



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER  
 WSH10003

PAGE  
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF:  
 ROBERTA WAGNER  
 304-558-0067

**VENDOR**  
 \*709025648 01 304-755-4353  
 JOHNSON CONTROLS INC  
 PO BOX 776  
 4132 FIRST AVE  
 NITRO WV 25143

**SHIP TO**  
 HEALTH AND HUMAN RESOURCES  
 WILLIAM R. SHARPE JR. HOSPITAL  
 CENTRAL RECEIVING  
 936 SHARPE HOSPITAL ROAD  
 WESTON, WV  
 26452 304-269-1210

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
06/24/2009				

BID OPENING DATE: 07/28/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	12	MN		031-06		
<p>*****            MANDATORY PRE-BID MEETING ON 7/9/9 AT 1:00 PM IN THE            BUSINESS OFFICE AT: WILLIAM R. SHARPE, JR. HOSPITAL            936 SHARPE HOSPITAL ROAD, WESTON, WV 26452            NO ONE PERSON MAY REPRESENT MORE THAN ONE VENDOR.            *****</p>						
<p>PERIODIC/PREVENTATIVE/PREDICTIVE MAINTENANCE</p>						
<p>EXHIBIT 1</p>						
<p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON            AWARD..... AND EXTENDS FOR A PERIOD OF ONE (1)            YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS            IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE            ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL            NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE            TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY            REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS            WRITTEN NOTICE.</p>						
<p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN            THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS, AND            PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE            CONTRACT.</p>						
<p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL</p>						

RECEIVED  
 2009 JUL 27 AM 10:33  
 WV PURCHASING  
 DIVISION

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS  
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
5. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **WEST VIRGINIA ALCOHOL & DRUG-FREE WORKPLACE ACT:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."

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**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in case of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130



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<p>WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) SUCCESSIVE ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM WITH THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN</p> <p>CONTRACTOR IS TO TRAIN AND CERTIFY THE INSTITUTIONS OPERATORS TO PERFORM NORMAL OPERATOR MAINTENANCE IN ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS TO INCLUDE PRE-OPERATION, DURING OPERATION, POST-OPERATION AND PERIODIC/PREVENTATIVE/PREDICTIVE MAINTENANCE ON CONTROL SYSTEMS FOR HEATING, VENTILATION AND AIR CONDITIONING SYSTEM, OPERATOR MAINTENANCE TRAINING AND RESULTS. PERFORM PERIODIC/PREVENTATIVE/PREDICTIVE BEYOND THE CAPABILITY OF THE OPERATORS ON CONTROL SYSTEM FOR HEATING, VENTILATION AND AIR CONDITIONING (HVAC) SYSTEM AT WILLIAM R. SHARPE, JR. HOSPITAL LOCATED IN WESTON, WEST VIRGINIA 26452.</p> <p>(SEE ATTACHED SPECIFICATIONS)</p> <p>INQUIRIES:            WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON 7/10/2009. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER OR E-MAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED ORALLY. IF POSSIBLE,</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
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<p>E-MAIL QUESTIONS ARE PREFERRED. ADDRESS INQUIRIES TO:</p> <p>ROBERTA WAGNER            DEPARTMENT OF ADMINISTRATION            PURCHASING DIVISION            2019 WASHINGTON STREET, EAST            CHARLESTON, WV 25311</p> <p>FAX: 304-558-4115            E-MAIL: ROBERTA.A.WAGNER@WV.GOV</p>						
<p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK).</p>						
<p>INSURANCE: SUCCESSFUL VENDOR SHALL FURNISH PROOF OF COVERAGE OF COMMERCIAL GENERAL LIABILITY INSURANCE PRIOR TO ISSUANCE OF THE CONTRACT. UNLESS OTHERWISE SPECIFIED IN THE BID DOCUMENTS, THE MINIMUM AMOUNT OF INSURANCE COVERAGE REQUIRED IS \$250,000.</p>						
<p>WORKER'S COMPENSATION: VENDOR IS REQUIRED TO PROVIDE A CERTIFICATE FROM WORKER'S COMPENSATION IF SUCCESSFUL.</p>						

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<p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>REV. 9/98</p> <p>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATIONS IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="text-align: center;">DEPARTMENT OF ADMINISTRATION        PURCHASING DIVISION        BUILDING 15        2019 WASHINGTON STREET, EAST        CHARLESTON, WV 25305-0130</p> <p>PLEASE NOTE: A CONVENIENCE COPY WOULD BE APPRECIATED.</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p>						

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ROBERTA WAGNER 804-558-0067

VENDOR	*709025648 01 304-755-4353
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SHIP TO	HEALTH AND HUMAN RESOURCES
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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
BUYER:-----RW/FILE 22-----						
RFQ. NO.:-----WSH10003-----						
BID OPENING DATE:-----7/28/2009-----						
BID OPENING TIME:-----1:30 PM-----						
PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:						
-----						
CONTACT PERSON (PLEASE PRINT CLEARLY):						
-----						
***** THIS IS THE END OF RFQ WSH10003 ***** TOTAL: _____						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE
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**WSH10003 -- PERIODIC/PREVENTIVE/PREDICTIVE MAINTENANCE FOR HEATING,  
VENTILATION AND AIRCONDITIONING CONTROL AND MECHANICAL SYSTEMS**

**PERIODIC / PREVENTIVE / PREDICTIVE MAINTENANCE FOR HEATING,  
VENTILATION AND AIRCONDITIONING CONTROL AND MECHANICAL  
SYSTEMS**

**SPECIFICATIONS**

Periodic/preventive/predictive maintenance. Train and certify operators to perform normal operator maintenance in accordance with manufacturers' specifications to include pre-operation, during operation, post-operation, and periodic/preventive/predictive maintenance on Control Systems for heating, Ventilation and Air Conditioning System. Periodically test/inspect/check operator maintenance performance, effectiveness of operator maintenance training and results. Perform periodic/preventive/predictive maintenance beyond the capability of the operators on Control System for Heating, Ventilation and Air Conditioning (HVAC) System at William R. Sharpe, Jr. Hospital located in Weston, West Virginia 26452.

**GENERAL CONDITIONS**

It is the intent of the Hospital to purchase only those services as listed. However, the Hospital reserves the right to add or delete from the quantities shown as required.

**SCOPE OF WORK**

Contractor will furnish all labor, material and equipment necessary to provide periodic/preventive/predictive maintenance in accordance with manufacturer's recommendations other than normal operation maintenance and service on:

Complete HVAC System and Control Equipment Consists of:

1. Air Handling Units:

Manufacturer	Model #	Serial #	Type
York International	YCM-04X-E	M0493-7115	100%OA
York International	YCM-03X	M0493-7116	100%OA
York International	YCM-05X	M0493-7117	100%OA
York International	YCM-01X	M0493-01X	100%OA
Dectron	DS-080-43	7715	Dryotron
York International	YCM-04X	M0493-7119	100%OA
York International	YCM-01X	M0493-7120	100%OA
York International	YCM-02X	M0493-7121	100%OA
York International	YCM-02X	M0493-7122	100%OA
York International	YCM-01X	M0493-7123	100%OA
Dunham Bush	HCS10MF108201	1083201A93E	Mixed A
Dunham Bush	HCS10MF103202	1083202A93E	Mixed A

All of the above 100% outside air units have Heat Wheels.

Carrier Split System	38HDC048610	4696x35660
Witt	CDS020VH	248832J97

**WSH10003 -- PERIODIC/PREVENTIVE/PREDICTIVE MAINTENANCE FOR HEATING, VENTILATION AND AIRCONDITIONING CONTROL AND MECHANICAL SYSTEMS**

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2. Heating Water System:

A. Boilers (3 total)

Ajax	WGM-8500-D	81958	Hot Water
Ajax	WGM-8500-D	81957	Hot Water
Ajax	WGM-8500-D	81959	Hot Water

Contractor will provide annual start-up and shut down of boilers

B. Hot Water Pump and Motor

Pumps "TA" Horizontal Split Case Base Mounted

2 each Taco (IA1038 13.6 B2N1B2L0) Frame N

C. Motors

2 US Elec. ID#V08V17R063R 50Hp  
ID#V09V231R060R-1 50 Hp

Contractor must include all other associated equipment, such as expansion tank, piping valves, and all other incidental parts.

3. Chilled Water System

A. Chillers (2 total)

Carrier	10XB54003501	465344	Cntfcl.
Carrier	10XB54003501	465334	Cntfcl.

Contractor will provide annual start-up and shut down including vibration analysis.

B. Cooling Towers (2 total)

Baltimore Aircoil	VTI-507-OCPX	93100081
Baltimore Aircoil	VTI-507-OCPX	93100082

Contractor will provide annual start-up and shut down

C. Chilled Water Pumps and Motors (2 total)

D. Pumps (2 each) – Model # TA1238 13.5 B2P1B2L0 Frame P

E. Motors Fram 364T

2 US Elec. ID#H009W01V309R102M 60Hp

Contractor must include all other associated equipment, such as expansion tank, piping, valves, and all other incidental parts.

F. Condenser Water Pumps and Motors (2 total)

G. Pumps "TA" Horizontal split Case Base Mounted

2 each Taco 1500 gpm (TA2038 12.0 B2M1C2L0) Frame M

H. Motors

2 US Elec. ID#V10V255R094R-2 G200 25Hp  
ID#V09V231R060R-000130 25Hp



**WSH10003 -- PERIODIC/PREVENTIVE/PREDICTIVE MAINTENANCE FOR HEATING,  
VENTILATION AND AIRCONDITIONING CONTROL AND MECHANICAL SYSTEMS**

I. Air Compressor Unit

Ingersoll-Rand	0204290185	2475D5	Max PSIG 175#
Curtis		12DS9E	

4. Exhaust and Make-up Air Units

A. Make-Up Units (4 Total)

Captive Aire Sys. Inc.	HMUA 12-12	40151-1	MH 15054
Captive Aire Sys. Inc.	HMUA 12-12	40151-2	MH 15054
Captive Aire Sys. Inc.	HMUA 12-12	40151-3	MH 15054
Captive Aire Sys. Inc.	HMUA 12-12	40151-4	MH 15054

B. Exhaust Units (5 Total)

Penn Power Ventilator	FX16BFT		
ACME Eng. Manu Corp.	829378	USWH43480	Centrimaster
Captive Aire Sys. Inc.	NCA18B		770
Loren Cook	100C2B		

5. Fan Coil System (8 Units in the Maintenance Building)

International Environmental Corp 93ec (Model) CXW03

6. Control System

Johnson Control Incorporated Metasys Control System and software, 212 VAVs, NCMs, PC Workstation, control and actuating air system and all other related control equipment.

Vendor must include the following diagnostic services:

- Contractor must provide two (2) spectrochemical oil analyses and two (2) vibration analyses per year on the chiller and one (1) electronic flue gas analyses on the boiler.
- The contractor will also drain, clean and refill the cooling tower once a year.
- The contractor will train the hospital personnel to perform normal operator maintenance consisting of pre-operational, operational, post-operational maintenance and will provide the necessary diagnostic and special tools required for this work.
- Contractor will inspect the work of hospital personnel monthly to ensure adequateness of operator maintenance and needs for changes in procedures and/or additional training for hospital personnel.
- Contractor will perform maintenance in accordance with manufactures specifications. This includes all periodic/preventive/predictive and repair maintenance.

**WSH10003 -- PERIODIC/PREVENTIVE/PREDICTIVE MAINTENANCE FOR HEATING, VENTILATION AND AIRCONDITIONING CONTROL AND MECHANICAL SYSTEMS**

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- Contractor will arrange for external inspections required by law, insurance, manufacturer, and/or management of the Hospital and ensure equipment is prepared for inspections as required.
- The contractor will maintain adequate "on hand" spare parts and equipment to ensure continued equipment operation. (may be stored on premises)
- The terms "Complete HVAC System and Control Equipment" means everything related to the system, including piping, hardware, software, and anything incidental to maintain the operation of this Control Equipment and HVAC System whether listed or not.
- The contractor is responsible for securing technical data for the entire Control and HVAC System as required.
- Contractor's management representative must visit facility at least quarterly, but all problems will be communicated with the vendor and must be resolved or addressed when they arise.
- At the conclusion of the contract period, the contractor is responsible for ensuring that all systems are in first-class condition and any discrepancies/malfunctions corrected. A joint inspection, including existing contractor and representatives of William R. Sharpe, Jr. Hospital will be required and existing contractor must correct any discrepancies prior to receiving final payment. A detailed on-site inspection of facilities to be serviced/controlled is mandatory prior to bidding.

**CONTRACT**

Vendor will furnish all labor, materials and equipment necessary to perform the above described functions listed.

The program shall consist of:

1. Periodic/Preventive/Predictive Maintenance
 

Each month a periodic/preventive/predictive maintenance calls will be scheduled by the vendor, the hospital will be informed of what maintenance functions will be performed. William R. Sharpe, Jr. Hospital will receive a copy of the periodic/preventive/predictive maintenance schedule at least 30 days prior to the call date.
2. Component Replacement
 

Any worn, defective or doubtful components or parts shall be repaired or replaced at no additional cost above stated contract price.
3. Emergency/Corrective Maintenance
 

Twenty-four (24) hour, Seven (7) days a week emergency/corrective service including overtime and parts of material will be provided at no additional cost above stated contract price.

Contractor must be available to customer at any time and respond within four (4) hours after notification of system problems. Contractors must maintain a 24 hour manned telephone to accept service calls. William R. Sharpe, Jr. Hospital

**WSH10003 -- PERIODIC/PREVENTIVE/PREDICTIVE MAINTENANCE FOR HEATING,  
VENTILATION AND AIRCONDITIONING CONTROL AND MECHANICAL SYSTEMS**

reserves the right to bill the service contractor \$100.00 per hour for each hour over the maximum four (4) hour allowance.

The contractor must maintain a stock of the following emergency repair items:

**BELTS – Goodyear or a brand of equal quality**

Quantity	Item	Quantity	Item
3	BX96	4	3VX475
2	BX85	2	BX83
3	BX83	2	BX42
3	BX51	3	BX90
4	BX96	3	3VX475
3	BX90	2	BX85
2	BX83	2	BX42
4	3VX315	3	BX40
2	BX81	2	AX38
3	BX88		

**BEARINGS**

Quantity	Item
4	Browning VPS-239 2-7/16"
4	Dodge P2B-SCAH-115 1-15/16"
4	Browning VPS-239 2-7/16"
4	Browning VPS-227 1-11/16"
2	Browning VPS 223 1-7/16"
4	Browning VPS 219 1-3/16"

The contractor will be paid monthly in arrears.

**Evaluation of Bids:**

Contract will be awarded to the responsive and responsible vendor with the lowest cost to the facility.

WSH10003 --

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Roberta:

Life of Contract: One year with two (2) one year renewal periods.

Mandatory Vendor Prebid Conference will be held on July 9, 2009 at 1:00 PM in the  
Business Office at: William R Sharpe Jr. Hospital  
936 Sharpe Hospital Road  
Weston, West Virginia 26452

All interested vendors must attend this mandatory prebid conference in order to be  
considered for an award of a contract.

STATE OF WEST VIRGINIA  
Purchasing Division

## PURCHASING AFFIDAVIT

### VENDOR OWING A DEBT TO THE STATE:

**West Virginia Code §5A-3-10a** provides that: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

### PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT:

If this is a solicitation for a public improvement construction contract, the vendor, by its signature below, affirms that it has a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the **West Virginia Code**. The vendor **must** make said affirmation with its bid submission. Further, public improvement construction contract may not be awarded to a vendor who does not have a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the **West Virginia Code** and who has not submitted that plan to the appropriate contracting authority in timely fashion. For a vendor who is a subcontractor, compliance with Section 5, Article 1D, Chapter 21 of the **West Virginia Code** may take place before their work on the public improvement is begun.

### ANTITRUST:

In submitting a bid to any agency for the state of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the state of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the state of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the state of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership or person or entity submitting a bid for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

### LICENSING:

Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

### CONFIDENTIALITY:

The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.

Under penalty of law for false swearing (**West Virginia Code §61-5-3**), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

Vendor's Name: Johnson Controls INC  
Authorized Signature: [Signature] Date: 7-27-09

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

Certification and application\* is hereby made for Preference in accordance with West Virginia Code, §5A-3-37. (Does not apply to construction contracts) West Virginia Code, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

- 1. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
4. Application is made for 5% resident vendor preference for the reason checked: Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: \_\_\_\_\_ Signed: \_\_\_\_\_
Date: \_\_\_\_\_ Title: \_\_\_\_\_

\*Check any combination of preference consideration(s) indicated above, which you are entitled to receive



**Service Agreement**

William R Sharpe Hospital  
936 Sharpe Hospital Rd  
Weston

WV 26452

**Proposal Date** July 27, 2009  
**Agreement**  
**Agreement Rev**

**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 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 08/01/2009 and will continue until 07/31/2012 ("Original Term"). The Agreement will automatically renew on a year-to-year basis after the Original Term ends unless the Customer or JCI gives the other written notice it does not want to renew. The notice must 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 and will be billed separately to the Customer by JCI.

**Price and Payment Terms**

The total Contract Price for JCI's Services during the 1st year of the Original Term is \$99,026.72. This amount will be paid to JCI in monthly 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 thirty (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.

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

JOHNSON CONTROLS, INC.

By \_\_\_\_\_

By \_\_\_\_\_

*Frank J Edwards*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Account Rep 27 Jul 09  
\_\_\_\_\_  
Title Date

\_\_\_\_\_  
Title Date

\_\_\_\_\_  
JCI Branch Manager Date

*(proposal not valid until signed by JCI Manager)*

JCI Branch CHARLESTON WV SERVICE BRANCH SVC (659)

Phone 8005233178x3711

Cust. PO # \_\_\_\_\_

Address 4132 FIRST AVENUE P O BOX 776

City State ZIP NITRO WV 25143

Schedule A

Equipment List (Selected Equipment to be Serviced)

**Covered Equipment At Site: Sharpe Hospital**

936 Sharpe Hospital Rd, Weston WV 26452

Qty	Equipment	Coverage Level	Extended Service
12	AHU (10-40HP)	Premium	24/7
	AHU (10-40HP) / 1,AHU (10-40HP) / 12,AHU (10-40HP) / 10,AHU (10-40HP) / 13,AHU (10-40HP) / 11,AHU (10-40HP) / 7,AHU (10-40HP) / 4,AHU (10-40HP) / 9,AHU (10-40HP) 5,AHU (10-40HP) / 6,AHU (10-40HP) / 2,AHU (10-40HP) / 3		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	1	
	Comprehensive	2	
2	Air Compressor (5-20HP)	Premium	24/7
	Air Compressor (5-20HP) /INGERSOLL RAN,Air Compressor (5-20HP) /CURTIS		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	1	
	Comprehensive	1	
3	Boiler (120-750MBH/50-300HP)	Premium	24/7
	Boiler (120-750MBH/50-300HP) / AJAX/1,Boiler (120-750MBH/50-300HP) / AJAX /3,Boiler (120-750MBH/50-300HP) / AJAX /2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	1	
	Comprehensive	2	
	Combustion Analysis	1	
2	Centrifugal Chiller (450-799T)	Premium	24/7
	Centrifugal Chiller (450-799T) / CARRIER 1,Centrifugal Chiller (450-799T) / CARRIER 2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	
	Comprehensive	2	
	Chiller Tube Brushing	1	
	Oil Analysis	2	
	Vibration Analysis-Chiller	2	



Schedule A

Equipment List (Selected Equipment to be Serviced)

2	Cooling Tower (>250T)	Premium	24/7
	Cooling Tower (>250T) /BAC 1,Cooling Tower (>250T) /BAC 2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	
	Comprehensive	2	
	Tower/Basin Cleaning (Large)	1	
	Cooling Tower Startup	1	
4	Exhaust Fan (6-15HP)	Premium	24/7
	Exhaust Fan (6-15HP) /PEN POWER ,Exhaust Fan (6-15HP) /ACME,Exhaust Fan (6-15HP) /CAPTIVE AIRE ,Exhaust Fan (6-15HP) /LOREN COOK		
	<b>Additional Options</b>	<b># per year</b>	
	Comprehensive	1	
8	FCU (0-7.5T)	Premium	24/7
	FCU (0-7.5T) / 0001,FCU (0-7.5T) / 0001 / Copy 0001,FCU (0-7.5T) / 0001 / Copy 0002,FCU (0-7.5T) / 0001 / Copy 0003,FCU (0-7.5T) / 0001 / Copy 0004,FCU (0-7.5T) / 0001 / Copy 0005,FCU (0-7.5T) / 0001 / Copy 0006,FCU (0-7.5T) / 0001 / Copy 0007		
	<b>Additional Options</b>	<b># per year</b>	
	Comprehensive	1	
4	MAU (<10HP)	Premium	24/7
	MAU (<10HP) /1,MAU (<10HP) /3,MAU (<10HP) /4,MAU (<10HP) /2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	1	
	Comprehensive	2	
1	Metasys OWS Standard	Basic	N/A
	Metasys OWS Standard / 0001		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	4	
2	Motor (>25HP)	Basic	N/A
	Motor (>25HP) /1,Motor (>25HP) /2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	

Schedule A

Equipment List (Selected Equipment to be Serviced)

2	Motor (>25HP)	Premium	24/7
	Motor (>25HP) /CWS 1, Motor (>25HP) /CWS 2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	
2	Motor (8-25HP)	Premium	24/7
	Motor (8-25HP) /CONDENSER WATER 1, Motor (8-25HP) /CONDENSER WATER 2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	
4	Network Control Module 300 series	Premium	24/7
	Network Control Module 300 series / 0001, Network Control Module 300 series / 0001 / Copy 0001, Network Control Module 300 series / 0001 / Copy 0002, Network Control Module 300 series / 0001 / Copy 0003		
	<b>Additional Options</b>	<b># per year</b>	
	Comprehensive	1	
2	Pump (10-40HP)	Premium	24/7
	Pump (10-40HP) / CONDENSER WATER1, Pump (10-40HP) / CONDENSER WATER2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	
2	Pump (10-40HP)	Premium	24/7
	Pump (10-40HP) / HW1, Pump (10-40HP) / HW2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	
2	Pump (10-40HP)	Premium	24/7
	Pump (10-40HP) /CW1, Pump (10-40HP) /CW2		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	
2	Split System Unit (0-15T)	Premium	24/7
	Split System Unit (0-15T) /CARRIER, Split System Unit (0-15T) / WITT		
	<b>Additional Options</b>	<b># per year</b>	
	Operational	2	
	Comprehensive	1	



Schedule A (Continued)

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

	<b>Total Dollar Amount</b>	<b>Payment Frequency</b>
Year 2	\$100,017 00	Monthly
Year 3	\$101,018 00	Monthly

Special Additions and Exceptions

This contract is a Premium Service Contract. All preventative maintenance, repairs and materials listed in RFQ WSH10003 will be covered post Condition A inspection  
JCI will schedule monthly preventive maintenance with the staff at William R Sharpe Hospital for routine maintenance. For emergency maintenance during normal operating hours service calls can be made by calling 304-755-4353. Emergency calls after hours can be made by calling a 24 hour hotline at 1-866- 300-7647  
JCI will perform a "Condition A" inspection upon start of contract. JCI will evaluate the condition of the equipment to ensure the equipment is in working order. If equipment is found to be unserviceable, JCI will quote repair. Once all equipment is deemed to be in working order all repairs, maintenance and materials will be covered under the contract.  
Payments will be monthly installments.

## 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/slats/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 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.

## Terms and Conditions

### 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

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) thefts; (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

## Terms and Conditions

employee

### M RESOLUTION OF DISPUTES

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

- 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

## Terms and Conditions

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.

### 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, 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

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