

EXHIBIT**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR
PURCHASE OF HVAC EQUIPMENT
AND INSTALLATION SERVICES WITH
JOHNSON CONTROLS INC.**

THE STATE OF TEXAS**§****CITY OF ROUND ROCK****§****KNOW ALL BY THESE PRESENTS:****§****COUNTY OF WILLIAMSON****§****COUNTY OF TRAVIS****§****§**

THAT THIS AGREEMENT for the purchase of HVAC equipment and installation services, and for related goods and services (referred to herein as the "Agreement"), is made and entered into on this the _____ day of the month of _____, 2021 by and between the CITY OF ROUND ROCK, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and JOHNSON CONTROLS, INC., whose offices are located at 410 Center Ridge Drive, Suite 400, Austin, Texas 78753 (referred to herein as "Vendor").

RECITALS:

WHEREAS, City desires to purchase certain purchase of HVAC equipment and installation services; and

WHEREAS, City is a member of the Sourcewell Cooperative Purchasing Program ("Sourcewell") and Vendor is an approved Sourcewell vendor through Sourcewell Contract #1030817-JHN; and

WHEREAS, City desires to purchase certain goods and services from Vendor through Buy Board as set forth herein; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified services and Vendor is obligated to provide said services. The Agreement includes Vendor's Proposal dated May 26, 2021 and the Limited Rider (attached as Exhibit "A").

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods** mean the specified supplies, materials, commodities, or equipment.

F. **Services** mean work performed to meet a demand or effort by Vendor to comply with promised delivery dates, specifications, and technical assistance specified.

2.01 EFFECTIVE DATE AND TERM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

B. This Agreement shall terminate upon the successful completion of services, which shall be no later than May 8, 2022.

C. City reserves the right to review the relationship with Vendor at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

The goods and services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the Contract Documents. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference to the terms and conditions set forth in pages one (1) through ten (10) of this Agreement.

4.01 ITEMS AWARDED

Vendor shall satisfactorily deliver the goods and services requested by the City at the pricing set forth in Exhibit "A," attached hereto and incorporated herein for all purposes by reference.

This Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions. A change in the Scope of Services must be negotiated and agreed to in all relevant details, and must be embodied in a valid written Supplemental Agreement executed by both parties.

5.01 CONTRACT AMOUNT

In consideration for the deliverables and services related to the deliverables, the City agrees to pay Vendor an amount not-to-exceed **Eight Hundred Seventy-Four Thousand Two Hundred Seventy-Three and 13/100 Dollars (\$874,273.13)** for the goods and services set forth in Exhibit "A."

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may affect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which

City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor may charge interest on an overdue payment at the “rate in effect” on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

9.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor’s charges.

11.01 ORDERS PLACED WITH ALTERNATE SERVICES PROVIDERS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

12.01 CITY’S REPRESENTATIVE

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Dustin Harrison
Superintendent, Building Construction
General Services Department
212 Commerce Cove
Round Rock, Texas 78664
(512) 218-7009

13.01 INSURANCE

Vendor shall meet all City of Round Rock Insurance Requirements as set forth at:
<https://www.roundrocktexas.gov/wp-content/uploads/2020/07/Insurance-Requirements-1.pdf>

14.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- C. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 WAIVER OF CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY

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. In no event shall the Vendor be liable for damages in excess of the amount of this Agreement.

19.01 ASBESTOS CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS

A. Asbestos-Containing Materials: Neither party desires or is licensed to undertake direct obligation relating to the identification, abatement, clean-up, control, removal or disposal of asbestos-containing materials ("ACM"). Consistent with applicable laws, City shall supply Vendor with any information in its possession relating to the presence of ACM in areas where Vendor undertakes any work or services that may result in the disturbance of ACM. If either City or Vendor becomes aware of or suspects the presence of ACM that may be disturbed by Vendor's work or services, it shall immediately stop the work or services in the affected area and

notify the other's contacts. As between City and Vendor, City shall be responsible at its sole expense for addressing the potential presence of ACM in conformance with all applicable laws and addressing the impact of its disturbance before Vendor continues with its work or services, unless Vendor had actual knowledge that ACM was present and acted with intentional disregard of that knowledge, in which case (i) Vendor shall be responsible at its sole expense for remediating areas impacted by the disturbance of the ACM, and (ii) City shall resume its responsibilities for the ACM after Vendor's remediation has been completed.

B. Other Hazardous Materials: "Hazardous Materials" means any material or substance that, whether by its nature of use, is now or hereafter defined or regulated as 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 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. Vendor shall have no obligations relating to the identification, abatement, clean-up, control, removal or disposal of mold, regardless of the cause of the mold. Vendor shall be responsible for removing or disposing any Hazardous Materials that it uses in providing work or services ("Vendor Hazardous Materials") and for the remediation of any areas impacted by the release of Vendor Hazardous Materials. For other Hazardous Materials that may be otherwise present at its facilities ("Non-Vendor Hazardous Materials"), City shall supply Vendor with any information in its possession relating to the presence of Non-Vendor Hazardous Materials that may interfere with Vendor's work or services, it shall immediately stop the work or services in the affected area and notify the other's contacts. As between City and Vendor, City shall be responsible at its sole expense for removing and disposing of Non-Vendor Hazardous Materials from its facilities and the remediation of any areas impacted by the release of the Non-Vendor Hazardous Materials, unless Vendor had actual knowledge that Non-Vendor Hazardous Materials were present and acted with intentional disregard of that knowledge, in which case (i) Vendor shall be responsible at its sole expense for the remediation of any areas impact by its release of such Hazardous Materials, and (ii) City shall remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from Vendor's performance of the work or services.

C. Environmental Indemnity: Notwithstanding any other provisions of the Agreement, and to the fullest extent permitted by law, City shall indemnify and hold harmless Vendor and its subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, 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 the City's use, of the storage, release, discharge, handling or presence of ACM, mold (actual or alleged and regardless of the cause of such condition) or Non-Vendor Hazardous Materials on, under or about the facility, or in the noncompliance with this section titled, "Asbestos Containing-Materials and Other Hazardous Materials."

20.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of a contract. The signatory executing this Agreement on behalf of Vendor verifies that Vendor does not boycott Israel and will not boycott Israel during the term of this Agreement.

21.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

22.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

Johnson Controls Inc.
410 Center Ridge Drive
Suite 400
Austin, Texas 78753

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephan L. Sheets, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

23.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

24.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

25.01 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

26.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

27.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this

Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Johnson Controls Inc.

By: Robert Truss
Printed Name: Rob Truss
Title: Market Director
Date Signed: 07/02/2021

Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Exhibit "A"



Proposal

Austin Waco TX Common Branch 0N88
401 Center Ridge Dr, STE 400 AUSTIN, TX 78753
Phone: 512-433-9149
Fax: 512-973-3555

TO: City of Round Rock
221 East Main Street
Round Rock, TX 78664

Date: May 26, 2021
Project: City of Round Rock Police
Department - RTU Replacement
Sourcewell 030817-JHN
Contract #:

Summary:

Johnson Controls Equipment (Packaged Rooftop Units & Mixed Air Units) – This quote includes an option for our 49 RTUs and 3 MAUs based on Record Set M1.2. Each unit's performance and accessories are included in the submittals provided with the quotation. All units have been provided with a 5-year parts and labor warranty. These units will be provided in 1 phase per request by the City of Round Rock.

Johnson Controls Metasys Controls System – This quote includes our building automation flag ship system, Metasys BACnet protocol controls system. The intent of this system is to control/monitor the equipment listed in the below description. These units will be provided in 1 phase per request by the City of Round Rock.

Estimated Timeframe:

Equipment Install – Approximately 2 weeks per phase once equipment is delivered (commissioning time may cause time to vary)

Controls Install – Approximately 4 weeks per phase (run in conjunction with equipment install)

Add - Electrical Installation Includes All New Disconnects & Whips

Add – 110-Volt Service Plugs with conduit

Scope:

- Provide Labor and Material to install conduit & wire that feeds the new roof top packaged A/C units
- Extend wire where required
- Extend conduit where required
- Provide & install Fused N3R service disconnects for all new packaged roof top units.
- Provide 110-volt Service Plugs
- Replace the brittle conduit on the GCFI Service Plugs

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Exclusion & Responsibilities:

- Any additional repairs, maintenance, installations not listed in the scope or engineered plans & specifications are excluded unless another proposal is requested.
- Roofing is excluded
- Structural is excluded
- Engineering is excluded
- Carpentry, domestic plumbing is excluded
- Any Electrical upgrades at main panels or breakers are excluded
- Any Building cosmetics is excluded
- Overtime is excluded
- DDC Controls operational repair, just disconnect and reconnect.

PRICING SUMMARY:

The total project is: **\$874,273.13** +plus tax if applicable. Pricing good for 30-days from the above date and is based on normal working hours Monday thru Friday from 8am to 5pm. If you have any questions regarding this proposal please contact me at (956) 535-2718. Thank you for the opportunity to quote on this valued inquiry and your interest in Johnson Controls.

JCI Rooftop Units and Mixed Air Units Description:

- Provide and install below Rooftop units:
 - (4) - 3 ton units
 - (7) - 4 ton units
 - (12) - 5 ton units
 - (3) - 6 ton units
 - (2) - 6.5 ton units
 - (12) - 7.5 ton units
 - (2) - 8.5 ton units
 - (2) - 10 ton units
 - (1) - 12.5 ton units
 - (2) - 15 ton units
 - (1) - 17.5 ton units
 - (1) - 20 ton units
- Provide and install below MAUs:
 - (3) - Model Series 240 units
- Provide and install roof curbs for all units
- Provide and install hail guards for all units
- Metasys BacNet communications card included
- Phase monitors included
- Motorized OA dampers included (where applicable)

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- Electric heat included (where applicable)
- Start-up of units are included
- Commissioning of units are included
- All units provided with 5-year warranties
- Provide crane suitable for this project
- Provide electrical wiring suitable for this project
- Provide insulation suitable for this project
- Provide/install piping suitable for this project

CLARIFICATIONS & EXCLUSIONS:

- Overtime labor has been included to meet estimated timeframe
- Performance bonding has been included where necessary
- Any/All fire alarm scope is not included in this quote

JCI Metasys Controls System Description:

- (1) Metasys Network Architecture:
- Furnish and install controller SNE1100 with enclosure and power supply
The Metasys SNE Series network engines are a new family of network engines. Network engines are Ethernet-based, supervisory engines that connect BAS networks to IP networks. The SNE network engines succeed the Network Automation Engine (NAE) Series of network engines to further the expansion and enhancement of Metasys supervisory control capabilities. The SNE Series network engines perform a key role in the Metasys system architecture. They provide network management and system-wide control coordination over one or more networks of equipment controllers.
- (2) Rooftop Units (RTU Type 14):
- Units will come with the suitable BacNet Cards, Johnson Controls will integrate to units
- Furnish and install zone temperature sensors
- Furnish and install necessary sensors, relays and interlock wiring to achieve sequences
- (9) Rooftop Units (RTU Types 1, 3 and 9):
- Units will come with the suitable BacNet Cards, Johnson Controls will integrate to units
- Furnish and install supply air temperature sensor
- Furnish and install damper actuator
- Furnish and install zone CO2 sensor
- Furnish New Low Voltage Circuit Wiring for Fire Alarm Control Module
- Furnish and install necessary sensors, relays and interlock wiring to achieve sequences
- (22) Rooftop Units (RTU Types 4, 5, 7, 10 and 12):
- Units will come with the suitable BacNet Cards, Johnson Controls will integrate to units

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- Furnish and install supply air temperature sensor
- Furnish and install damper actuator
- Furnish New Low Voltage Circuit Wiring for Fire Alarm Control Module
- Furnish and install necessary sensors, relays and interlock wiring to achieve sequences
- (16) Rooftop Units (RTU Types 2, 6, 8, 11 and 13):
- Units will come with the suitable BacNet Cards, JCI will integrate to units
- Furnish and install necessary sensors, relays and interlock wiring to achieve sequences
- (4) Circulating Fan (CF-1F thru CF-4F):
- Furnish and install start/stop, status relays for circulating fans*

*Wired to nearest controller

- (1) Gas-Fired Unit Heater (UH-1E, 2E, 1F, 2F):
- Re-utilize existing manufacturer provided thermostat
- Miscellaneous Monitoring
- Furnish and install zone humidity sensors*

*Wired to nearest controller

CLARIFICATIONS:

- Includes Johnson Controls Metasys® controllers.
- JCI has provided an electrical contractor to complete all 120V and higher wiring associated to this quote.
- Includes project management, engineering, and programming/commissioning.
- This proposal shall be included within any contract terms and conditions.
- All wiring will be in EMT conduit for interior exposed locations and in plenum rated cable where applicable by code.

EXCLUSIONS:

- Any and all controls for exhaust fans
- Furnishing of any control damper unless noted in scope above.
- Any electric meter, water meter and gas meter.
- Furnishing, installation and wiring of VFDs.
- Furnishing, installation and wiring of smoke detectors, smoke dampers, combination fire/smoke dampers and fire dampers and associated actuators and wiring unless noted in scope above.
- Fire sequencing, smoke sequencing, etc.
- Installation of dampers, Airflow measuring stations, valves, immersion wells, pressure taps or flow meters as listed in the above scope of work.
- After hour, weekend or holiday work
- Third Party Commissioning excluded

3RD Party Test and Balance Description:

- Profile RTU's
 - o Set total airflow by duct traverse (balancing air devices **NOT** included)
 - o Name plate data
 - o Motor volts, Amps and Fan RPM
 - o Measure and record temperature differentials
 - o Set Outside Air volume to design

- Profile MAU's
 - o Set total airflow by duct traverse (balancing air devices **NOT** included)
 - o Name plate data
 - o Motor volts, Amps and Fan RPM
 - o Measure and record temperature differentials

 - o Set Outside Air volume to design

CLARIFICATIONS & EXCLUSIONS:

- Mechanical equipment repairs (if required) and additional site visits not included in this scope.
- Harmonic Balance of rotating equipment not included.
- All work to be performed during normal working hours.
- New sheaves, belts, & pulleys parts and labor not included.
- Troubleshooting or profiling of any equipment beyond this scope not included.
- Sound and Vibration testing not included.

Exhibit "A"

JCI Controls, Inc.

Project: City of Round Rock Police Department - RTU Replacement
Reference Number:

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

This proposal is valid for 30-days

City of Round Rock

Johnson Controls, Inc.

Name: _____

Title: _____

Date: _____

PO: _____

Name: Lonnie Cavazos _____

Title: Senior Account Executive _____

Date: 5-26-2021 _____

_____ 

Exhibit "A"

TERMS AND CONDITIONS

By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions:

1. **SCOPE OF WORK.** This proposal is based upon the use of straight time labor only. Plastering, patching and painting are excluded. "In-line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Johnson Controls, Inc. (hereinafter referred to as JCI), shall be distributed and installed by others under JCI's supervision but at no additional cost to JCI. Purchaser agrees to provide JCI with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. JCI agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge JCI for any costs or expenses without JCI's written consent unless specifically noted in the statement of the scope of work or services undertaken by JCI under this agreement, JCI's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment Hazards or dangerous substances, to include but not be limited to asbestos or PCSs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by JCI shall not operate to compel JCI to perform any work relating to Hazards without JCI's express written consent.
2. **INVOICING & PAYMENTS.** JCI may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Ten percent (10%) of the contract price is for engineering, drafting and other mobilization costs incurred prior to installation. This 10% shall be included in JCI's initial invoice. Purchaser agrees to pay JCI the amount invoiced upon receipt of the invoice. Waivers of lien will be furnished upon request as the work progresses to the extent payments are received. If JCI's invoice is not paid within 30 days of its issuance, it is delinquent.
3. **MATERIALS.** If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of JCI, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, JCI shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefore.
4. **WARRANTY.** JCI warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of ninety (90) days from delivery of said equipment, or if installed by JCI, for a period of ninety (90) days from installation. JCI warrants that for equipment furnished and/or installed but not manufactured by JCI, JCI will extend the same warranty terms and conditions which JCI receives from the manufacturer of said equipment. For equipment installed by JCI, if Purchaser provides written notice to JCI of any such defect within thirty (30) days after the appearance or discovery of such defect, JCI shall, at its option, repair or replace the defective equipment. For equipment not installed by JCI, if Purchaser returns the defective equipment to JCI within thirty (30) days after appearance or discovery of such defect, JCI shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for equipment not installed by JCI shall be borne by Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE
5. **LIABILITY.** JCI shall not be liable for any special, indirect or consequential damages arising in any manner from the equipment or material furnished or the work performed pursuant to this agreement.
6. **TAXES.** The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. In addition to the stated price, purchaser shall pay all taxes not legally required to be paid by JCI or, alternatively, shall provide JCI with acceptable tax exemption certificates. JCI shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work.
7. **DELAYS.** JCI shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond JCI's control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner or other Contractors or delays caused by suppliers or subcontractors of JCI, etc.
8. **SCHEDULE.** JCI and Purchaser shall mutually agree upon a schedule for completion of the work. In the event Purchaser desires to change or accelerate the schedule or the schedule is otherwise accelerated, delayed, or impacted for reasons beyond the control of JCI, JCI shall be entitled to a change order equitably adjusting the compensation of JCI to account for the increased costs associated with such schedule changes.
9. **DISPUTES.** All disputes involving more than \$15,000 shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall recover all legal costs and attorney's fees incurred as a result. Nothing here shall limit any rights under construction lien laws.
10. **INSURANCE.** Insurance coverage in excess of JCI's standard limits will be furnished when requested and required. No credit will be given or premium paid by JCI for insurance afforded by others.

Exhibit "A"

11. INDEMNITY. The Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorneys' fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part, by the negligent act or omission of the Indemnifying Party.
12. OCCUPATIONAL SAFETY AND HEALTH. The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project or project site.
13. LEGAL FEES. Purchaser agrees to pay and reimburse JCI for any and all reasonable legal fees which are incurred by JCI in the collection of amounts due and payable under this Agreement.
14. ENTIRE AGREEMENT. This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
15. CHANGES. No change or modification of any of the terms and conditions stated herein shall be binding upon Johnson unless accepted by Johnson in writing.



Exhibit "A"

Johnson Controls Rider to Agreement

This Rider is made as of **July 22, 2021** by and between Johnson Controls, Inc. ("Contractor") and City of Round Rock ("Customer") and amends the Agreement for HVAC Equipment and Installation Services, dated July 22, 2021 relating to installation work at the City of Round Rock, Texas (the "Agreement"). This Rider is effective as of the date of last signature below. In the event of a conflict between the provisions of this Rider and the Agreement, the provisions of this Rider shall prevail. To the extent any provisions of this Rider are the same or similar in any respect to any provisions of the Agreement, the same or similar provision in the Agreement is deleted and replaced with the provision in this Rider.

1. INDEMNITY.

- A. TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE, AND EXCEPT AS SET OUT IN SUBPARAGRAPH (B) BELOW, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CUSTOMER, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES (COLLECTIVELY, "CLAIMS"), RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE, ARISING OUT OF CONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE PROPORTIONATE EXTENT CAUSED BY THE NEGLIGENCE OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE.
- B. NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES, FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS.

City of Round Rock ("Customer")

By: _____

Title: _____

Johnson Controls, Inc. ("Contractor")

By:  _____

Title: Senior Account Executive _____