



March 19, 2021

City Of Greensboro
Mike Perdue

**RE: COLISEUM AND GAC HVAC ENGINEER AND
MAINTENANCE SUPPORT CONTRACT**

City Of Greensboro OPS Agreement 2021-2026



Mike,

Thank you for being a loyal Johnson Controls Customer. We appreciate your business and look forward to continuing as your building technology services partner.

This Contract/Agreement to follow the following items addressed in the Request for Proposal:

OBJECTIVE

This Contract is for the full time “ON Site” HVAC Service / Maintenance Engineer manager of all HVAC Building Management and Fire Alarm equipment, it requires the Inspection, Management, Maintenance, Scheduling and Performance of the HVAC Equipment and Controls at the GREENSBORO COLISEUM COMPLEX.

The Contractor would provide “one” 40 hour per week Certified Johnson Controls Engineer (JCI) to care for and maintain all HVAC equipment and JCI Building Management System (BMS), and Fire Alarm System. The Contractor would provide a “second” Certified JCI Engineer that would be a back up to the assigned Engineer in the event the assigned Engineer was not available for any reason i.e. Vacation, Sick, etc. The Contractor also shall provide on call service contact and support 24/7/365.

The onsite Certified JCI Controls Engineer would need to have at minimum of 10 Years HVAC / HVAC Controls engineering experience working at a similar complex or larger production factory. The Certified JCI Controls Engineer would perform other duties as assigned by the Greensboro Coliseum’s Maintenance / Production Manager, which would include but not limited to the management of the Fire Alarm system, Fire Pump, Sprinkler systems, Security Systems, hand held radios, Swimming Pool Pump / Filter / and Heater Systems etc.

The continued quality of the maintenance service of this Johnson Controls Building Automation System / Various HVAC equipment specified will be a direct reflection of the quality and integrity of the Contractor.

The equipment included in the scope of this contract are as follows:

JCI Controls and Connected Remote Support

Fire Alarm Systems

Aquatics Facility Pool Systems for controls systems only



GENERAL REQUIREMENTS

- HVAC Engineer with experience on performing all types of maintenance operations on commercial JCI HVAC controls and JCI Fire Alarm Panel/System. The selected firm will maintain current standards, perform subsequent updates, and perform all work to current Greensboro Coliseum Maintenance Department Standards and Specifications throughout the contract duration. These may be updated throughout the life of the contract. The selected firm will inspect, manage and maintain all assets within the project limits as identified in this scope, perform work that is consistent with the Greensboro Coliseum Maintenance Department practices, and produce end results in accordance with Contract Documents in effect at the time of the performance of any work.
- Contractor required to provide Required Annual NFPA 72 inspection.

Contract Length

The Contract term would be in place for 59 months beginning 7/1/2021.

However, Annually Renewal / Review will be made at the sole discretion and option of the Greensboro Coliseum Maintenance / Production Manager. If is the Maintenance / Production Manager Elects to renew the contract, satisfactory performance of the Contractor, and other factors as determined by the Greensboro Coliseum Maintenance Manager.

Invoicing and Compensation: To be paid monthly

Organizational Structure:

Upon contract execution, provide a detailed organizational structure. Clearly define the responsibilities of each position identified in the organization structure. Provide qualifications of all personnel. Throughout the contract duration, submit all changes to organizational structure or position responsibility to the Greensboro Coliseum Maintenance Manager.

Performance Expectations and Evaluation

Inspect, manage and maintain the equipment stated as identified in the Scope uniformly and consistently throughout the contract period by meeting the performance specifications/measures established in this scope.

The Department will evaluate Contractor performance in two ways:

- 1) By comparing actual work performance to the performance criteria established within this scope
- 2) By semiannually grading the Contractor according to the Performance Based Contracting Procedure. Unsatisfactory performance of work or failure to perform in accordance with the Contractor's technical proposal or other contract documents will affect the Contractor's semiannual grade and may further result in contract default.



Safety

Proposers must maintain safety standards and practices required by Greensboro Coliseum Maintenance Manager. Proposers must provide the following information in the Safety Portion of their Proposal:

- EMR rating
 - [Supporting Documentation Attached](#)
- Amount of Commercial General Liability Insurance, including any umbrella policies
 - [Attached, can be adjusted to desired limits](#)
- Whether personnel are trained in Lockout/ Tag out procedures and when the last such training or updates have been performed
 - Annually, last completed on 12/20/2020
- Whether firm has proper Personal Protection Equipment for its employees
 - All employees provided all required PPE and required to use at all times
- Whether firm has Trained on Adaptive Frequency Drive Capacitor Discharge and the frequency such training takes place
 - JCI has technicians trained on VFD and Capacitor discharge.
- Demonstrate how firm Complies with OSHA safety standards
 - [In Attached Documentation](#)

Documentation as listed attached with proposal.



General Technician Qualifications / JCI Controls Engineer

Proposers must provide the following information regarding the technicians/engineers that will be assigned for this contract:

- Whether firm or general technician/engineer is a JCI factory authorized service provider
- Candidates shall have a minimum of 10 years of experience in Facility Maintenance /Operations and Management.
- Whether general technician/engineer is EPA certified
- Whether general technician/engineer can be on site 40 hours per week / flexibility to work nights and weekends
- Describe the experience of the general technician/engineer in configuring, setting up, and calibrating end devices on factory or field installed hardware
- Describe general technician/engineer's experience in Laser alignment
- Whether firm or general technician/engineer has access to an In-house Augury certified Vibration Analysis Technician
- Whether the general technician/engineer's firm has access to an In-house qualified laboratory to perform a compressor oil analysis to determine system moisture content and acid content
- Whether the general technician/engineer or their firm has certification in Johnson Controls Metasys System
- The duties of the general technician/engineer will include, but not be limited to the following:
 - Provide technical assistance to installation sub-contractors as required
 - Provide technical support to associates
 - Maintain company equipment and hardware in good working order
 - Provide remote access information for sites to Virtual Service
 - Create and program site database
 - Examine and troubleshoot communication Links and Local Area Networks
 - Johnson Controls service tool and training with Johnson Controls service tools are required
 - Provide Engineering Support / Consult for future upgrades to Facility General Infrastructure and control system upgrades.

○ [Resume attached](#)



Proposers must describe in detail their experience in maintaining and repairing the following equipment:

JCI Controls and Connected Remote Support

- Unlimited remote support on JCI BMS
- Controls technician training for current version of JCI Metasys System as well as several legacy controllers.
- Controls software maintenance agreement with version updates as they are released
- Critical Alarm monitoring
- Service provider installs a data pump that creates a VPN tunnel to encrypt and deliver the collected building data to a secure hosted server. The collected data is stored for a minimum of two years.
- Opportunity for JCI Metasys training for current employees.

Proposer Expected to provide:

- 24/7 Emergency Call Center Support for after-hours emergencies.
- \$5000 annually for JCI FACTORY replacement parts for BMS and Fire Alarm Systems. All Parts will discounted List - 50% - 10%
- Discounted Hourly Service Rates for additional service requests throughout Contract Duration. Additional Services will be discounted 10% off of Published Street Rate at time of service.

EVALUATION CRITERIA

Proposers will be evaluated as follows:

- | | |
|---|-------------------------|
| • Experience of firm and its proposed general technician/engineer- | 75 points |
| • Safety Plan and Qualifications of firm and general technician/engineer- | <u>25 Points</u> |
| Total | 100 Points |



RFP Requirements:

ALL QUESTIONS shall be emailed to Mr. Mike Perdue @ Mike.perdue@greensboro-nc.gov

At least 5 days before bids are due.

ALL QUESTIONS AND ANSWERS WILL BE EMAILED TO ALL BIDDERS.

All RFP must include the following Required M/WBE Forms:

M/WBE Affidavits C1 and E1 [Attached](#)

M/WBE good faint effort proof if you are sub-contracting any of the work [Attached](#)

Certified of General Liability Insurance and Works comp Ins. [Attached](#)

Provide both the name and credentials for the on-site Certified JCI Controls Engineer [Attached](#)

Please email you RFP Proposal TO Mr. Mike Perdue @ Mike.perdue@greensboro-nc.gov

On or before 2PM on APRIL 26

This agreement is also built to include back-up personnel. At any time an employee is on vacation, sick, or a leave of absence, Johnson Controls will provide additional personnel to prevent any disruptions.

To make sure that your operation and maintenance agreement continues without interruption, we are offering a 5-year renewal of your agreement effective 07/01/2021 to 05/31/2026 be paid monthly with Net Terms 30 Days. Annual pricing as listed below:

Year 1: \$177,300

Year 2: \$181,733

Year 3: \$186,276

Year 4: \$190,933

Year 5: \$179,397 (To reflect 59 Month Term)

Total Contract Amount = \$915,639.00

As a manufacturer of mechanical, controls, security and fire systems, we have the expertise and resources to provide proper maintenance and repair services for your facility. With your operation and maintenance agreement you have a solution that helps optimize your building's performance and provides dependability, sustainability and energy efficiency. Your service is delivered with the attention of a local service company backed by the resources of a global organization.

Again, thank you for your business and we look forward to serving you in the coming year. Please do not hesitate to call if I can assist you in any way.

Sincerely,

A handwritten signature in cursive script that reads "Jim Glover".

Jim Glover



Terms and Conditions

Operations & Maintenance Agreement

THIS OPERATIONS & MAINTENANCE AGREEMENT (the “Agreement”) is made effective as of 7-1-2021 (the “Effective Date” _) by and between Johnson Controls, Inc. (“Manager”) and The City of Greensboro Coliseum (“Owner”). Manager and Owner are each a “Party” and are together the “Parties” to this Agreement.

RECITALS

- A. Manager provides facility infrastructure operations and maintenance services.

Owner desires to retain Manager to provide the services described on **Attachment A** to this Agreement (the “Services”) for its facility and Manager is willing to provide such Services, each according to the terms of this Agreement.

AGREEMENT

1. Services; Subcontractors. Subject to the terms of this Agreement, Manager will provide the Services for the Facility. Manager will have the option to provide the Services by continuing to use existing subcontractors, vendors, consultants and suppliers (the “Subcontractors”), by assuming and performing the work itself, or by assigning the work to another Subcontractor(s). Manager is authorized (a) to directly perform the Services, or (b) to enter into contracts with Subcontractors to perform the Services, or (c) to modify contracts with Subcontractors to perform the Services. Upon request by Manager, Owner will either terminate or assign the existing subcontracts (between Owner and the third parties) to Manager. Manager will assume responsibility for such Subcontractors only upon negotiating and signing an agreement between Manager and the affected Subcontractors. All Subcontractors will possess the skills and experience and/or materials and supplies appropriate to the Services provided.
2. Independent Contractor and Employee Status. Manager is an independent contractor of Owner and is not an employee of, partner of, or in a joint venture with Owner. Manager will exercise general and overall control over its employees, as the employer of such employees. Should Owner have a complaint regarding the performance of the services or the behavior of Manager’s employees under this Agreement, or request a change in the manner in which services are being performed, it will transmit same to Manager, which will take immediate action to resolve the problem.
3. Transfer of Personnel. Manager will have the option to offer employment the Owner’s employees made available to Manager by Owner for the purpose of performing the Services (the terms of such employment offers, if any, will be solely determined by Manager), and Manager will hire those employees who accept the offer of employment (the “Transferred Employees”). Any Transferred Employees must satisfy Manager’s hiring criteria, be subject to Manager’s policies and procedures, and execute agreements providing for protections of confidential information and adherence to business conduct guidelines. Owner will remain responsible for all obligations and liabilities arising out of, or relating to, the employment relationship between it and the Transferred Employees, including, without limitation, payment of wages, benefits, and severance pay incurred or vesting prior to the date of hire of the Transferred Employees by Manager.

4. No Solicitation. Owner acknowledges that Manager's employees who provide the Services pursuant to this Agreement represent a valuable resource for Manager. Owner agrees that during the Term of this Agreement or any renewal thereof, it will not offer to employ or accept for employment any such employees of Manager without the prior written consent of Manager. If this Agreement is terminated by Owner for any reason (or no reason) at any time, other than for default by Manager pursuant to this Agreement, Owner agrees that it will not offer to employ or accept for employment any such employees of Manager for a period of one hundred eighty (180) days following termination of this Agreement. If Owner hires any employees of Manager in breach of this section, Owner agrees to pay Manager a sum equal to one year's salary of the employee calculated at the rate paid by Manager to the respective employee on the date of his/her termination of employment with Manager.
5. Policies and Procedures. All Services provided by Manager will be consistent with building rules and regulations of Owner provided to Manager in writing, which may be amended from time to time with written notice to Manager. Manager will take such safety precautions as are customary in the industry for the services to be performed.
6. Facilities and Equipment. Owner will make available to Manager such reasonable facilities, equipment, and supplies as are required for Manager to perform the Services under this Agreement. The facilities and equipment provided by Owner; hereunder will remain the property of Owner; however, Manager will be responsible for maintaining the cleanliness of such facilities and equipment, unless otherwise instructed by Owner.
7. Compensation for the Services. Owner will pay Manager for the Services in accordance with the fee schedule contained in **Attachment C** attached to this Agreement. Manager will invoice for all fees on a monthly basis in advance and Owner agrees to pay the fees within fifteen (15) days of receipt of invoice. All invoices not paid within fifteen (15) days of invoice will bear interest from the date of invoice at the rate of twelve percent (12%) per annum, or the highest lawful rate if applicable, until paid. Owner will pay all amounts in United States dollars to Manager at its headquarters in Milwaukee, Wisconsin in accordance with instructions provided by Manager. In addition to the fees, Owner will pay Manager for any and all applicable taxes, that maybe due in connection with the payment of such fees, including but not limited to sales tax, VAT, or other similar taxes or tariffs. Owner will be responsible for any and all costs associated with special requirements imposed by law or any governmental entity or subdivision, including a change in law.
8. Indemnification.
 - a. In General. Owner and Manager will indemnify and hold harmless each other and their affiliates and their respective officers, directors, employees, agents, successors and assigns, from any and all losses, damages, liabilities, assessments, levies, duties, fines, expenses, judgments, claims, proceedings, suits, actions, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties) (collectively, "Losses"), arising out of or relating to any third party claims arising from the party's performance of this Agreement, but only to the extent of the indemnifying party's negligence or intentional acts.
 - b. Owner's Property. Subject to 7(a) above, Manager will not be liable for and will not bear any risk of claim, liability or obligation for damage to the Owner's property. Owner expressly agrees to assume all risk of damage to Owner's property and waives all rights of subrogation against Manager and any of Manager's contractors.
 - c. Total Liability. Manager and Owner agree that Manager's total legal liability under this Agreement for all claims (regardless of legal theory), demands, liabilities, damages, attorney's fees, costs of any kind, character or description will not exceed a total sum of One Million Dollars (\$1,000,000).

d. Hazardous Materials and Environmental Issues.

- i. 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, Owner will supply Manager with any information in its possession relating to the presence of ACM in areas where Manager undertakes any Services that may result in the disturbance of ACM. It is Manager’s policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Owner will provide such certification for the Facility, or aid Manager in receiving such certification from Facility owner if Owner does not own the Facility, if Manager will undertake Services in the Facility that could disturb ACM. Furthermore, for facilities constructed prior to 1982, if a complete copy of a current, comprehensive ACM survey or assessment does not exist for the area of the Facility where Manager will undertake Services that could disturb ACM, Manager will engage a qualified asbestos inspector to conduct an ACM assessment/ survey of that area of the Facility at Owner’s expense. If either Owner or Manager becomes aware of or suspects the presence of ACM that may be disturbed by Manager’s Services, it will immediately stop the Services in the affected area and notify the other’s contacts. As between Owner and Manager, Owner will 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 Manager continues with its Services, unless Manager had actual knowledge that ACM was present and acted in disregard of that knowledge, in which case (i) Manager will be responsible at its sole expense for remediating areas impacted by the disturbance of the ACM, and (ii) Owner will resume its responsibilities for the ACM after Manager’s remediation has been completed.
- ii. Other Hazardous Material. “Hazardous Materials” means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any local, state or federal law, regulation or ordinance, relating to or addressing public and employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product or polychlorinated biphenyls. “Hazardous Materials” specifically includes mold and lead-based paints and specifically excludes ACM. Manager will have no obligations relating to the identification, abatement, cleanup, control, removal or disposal of mold, regardless of the cause of the mold. Manager will be responsible for removing or disposing of any Hazardous Materials that it uses in providing Services (“Manager Hazardous Materials”) and for the remediation of any areas impacted by the release of Manager Hazardous Materials. For other Hazardous Materials that may be otherwise present at its facilities (“Non-Manager Hazardous Materials”), Owner will supply Manager with any information in its possession relating to the presence of such materials if their presence may affect Manager’s performance of the Services. If either Owner or Manager becomes aware of or suspects the presence of Non-Manager Hazardous Materials that may interfere with Manager’s Services, it will immediately stop the Services in the affected area and notify the other’s contacts. As between Owner and Manager, Owner will be responsible at its sole expense for removing and disposing of Non-Manager Hazardous Materials from its facilities and the remediation of any areas impacted by the release of the Non-Manager Hazardous Materials, unless Manager had actual knowledge that Non-Manager Hazardous Materials were present and acted in disregard of that knowledge, in which case (i) Manager will be responsible at its sole expense for the remediation of any areas impacted by its release of such Hazardous Materials, and (ii) Owner will remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from Manager’s performance of the Services.

- iii. Environmental Indemnity. Notwithstanding any other provision of the Agreement, and to the fullest extent permitted by law, Owner will indemnify and hold harmless Manager and Manager's subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all Losses directly or indirectly relating to or arising from the Owner's use, or the storage, release, discharge, handling or presence of ACM, mold (actual or alleged and regardless of the cause of such condition) or Non-Manager Hazardous Materials on, under or about the facility, or the non-compliance with this subsection titled "Hazardous Materials and Environmental Issues."
 - e. Waiver of Certain Damages. IN NO EVENT, WHETHER IN CONTRACT, TORT OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), WILL A PARTY BE LIABLE FOR INDIRECT OR CONSEQUENTIAL (INCLUDING LOSS OF BUSINESS, LOSS OF PROFITS, AND THE LIKE), EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. The waiver of consequential damages and the limitation of liability set forth above are fundamental elements of the basis for this Agreement between Manager and Owner. Manager would not be able to provide the Services on an economic basis, and would not have entered into this Agreement, without such waiver and limitation.
- 10. Health and Safety of Facility. The Parties will notify each other as promptly as is reasonably possible upon becoming aware of an inspection under, or any alleged violation of the Occupational Safety and Health Act relating in any way to the undertakings of either party under this Agreement. Notwithstanding anything to the contrary within this Agreement, the Parties acknowledge and agree that Owner retains all responsibility for the health and safety of the Facility, and its own employees, agents, contractors, and persons invited into the Facility by the Owner and/or its employees, agents and contractors.
- 11. Fire and Safety Equipment. If this Agreement covers fire safety or security equipment, Owner understands that Manager is not an insurer regarding those services. Owner will not be responsible for any damage or loss that may result from fire safety or security equipment that fails to perform properly or fails to perform.
- 12. Insurance. Manager will obtain and continue in force during the Term all insurance specified below. Before starting the Services, Manager will deposit with Owner certificates evidencing the insurance it is required to provide.
 - a. Manager will provide the following insurance:
 - i. Worker's Compensation and Occupational Disease Disability insurance as required by the laws of the jurisdiction where the work is being performed, or by self-insurance;
 - ii. Employer's liability insurance in the amount of \$100,000 bodily injury for each accident;
 - iii. Comprehensive automobile liability insurance for vehicles furnished by Manager with a combined single limit of \$2,000,000 for each occurrence; and
 - iv. Comprehensive General Liability insurance with a combined single limit of \$5,000,000 for each occurrence/\$5,000,000 aggregate.
 - b. Manager will cause the aforesaid insurance policies, where applicable, to include:

- i. Owner as an additional insured with respect to liability arising out of operations performed for Owner, by or on behalf of Manager, but only to the extent required in this section 8, for damages directly caused by the negligence of Manager;
- ii. language that said insurance will be primary with respect to liability arising out of operations performed for Owner, by or on behalf of Manager, but only to the extent of damages directly caused by the negligence of Manager; and
- iii. Manager will maintain in full force and effect all of the above required insurance policies. Should any of the above described policies be cancelled before the expiration date, notice will be delivered in accordance with policy provisions. .

13. Agreement Term. The initial term of this Agreement will begin on the Effective Date and continue until for __59__ months (the “Initial Term”).

14. Termination.

- a. For Convenience. This Agreement may be terminated by either Party for convenience (i.e., without cause) by providing written notice delivered to the other Party at least one hundred eighty (90) days.
- b. For Cause. Upon the occurrence of any default or breach of this Agreement by either Party that is not cured within thirty (30) days of receipt of written notice, the non-breaching Party may immediately terminate this Agreement.
- c. Transition Assistance. To assist Owner with transitioning the Services to another provider (i) if either Party terminates for convenience, or (ii) at the expiration of this Agreement, upon Owner’s written request which must be provided at least thirty (30) days before the effective date of Termination or the expiration date, Manager will provide the some or all of Services (as requested by Owner) for up to an additional ninety (90) days after such expiration or termination. During this transition period Manager will continue to be compensated in the manner set forth in this Agreement for actual time spent and Services performed. These transition services will include providing Owner and its agents, contractors and consultants as necessary with reasonable access to and use of all systems then being used by Manager to provide the Services. The assistance services described above will include, but are not limited to:
 - i. Notifying all outside vendors of procedures to be followed during the turnover phase;
 - ii. Reviewing all software libraries and operations and maintenance procedures with the new service provider;
 - iii. Delivering documentation relating to the Services;
 - iv. Providing transition training and assistance to new operations and maintenance staff;
 - v. Assisting in the execution of a parallel operation, until the effective date of termination of transition services; and
 - vi. Providing consulting support, on an as-needed basis.

If any transition assistance provided by Manager requires the utilization of additional resources that Manager would not otherwise use in the performance of this Agreement, Owner will pay Manager for such usage at the then-current Agreement prices. If the transition assistance requires Manager to incur expenses in addition to the expenses that Manager would otherwise incur in the performance of the Agreement, the Owner will reimburse Manager for such additional expenses.

- d. Effect of Termination. Upon termination of this Agreement for any reason, Manager and Owner will account to each other for all matters outstanding with respect to this Agreement Manager will deliver to Owner the following:
- i. A final accounting, reflecting the balance of income and expenses and assets and liabilities as of the date of termination to be delivered within thirty (30) days after such termination or withdrawal;
 - ii. Any balance or monies of Owner held by Manager to be delivered upon such termination. Owner will simultaneously deliver to Manager any monies due Manager; and
 - iii. All original records, contracts, leases, receipts for deposits, unpaid bills, warranties, and other papers or documents which pertain to the Facility to be delivered immediately upon termination. Upon termination Owner will assume responsibility for payment of all approved or authorized unpaid bills.
- e. Rights Not Affected. The termination of this Agreement will not affect the rights of either Party with respect to any damages it has suffered as a result of any breach of this Agreement, nor will it affect the rights or obligations of either Party with respect to liability or claims accrued, or arising out of events occurring, prior to the date of termination, all of which will survive such termination.

15. Representations and Warranties.

- a. Mutual Representations and Warranties. Each Party warrants and represents to the other that:
- i. It has all the requisite corporate power and authority to execute and deliver this Agreement and perform its obligations hereunder.
 - ii. Its execution, delivery and performance of this Agreement have been duly authorized by, or are in accordance with, its certificate of incorporation and by-laws; this Agreement has been duly executed and delivered for it by authorized signatories; and, this Agreement constitutes its legal, valid and binding obligation.
 - iii. Its execution, delivery and performance of this Agreement does not and will not result in a breach or violation of, or constitute a default under any law, or any agreement, lease or instrument to which it is a Party or by which it or its properties may be bound or affected

- iv. It has not received any notice, nor to its knowledge is there pending or threatened any notice of any violation of any applicable laws, awards, or orders against it or any of its affiliates which would materially adversely affect its ability to perform hereunder.
- v. It will abide by all applicable laws, regulations, and ordinances, including the US Foreign Corrupt Practices Act and any other anti-corruption laws.

b. Owner Representations and Warranties. Owner warrants and represents to Manager that:

- i. Owner presently intends to continue to use the Facility during the Term in a manner similar to its present use.
- ii. Owner has provided Manager with all records previously requested by Manager, and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be, true and accurate in all material respects.
- iii. Owner will provide a work environment that is not hostile and is free from harassment to Manager's on-site employees and for all other Manager's employees and agents when on-site with Owner.
- iv. Owner will consult with Manager on all material, industrial, insurance, safety, regulatory, or public relations matters and matters where litigation arises or is threatened or there are grounds for litigation arising which are known to the Owner arising out of or in connection with this Agreement as soon as Owner is aware of the same where such matters affect the performance of the Services by Manager.
- v. Owner will cooperate with Manager generally, and in particular, provide Manager in a timely and complete manner with any information, policies and procedures relevant to the performance by Manager of its obligations under this Agreement.
- vi. Owner will at no charge provide Manager, its employees, agents and subcontractors with reasonable access to the Facility throughout the Term for the purposes of fulfilling all of its obligations under this Agreement
- vii. Owner furnish Manager with general offices, work areas, support areas, telephone and data communication equipment, storage facilities, light, identification, parking facilities, cafeterias and rest rooms, heat, air conditioning and other items to enable Manager to provide the Services as further outlined in this Agreement. In addition, Owner will, at its option, provide Manager with access to either personal computers or high speed Internet connections at the Facility. All such equipment will be provided to Manager free of charge, and will be used by Manager solely in connection with the performance of the Services. The items provided by the Owner hereunder will remain the property of Owner.

c. Manager Representations and Warranties. Manager warrants and represents to Owner that:

- i. Manager will perform its obligations under this Agreement in compliance with all laws and in compliance with Owner's policies, provided that such policies have been made known to Manager before commencing the Services under this Agreement.
- ii. Manager will supply sufficient and appropriately qualified and skilled employees and Subcontractors to provide the Services.
- iii. Except as otherwise provided in this Agreement, all Services will be performed in a manner consistent with industry standards.

16. Disputes. The Parties will promptly seek in good faith and in a spirit of cooperation a rapid and equitable solution to any dispute, controversy or claim between them relating to this Agreement.

- a. **Escalation.** The Parties will engage in direct and meaningful negotiations to arrive at such solution, and to provide for the following, each successive step being resorted to by failure of the step before it:
 - i. First, the Parties will engage in good faith negotiations to resolve their differences;
 - ii. Second, the Parties will engage in mediation; and
 - iii. Third, the parties will engage in arbitration.
- b. **Mediation.** If the Parties are unable to resolve their dispute through direct negotiation or have not established a viable bargaining format, they may use a mediator. The applicable rules for mediation will be the Commercial Mediation Rules of the American Arbitration Association, in effect at the time of the dispute.
- c. **Arbitration.** If negotiations or mediation fail to reach an equitable solution to the dispute within forty-five (45) days after commencement, then the dispute, controversy or claim will be settled exclusively by final and binding arbitration, which may be initiated at the request of either Party. The arbitration will be conducted in the English language, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (by whatever name called at the time of arbitration) as amended by this section. In no event will a person serving as a mediator of an issue or set of issues pursuant to the provisions of section 15(b), above be permitted to serve as an arbitrator of the same or similar issues, pursuant to this section 15(c).
- d. **Location of Arbitration/Mediation.** The proceedings will be held at a mutually agreeable location in Milwaukee, Wisconsin, by one or more mediators/arbitrators appointed in accordance with said rules, as the case may be.

- e. Fast Track Arbitration. To avoid expensive and time-consuming litigation, the Parties will “fast track” all arbitration proceedings. The term “fast track” means, at a minimum, that the entire process of arbitration, including issuance of award, will be structured to be completed within ninety (90) days from receipt of notice of demand for arbitration. All procedural disputes relating to the term “fast track” will be resolved by the arbitrator (or majority of arbitrators selected, if more than one), whose decision(s) will be final and binding on the Parties. Failure by the arbitrator(s) to issue an award within the ninety (90) day time period will not deprive the arbitrator(s) of jurisdiction over the dispute.
 - f. Cost of Mediation Arbitration; Attorney Fees. Each Party will bear its own expenses and an equal quota of the expenses of the mediator(s), arbitrator(s) and the fees of the body administering the mediation and/or arbitration.
 - g. Arbitral Award. Any award rendered in an arbitration proceeding will be payable in U.S. Dollars and judgment upon the award may be entered in any court of competent jurisdiction, or application may be made to any such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
 - h. Governing Law. This Agreement will be governed by and construed in accordance with the laws of place of performance of the Agreement. Any provisions of this Agreement which may be prohibited or unenforceable in any jurisdiction will be ineffective to the extent of such prohibition or unenforceability in such jurisdiction only, and without invalidating the remaining provisions hereof in any other jurisdiction.
17. No Waiver; Cumulative Remedies. No course of dealing between Owner and the Manager, nor any failure to exercise, nor any delay in exercising, on the part of any party, any right, power or privilege hereunder will operate as a waiver; nor will any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Each of Owner’s and Manager’s respective rights and remedies with respect to any breach of or default by the other Party, whether established by this Agreement or by law, will be cumulative and may be exercised singularly or concurrently.
18. Notices. All notices and other communications made or required to be given pursuant to this Agreement will be in writing and shall be deemed duly served if and when mailed by certified or registered mail, or delivered by a nationally reputable overnight courier service (a) if to Manager, to Manager at the address indicated below; and (b) if to Owner, to Owner at Owner’s address as set forth below; provided, however, that the party intended to receive such notice may change the address for notices to such party under this Agreement by designating an alternative address in writing:

If to Owner, to:



If to Johnson Controls, to:

Johnson Controls _____

4189 Eagle Hill Dr. Suite 120

High Point NC. 27265 _____

Unless otherwise provided herein, such notice or other communication may be mailed by United States registered or certified mail, return receipt requested, postage prepaid and may be deposited in a United States Post Office or a depository for the receipt of mail regularly maintained by the post office. Such notices, demands, consents and reports may also be delivered by hand, by facsimile (followed by "hard copy" sent within one (1) business day using any other acceptable means set forth herein), by overnight courier service or by any other method or means permitted by law. For purposes of this Agreement, notices will be deemed to have been given upon receipt or attempted (and refused) delivery whether given by personal delivery, facsimile, overnight courier service or the United States mails as provided above.

19. Force Majeure. Neither Party will be responsible to the other for damage, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence, of that Party. Such conditions include, but are not limited to acts of God; acts of government agencies; strikes; labor disputes; fire; explosions or other casualties; thefts; vandalism; civil commotion, riots or war; of unavailability of parts, materials, or supplies. If this Agreement covers fire safety or security equipment, the Owner understands that Manager is not an insurer regarding those Services. Manager will not be responsible for any damage or loss that may result from fire safety or security equipment that fails to perform properly or fails to prevent a casualty loss unless such failure is solely the result of Manager's negligence or intentional acts.

20. Permits, Laws, Regulations and Taxes. Manager will comply with any and all applicable federal, state or local regulatory requirements and to secure such licenses as may be required for its employees and to conduct business in the state, municipality, province, or location. Manager will pay all applicable municipal, state, county or local sales, use, gross receipts or other related taxes arising out of, or relating to, the performance of this Agreement by Manager. Owner will reimburse Manager for the amount of any such tax(es) paid.

21. Publicity. Manager or Owner may issue press releases, publicity statements or promotional materials regarding this appointment or this Agreement. Manager may not use any of Owner's trademarks, service marks, other proprietary marks of Owner hereunder in any advertising press releases, publicity matters or other promotional materials without Owner's prior written permission, which will not be unreasonably withheld or delayed; provided, however, that Manager will be permitted to identify Owner as a client of Manager and describe the nature of the Services provided to Owner without Owner's permission, so long as the material published does not contain words of endorsement -- expressly or implied -- by Owner of Manager's services.

22. Confidentiality. The Parties understand and acknowledge that the terms, provisions, conditions and agreements contained in this Agreement are strictly confidential as between Owner and Manager. Owner and Manager will keep in strictest confidence and not use for itself or disclose to any third party any Confidential Information disclosed by the other Party during the course of their dealings with each other, except as hereinafter provided. Such Confidential Information may be disclosed only to such of the employees, agents or contractors of the recipient who has a need to know such information for the purpose for which it was disclosed and who owe their employer or principal a legally enforceable duty of confidentiality at least as stringent as the duty Owner and Manager owe one another under this Agreement. The Parties agree to protect the others' Confidential Information using the same degree of care with which they protect their own Confidential Information, but in no event less than reasonable care. The Parties recognize as the exclusive property of the other all Confidential Information disclosed to it by the other Party. The Parties will advise each other orally or in writing whether any information being disclosed to it is proprietary and/or confidential to the disclosing Party, and to the extent reasonably practicable, the disclosing Party shall mark all Confidential Information as "Confidential." To the extent reasonably practicable, information that is disclosed orally or visually will be identified as "confidential" or "proprietary" at the time of disclosure, and its confidential or proprietary nature shall be confirmed in writing within twenty (20) days of disclosure. The failure of either Party to mark Confidential Information as "Confidential" or provide the written confirmation shall in no way negate the other Party's obligations with respect to such Confidential Information. The obligations in this section will not in any way restrict or impair the right of either Party to disclose and use the following:

- a. Information which at the time of disclosure is published or is otherwise in the public domain;
- b. Information which after disclosure becomes part of the public domain otherwise than through a breach of this Agreement by the recipient;
- c. Information which was known to the recipient prior to receipt from the disclosing Party, provided such prior knowledge can be adequately substantiated by documentary evidence antedating the disclosure by the other Party;
- d. Information which becomes known to the receiving Party from a source which legally derives such information independently of the disclosing Party under this Agreement; or
- e. Information which is independently developed by the receiving party and the receiving party can so prove.

Each Party may disclose this Agreement to consultants, including attorneys, for internal purposes in connection with analyzing, amending, renewing, enforcing or terminating this Agreement, or in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof, required by law, or necessary to establish rights hereunder. Owner may not disclose the Agreement to any consultant who is a current customer of Manager, a prospective customer of Manager or a competitor with Manager, without Manager's prior written

consent, which can be withheld in Manager's sole and absolute discretion. Upon the request of the disclosing Party, the recipient will promptly deliver to the disclosing Party any and all documents, in whatever form, which contain or relate to the disclosing Party's Confidential Information, whether or not made or compiled by the recipient or furnished to it by the disclosing Party. Counsel for the receiving Party may retain one copy for archive purposes. No right or license whatsoever, either expressed or implied, is granted by either Party to the other pursuant to this Agreement under any patent, patent application, copyright, trademark or other proprietary right, now or hereafter owned or controlled by either party. Any inventions, creations, or other intellectual property made jointly by the Parties, or their employees, will be jointly owned by the Parties. Unless otherwise agreed to in writing, neither Party will have any obligations of secrecy under this Agreement after three (3) years from the end of the Term or the termination of this Agreement, whichever is later.

23. Software and Data.

- a. Software Manufactured By Third Parties. The Parties understand that software needed to provide the Services ("Software") may be obtained from third parties. Owner, as an end user of this product will be required to sign an End User License Agreement provided by the third party and abide by the terms of that Agreement.
- b. Software and Data Provided By Manager. Title to the original of any item of proprietary (to Manager) Software and/or data delivered under this Agreement and any copies made by Owner in whole or in part are, and will at all times remain, in Manager. If applicable, Owner acknowledges Manager's claim that the Software and/or data contains valuable proprietary information and trade secrets and that unauthorized dissemination of the Software and/or data (including without limitation disassembly or reverse engineering) could cause irreparable harm, and Owner will not to disclose, transfer, provide or otherwise make available in any form the Software and/or data (including documentation and materials), the information contained in the Software, or any portion of the information, to any person other than Owner's employees without the prior written consent of Manager. Owner will use the Software and/or data, the information contained therein, or any portion thereof only as permitted in the Agreement. Owner will take appropriate action, by instruction, agreement or otherwise, with any persons permitted access to the Software and/or data so as to enable it to hold the Software and/or data in confidence and otherwise satisfy its obligations under the Agreement. Owner may not to make copies of the Software and/or data, except as necessary to accommodate the use required by the Agreement. Except as specifically set forth herein, all copies of the Software and/or data made by Owner, and all rights in patents, copyrights, trade secrets, and other intellectual property rights of Manager therein, are property of Manager.
- c. Data/Databases. It is understood that the Manager is in possession, and brings to the performance of Services for Owner, certain and specific knowledge and expertise relating to or arising out of its

operations and maintenance experience (“Library Database”). The Library Database is continually refined and updated during the course of the Manager performing Services. Both Manager and Owner acknowledge that this Library Database will expand as a result of this Agreement. It is further understood that the Manager will use this Library Database to develop site-specific operating procedures and data (“Site-Specific Operational Database”). As a condition of entering into this Agreement, Owner agrees to let Manager input such data pertaining to the Facility including, without limitation, management, cost, technical operations and maintenance, and real and personal property-related into both the Manager’s Library Database and the Site-Specific Operational Database. It is further agreed and is a condition of entering into this Agreement, that the Manager will utilize data from

Manager’s Library Database in the creation of the Site-Specific Operational Database. Manager will retain ownership of the Library Database, as amended from time to time, and Owner assigns all rights it might have in the data contained within the Library Database to Manager. In consideration of the foregoing the Owner will have the right to use the Site-Specific Operational Database solely for the Facility, and for the duration of this Agreement. If this Agreement is terminated, for whatever reason or by whatever means, Owner and Manager will cooperate to provide Owner with a copy of the data input by Manager during the Term of this Agreement.

- d. Reports and documents. All reports or documents, including drawings, reports and related documentation (collectively the “Information”) specifically prepared for Owner by Manager during the course of this Agreement will become the property of Owner, provided however that Owner will have no right, title or interest in any of the underlying data, processes, methodologies or other intellectual property (in its broadest sense) used by Manager in compiling the Information. The parties acknowledge and recognize that Manager, acting (by investment, training, or employing individuals possessed of special skills, or otherwise) on its own behalf, and in the course of ongoing business relationships with many clients, has developed certain standardized processes, formats, templates, procedures, and databases to assist in conducting the services described in this Agreement. Those standardized processes, formats, templates, procedures and databases will remain the property of Manager notwithstanding anything to the contrary contained in this Agreement.

24. Miscellaneous.

- a. Invalidity of Provisions. If any provisions of this Agreement are held to be contrary to law or invalid or unenforceable in any respect and any jurisdiction, or as to any one or more periods of time, geographical areas or business activities, the remaining provisions will not be affected but will remain in full force and effect as to the other and remaining provisions, and any such invalid or unenforceable provision will be deemed without further action on the part of the parties hereto, modified, amended, limited, and reformed to the extent necessary to render the same valid and enforceable.
- b. No Third Party Beneficiaries. Nothing contained in this Agreement will create a contractual relationship with or cause of action in favor of a third party against either the Owner or Manager. The Services under this Agreement are being performed solely for the Owner’s benefit, and no other party or entity will have any claim against Manager because of this Agreement or the performance or non-performance of the Services hereunder. Owner will indemnify, defend and hold harmless Manager from and against any losses, costs, claims, causes of action or liability from or alleged by



third parties, as a result of or relating to this Agreement or the Services provided under this Agreement.

- c. Headings. The headings contained in this Agreement are for convenience of reference only and are not to be used in construing the provisions that follow them.
- d. Non-Discrimination and Non-Segregation. Neither Party will permit any discrimination against or segregation of any person or group of persons in connection with the performance of this Agreement on account of sex, marital status, race, age, religion, color, creed, national origin, ancestry or disability, nor will either Party, or any person claiming under or through either Party, establish or permit any such practice or practices of discrimination or segregation in connection with the performance of any of the Services or other obligations under this Agreement.
- e. Estoppel Letters. Upon request, Owner and Manager will provide to the other, upon five (5) days' written notice, a written statement certifying that this Agreement is in full force and effect, that the Parties are current in their respective obligations under this Agreement and that the other Party is not in default under any of the provisions of this Agreement, except that, if the Party being requested to provide such a statement does not believe the foregoing to be true, it will state with particularity any matters which would render the foregoing representations untrue.
- f. Further Assurances. Owner and the Manager each will act in good faith to do all acts, furnish to the other all documents, and do or cause to be done all such other things as any Party may reasonably request from the other Party from time to time in order to give full effect to this Agreement and to secure each Party's respective rights.
- g. Cooperation. Should any claim, demand, suit or any other legal proceedings be made or instituted by any person against one Party which arises out of any of the matters relating to this Agreement or out of any matters relating to another Party's obligations to such Party or to third parties, such other Party will give such Party any pertinent information in the defense or other disposition thereof.
- h. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than those to which it has been held invalid or unenforceable, will not be affected thereby, but will be valid and enforceable to the fullest extent permitted by law.
- i. Assignment. Neither Party will assign, sublet, sell, or transfer its interest in this Agreement without the written consent of the other. Provided, however, that Manager may assign this agreement without Owner's written consent to any wholly-owned or controlled affiliate or subsidiary.
- j. Entire Agreement. This Agreement represents the entire understanding between the Parties and supersedes any prior oral understandings, written agreements, proposals, or other communications between the two Parties. Any modification or amendment hereof must be made in writing and executed by both Parties



AGREED:

JOHNSON CONTROLS, INC.

By:

Title:

[OWNER NAME]

By:

Title:

Attachment A: Scope of Services

The Services will consist of the following:

JCI will provide the following personnel:

- One Johnson Controls Engineer
- Back-Up Personnel
- \$5000 annually for JCI FACTORY replacement parts for BMS and Fire Alarm Systems.

Manager will conform to all of the Johnson Controls standards, processes and procedures including but not limited to payroll, safety, annual reviews, and employee conduct and business ethics.

The labor provided as part of this Agreement is to be performed during normal business hours that are approved by both Manager and Owner. These hours will not exceed a normal 40 hour work week unless otherwise approved by and paid for by The City of Greensboro or unless otherwise stated within this Agreement. Manager's employees at the Facility will be afforded all of the rights and privileges accrued and provided by Johnson Controls Benefits Plan inclusive of JCI vacations, sick days, holidays and personal time.

The Owner will provide all material, supplies, office space, furniture and equipment necessary for the functionality of these positions.