units heaters, steam terminal coils, and heat exchangers. The existing steam boilers shall be replaced with new hot water boilers and pumps for service of the building. For existing equipment that is being converted to hot water, new controls will be installed to upgrade existing pneumatic controls with new digital controls.

All replacement work shall occur over the cooling months to keep building heat operational for wintertime.

FIM #1 – Boiler Replacement and Steam to Hot Water Conversion with Controls Upgrade

Provided Equipment:

- **(3) Natural Gas Boilers**
- **(3) Boiler Pumps**
- **(3) Hot Water Pumps**
- **(4) Expansion Tanks**
- **(1) Air Separator**
- **(11) Unit Heaters**
- **(16) Hot Water Replacement Coils**
- **(4) Terminal Coils**
- **(6) Variable Frequency Drives**
- **HVAC BAS Controls and Controls Low Voltage Wiring Provided by JCI**

Mechanical Demolition:

1. Demolish existing boiler and all associated piping, fittings, valves, controls and supports. Existing concrete housekeeping pad shall be reused. Patch, extend and repair pad as required for installation of new boilers.
2. Demolish existing boiler heating water pumps and all associated piping, fittings, valves, instrumentation and supports.
3. Demolish existing steam, condensate and heating water piping and all associated fittings and prepare existing piping for new connection as required.
4. Demolish existing shell and tube heat exchanger and all associated fittings.
5. Demolish existing hydronic specialties including air separators and expansion tanks.
6. Demolish existing condensate receiver/pumps and all associated piping.
7. Demolish existing boiler flue gas venting and all fittings.
8. All demolished equipment will be hauled away from site and are the responsibility of the mechanical contractor.

Mechanical Install:

1. Provide a set of professionally engineered plans and specifications.
2. Project Management Services as described below.
3. All permitting and inspection fees are included.
4. Asbestos abatement to be completed by the Owner before the start of construction.
5. Provide three (3) new 4,000MBH high-efficiency condensing hot water boilers.

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6. Provide new hot water pumps for a constant primary, variable secondary type pumping arrangement.
7. Provide and install all associated piping, fittings, valves,
8. The entire new and existing hot water piping system will have 35% ethylene glycol installed in it for freeze protection. All new and existing heating piping shall be cleaned and flushed prior to new fluid being added.
9. Provide new heating water boiler pumps and all associated material.
10. Provide new heating water piping and all associated material
11. Provide new hydronic specialties including new air separators and expansion tanks.
12. A natural gas distribution system will be provided to serve the new boilers. Piping material will be welded black iron. Replacement of the gas meter shall be coordinated with the utility provider.
13. Provide new combustion air intake and flue gas venting. New intake air piping shall be schedule 40 PVC. Flue venting category IV AL29-4C. New venting will be routed through the existing coal bunker and up through the concrete slab. Combustion air intake piping will terminate roughly 6' above grade.
14. (16) existing steam coils in air handlers and steam terminal coils (4) shall be replaced with new coils.
15. (11) existing steam unit heaters and controls shall be replaced with hot water units.
16. Provide new heating water system pumps and all associated material. VFDs with integral disconnect will be provided on pumps.
17. Provide new 2" Fiberglass Piping insulation for new installed piping.
18. All air and water systems will be tested by a 3rd party Testing And Balancing (TAB) agency. The TAB contractor will be either NEBB or AABC certified for balancing commercial HVAC and Plumbing systems.

Electrical Demolition:

1. Demolish existing boiler circuits back to existing panel. Demolish existing breaker in panel.
2. Demolish existing boiler heating water pump circuits and breaker in panel.
3. Demolish existing condensate pump circuits and breaker in panel.

Electrical Install:

1. Add new 400A NF type panelboard in Boiler Room main level fed from new switch at Distribution Panel DP-1 in Boiler Room upper level.
 - This option will help keep the cost down for future electrical upgrades.
 - The existing system is beginning to show its age, so a new panel would provide a more reliable and long-term solution.

Ceilings

- Corridor areas identified for piping runs in the engineered drawings will require the ceiling tiles to be removed and replaced. In areas of significant removal a new ceiling grid and tiles will be installed. Areas identified for replacement will be at Johnson Controls project management's discretion.

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Controls

Any existing air handlers with DDC existing, but getting a new coil, will just receive a new hot water control valve.

All remaining pneumatics will remain in place.

The DDC scope of work include the following:

Provide DDC controls and controls wiring for the following:

- (1) New network engine with capacity for future projects
- (1) Hot Water Boiler System – Excludes wiring any boiler sensors or safeties provided with the boiler No VFDs
- (3) Shop AHUs/EFs – Full New Controls to replace the existing pneumatic controls AHU 12,13,14
- (5) AHUs – Existing pneumatic and N2 controls – Full new DDC Controls – AHU 1, 2, 6, 8, 16
- (5) New 2010 AHUs – New hot water valves – existing controls to remain - confirming operation of existing controls AHU 1,5, 5B, 6 & 8
- (1) Pool Unit= All new controls AHU 7
- (11) Unit Heaters – New controls
- (4) Zones Reheat Coils – New Controls
- (5) Existing N2 controllers on the far east addition – replace with new CGM controllers
- (1) Replace existing 2010 NCE with a CGM controller and connect existing BACnet devices to new SNE.

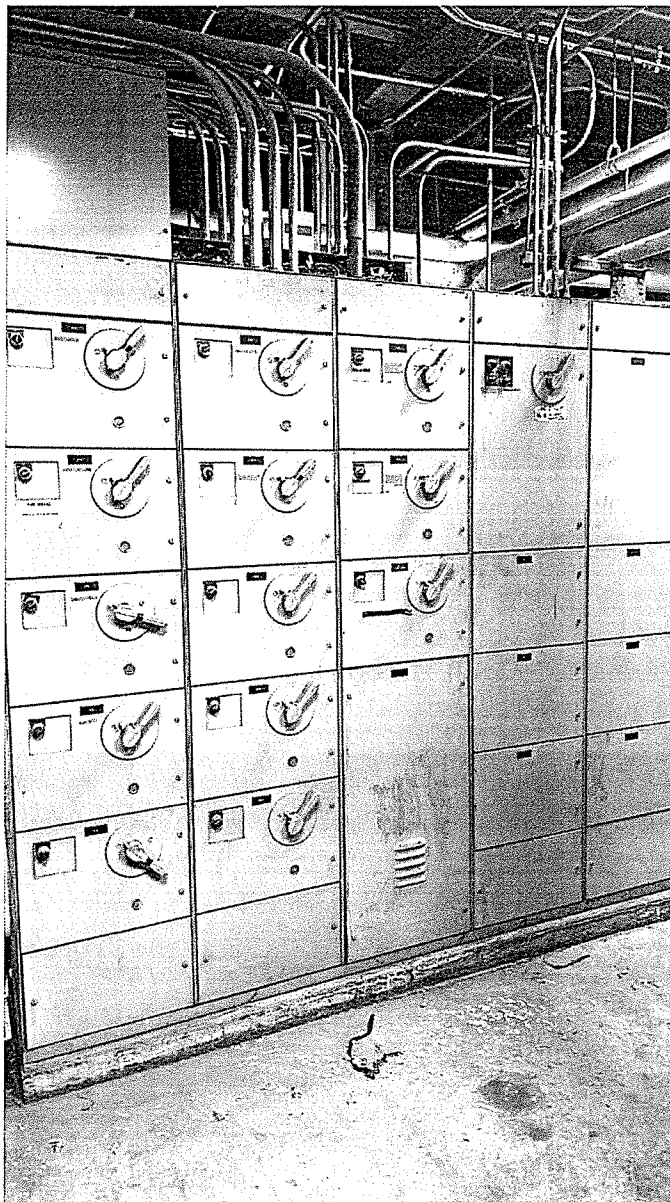
Demolition of existing pneumatic controls where they are being upgraded to DDC.
Preserve existing pneumatic system for remaining pneumatic equipment.

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FIM #2 – Electrical Switch Panel Replacement Upgrade

Upgrade and replace the Existing Switch Board and MCC-1 in the Boiler Room with a new 2000A switchboard to replace the existing switchboard and new 600A NF Type panelboard to replace MCC-1.

- a. Base bid in FIM #1 electrical upgrades offer a balance between cost and reliability, it still relies on some components of the aging infrastructure, which may not be ideal for future renovations and dependability.
- b. This will ensure the most reliable and efficient operation of the new mechanical
- c. equipment. Although this option will have a higher upfront cost, it will eliminate the need for piecemeal upgrades in the future.



Exclusions

- Excludes any inspections or update requests not included in the scopes above. This includes but is not limited to any pre-existing code compliance issues around life safety, fire rated walls, fire dampers, fire alarms, etc.
- Flush and fill of existing hot water loop and/or any chemical treatment.
- Excludes changes to the existing walls, floors, casework, or doors.
- Room finishes, flooring, painting, wall coverings, carpet, tiles, floor coverings, etc.
- Final cleaning of the areas not related to the mechanical spaces that we are working in.
- Fire protection system updates.
- **Repair or replacement of defective mechanical, electrical or controls equipment, except the equipment described in the scope description. Johnson Controls will identify the location of defective equipment and notify The Owner.**
- Repair or upgrades required due to bring adjacent controls, electrical and mechanical systems up to code.
- Correction of any existing applicable building code violations and Federal Americans with Disabilities Act (ADA) violations identified by Johnson Controls during the execution of the Work. Such violations will be brought to the attention of the customer for remedy.
- Overtime work caused by unforeseen circumstances beyond the control of Johnson Controls, such as or scheduling changes by The Owner. The cost difference between the overtime work wages and normal time work wages will be the responsibility of The Owner.
- ***Asbestos abatement and removal for this project is entirely the responsibility of The Owner. Johnson Controls is continuing to work with The Owner and our subcontractors to sufficiently identify the scope, costs and project scheduling implications of any required abatement such that The Owner can adequately plan for this requirement. If hazardous materials are encountered during the implementation phase, Johnson Controls will immediately stop work, take measures to reduce any contamination, and notify the owner facility manager of the possible hazardous material condition and location. Johnson Controls will then request that The Owner remove and dispose of the hazardous materials prior to any continuation of work. Hazardous materials encountered during the ongoing service phase of the project will remain the property and disposal responsibility of The Owner.***
- The cost of hazardous material abatement or removal, such as asbestos, mold and lead paint that is not currently specified in the engineering scope of work. In the event hazardous materials are uncovered and abatement is beyond the ability of Johnson Controls to abate under this contract, the SCOPE will be evaluated for possible removal from the scope of work or the transfer of this responsibility to The Owner.
- Water balance of existing systems, unless specified in the scope of work.
- Existing building ventilation conditions and indoor air quality issues are excluded from the scope and cost of this project.
- Repairs/replacement of insulation, piping, electrical or ductwork found to be corroded or rusted or otherwise unacceptable for installation of components or fittings required for installation other than what is specified in the scope of work.
- Engineering services, studies and analysis associated with any exclusions or work clearly outside of the scope definition.
- Resolution of existing design, service and or distribution conditions known or unknown.
- Unknown permits, fees or processes required by local or oversight jurisdiction and/or utilities.
- Existing temperature controls devices not functioning properly that are outside the scope of this project.
- Clearing classroom areas for above ceiling work space will be responsibility of The Owner.
- School district internet and camera systems placement modifications will be the responsibility of The Owner.

*****NOTE: MUSIC ROOM HUMIDIFIER – through the project development phase the original design of the building included a steam humidifier for the chorus room area. This piece of equipment was identified as ‘not operable’ and has not been functioning for an undetermined amount of time. JCI is EXCLUDING replacing this piece of equipment. If it is determined by the owner that this equipment is needed in the future it can be added at additional cost.***

Procurement and Installation of New HVAC Equipment

Project Management

Overview: JCI's PM Team will be responsible to work with the owner's Administration and Facilities Director to complete all the associated work for the proposed project. It will be the PM Team's job to ensure that this project will run smoothly and efficiently and to keep the owner informed of the project progress along the way.

Design: JCI's PM Team will be responsible for the coordination and completion of the design drawings and specifications needed for this project. The PM Team will coordinate between the design team and the owner to ensure that the design meets expectations and site conditions.

Procurement: Long lead materials and equipment will be identified at the beginning of this project and the PM Team will quickly procure and track the progress of these items to minimize delays. All subcontractors hired by JCI will communicate and coordinate directly through JCI's representatives during this project not the owner. Qualifications for subcontractors will include their prior history with JCI & the owner as well as their pricing, bonding, and ability to meet the project schedule.

Scheduling: Project Schedules will be submitted to the owner during the construction kick off meeting and updated as needed throughout the project. The PM Team is responsible to ensure that our vendors and subcontracts have the manpower and materials necessary to follow our project schedule and we will require adjustments to do so at our weekly progress meetings.

1. Project Kick Off Meeting will be held with the JCI Development Team and the Owner's Administration and Operations Team and will turn over control of the project to the PM Team. Consideration will be given to minimize disruption to the ongoing activities at Brookings High School.
2. Project Construction and Safety Meetings will be coordinated with subcontractors and the owner's representative throughout the project schedule. Safety training and construction updates to the ongoing scheduled work will be given by the subcontractors and the PM Team.
3. Project Close Out Meeting will be held at the end of this project to turn the systems back over to the Owner. Owner instructions will be provided by the subcontractors, vendors and manufacturers during the project close out. The PM Team will coordinate times with the owner. All project documentation will be turned over to the owner at the Turnover Meeting and include: Operating & Maintenance Manuals, Shop Drawings, As Built Drawings and Test Results.

Project Schedule

It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others to work diligently under their direction to achieve the Milestone Schedule identified herein:

Milestone*	Completion Date
Brookings School Board or Authorized Representative authorizes PDA with <u>confirmed list of Project Priority FIMs</u> to be included in the project.	April 30, 2024 Signed April 8, 2024
JCI requests pertinent Customer Documents and Data	May 15, 2024
JCI commences with on-site equipment/systems auditing, engineered drawings, equipment selections, subcontractor confirmation, structural reviews	Approximately 8 weeks to complete
Complete Design/Build Process with add alternates, if requested – Formalized Proposal and final pricing presented	July 31, 2024 <i>Complete Sept 20, 2024</i>
Brookings School Board or Authorized Representative authorizes Project Contract Proposal with <u>confirmed list of Project Priority FIMs</u> to be included in the project.	October 31, 2024
Implementation Period begins – Product ordering, project management, engineering submittal finalization **Approximately 25 Week Equipment lead times	November 1, 2024
Construction Begins	May 1, 2025 Or sooner with abatement progress
Substantial Installation Complete	October 15, 2025

* These milestones may be modified by subsequent work plans which are mutually agreed upon by both parties

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Pricing

Items cited on this Project Development Agreement are priced in accordance with the Johnson Controls Sourcewell/NJPA contract.#070121-JHN.

Base Bid FIM #1: Boiler Replacement Steam to hot water conversion with controls upgrade

Price includes TURNKEY mechanical engineering, structural review, demo and removal of existing equipment, crane, new equipment and installation. Plumbing, sheet metal, roof repair, electrical, controls and programming, test and balance, taxes all included.

Total Base Bid Price: \$4,132,000.00 **Initial Here to Accept: _____**

ADD Alternate FIM #2: Main Boiler Room Electrical Switch Panel Replacement

Price includes TURNKEY electrical engineering review, demo and removal of existing equipment, crane, new equipment and installation, taxes all included.

Price for ADD Alternate: \$420,000.00 **Initial Here to Accept: _____**

Total Price of Accepted Bids: **\$ _____**

This proposal and alternates listed below are hereby accepted and Johnson Controls is authorized to proceed with work; subject, however to credit approval by Johnson Controls, Inc., Milwaukee, Wisconsin.

This proposal is valid until: Nov 9, 2024

Brookings School District, SD

Johnson Controls, Inc.

Name: _____

Name: Jay Nelson

Title: _____

Title: HVAC Owner Sales

Date: _____

Date: _____

PO: _____

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CUSTOMER ACCEPTANCE:

In accepting this Agreement, Customer agrees to the terms and conditions contained herein including those on the following page(s) of this Agreement 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 requested by Customer after the execution of this Agreement shall be paid for by the 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.**

Customer agrees to pay Johnson Controls pursuant to the progress-based billing schedule of values below. If the schedule of values includes an upfront deposit, it will be paid within 30 days of contract signing and Johnson Controls will not commence work until the upfront deposit is received. Customer agrees to pay for materials, goods, and equipment (ordered, delivered, or stored) pursuant to the schedule of values, prior to installation commencement. The remaining portion of the total price will be progress billed through completion of the work. Johnson Controls progress-based billing can also include any services performed on-site or off-site. All invoices will be delivered via email, paid via ACH/EFT bank transfer and are due NET 30 days from the date of the invoice. ACH/EFT bank transfer details will be provided upon contract execution. The proposed total price is contingent on Customer agreeing to these payment and invoicing terms

Schedule of Values	
Description of Work	%
Deposit	
Mobilization	10%
Engineering	10%
Material	10%
Installation	
Commissioning	
*To be mutually agreed upon in writing at a letter date	

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 via _____

Deposit Invoice accepted (_ 30 _ %):

No: Yes:

Standard Terms and Conditions – U.S.A. and Canada

“JCI” or “Johnson Controls” shall mean Johnson Controls, Inc. for work performed in the U.S.A. and Johnson Controls Canada LP for work performed in Canada. These terms and conditions are an integral part of JCI’s offer and form the basis of any agreement (the “Agreement” resulting from JCI’s proposal for the goods and/or services described. By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions :

(1) SCOPE OF WORK. This proposal is based upon the use of straight time labor only. JCI and its subcontractors shall be provided access to the work site during regular business hours, or such other hours as may be requested by JCI, including sufficient areas for staging, mobilization and storage. Plastering, patching and painting are excluded. “In-line” duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Johnson Controls, Inc. (hereinafter referred to as JCI), shall be distributed and installed by others under JCI’s supervision but at no additional cost to JCI. Purchaser agrees to provide JCI with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. JCI agrees to keep the job site clean of debris arising out of its own operations. JCI’s obligation is limited to the scope of work set forth in JCI’s proposal and does not include any modifications to the work site under the Americans with Disabilities Act or any other law or building code(s). In no event shall JCI be required to perform any work JCI reasonably believes is outside the scope of work without a written change order signed by Purchaser and JCI. In the performance of the work, if JCI encounters conditions at the work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings or (ii) unknown physical or pre-existing conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the type and character of the work, JCI shall notify Purchaser of such conditions. If such conditions differ materially and cause an increase in JCI’s costs of, or time required for, performance of any part of the work, JCI shall be entitled to and Purchaser shall consent by change order to, an equitable adjustment of the contract price, contract time or both. Purchaser shall not charge any retention or back charge JCI for any costs or expenses without JCI’s written consent unless specifically noted in the statement of the scope of work or services undertaken by JCI under this Agreement, JCI’s obligations under this Agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environmental hazards or dangerous substances, to include but not be limited to asbestos or PCSs, discovered in or on the premises. Any language or provision of the Agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by JCI shall not operate to compel JCI to perform any work relating to such hazards or substances without JCI’s express written consent.

(2) DEPOSIT, INVOICING & PAYMENTS. Purchaser agrees to pay JCI pursuant to the progress billing schedule of values set forth in JCI’s proposal. If the schedule of values includes an upfront deposit, it will be paid within 30 days of contract signing and JCI will not commence work until the upfront deposit is received. Customer agrees to pay for materials, goods, and equipment (ordered, delivered, or stored) pursuant to the schedule of values, prior to installation commencement. JCI progress-based billing can also include services performed on-site or off-site. All invoices will be delivered via email, paid via ACH/EFT bank transfer and are due net 30 days from the date of invoice. ACH/EFT bank transfer details will be provided upon contract execution. The proposed total price is contingent on Purchaser agreeing to these payment and invoicing terms.

Waivers of lien will be furnished upon request as the work progresses to the extent payments are received. Invoicing disputes must be identified in writing within 21 days of the date of invoice. Payments of any disputed amounts are due and payable upon resolution. All other undisputed amounts remain due within 30 days from the date of invoice. This Agreement is entered into with the understanding that the services to be provided by JCI are not subject to any local, state, or federal prevailing wage statute. If it is later determined that local, state, or federal prevailing wage rates apply to the services to be provided by JCI, JCI reserves the right to issue a modification or change order to adjust the wage rates to the required prevailing wage rate. Purchaser agrees to pay for the applicable prevailing wage rates. In the event of Purchaser’s default, the balance of any outstanding amounts will be immediately due and payable. Payment is a condition precedent to JCI’s obligation to perform under the Agreement. Purchaser acknowledges and agrees that timely payments of the full amounts listed on invoices is an essential term of this Agreement and that failure to make payment in full when due is a material breach of this Agreement. Purchaser further acknowledges that if there is any amount outstanding on an invoice, it is material to JCI and will give JCI, without prejudice to any other right or remedy, the right to, without notice: (i) suspend, discontinue or terminate performing any work and/or withhold further deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or suspend JCI’s obligations under or terminate this Agreement; and (ii) charge Purchaser 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. JCI’s election to continue providing future services does not, in any way diminish JCI’s right to terminate or suspend services or exercise any or all rights or remedies under this Agreement. JCI 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 JCI 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 Purchaser disputes any late payment notice or JCI’s efforts to collect payment, Purchaser shall immediately notify JCI in writing and explain the basis of the dispute. JCI may increase prices upon notice to the Purchaser to reflect increases in material and labor costs. Prices for products covered by this proposal may be adjusted by JCI, upon notice to Purchaser at any time prior to shipment and regardless of Purchaser’s acceptance of JCI’s proposal or quotation, to reflect any increase in JCI’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.

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(3) MATERIALS. If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of JCI, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, JCI shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefore.

(4) LIMITED WARRANTY. JCI warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of twelve (12) months from delivery of said equipment, or if installed by JCI, for a period of twelve (12) months from installation, whichever occurs first. Alongside this limited warranty, for all new York™ air or water-cooled chillers and/or Metasys™ building automation systems installed in the US and Canada and sold through JCI owned and operated branches, JCI also provides a Year One Service Agreement for such equipment, the scope, limitations, terms and conditions of which are at <https://www.johnsoncontrols.com/yearoneservice> (collectively, "Year One Service"). JCI will not provide a credit against purchase price if offered Year One Service is declined. No warranty is provided for third-party products and equipment installed or furnished by JCI. Such products and equipment are provided with the third-party manufacturer's warranty to the extent available, and JCI will transfer the benefits, together with all limitations, of that manufacturer's warranty to Purchaser. For equipment installed by JCI, if Purchaser provides written notice to JCI of any such defect within thirty (30) days after the appearance or discovery of such defect, JCI shall, at its option, repair or replace the defective equipment. All transportation charges incurred in connection with the warranty for equipment not installed by JCI shall be borne by Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. **THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.** JCI 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 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.

(5) LIABILITY. To the maximum extent permitted by law, in no event shall JCI and its affiliates and their respective personnel, suppliers and vendors ("JCI Parties") be liable to Purchaser 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, indirect, punitive or consequential damages; (b) loss of business, use, profits, revenues, customer opportunities, 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 arising in any manner from the equipment or material furnished or the work performed pursuant to this Agreement. In any case, the entire aggregate liability of the JCI Parties under this Agreement for all damages, losses, causes of action, whether in contract, tort (including negligence), or otherwise, shall be limited to the amount actually received by JCI for the performance of its obligations hereunder.

(6) TAXES/TARIFFS. The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. In addition to the stated price, Purchaser shall pay all taxes not legally required to be paid by JCI or, alternatively, shall provide JCI with acceptable tax exemption certificates. JCI shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work. Pricing for products and parts covered by this proposal does not include any amounts for changes in tariffs or other similar charges imposed and/or enacted by a government. At any time prior to shipment, JCI shall be entitled to an increase in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in tariffs or similar charges due to such changes.

(7) DELAYS. JCI shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond JCI's control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner or other Contractors or delays caused by suppliers or subcontractors of JCI.

(8) COMPLIANCE WITH LAWS. JCI shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.

(9) SCHEDULE. JCI and Purchaser shall mutually agree upon a schedule for completion of the work. In the event Purchaser desires to change or accelerate the schedule or the schedule is otherwise accelerated, delayed, or impacted for reasons beyond the control of JCI, JCI shall be entitled to a change order equitably adjusting the compensation of JCI to account for the increased costs associated with such schedule changes.

(10) DISPUTES. JCI shall have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be submitted to a court of law or arbitrated. For Purchasers located in the United State, the laws of Delaware shall govern the validity, enforceability, and interpretation of this Agreement, without regard to conflicts of

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law principles thereof, and the exclusive venue for any such litigation or arbitration shall be in Milwaukee, Wisconsin. For Purchasers located in Canada, the laws of Ontario shall govern the validity, enforceability, and interpretation of this Agreement, without regard to conflicts of law principles thereof, and the exclusive venue for any such litigation or arbitration shall be in Ontario, Canada. The parties waive any objection to the exclusive jurisdiction of the specified forums, including any objection based on forum non conveniens. In the event the matter is submitted to a court, JCI and Purchaser hereby agree to waive their right to trial by jury. In the event the matter is submitted to arbitration by JCI, the costs of arbitration shall be borne equally by the parties, and the arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction. If JCI prevails in any collection action. Purchaser will pay all of JCI's reasonable collection costs (including legal fees and expenses). Except as provided below, no claim or cause of action, whether known or unknown, shall be brought by either party against the other more than one year after the claim first arose. Claims not subject to the one-year limitation include JCI claims for unpaid: (1) contract amounts, (2) change order amounts (approved or requested) and (3) delays and/or work inefficiencies.

(11) INSURANCE. Insurance coverage in excess of JCI's standard limits will be furnished when requested and required. No credit will be given or premium paid by JCI for insurance afforded by others.

(12) INDEMNITY. To the fullest extent permitted by law, JCI and Purchaser shall indemnify each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, actions, costs, expenses or liabilities to the extent attributable to the actions or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault.

(13) PATENTS. JCI shall defend or, at its own option settle, any action against Purchaser brought by a third party to the extent that the action is based upon a claim that the equipment provided under the Agreement infringes any U.S. patents or copyrights for Purchasers located in the United States or Canadian patents or copyrights, for Purchasers located in Canada, or misappropriates any trade secrets of a third party ("Claim"), provided that: (i) Purchaser gives JCI prompt written notice of any such Claim, (ii) Purchaser gives JCI full authority to defend or settle any such Claim, and (iii) Purchaser gives JCI proper and full information and assistance, at JCI's expense (except for Purchaser's employees' time) to defend or settle any such Claim. JCI will pay those costs and damages finally awarded against Purchaser in the action that are specifically attributable to the claim or those costs and damages agreed to in a monetary settlement of the action. **THE FOREGOING IS IN LIEU OF ANY WARRANTIES OF NONINFRINGEMENT, WHICH ARE HEREBY DISCLAIMED.** The foregoing obligation of JCI does not apply with respect to products or equipment or portions or components thereof (a) not supplied by JCI, (b) made in whole or in part in accordance with Purchaser or owner specifications, (c) which are modified after shipment or installation by JCI, if the alleged infringement related to such modification, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Purchaser continues allegedly infringing activity after being notified thereof and/or after being informed of modifications that would have avoided the alleged infringement without significant loss of performance or functionality, or (f) where Purchaser's use of the product or equipment is incident to an infringement not resulting primarily from the product or equipment; Purchaser will indemnify JCI and its officers, directors, agents, and employees from all damages, settlements, attorneys' fees and expenses related to a claim of infringement, misappropriation, defamation, violation of rights of publicity or privacy excluded from JCI's indemnity obligation herein.

(14) OCCUPATIONAL SAFETY AND HEALTH. The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project or project site.

(15) PURCHASER RESPONSIBILITIES. Purchaser is solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply JCI 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 Purchaser and/or end user against unauthorized access. Purchaser 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.

(16) FORCE MAJEURE. JCI 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 JCI 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 JCI, 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,

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unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of JCI. If JCI's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, JCI shall be excused from performance under the Agreement. Without limiting the generality of the foregoing, if JCI is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, JCI will be entitled to extend the relevant completion date by the amount of time that JCI 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 JCI's cost to perform the services, Purchaser is obligated to reimburse JCI for such increased costs, including, without limitation, costs incurred by JCI for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by JCI in connection with the Force Majeure Event.

(17) FAR. In the United States, JCI supplies "commercial items" within the meaning of the Federal Acquisition Regulations (FAR), 48 CFR Parts 1-53. As to any customer order for a U.S. Government contract, JCI will comply only with those mandatory flow-downs for commercial item and commercial services subcontracts listed either at FAR 52.244-6, or 52.212-5(e)(1), as applicable.

(18) DIGITAL ENABLED SERVICES; DATA. If JCI provides Digital Enabled Services under this Agreement, these Digital Enabled Services require the collection, transfer and ingestion of building, equipment, system time series, and other data to JCI's cloud-hosted software applications. Customer consents to and grants JCI the right to collect, transfer, ingest and use such data to enable JCI and its affiliates and agents to provide, maintain, protect, develop and improve the Digital Enabled Services and JCI products and services. Customer acknowledges that, while Digital Enabled Services generally improve equipment performance and services, Digital Enabled Services do not prevent all potential malfunction, insure against all loss, or guarantee a certain level of performance. Customer shall be solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network"), shall appropriately protect hardware and products connected to the Network and will supply JCI secure Network access for providing its Digital Enabled Services. As used herein, "Digital Enabled Services" mean services provided hereunder that employ JCI software and related equipment installed at Customer facilities and JCI cloud-hosted software offerings and tools to improve, develop, and enable such services. Digital Enabled Service may include, but are not limited to, (a) remote servicing and inspection, (b) advanced equipment fault detection and diagnostics, and (c) data dashboarding and health reporting. If Customer accesses and uses Software that is used to provide the Digital Enabled Services, the Software Terms (defined below) will govern such access and use.

(19) JCI DIGITAL SOLUTIONS. Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, JCI's standard terms for such Software and Software related professional services in effect from time to time at www.johnsoncontrols.com/techterms (collectively, the "Software Terms"). Specifically, the JCI General EULA set forth at www.johnsoncontrols.com/buildings/legal/digital/generaleula governs access to and use of software installed on Customer's premises or systems and the JCI Terms of Service set forth at www.johnsoncontrols.com/buildings/legal/digital/generaltos govern access to and use of hosted software products. The applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, JCI 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, unless otherwise agreed, 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 in the applicable statement of work, order or other applicable ordering document. 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. Customer shall pay all invoiced amounts within thirty calendar days after the date of invoice. Payments not made within such time period shall be subject to late charges as set forth in the Software Terms. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at Johnson Controls' then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement and applicable SOW will be subject to additional fees based on the date such excess use began.

(20) PRIVACY.

(a) JCI as Processor. Where JCI factually acts as Processor of Personal Data on behalf of Purchaser (as such terms are defined in the DPA) the terms at www.johnsoncontrols.com/dpa shall apply.

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(b) *JCI as Controller.* JCI will collect, process and transfer certain personal data of Purchaser and its personnel related to the business relationship between it and Purchaser (for example names, email addresses, telephone numbers) as controller and in accordance with JCI's Privacy Notice at <https://www.johnsoncontrols.com/privacy>. Purchaser acknowledges JCI's Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Purchaser consents to such collection, processing and transfer. To the extent consent to such collection, processing and transfer by JCI is mandatorily required from Purchaser's personnel under applicable law, Purchaser warrants and represents that it has obtained such consent.

(21) **ENTIRE AGREEMENT.** This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.

(22) **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon Johnson unless accepted by Johnson in writing.

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