



GALVESTON COUNTY, TEXAS

COMMISSIONERS COURT 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge Ryan Dennard Commissioner, Precinct 1 Kevin O'Brien Commissioner, Precinct 2 Stephen Holmes Commissioner, Precinct 3 Ken Clark Commissioner, Precinct 4

SPECIAL MEETING-AGENDA May 23, 2013 – 10:00 AM

CONSENT AGENDA: ALL ITEMS MARKED WITH A SINGLE ASTERISK (*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

Call to Order

Consent Agenda

- *1. Consideration for *Approval for Extended Warranty Maintenance Contract with Johnson Controls, Inc. for Mid County Annex chiller and cooling tower* submitted by Facilites.

Action Agenda

2. Commissioner, Precinct 1
 - a. Consider and possibly approve the appointment of Commissioners to serve as the governing body of the Galveston County Emergency Service District No. 2.
3. County Legal
 - a. **Break into Executive Session.**
 - b. **The Commissioners Court will enter into Executive Session as permitted under the Texas Open Meetings Act, Texas Government Code, Chapter 551, Section 551.071, Consultation with Attorney: rendering legal advice about pending or contemplated litigation regarding the SRL Elevation Program and/or on a matter in which the duty of the attorney to the County under the Texas Rules of Professional Conduct clearly conflicts with the Open Meetings Act relating to the SRL Elevation Program.**
 - c. **Adjourn Executive Session.**
 - d. Discussion and update regarding SRL Elevation Program.

- e. Consideration of issuing notice of default (with opportunity to cure) or notice of termination of contract to T&M Elevation and Transport.

Adjourn

Appearances before Commissioners Court

A speaker whose subject matter as submitted relates to an identifiable item of business on this agenda will be requested by the County Judge or other presiding court members to come to the podium where they will be limited to three minutes (3). A speaker whose subject matter as submitted does not relate to an identifiable item of business on this agenda will be limited to three minutes (3) and will be allowed to speak before the meeting is adjourned. Please arrive prior to the meeting and sign in with the County Clerk.



GALVESTON COUNTY, TEXAS COMMISSIONERS COURT Contract Approval Request

To Be Completed By Department							
1. Date of Request: 5/17/13		2. Contract Type: Expense Revenue Other			3. Renewal Contract: Yes/No		
4. Department Name: Facilities				5. Department Contact: Charles Kenworthy			
6. Description: Consent approval extended warranty maintenance contract with Johnson Controls Inc. for Mid County Annex chiller and cooling tower submitted Facilities							
7. IFAS PEID No: 714889		8. Orgkey: 1101170100		9. Object Code: 5481000			
10. Vendor: Johnson Controls Inc.				11. Vendor Contract No:			
12. Requested Legal Review: Yes/No (Explain if No) Legal Dept. reviewed agreement.							
Expenditure Budget / Revenue Projections							
13. Fund Name	14. Fund #	15. Current Year Budgeted	16. Current Year Projected	17. Year 2 Projected	18. Year 3 Projected	19. Year 4 Projected	20. Year 5 Projected
General		45,702.00					
		60,000	45,702				
21. Totals:		-	-	-	-	-	-
To Be Completed By Purchasing Department							
Contract Start Date: 6/1/13		Auto Renewal Contract: Yes/No		Bid No:			
Contract End Date: 5/31/16		Contract # Issued By Purchasing:		CM13219			

TXMAS-5-03FAC020

Approved By:

Charles Kenworthy
Signature

5/17/13
Date

Department Head:

Assistant Purchasing Agent:

Erin A. McFarland, CPPB

5/20/2013

County Legal:

Contract listed in Budget Documentation: Yes/No

County Budget Office:

Neil [Signature]

5/17/2013

Planned Service

CUSTOMER GALVESTON COUNTY
LOCAL JOHNSON CONTROLS OFFICE 10644 WEST LITTLE YORK RDSUITE 200 HOUSTON , TX , 77041
DATE 05/15/2013

Pricing Per TXMAS-5-03FAC020



Partnering with you to deliver value-driven solutions

A Planned Service Agreement with Johnson Controls provides you with a customized service strategy designed around the needs of your facility. Our approach features a combination of scheduled, predictive and preventative maintenance services that focus on your goals

As your building technology services partner, Johnson Controls can help ensure your building is performing at optimum levels. By integrating our service expertise with innovative processes and technologies, our value-driven planned service solutions deliver sustainable results, minimize equipment downtime and maximize occupant comfort.



Executive Summary

PLANNED SERVICE PROPOSAL FOR GALVESTON COUNTY

Dear Mr. Kenworthy,

We value and appreciate your interest in Johnson Controls as a service provider for your building systems and are pleased to provide a value-driven maintenance solution for your facility. The enclosed proposal outlines the Planned Service Agreement we have developed on your facility.

Details are included in the Planned Service Agreement summary (Schedule A), but highlights are as follows:

- In this proposal we are offering a service agreement for 3 Years - Starting 6/1/2013 and ending 5/31/2016 with two additional 1-year renewal options
- The agreement price for first year is \$45,702.00; see Schedule A, Supplemental Price and Payment Terms, for pricing in subsequent years.
- Pricing Per TXMAS-5-03FAC020
- The equipment options and number of visits being provided for each piece of equipment are described in Schedule A, Equipment list.

As a manufacturer of both mechanical and controls systems, Johnson Controls has the expertise and resources to provide proper maintenance and repair services for your facility.

Again, thank you for your interest in Johnson Controls and we look forward to becoming your building technology services partner.

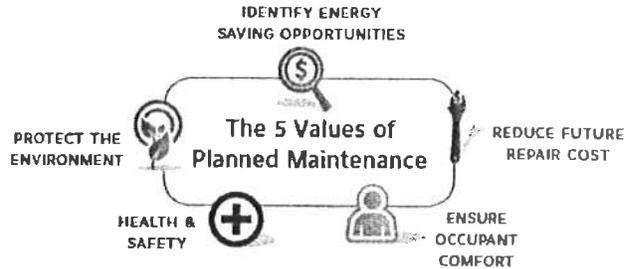
Please contact me if you have any questions.

Sincerely,

Mark Schultz
Senior Account Executive
281-726-6769

Benefits of Planned Service

A Planned Service Agreement with Johnson Controls will allow you to optimize your building's facility performance, providing dependability, sustainability and energy efficiency. You'll get a value-driven solution that fits your specific goals, delivered with the attention of a local service company backed by the resources of a global organization.



With this Planned Service Agreement, Johnson Controls can help you achieve the following five objectives:

1. Identify Energy Savings Opportunities

Since HVAC equipment accounts for a major portion of a building's energy usage, keeping your system performing at optimum levels may lead to a significant reduction in energy costs.

2. Reduce Future Repair Costs

Routine maintenance may maximize the life of your equipment and may reduce equipment breakdowns.

3. Ensure Occupant Comfort

A comfortable working environment enables employees to work more productively and may lead to increased job satisfaction.

4. Health and Safety

When proper indoor conditions and plant requirements are maintained, business results may be improved by minimizing sick leave and reducing accidents.

5. Protect the Environment

Greenhouse gas emissions can be minimized by maintaining equipment at peak efficiency, inspecting for refrigerant leaks and managing refrigerant charges.

All of the services we perform on your equipment are aligned with "The 5 Values of Planned Maintenance" and our technicians understand how the work they perform can help you accomplish your business objectives.

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL PREPARED FOR GALVESTON COUNTY

Personalized Account Management

A Planned Service Agreement also provides you with the support of an entire team that knows your site and can closely work with you on budget planning and asset management. Your local Johnson Controls account management team can help guide planned replacement, energy retrofits and other building improvement projects. You'll have peace of mind that an entire team of skilled professionals will be looking out for what is best for your facility and budget.

A Culture of Safety

Johnson Controls technicians take safety seriously and personally, and integrate it into everything they do. All of our technicians participate in regular and thorough safety training. Because of their personal commitment, we are a leader in the HVAC service industry for workplace safety performance. This means that you do not have to worry about us when we are on your site.



Commitment to Customer Satisfaction

Throughout the term of your Planned Service Agreement, we will periodically survey you and use your feedback to continue to make improvements to our service processes and products. Our goal is to deliver the most consistent and complete service experience possible. To meet this goal, we've developed and implemented standards and procedures to ensure you receive the ultimate service experience – every time.

Energy & Sustainability

A more sustainable world one building at a time – Johnson Controls is a company that started more than 125 years ago with a product that reduced energy use in buildings. We've been saving energy for customers ever since. Today, Johnson Controls is a global leader in creating smart environments where people live, work and play, helping to create a more comfortable, safe and sustainable world.

The Value of Integrity

Johnson Controls has a long, proud history of integrity. We do what we say we will do and stand behind our commitments. Our good reputation builds trust and loyalty. In recognition for our commitment to ethics across our global operations, we are honored to be named one of the World's



Most Ethical Companies for the fourth year in a row by Ethisphere Institute, a leading think tank dedicated to business ethics and corporate social responsibility. In addition, *Corporate Responsibility Magazine* recently recognized Johnson Controls as the #1 company in its annual "100 Best Corporate Citizens" list.

Service Plan Methodology

As part of the delivery of this Planned Service Agreement, Johnson Controls will dedicate a local service operations agent responsible for having a clear understanding of the agreement scope, and your facility procedures and protocols.

A high-level overview around our service delivery process is outlined below including scheduling, emergency service, on-site paperwork, communication and performing repairs outside of the agreement scope.

Scheduling

Preventative maintenance service will be scheduled using our automated service management system. In advance of the scheduled service visit, our technician is sent a notice of service through a hand-held wireless device. Once the technician acknowledges the request, your service operations agent will call or e-mail your on-site contact to let you know the start date and type of service scheduled.

The technician checks in, wears personal protective equipment, performs the task(s) as assigned, checks out with you and asks for a screen capture signature on our hand-held device. A work order is then e-mailed, faxed or printed for your records.

Emergency Services

Emergency service can be provided 7 days a week, 24 hours a day, 365 days a year. During normal business hours, emergency service will be coordinated by the service operations agent. After hours, weekends and holidays, the emergency service number transfers to the Johnson Controls after-hours call center and on-call technicians are dispatched as needed.

Johnson Controls is committed to dispatching a technician within hours of receiving your call through the service line. A work order is e-mailed, faxed or printed for your records. Depending on the terms of your agreement, you may incur charges for after hour services.

Communication

A detailed communication plan will be provided to you so you know how often we will provide information to you regarding your Planned Service Agreement. The communication plan will also provide you with your main contacts at Johnson Controls.

Approval Process for Non-Covered Items

Johnson Controls will adhere to your procurement process. No work will be performed outside of the agreement scope without prior approval. Johnson Controls will work with you closely to ensure your procurement process is followed before any non-covered item work is started.

Summary of Services and Options

Comprehensive and Operational Inspections

During comprehensive and operational inspections, Johnson Controls will perform routine checks of the equipment for common issues caused by normal wear and tear on the equipment. Additional tests can be run to confirm the equipment's performance. Routine maintenance such as lubrication, cleaning and tightening connections, can be performed depending on the type of equipment being serviced. Routine maintenance is one of the keys to the five values of maintenance – it can help identify energy saving opportunities, reduce future repair costs, ensure occupant comfort, protect the environment and improve the health and safety of the building.

Summary

Thank you for considering Johnson Controls as your building technology services partner. The following agreement document includes all the details surrounding your planned service agreement.

With planned service from Johnson Controls, you'll get a value-driven solution that can help optimize your building controls and equipment performance, providing dependability, sustainability and energy efficiency. You'll get a solution that fits your specific goals, delivered with the attention of a local service company backed by the resources of a global organization.

We'll be your building technology services partner

**JOHNSON CONTROLS PLANNED SERVICE PROPOSAL
PREPARED FOR GALVESTON COUNTY**

Planned Service Agreement

Customer Name: GALVESTON COUNTY
Address: 9850 E F LOWRY EXPRESSWAY TEXAS CITY TX 77539
Proposal Date: 05/15/2013
Estimate #: 1-2EOUV14

Scope of Service

Johnson Controls, Inc. ("JCI") and the Customer (collectively the "Parties") agree Preventative Maintenance Services, as defined in Schedule A ("Services"), will be provided by JCI at the Customer's facility. This Planned Service Agreement, the Equipment List, Supplemental Price and Payment Terms, Terms and Conditions, and Schedules attached hereto and incorporated by this reference as if set forth fully herein (collectively the "Agreement"), cover the rights and obligations of both the Customer and JCI.

Extended Service Options for Premium Coverage

If Premium Coverage is selected, on-site repair services to the equipment will be provided as specified in this Agreement for the equipment listed in the attached Equipment List.

Equipment List

Only the equipment listed in the Equipment List will be covered as part of this Agreement. Any changes to the Equipment List must be agreed upon in writing by both Parties.

Term / Automatic Renewal

This Agreement takes effect on 06/01/2013 and will continue until 5/31/2016 ("Original Term"). There will be two additional 1-year extension options. The Renewal Option notice will be delivered at least forty-five (45) days prior to the end of the Original Term or of any renewal period. The Original Term and any renewal periods are sometimes collectively referred to in this Agreement as the "Term". Renewal price adjustments are discussed in the Terms and Conditions.

Refrigerant Charges

Refrigerant is not included under this Agreement.

Customer Initials _____

**JOHNSON CONTROLS PLANNED SERVICE PROPOSAL
PREPARED FOR GALVESTON COUNTY**

Price and Payment Terms

The total Contract Price for JCI's Services during the 1st year of the Original Term is \$45,702.00. This amount will be paid to JCI in Annually installments. Pricing for each subsequent year of a multiyear original term is set forth in the Supplemental Price and Payment Terms. All payments will be due and payable within the terms of the Texas Prompt Payment Act. ~~30 days of the invoice date and such timely payment by Customer shall be a condition precedent to JCI's obligation to perform its Services. A penalty of one and a half percent (1.5%) of the amount due per month shall accrue for payments received after the payment due date.~~ Renewal price adjustments are set forth in the Terms and Conditions.

Pricing Per TXMAS-5-03FAC020

This proposal is valid for thirty days from the proposal date.

JOHNSON CONTROLS Inc.

By: Mark Schultz

Signature:

Title: Senior Account Executive

Date:

Signature:

Title: JCI Branch Manager

Date:

Proposal not valid until signed by JCI Branch Manager

By:

Signature:

Title:

Date:

Customer PO#:

JCI Branch: Houston Service - 0408

Address: 10644 WEST LITTLE YORK RDSUITE 200

HOUSTON TX 77041

Branch Phone: (713) 934 2400

Customer Initials _____

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL
 PREPARED FOR GALVESTON COUNTY

Schedule A

Equipment List (Selected Equipment to be serviced)

Site		Address			
GALVESTON COUNTY		9850 E F LOWRY EXPRESSWAY TEXAS CITY TX 77539			
Qty	Equipment	Services Provided	# Per Year	Coverage Type	Extended Coverage
2	Chiller, Water Cooled, Screw (Single Compressor), <250 Tons			Premium	
		Operational Inspection	3		
		Annual Inspection	1		
		Condenser Tube Brushing (removal and replacement of one head only)	1		
		Oil Sample and Analysis	1		
2	Chiller, Solid State Starter (SSS), Medium Voltage, 95-190 FLA			Premium	
		Operational Inspection	3		
		Annual Inspection	1		
1	Cooling Tower, Gravity Distribution, 300-599 Tons			Basic	NA
		Annual Inspection	1		
		Tower Cleaning	1		

**JOHNSON CONTROLS PLANNED SERVICE PROPOSAL
PREPARED FOR GALVESTON COUNTY**

1	Chiller, Air Cooled, VSD Screw, 150-250 Tons			Premium	
		Operational Inspection	3		
		Annual Inspection	1		
		Condenser Coil Cleaning (with sound attenuation louvers)	1		
		Oil Analysis (2 Circuits)	1		
		VSD Coolant Change	1		

Customer Initials _____

**JOHNSON CONTROLS PLANNED SERVICE PROPOSAL
PREPARED FOR GALVESTON COUNTY**

Supplemental Price & Payment Terms (Applies to Multi-Year Contracts Only)

Year	Total Annual Dollar Amount	Payment Frequency
Year1	\$45,702.00	Annually
Year2	\$47,529.00	Annually
Year3	\$49,428.00	Annually
Year4	\$51,408.00	Annually
Year5	\$53,469.00	Annually

Special Additions & Exceptions

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL PREPARED FOR GALVESTON COUNTY

Terms and Conditions

DEFINITIONS

COVERED EQUIPMENT is the equipment for which Services are to be provided under this Agreement as set forth in the attached Equipment List.

EQUIPMENT FAILURE means the sudden and accidental failure of moving parts or electric or electronic components that are part of the Covered Equipment and are necessary for its operation.

SCHEDULED SERVICE VISITS are the on-site labor visits required to perform JCI recommended inspections and preventive maintenance on Covered Equipment.

SCHEDULED SERVICE MATERIALS are the materials required to perform Scheduled Service Visits on Covered Equipment, such as grease, lubricants and sprays, depending on the Covered Equipment.

REPAIR LABOR is the labor necessary to restore Covered Equipment to working condition following an Equipment Failure, but does not include services relating to total equipment replacement due to obsolescence or unavailability of parts.

REPAIR MATERIALS are the parts necessary to restore Covered Equipment to working condition following an Equipment Failure, but excludes total equipment replacement due to obsolescence or unavailability of parts. At JCI's option, Repair Materials may be new, used, or reconditioned.

SERVICE COVERAGE OPTIONS

BASIC COVERAGE means Scheduled Service Visits, plus Scheduled Service Materials if elsewhere noted in this Agreement, for Covered Equipment. No parts or equipment are provided for under BASIC COVERAGE.

PREMIUM COVERAGE means BASIC COVERAGE as well as Repair Labor, plus Repair Material if elsewhere noted in this Agreement for Covered Equipment.

EXTENDED SERVICE means service for repairs performed outside JCI's normal business hours (available either 24/5 or 24/7) and is available only if Customer has PREMIUM COVERAGE, as more fully described in Schedule A. The price for Extended Service, if chosen by Customer, is part of the total Contract Price.

If Services are performed, or materials, parts or equipment provided, beyond the scope or time period of those covered by the Service Coverage option selected by Customer, Customer agrees to pay JCI's standard fee for all additional Services, materials, parts and equipment.

A. INITIAL EQUIPMENT INSPECTION NECESSARY FOR PREMIUM COVERAGE

If Customer has ordered PREMIUM COVERAGE, JCI will inspect the Covered Equipment within 45 days of the date of this Agreement or as seasonal or operational conditions permit. JCI will advise Customer if JCI finds any Covered Equipment not in working order or in need of repair. With the Customer's approval, JCI will perform the work necessary to put the Covered Equipment in proper working condition. This work will be done at JCI's standard fee for parts and labor in effect at that time. If the Customer does not want JCI to do the work identified by JCI, or if Customer does not have the work done, the equipment will be removed from the list of Covered Equipment and the price of this Agreement will be adjusted accordingly. This inspection does not affect Customer's warranty. Should Customer not make recommended repairs, JCI reserves the right to invoice Customer for the cost of the inspection.

B. STANDARD OF CARE AND WARRANTIES

Customer understands JCI is a provider of services under this Agreement and shall not be considered a merchant or a vendor of goods. JCI warrants its Services will be provided in a good and workmanlike manner. Any Services not performed in a good and workmanlike manner will be re-performed by JCI provided Customer notifies JCI as soon as possible, which shall be no later than one calendar year from the date the Services were performed. Customer

acknowledges that re-performance, as provided herein, shall be its exclusive and only remedy with regards to any Services provided by JCI.

If a part is installed as part of JCI's Services, JCI warrants the installed part will be free from defects in workmanship and material until the end of the Term or for one (1) year from the date on which JCI installs the part, whichever is earlier. If the part is covered under a manufacturer's warranty for a term less than one (1) year, JCI's warranty to the Customer as to such part shall be limited to the term of the manufacturer's warranty. In order to assert a warranty claim, Customer must provide prompt written notice to JCI of its claim during the applicable warranty period. Any claim based upon this warranty must be brought within one (1) year of the expiration of the applicable warranty period. This limitation is in lieu of any other applicable statute of limitation. JCI's sole obligation under this warranty shall be to repair or replace the defective part without charge to Customer during such warranty period. If JCI installs or furnishes equipment under this Agreement, and the equipment is covered by a warranty from the manufacturer, JCI will, to the extent transferable, transfer the benefits of such manufacturer's warranty to Customer. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ALL OTHER EQUIPMENT, MATERIALS, PARTS AND OTHER ITEMS PROVIDED BY JCI ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND.

CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT THESE WARRANTIES ARE THE SOLE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER FURTHER ACKNOWLEDGES THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY JCI, ITS AGENTS OR EMPLOYEES, SHALL CREATE A WARRANTY IN ANY WAY WHATSOEVER.

C. EXCLUSIONS

JCI's Services and Warranty obligations do not include:

- 1) supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as refrigerant, ribbons, bulbs, and paper;
- 2) failures beyond JCI's reasonable control, including (i) acts of God, (ii) abuse or misuse of equipment, (iii) alterations, adjustments, attachments, combinations, modifications, or repairs to equipment not performed or provided by JCI, (iv) items caused by or related to equipment not covered by this Agreement, (v) operator error, (vi) failure to comply with Customer's obligations contained in this Agreement, (vii) use of the Covered Equipment in a manner or environment, or for any purpose, for which it was not designed by the manufacturer (including improper water treatment), and (viii) site-related problems, including power failures and fluctuations and failure to keep the site clean and free of dust, sand and other particles or debris;
- 3) service calls due to warranty claims on the Covered Equipment;
- 4) repainting or refinishing Covered Equipment;
- 5) electrical work to the Customer's facility;
- 6) stockpiling of parts or supplies;
- 7) the repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slots/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
- 8) service calls resulting from the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather;
- 9) service calls required because JCI had previously been denied access to the equipment;
- 10) disposal of hazardous wastes. Hazardous wastes remain the property and the responsibility of the Customer even when removed from equipment or replaced by JCI as provided by the terms of this

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL PREPARED FOR GALVESTON COUNTY

Agreement. The Customer shall be responsible for the proper storage and disposal of hazardous wastes. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs; and 11) normal wear and tear.

D. CUSTOMER OBLIGATIONS AND COMMITMENTS TO JCI

- 1) The Customer warrants that all Covered Equipment is in good working condition and that the Customer has given JCI all information concerning the condition of the Covered Equipment.
- 2) The Customer agrees that, during the Term of this Agreement, the Customer will:
 - (a) operate the Covered Equipment according to the manufacturer's and JCI's recommendations;
 - (b) keep accurate and current work logs and information on the Covered Equipment as recommended by the manufacturer and JCI;
 - (c) provide an adequate environment for Covered Equipment as recommended by the manufacturer and JCI, including, but not limited to, adequate space, electrical power, air conditioning, and humidity control;
 - (d) notify JCI immediately of any equipment malfunction, breakdown, or other condition affecting the operation of the Covered Equipment;
 - (e) allow JCI to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that JCI can perform the Services required under this Agreement;
 - (f) provide proper condenser and boiler water treatment, as necessary, for the proper functioning of Covered Equipment, if such services are not JCI's responsibility under this Agreement; and
 - (g) cooperate with JCI and provide any and all necessary information to facilitate the delivery of the Services by JCI as described herein in a timely manner; and
- 3) The Customer acknowledges that its failure to meet its obligations will relieve JCI of any responsibility, to the extent provided in this Agreement, for any equipment breakdown, or any necessary repair or replacement of any equipment and to provide any Services.

E. CHANGES TO CUSTOMER EQUIPMENT

The Customer retains the right to make changes or alterations to the Covered Equipment. If, in JCI's sole opinion, such changes or alterations affect JCI's Services or obligations, JCI shall have the right to make appropriate changes to the scope of this Agreement or the Contract Price.

F. ACCESS

The Customer will give JCI full access to all equipment that is either Covered Equipment or associated with Covered Equipment when JCI requests such access. If access cannot be provided, JCI's obligations under this Agreement will be suspended until such access is provided. Matters affecting JCI's access to the Covered Equipment may include, but are not limited to, the removal, replacement, repair, refinishing, restoration, reconstruction, or other remedial actions taken by the Customer with respect to equipment or to the Customer's facility. Suspension of JCI's duties for this reason will not cancel or suspend any of the Customer's obligations under this Agreement.

G. INDEMNITY

JCI and the Customer agree to indemnify the other Party and their officers, agents, directors, and employees, from third party claims, demands, or suits for bodily injury, including death, or tangible property damage resulting from the intentional misconduct or any negligent acts by their employees or agents. Customer expressly agrees JCI shall be responsible only for such injury or damage caused by the intentional misconduct or the negligent act of JCI's employees and agents and JCI shall not be responsible for any injury or damage caused, or contributed to, in any manner by Customer or any third-party. The obligations of JCI and of the Customer under this paragraph are further subject to paragraphs H and O below.

H. LIMITATION OF LIABILITY

Form E9115 (Rev11/07)

Customer's Initials _____

JCI SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR THE LIKE) CAUSED BY THE MATERIALS, EQUIPMENT, PARTS OR SERVICES PROVIDED HEREUNDER OR THE FAILURE OF THE MATERIAL, EQUIPMENT, PART OR SERVICE TO PERFORM, ACCURATELY PERFORM, TIMELY PERFORM, OR OTHERWISE MEET THE NEEDS, SPECIFICATIONS OR EXPECTATIONS OF CUSTOMER, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF JCI OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. JCI'S TOTAL LIABILITY TO CUSTOMER FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE GREATER OF (i) \$25,000, OR (ii) THE AGGREGATE FEES PAID BY CUSTOMER TO JCI FOR THE SERVICES.

The waiver of warranty, exclusive remedies, waiver of consequential damages and limitation of liability set forth in this Agreement are fundamental elements of the basis for this Agreement. JCI would not be able to provide the products, parts or Services on an economic basis, and would not have entered into this Agreement, without such limitations.

I. FORCE MAJEURE

- 1) JCI shall not be responsible to the Customer for damage, loss, injury, or delay caused by conditions beyond JCI's reasonable control, and without the intentional misconduct or negligence of JCI. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes; (d) labor disputes; (e) fire; (f) explosions or other casualties; (g) theft; (h) vandalism; (i) terrorism, riots or war; or (j) unavailability of parts, materials or supplies.
- 2) If this Agreement covers fire safety or security equipment, the Customer understands that JCI is not an insurer regarding those services. JCI shall not be responsible for any damage or loss whatsoever that may result from fire safety or security equipment that fails to perform properly or fails to prevent loss or damage.
- 3) JCI is not responsible for any injury, loss, or damage caused by equipment that is not Covered Equipment.

J. RENEWAL PRICE ADJUSTMENT

JCI will provide Customer with notice of any adjustments to the Price and Payment Terms provision of this Agreement applicable to a renewal period no later than forty-five (45) days prior to the commencement of such renewal period. Unless the Customer terminates the Agreement as provided in the Term/Automatic Renewal provision of this Agreement, the adjusted price shall be the price for the renewal period.

K. JCI'S EQUIPMENT

JCI may provide tools, documentation, panels, or other control equipment in the Customer's building for JCI's convenience in performing JCI's Services. Such equipment shall remain JCI's property and JCI retains the right to remove the same during the Term or upon the termination of this Agreement.

L. JCI'S EMPLOYEES

The Customer acknowledges that JCI's employees are a valuable asset to JCI. In the event during the Term of this Agreement or one hundred eighty (180) days thereafter Customer hires any JCI employee who worked at the Customer's facility at any time the Customer agrees to 1) pay JCI an amount equal to 12 months salary for such employee, and 2) reimburse JCI for all costs associated with any training JCI provided to such employee during the three years before the date the Customer hires such employee.

M. RESOLUTION OF DISPUTES

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL PREPARED FOR GALVESTON COUNTY

Customer shall make all payments to JCI when due in accordance with the Price and Payment Terms provision of this Agreement or any renewal adjustments thereto, and such timely payment by Customer shall be a condition precedent to JCI's obligation to perform its Services hereunder. If a dispute, claim, or other matter in question ("Dispute") related in any manner to this Agreement arises, the Parties shall promptly attempt in good faith to resolve such Dispute by negotiation. The Parties further agree as follows:

- 1) **EACH PARTY WAIVES ANY RIGHT TO TRIAL IN A COURT OF LAW AND TO TRIAL BY JURY.**
- 2) **Notice of Dispute:** In order to be able to mediate or arbitrate any Dispute between JCI and Customer, written notice thereof must be given by the Party requesting mediation within five (5) days after the Dispute arises. The purpose of such notification is to place the notified Party on notice so proper measures can be taken to defend against such Dispute, and the failure to give such notice shall preclude the Party desiring arbitration from subsequently mediating or arbitrating the particular Dispute.
- 3) **Mediation:** As a condition precedent to arbitration, the Parties must submit the Dispute to mediation within five (5) days of the notice of dispute. Mediation shall be conducted in accordance with the then current mediation rules of the American Arbitration Association or other mediation service mutually agreed to by the Parties.
- 4) **Arbitration:** In the event mediation of the Dispute is unsuccessful, no later than five (5) days following such mediation the Dispute must be submitted to arbitration. Arbitration shall be conducted in accordance with the then current arbitration rules of the American Arbitration Association or other arbitration service mutually agreed to by the Parties. Arbitration must be completed within sixty (60) days after the Dispute is submitted to arbitration unless the Parties mutually agree otherwise. The award rendered by the arbitrator shall be final, and judgment may be entered there upon in accordance with applicable law in any court having competent jurisdiction thereof. The Party prevailing in the arbitration shall be entitled to an award of its reasonable costs, including reasonable attorney's fees, incurred as a result of the Dispute.
- 5) **Services Obligation Suspended:** The Parties agree while arbitration of the Dispute is pending, JCI's obligation to provide continued Services as set forth in this Agreement shall be temporarily suspended until the arbitration award is issued. In the event JCI elects to suspend its Services Customer will remain obligated to pay any outstanding amounts owed JCI but will not be obligated to pay for the Services suspended. The right of JCI to suspend its Services hereunder is in addition to all other rights JCI may have at law or in equity and does not impair the rights of JCI with regard to a Dispute hereunder. The Customer expressly agrees JCI may not be held liable for damages of any nature which Customer may suffer as a result of JCI's temporary suspension of its Services in accordance with this provision.
- 6) The rights and obligations of JCI herein are in addition to, and do not alter, impair, limit, or otherwise waive any other rights granted JCI in equity or by statute.

N. TERMINATION

In addition to the Term/Automatic Renewal provision of this Agreement, JCI and the Customer agree in the event either Party refuses or fails to perform its obligations under this Agreement in the manner specified herein, the affected Party must provide the other with written notice containing a detailed description of the alleged deficiency or breach, including specific reference to the applicable provision(s) of this Agreement within five (5) days of the alleged deficiency or breach. Should the Party alleged to be in breach of this Agreement fail to respond in writing to, or take action to cure the alleged deficiency or breach within ten (10) days of the written notice of same, the affected Party may terminate this Agreement for cause. In the event the Agreement is terminated for cause, Customer shall make payment to JCI for all undisputed amounts owed within ten (10) days of the termination effective date. A Party's termination of this Agreement for cause shall be without prejudice to any other right or remedy.

O. ASBESTOS, MOLD AND HAZARDOUS MATERIALS

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- 1) **Asbestos-Containing Materials:** Neither Party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials ("ACM"). Consistent with applicable laws, Customer shall supply JCI with any information in its possession relating to the presence of ACM in areas where JCI undertakes any Services that may result in the disturbance of ACM. It is JCI's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Customer shall provide such certification for buildings it owns, or aid JCI in receiving such certification from facility owners in the case of buildings that it does not own, if JCI will undertake Services in the facility that could disturb ACM. If either Customer or JCI becomes aware of or suspects the presence of ACM that may be disturbed by JCI's Services, it shall immediately stop the Services in the affected area and notify the other's contacts. As between Customer and JCI, Customer shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable laws and addressing the impact of its disturbance before JCI continues with its Services, unless JCI had actual knowledge that ACM was present and acted in disregard of that knowledge, in which case (a) JCI shall be responsible at its sole expense for remediating areas impacted by the disturbance of the ACM, and (b) Customer shall resume its responsibilities for the ACM after JCI's remediation has been completed.
- 2) **Other Hazardous Materials:** JCI shall have no obligations relating to the identification, abatement, cleanup, control, removal or disposal of mold, regardless of the cause of the mold. JCI shall be responsible for removing or disposing of any Hazardous Materials that it uses in providing Services ("JCI Hazardous Materials") and, other than mold, for the remediation of any areas impacted by the release of JCI Hazardous Materials. For other Hazardous Materials that may be otherwise present at its facilities ("Non-JCI Hazardous Materials"), Customer shall supply JCI with any information in its possession relating to the presence of such materials if their presence may affect JCI's performance of the Services. If either Customer or JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with JCI's Services, it shall immediately stop the Services in the affected area and notify the other's contacts. As between Customer and JCI, Customer shall be responsible at its sole expense for removing and disposing of mold and Non-JCI Hazardous Materials from its facilities and the remediation of any areas impacted by mold or the release of the Non-JCI Hazardous Materials. Notwithstanding the foregoing, if JCI had actual knowledge that Non-JCI Hazardous Materials other than mold were present and acted in disregard of that knowledge, then in such case (a) JCI shall be responsible at its sole expense for the remediation of any areas impacted by JCI's release of such Hazardous Materials, and (b) Customer shall remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from JCI's performance of the Services.
- 3) **Environmental Indemnity.** To the fullest extent permitted by law, Customer shall indemnify and hold harmless JCI and JCI's Subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and successors and assigns, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from Customer's or the owner's use, storage, release, discharge, handling or presence of ACM or Non-JCI Hazardous Materials on, under or about the facility(ies), or the noncompliance with this Section O. To the fullest extent permitted by law, JCI shall indemnify and hold harmless Customer, its officers, directors, employees, agents, representatives, shareholders, affiliates, successors and assigns, from and against any and all losses, claims, damages, expenses (including reasonable legal fees and defense costs), claim, causes of action or liability, directly or indirectly, relating to or arising from JCI's use, storage, release, discharge, handling or presence of JCI Hazardous Materials on, under or about the facility(ies), or the noncompliance with this Section O.



JOHNSON CONTROLS PLANNED SERVICE PROPOSAL PREPARED FOR GALVESTON COUNTY

P. ASSESSMENT

It is the Customer's responsibility to pay all taxes or other government charges relating to the Services, transfer, use, ownership, servicing, or possession of any equipment relating to this Agreement.

Q. MISCELLANEOUS PROVISIONS

- 1) Any notice that is required to be given under this Agreement must be in writing and sent to the Party at the address noted on the first page of this Agreement.
- 2) This Agreement cannot be transferred or assigned by Customer without the prior written consent of JCI.
- 3) This Agreement is the entire Agreement between JCI and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the Customer.
- 4) Any change or modification to this Agreement will not be effective unless made in writing. Such written modification must specifically indicate that it is an amendment, change, or modifications to this Agreement.
- 5) The Customer acknowledges and agrees that any purchase order issued by Customer, in accordance with this Agreement, is intended only to establish payment authority for the Customer's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in the Customer's purchase order will have any force or effect.
- 6) Should any changes to relevant regulations, laws, or codes substantially affect JCI's Services or obligations, the Customer agrees to negotiate in good faith with JCI for appropriate and equitable changes to the scope or price of the Agreement or both.
- 7) The Parties agree and acknowledge that this is a negotiated agreement and that the rule of construction that any ambiguities are to be construed against the drafting Party shall not apply.
- 8) Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against JCI. The Services under this Agreement are being performed solely for the Customer's benefit, and no other party or entity shall have any claim against JCI because of this Agreement or the performance or non-performance of the Services hereunder.
- 9) The failure of JCI or the Customer to insist upon, or to delay enforcing the strict performance of the terms and conditions hereof, or any right or remedy, as provided herein, shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of JCI or the Customer.

R. CHOICE OF LAW

This Agreement shall be subject to and governed by the laws of the State where the project is located.

S. SEVERANCE

Should any term, part, portion, or provision of this Agreement be decided or declared by the courts to be, or otherwise found to be, illegal or in conflict with any law of the state governing this Agreement or the United States, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions, and provisions shall be deemed severable and shall not be affected thereby, provided such remaining parts, terms, portions, or provisions can be construed in the substance to constitute the Agreement that the Parties intended to enter into in the first instance.

T. JCI'S INTELLECTUAL PROPERTY

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JCI shall retain all right, title and interest in and to any (a) deliverables provided to Customer hereunder, including without limitation, all software source and object code, documentation, technical information or data, specifications and designs and any changes, improvements or modifications thereto or derivatives thereof ("Deliverables") and (b) Know-How (defined below) employed by JCI in the creation of the Deliverables or performance of the Services, whether known to JCI prior to, or developed or discovered or acquired in connection with, the performance of its obligations hereunder. Ownership of all Deliverables and Know-How shall vest solely in JCI and no Deliverables shall be deemed "works made for hire." Without limiting the generality of the foregoing, ownership of all source files used in the course of performing the Services shall remain the exclusive property of JCI. For purposes of this Agreement, "Know-How" means any know-how, processes, techniques, concepts, methodologies, tools, analytical approaches, database models and designs, discoveries, and ideas furnished, produced by, developed, employed or used by JCI in the creation or provision of the Deliverables or in the performance of the Services, and any changes, improvements or modifications thereto or derivatives thereof.

[END OF DOCUMENT]