

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“**Agreement**”) is made and entered into as of the date stated on the City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (the “**City**”), and **JOHNSON CONTROLS, INC.**, a corporation organized under the laws of Wisconsin authorized to do business in the State of Colorado (“**Contractor**”) (collectively the “**Parties**”).

WITNESSETH:

WHEREAS, the City owns, operates, and maintains Denver International Airport (“**DEN**”); and

WHEREAS, the City desires to obtain professional Data Center Maintenance services; and

WHEREAS, Contractor is qualified, willing, and able to perform the services, as set forth in this Agreement in a timely, efficient, and economical manner; and

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the Parties agree as follows:

ARTICLE I. LINE OF AUTHORITY

The Chief Executive Officer of the Department of Aviation (the “**CEO**”), his/her designee or successor in function, authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to DEN Business Technologies. The relevant Senior Vice President (the “**SVP**”), or his/her designee (the “**Director**”), will designate a Project Manager to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Contractor hereunder shall be processed in accordance with the Project Manager directions.

ARTICLE II. SCOPE OF WORK AND CONTRACTOR RESPONSIBILITIES

A. Scope of Services. Contractor shall provide professional services and provide deliverables for the City as designated by the CEO, and/or her designee, from time to time and as described in the attached *Exhibit A* (“**Scope of Work**”) and in accordance with Task Orders, schedules and budgets set by the City. The City may, through a Task Order and without requiring amendment to this Agreement, make minor changes, additions, or deletions to the Scope of Work without change to the Maximum Contract Amount.

B. Standard of Performance. Contractor shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

C. Time is of the Essence. Contractor acknowledges that time is of the essence in its performance of all work and obligations under this Agreement. Contractor shall perform all work under this Agreement in a timely and diligent manner.

D. Subcontractors.

1. In order to retain, hire, and/or contract with an outside subcontractor for work under this Agreement, Contractor must obtain the prior written consent of the CEO or the CEO's designee. Contractor shall request the CEO's approval in writing and shall include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by the City.

2. The CEO shall have the right to reject any proposed outside subcontractor deemed by the CEO to be unqualified or unsuitable for any reason to perform the proposed services. The CEO shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

3. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of this Agreement and/or the subcontract.

4. Contractor is subject to Denver Revised Municipal Code ("**D.R.M.C.**") § 20-112, wherein Contractor shall pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

5. This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City's approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City's approval of a subcontractor does not relieve Contractor of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

E. Personnel Assignments.

1. Contractor or its subcontractor(s) shall assign all key personnel identified in this Agreement, including Task Order(s) to perform work under this Agreement ("**Key Personnel**"). Key Personnel shall perform work under this Agreement, unless otherwise approved in writing by the SVP or his/her authorized representative.

2. It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Contractor and its subcontractor(s) shall retain Key Personnel for the entire Term of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

3. If, during the Term of this Agreement, the Project Manager determines that the performance of any Key Personnel or other personnel, whether of Contractor or its subcontractor(s), is not acceptable or that any Key Personnel is no longer needed for performance of any Task Order, the Project Manager shall notify Contractor and may give Contractor notice of the period of time which the Project Manager considers reasonable to correct such performance or remove the Key Personnel, as applicable.

4. If Contractor fails to correct such performance, then the City may revoke its approval of the Key Personnel or other personnel in question and notify Contractor that such Key Personnel or other personnel will not be retained on this Project. Within ten (10) days of receiving this notice, Contractor shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by the Project Manager. Contractor's failure to obtain the Project Manager's approval shall be grounds for Termination for Cause in accordance with Article IV, Section C.3.

ARTICLE III. OWNERSHIP AND DELIVERABLES

Upon payment to Contractor, all records, data, deliverables, and any other work product prepared by Contractor or any custom development work performed by Contractor for the purpose of performing this Agreement on or before the day of payment shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Contractor and the City, Contractor shall provide the City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Contractor or otherwise saved or maintained by Contractor as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Parties. Contractor also agrees to allow the City to review any of the procedures Contractor uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this Agreement. Upon written request from the City, Contractor shall deliver any information requested pursuant to this Article within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

ARTICLE IV. TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence on the Effective Date and shall expire three (3) years from the Effective Date, unless terminated in accordance with the terms stated herein (the "**Expiration Date**").

B. If the Term expires prior to Contractor completing the work under this Agreement, subject to the prior written approval of the CEO or his/her authorized representative, this Agreement shall remain in full force and effect until the completion of any services commenced prior to the Expiration Date. Contractor has no right to compensation for services performed after the Expiration Date without such express approval from the CEO or his/her authorized representative.

C. Suspension and Termination.

1. Suspension. The City may suspend performance of this Agreement at any time with or without cause. Upon receipt of notice from the Director, Contractor shall stop work as directed in the notice and, as directed in the notice, shall submit an invoice for any work performed but not yet billed. Any milestones or other deadlines shall be extended by the period of suspension unless otherwise agreed to by the City and Contractor. The Expiration Date shall not be extended as a result of a suspension.

2. Termination for Convenience. The City may terminate this Agreement at any time without cause upon written notice to Contractor from the Director.

3. Termination for Cause. In the event Contractor fails to perform any provision of this Agreement, the City may either:

a. Terminate this Agreement for cause with ten (10) days prior written notice to Contractor; or

b. Provide Contractor with written notice of the breach and allow Contractor an Opportunity to Cure.

4. Opportunity to Cure. Upon receiving the City's notice of breach pursuant to Section C.3.b of this Article, Contractor shall have five (5) days to commence remedying its defective performance. If Contractor diligently cures its defective performance to the City's satisfaction within a reasonable time as determined by the City, then this Agreement shall not terminate and shall remain in full force and effect. If Contractor fails to cure the breach to the City's satisfaction, then the City may terminate this Agreement pursuant to Article IV, Section C.3.a.

5. Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement is suspended or terminated, the City shall pay Contractor the reasonable cost of only those services performed to the satisfaction of the CEO or his/her authorized representative prior to the notice of suspension or termination. Contractor shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Contractor has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the of termination process or as provided in Section 6 below.

6. Reimbursement for Cost of Orderly Termination. In the event of Termination for Convenience of this Agreement pursuant to Article IV, Section C.2., Contractor may request reimbursement from the City of the reasonable costs of orderly termination associated with the Termination for Convenience as part of its submittal of costs pursuant to Section C.5. In no event shall the total sums paid by the City pursuant to this Agreement, including Sections C.5 and C.6, exceed the Maximum Contract Amount.

7. No Claims. Upon termination of this Agreement, Contractor shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Contractor shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

D. Remedies. In the event Contractor performs services under this Agreement in violation of any provision herein, Contractor shall be liable to the City for all costs of correcting the work without additional compensation, including but not limited to additional costs incurred by the City, its tenants, or its other contractors arising out of Contractor's defective work. These remedies are in addition to, and do not limit, the remedies available to the City in law or in equity. These remedies do not amend or limit the requirements of Article VIII and Article IX of this Agreement.

ARTICLE V. COMPENSATION AND PAYMENT

A. Maximum Contract Amount. Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory for payment for services rendered and expenses incurred by Contractor under the terms of this Agreement for any amount in excess of the sum of One Million Four Hundred Thirteen Thousand, One Hundred Fifty-Four **Dollars** and Zero **Cents (\$1,413,154.00)** ("**Maximum Contract Amount**"). Contractor shall perform the services on either an hourly ratebasis or a lump sum basis up to the Maximum Contract Amount.

B. Limited Obligation of City. The obligations of the City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Contractor acknowledges and understands the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

C. Payment Source. For payments required under this Agreement, the City shall make payments to Contractor solely from funds of the City and County of Denver Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

D. Basis for Contractor's Fee. Contractor's fee is based on the time required by its professionals to complete the services under this Agreement. Rates are set forth in **Exhibit A ("Rates")** and vary according to the experience and skill required.

E. Payment Schedule. Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Contractor's fees and expenses in accordance with this Agreement. Unless otherwise agreed to in writing, Contractor shall invoice the City on a regular basis in arrears and the City shall pay each invoice in accordance with Denver's Prompt Payment Ordinance, D.R.M.C. § 20-107, *et seq.*, subject to the Maximum Contract Amount.

F. Invoices. On or before the fifteenth (15th) day of each month, Contractor shall submit to the City a monthly progress invoice containing reimbursable costs and receipts from the previous month for professional services rendered under this Agreement to be audited and approved by the City ("**Invoice**"). Each Invoice shall provide the basis for payments to Contractor under this Agreement. In submitting an Invoice, Contractor shall comply with all requirements of this Agreement and:

1. Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
2. Include a statement of recorded hours that are billed at an hourly rate;
3. Include the relevant purchase order (“**PO**”) number related to the Invoice;
4. Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services, indicate the hourly rate and multiplier where applicable, and identify the allowable reimbursable expenses;
5. For only those reimbursable costs incurred in the previous month, submit itemized business expense logs and, where billing is based upon receipts, include copies of receipts for all allowable reimbursable expenses;
6. Include the signature of an authorized officer of Contractor, along with such officer's certification they have examined the Invoice and found it to be correct; and
7. Submit each Invoice via email to ContractAdminInvoices@flydenver.com.
8. Late Fees. Contractor understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City’s Prompt Payment Ordinance.
9. Travel Expenses. Travel and any other expenses are not reimbursable unless such expenses are related to and in furtherance of the purposes of Contractor’s engagement, are in accordance with this Agreement, and Contractor receives prior written approval of the SVP or his/her authorized representative.

G. Timesheets. Contractor shall maintain all timesheets kept or created in relation to the services performed under this Agreement. The City may examine such timesheets upon the City’s request.

H. Disputed Invoices. The City reserves the right to reject and not pay any Invoice or part thereof, including any final invoice resulting from a Termination of this Agreement, where the SVP or his/her authorized representative determines the amount invoiced exceeds the amount owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in Article IX.

I. Carry Over. If Contractor's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Contractor if the CEO or his/her authorized representative determines such fees are reasonable and appropriate and provides written approval of the expenditure.

ARTICLE VI. MWBE, WAGES AND PROMPT PAYMENT

A. Minority/Women Business Enterprise.

1. This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (“**D.R.M.C.**”), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto.

The contract goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity (“**DSBO**”) is 0%.

2. Under § 28-68, D.R.M.C., Contractor has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MWBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MWBEs performing on this Agreement through contract amendment, or other contract modifications, or as otherwise described in § 28-70, D.R.M.C. Contractor acknowledges that:

a. If required by DSBO, Contractor shall develop and comply with a Utilization Plan in accordance with § 28-63, D.R.M.C. Along with the Utilization Plan requirements, Contractor must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving the MWBE participation goal. The Utilization Plan is subject to modification by DSBO.

b. If Agreement modifications are issued under the Agreement, Contractor shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases discussed in § 28-70, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.

c. If amendments or other contract modifications are issued under the contract that include an increase in the scope of work of this Agreement, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such amendments or modifications shall be immediately submitted to DSBO for notification purposes.

d. Those amendments or other modifications that involve a changed scope of work that cannot be performed by existing project subcontractors are subject to the original goal. Contractor shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. Contractor must also satisfy the requirements under §§ 28-64 and 28-73, D.R.M.C., with regard to changes in scope or participation. Contractor shall supply to the DSBO Director all required documentation described in §§ 28-64, 25-70, and

28-73, D.R.M.C., with respect to the modified dollar value or work under the Agreement.

e. Failure to comply with these provisions may subject Contractor to sanctions set forth in § 28-76 of the MWBE Ordinance.

f. Should any questions arise regarding DSBO requirements, Contractor should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

B. Prevailing Wage. To the extent required by law, Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, §§ 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

1. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the Effective Date of this Agreement. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

2. Contractor shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.

3. Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.

4. Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

5. If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

C. City Minimum Wage. To the extent required by law, Contractor shall comply with and agrees to be bound by all requirements, conditions, and the City determinations regarding the City's Minimum Wage Ordinance, §§ 20-82 through 20-84, D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the City's Minimum Wage Ordinance. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

D. Prompt Pay. The City will make monthly progress payments to Contractor for all services performed under this Agreement based upon Contractor's monthly invoices. Such invoices shall be in a form acceptable to the City and shall include detail of the time worked by Contractor's own personnel, billings from subcontractors, and all other information necessary to assess Contractor's progress. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

1. Final Payment to Contractor shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by Contractor. The City may, at the discretion of the DSBO Director, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the Director. However, no deductions shall be made from Contractor's compensation because of penalty, liquidated damages or other sums withheld from payments to contractor(s).

2. For contracts of one million dollars (\$1,000,000.00) and over, Contractor is required to comply with the Contractor Prompt Payment provisions under § 28-135, D.R.M.C., with regard to payments by Contractor to MWBE subcontractors. The Contractor shall make payments by no later than thirty-five (35) days from receipt by the Contractor of the subcontractor's invoice.

ARTICLE VII. INSURANCE REQUIREMENTS

A. Contractor shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit B* ("**Insurance Requirements**") during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in *Exhibit C*. All certificates of insurance and any required endorsements must be received and approved by DEN Risk Management before any airport access or work commences.

B. Unless specifically excepted in writing by DEN Risk Management, if Contractor shall be using subcontractors to provide any part of the services under this Agreement, Contractor shall do one of the following:

1. Include all subcontractors performing services hereunder as insureds under its required insurance and specifically list on all submitted certificates of insurance required under *Exhibit B*; or

2. Ensure that each subcontractor provides its own insurance coverage in accordance with the requirements set forth in this Agreement.

C. The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Contractor from liabilities arising out of the performance of the terms and conditions of this Agreement by Contractor, its agents, representatives, employees, or subcontractors. Contractor shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Contractor is not relieved of any liability or other

obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Contractor; (ii) damage, theft, or destruction of Contractor's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.

F. Contractor's liability to City for any claim under this agreement shall not exceed three times (3x) the Maximum Contract Amount of the Agreement set forth in Article V.A., above.

ARTICLE VIII. DEFENSE AND INDEMNIFICATION

A. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("**Claims**"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The

Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

ARTICLE IX. DISPUTES

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. The determination resulting from said administrative hearing shall be final, subject only to Contractor's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

ARTICLE X. GENERAL TERMS AND CONDITIONS

A. Status of Contractor. Parties agree that the status of Contractor shall be an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in § 9.1.1(E)(x) of the Charter of the City and County of Denver (the "**City Charter**"). It is not intended, nor shall it be construed, that Contractor or its personnel are employees or officers of the City under D.R.M.C. Chapter 18 for any purpose whatsoever.

B. Assignment. Contractor shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO or his/her authorized representative. Any attempt by Contractor to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO or his/her authorized representative, automatically terminate this Agreement and all rights of Contractor hereunder.

C. Compliance with all Laws and Regulations. Contractor and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations, and codes of the United States, the State of Colorado and with the City Charter, ordinances, and rules and regulations of the City.

D. Compliance with Patent, Trademark and Copyright Laws.

1. Contractor agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States, as they may be amended from time to time. Contractor will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, all releases, and other necessary documents. If Contractor prepares any documents which specify any material, equipment, process or procedure which is protected, Contractor shall disclose such patents, trademarks and copyrights in such documents.

2. Pursuant to Article VIII, Contractor shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings

resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

E. Notices.

1. Notices of Termination. Notices concerning termination of this Agreement, shall be made as follows:

by Contractor to:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by the City to:

Johnson Controls, Inc.
10289 W. Centennial Rd.
Littleton, CO 80127

2. Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested, or by electronic delivery directed to the person identified above and copied to the Project Manager through the electronic or software system used at the City's direction for other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing "send" or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the method contained in Subsection E.2.

3. Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the electronic or software system used for work-related communications and transmittals at the City's direction.

F. Rights and Remedies Not Waived. In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Contractor. The City making any such payment when any breach or default exists shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. The City's assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall not be deemed or taken to be a waiver of any other breach.

G. No Third-Party Beneficiaries. The Parties agree that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Contractor receiving services or benefits under this Agreement shall be deemed an incidental beneficiary and shall not have any interest or rights under this Agreement.

H. Governing Law. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

I. Bond Ordinances. This Agreement is in all respects subject and subordinate to any and all the City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

J. Venue. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

K. Cooperation with Other Contractors.

1. The City may award other contracts for additional work, and Contractor shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Contractor to coordinate its work under this Agreement with one or more such contractors.

2. Contractor shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

L. Inurement. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

M. Force Majeure. The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

N. Coordination and Liaison. Contractor agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the SVP or his/her authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Contractor's work.

O. No Authority to Bind City to Contracts. Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

P. Information Furnished by the City. The City will furnish to Contractor information concerning matters that may be necessary or useful in connection with the work to be performed by Contractor under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Contractor understands and acknowledges that the information provided by the City to Contractor may contain unintended inaccuracies. Contractor shall be responsible for the verification of the information provided to Contractor.

Q. Taxes and Costs. Contractor shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

R. Environmental Requirements. Contractor, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

1. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.* (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 *et seq.* (1990)), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

2. Contractor shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

3. Contractor agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Contractor agrees to evaluate methods to reduce the generation and disposal of waste materials.

4. In the case of a release, spill or leak as a result of Contractor's activities under this Agreement, Contractor shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Contractor shall reimburse the City for any penalties and all costs and expenses, including without

limitation attorney's fees, incurred by the City as a result of the release or disposal by Contractor of any pollutant or hazardous material.

ARTICLE XI. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS

A. Diversity and Inclusiveness. The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Contractor is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

B. Non-Discrimination Policy. In connection with the performance of services under this Agreement, Contractor shall not refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Contractor further agrees to insert this provision in all subcontracts hereunder.

C. Advertising and Public Disclosures. Contractor shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the SVP or his/her authorized representative. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Contractor shall notify the SVP in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Contractor's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

D. Colorado Open Records Act.

1. Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act (“**CORA**”), C.R.S. §§ 24-72-201 *et seq.*, and Contractor agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Contractor asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Contractor to the City shall be considered confidential by the City only to the extent provided in CORA, and Contractor agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

2. In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any material Contractor may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Contractor objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is

filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Contractor agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Contractor does not wish disclosed. Contractor agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Contractor's objection to disclosure, including prompt reimbursement to the City of all reasonable attorney's fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

E. Examination of Records and Audits.

1. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. §20-276.

2. Additionally, Contractor agrees until the expiration of three (3) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO or his or her representative, shall have the right to examine any pertinent books, documents, papers and records of Contractor related to Contractor's performance of this Contract, including communications or correspondence related to Contractor's performance, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

3. In the event the City receives federal funds to be used toward the services performed under this Agreement, the Federal Aviation Administration ("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Contractor further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

F. Use, Possession or Sale of Alcohol or Drugs. Contractor shall cooperate and comply with the provisions of Denver Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Contractor from City facilities or participating in City operations.

G. City Smoking Policy. Contractor and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

H. Conflict of Interest.

1. Contractor and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, work, activity or conduct which would result in a conflict of interest. A conflict of interest occurs when, for example, because of the relationship between two individuals, organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work for the City, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scopes of work.

2. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Contractor written notice which describes such conflict. If, during the course of the Agreement, the City determines that a potential conflict of interest exists or may exist, Contractor shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

3. Contractor has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work the Contractor is performing or anticipates performing for other entities on the same or interrelated project or tasks. Contractor must disclose, in writing, any corporate transactions involving other companies that Contractor knows or should know also are performing or anticipate performing work at DEN on the same or interrelated projects or tasks. In the event that Contractor fails to disclose in writing actual or potential conflicts, the CEO in his/her sole discretion, may terminate the Task Order, if applicable, or City may terminate the Agreement for cause or for its convenience.

I. Prohibition Against Employment of Illegal Aliens to Perform Work Under this Agreement.

1. The Agreement is subject to § 8-17.5, C.R.S., and D.R.M.C. § 20-90 and Contractor is liable for any violations as provided in said statute and ordinance.

2. Contractor certifies that:

a. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

b. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

3. Contractor also agrees and represents that:

a. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

b. It shall not enter into a contract with a subcontractor or subcontractor that fails to certify to Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

c. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

d. It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

e. If it obtains actual knowledge that a subcontractor or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. Contractor will also then terminate such subcontractor or subcontractor if within three (3) days after such notice the subcontractor or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor or subcontractor provides information to establish that the subcontractor or subcontractor has not knowingly employed or contracted with an illegal alien.

f. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S. or the City Auditor under authority of D.R.M.C. § 20-90.3.

ARTICLE XII. SENSITIVE SECURITY INFORMATION

Contractor acknowledges that, in the course of performing its work under this Agreement, Contractor may be given access to Sensitive Security Information (“**SSI**”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Contractor specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Contractor understands any questions it may have regarding its obligations with respect to SSI must be referred to the DEN’s Security Office.

ARTICLE XIII. DEN SECURITY

A. Contractor, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Contractor or the City by the FAA or TSA. If Contractor, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Contractor shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Contractor must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Contractor and/or its agents will be deducted directly from the invoice for that billing period.

B. Contractor is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Contractor. The fee/fine will be deducted from the invoice at time of billing.

ARTICLE XIV. FEDERAL RIGHTS

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System. As applicable, Contractor shall comply with the Standard Federal Assurances identified in Appendix 1.

ARTICLE XV. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

A. Attachments. This Agreement consists of Article I through XVI which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Appendix 1: Standard Federal Assurances
Exhibit A: Scope of Work
Exhibit B: Insurance Requirements

B. Order of Precedence. In the event of an irreconcilable conflict between a provision of Article I through XVI and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Appendix 1
Article I through XVI hereof
Exhibit A
Exhibit B

ARTICLE XVI. CITY EXECUTION OF AGREEMENT


A. City Execution. This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same.

B. Electronic Signatures and Electronic Records. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Contractor in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGES FOLLOW]


Contract Control Number: PLANE-202056103
Contractor Name: JOHNSON CONTROLS INC


IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: 8/18/2021

SEAL DocuSigned by:


CITY AND COUNTY OF DENVER:

ATTEST:


By: DocuSigned by:

63CED49359814EC...
Mayor
Michael B. Hancock


DocuSigned by:

401363B9DD334C3...
Clerk and Recorder/Public Trustee
Paul López


APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

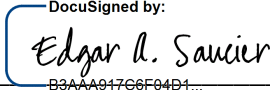
By: DocuSigned by:

359EBB4A41E774CA...
Assistant City Attorney
Kevin Cain

By: DocuSigned by:

0760087070F0401...
Chief Financial Officer
Brendan J Hanlon

By: DocuSigned by:

0269394F8B7843D...
YAuditor
Timothy M. O'Brien

Contract Control Number:
Contractor Name:

PLANE-202056103
JOHNSON CONTROLS INC

By:  _____
B3AAA917C6F04D1...

Name: Edgar A. Saucier
(please print)

Title: Vice President HVAC Service
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Appendix No. 1

Standard Federal Assurances and Nondiscrimination Non-Federal Contract Provision

A5 CIVIL RIGHTS – GENERAL

A5.3.1 GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A6.4 CONTRACT CLAUSES

A6.4.1 Title VI Clauses for Compliance with Nondiscrimination Requirements

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

- 1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3. Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- a) Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b) Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

A6.4.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-

aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A20.3 Occupational Safety and Health Act Of 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Exhibit A

PLANNED SERVICE
PROPOSAL

Planned Service and Operations Proposal

CUSTOMER

Denver International Airport
South Campus & Concourse A Data Center
Operations and Maintenance Agreement
Contract Exhibit A

LOCAL JOHNSON CONTROLS OFFICE

10289 W CENTENNIAL RD
LITTLETON , CO 80127-4216

DATE

6/17/21



Partnering with you to deliver value-driven solutions

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

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

**JOHNSON CONTROLS PLANNED SERVICE PROPOSAL
DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER**

Executive Summary

PLANNED SERVICE AND OPERATION PROPOSAL FOR DENVER INTERNATIONAL AIRPORT SOUTH DATA CENTER

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

Details are included in the Planned Service Agreement, but highlights are as follows:

- In this proposal we are offering a service agreement for 5 years
With estimated start date of 7/17/2021 and ending 7/16/2023.
- The agreement price for first year is \$451,736.00; see Schedule A, Supplemental Price, Terms and Conditions, for pricing in subsequent years.
- The service scope of work being provided for the project are described in Attachment A, Scope of Work.

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

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

Please contact me if you have any questions.

Sincerely,

Rey Medina

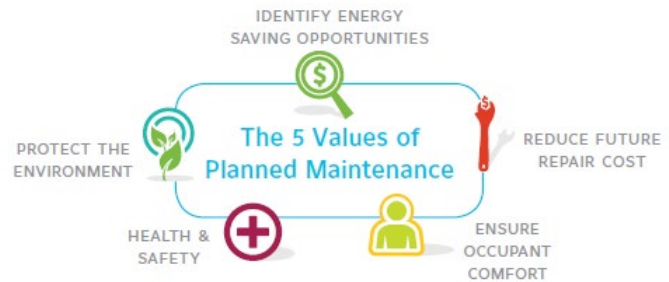
Rey Medina

Account Executive, BSNA HVAC Controls & Equipment, North America
Building Technologies and Solutions

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Benefits of Planned Service

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



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

1. Identify Energy Savings Opportunities

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

2. Reduce Future Repair Costs

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

3. Ensure Occupant Comfort

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

4. Health and Safety

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

5. Protect the Environment

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

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

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Personalized Account Management

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

A Culture of Safety

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



Commitment to Customer Satisfaction

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

Energy & Sustainability

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

The Value of Integrity

Johnson Controls has a long, proud history of integrity. We do what we say we will do and stand behind our commitments. Our good reputation builds trust and loyalty. In recognition for our commitment to ethics across our global operations, we are honored to be named one of the World's Most Ethical Companies for the fourth year in a row by Ethisphere Institute, a leading think tank dedicated to business ethics and corporate social responsibility. In addition, *Corporate Responsibility Magazine* recently recognized Johnson Controls as the #1 company in its annual "100 Best Corporate Citizens" list.



JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Service Plan Methodology

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

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

Scheduling

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

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

Emergency Services

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

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

Communication

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

Approval Process for Non-Covered Items

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

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Summary of Services and Options

Comprehensive and Operational Inspections

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

Summary

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

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

We'll be your building technology services partner

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Data Center Facilities Management

Data Center Management Philosophy

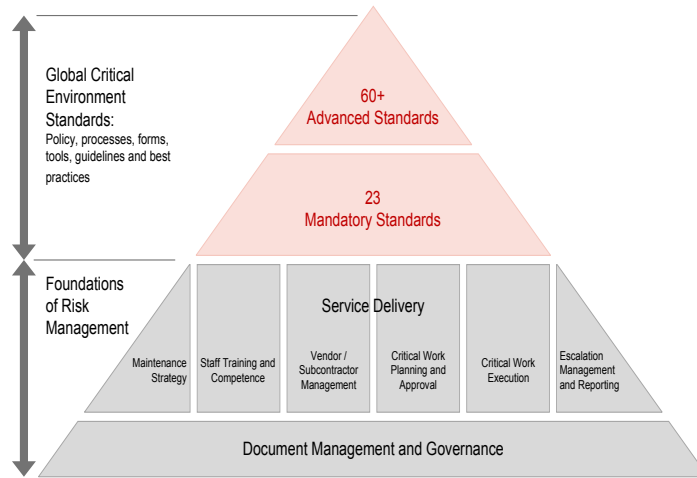
Johnson Controls understands the importance of maintaining the uptime of our customer's critical environments. We have proven strategies to manage and minimize the risk of change and to deploy best practice standards across all critical environments which we manage during transition and beyond.

- Our Global Center of Excellence for Critical Environments regularly convenes to share and agree the global standards and tools which will be adopted and deployed at the critical sites we manage. With over 750 highly critical environments managed for our customers across the globe – from large data centers and manufacturing facilities through to smaller critical server rooms and labs – we appreciate the importance of zero unplanned downtime and deliver this on a daily basis. In fact, the global critical environments program management standards we have put in place at our large global accounts have been reviewed by the Uptime Institute as the basis for a Johnson Controls best practice/standard for all global critical facilities management programs. Our critical environments expertise means we have the programs, processes, tools, technology and staffing to guarantee consistency and ensure uptime.
- We have highly skilled employees dedicated to providing services to mission critical facilities
- We have been in business since 1885 and we have been providing services to mission critical facilities since our first facilities contract in 1953.
- Our experience in maintaining critical facilities on a 24x7x365 basis – includes an impressive portfolio of large U.S. companies including Agilent, BNSF, CSC, Ericsson, ExxonMobil, IBM, Key Bank, GSK and others.

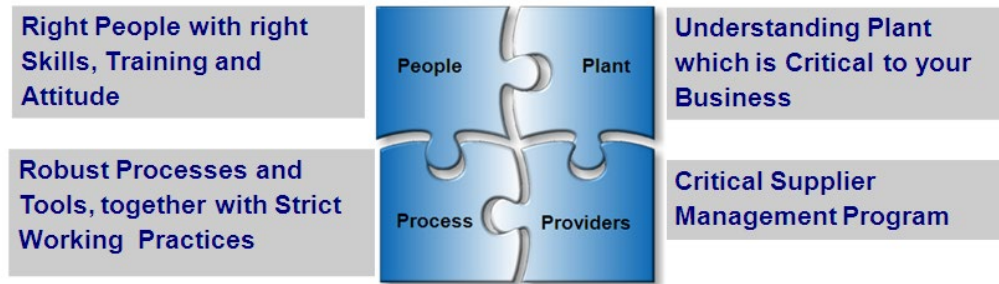
Johnson Controls has developed a suite of structured solutions that minimize operational risk and increase availability based on design intent. We have the ability to provide superior critical environment services in support of the critical load from Facility Commissioning to ongoing O&M risk management strategies. Our Critical Environment Management Services result in an optimized environment that means:

- Lowest operational risk
- Fewer emergency repairs.
- Maximum availability
- Longer equipment life.
- Lowest cost of ownership.
- Better capacity planning and forecasting.

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER



Our approach to managing Risk in Critical Environments is based on 7 Foundations of Risk Management as shown above. Each of these need to be effectively managed to reduce the likelihood of unplanned downtime occurring. We have developed a comprehensive Global Critical Environment Program, supported by a network of regional expert groups, which builds four Levels of Standards on these foundations covering People; Plant; Process and Providers.



Each of these levels shown above have a number of processes, procedures and best practice documents associated with them and is increasingly complex in terms of the work involved in implementation and execution. As such the degree to which these standards are applied will vary depending on the criticality of the plant, the funding available to reduce risk and our clients' attitude to risk management.

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Data Center Management Solutions

We deliver these benefits by integrating our field teams with a program that is supported by our critical facility experts in our Global Critical Environment Networks. With direction from our Global Operational Excellence Teams, we also utilize the experience of our field resources to perform on-site data collection, analysis and remediation services. Software tools improve our ability to analyze key performance and capacity metrics on mechanical and electrical infrastructure. These tools ensure improved efficiency and reliability for an individual data center or an entire enterprise. Our “core” Critical Environment Management technologies/services are grouped into the following categories:

- Critical Document Management Portal - CF Artisan
- Critical Position Development (CPD)
- Critical Environment Management Interface
- Risk Dashboard
- OPRA – Operational Performance & Risk Assessment

Reporting Features

All of the analyzed information is made available to the on-site Johnson Controls account team and directly to the customer. On a pre-determined basis, the Subject Matter Experts and Center of Excellence support teams will generate an enterprise report that summarizes CF Analyst data against the customer’s key performance indicators.

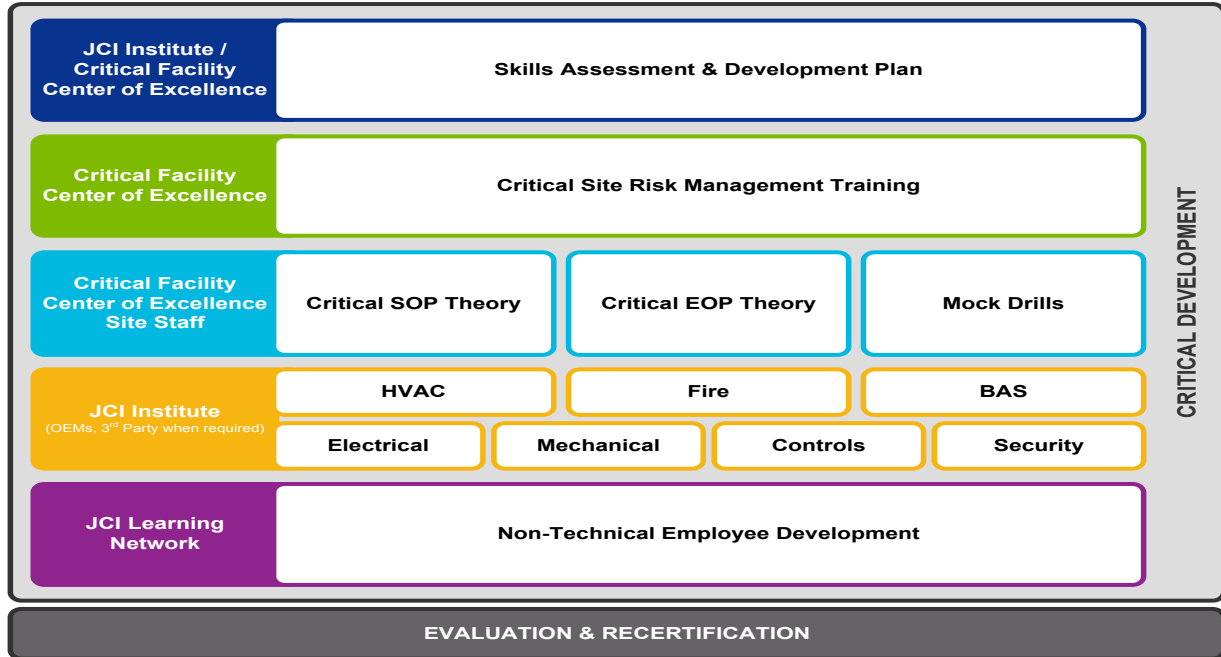
Critical Document Management Portal

The document management tool is deployed to mitigate the largest risk in data centers, which is process error. This web-based tool is designed so each site can collect, develop and store all critical documentation for ease of access and controls. Utilizing a central database for all critical documentation allows for portfolio consistency and strict revision controls. In addition, all critical site data will be accessible to all stakeholders regardless where you are geographically located.

Critical Position Development - Critical Staff Training and Development

The universal requirement across multiple data centers is for continuous availability of supported applications. A highly skilled and competent staff is imperative. The methodology we use to track staff development is Critical Position Development (CPD). This application assigns tasks (including Sequences of Operation) to each staff member and contractors based on roles and responsibilities. A formal process is used to set up training plans, track competency levels and re-qualify each member annually. Progress reports are available to both site managers and our customers. In addition, the Critical Environments Operational Excellence teams are responsible for auditing staff development and progress. These centralized teams are also integrated into each account to ensure that the program & operations has the necessary governance to maximize effectiveness and consistency through continuous auditing.

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER



Critical Environment Measurement Interface

In order to ensure that all sites are compliant with the 23 Mandatory processes, we have developed a Critical Environment Measurement Interface (CEMI) to document compliance to the Global Critical Environment Standards. Each month, the designated account CE Staff member uses this tool to update compliance to the Global Critical Environment Standards.

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Data Center Operational Performance & Risk Assessment (OPRA)

An OPRA is a transition activity to identify risk in infrastructure & operations. This is designed to identify areas of risk in managing, operating and maintaining a critical facility. This review is unlike the more traditional engineering evaluations that target issues relating to only design or configuration. A risk assessment will assess all the primary resource elements of people and staffing, critical process management, existing infrastructure support systems and the current applied technologies. The typical areas that could be included in this report are:

- Electrical Infrastructure & Distribution Review –
 - Design concept review
 - Asset/system review & condition
 - Single point of failure analysis
 - Risk & Impact Statements per asset/system
 - Capacity Review & profile review
 - Capital planning costs/ROM Pricing

- Mechanical Infrastructure & Distribution Review –
 - Design concept review
 - Asset/system review & condition
 - Single point of failure analysis
 - Risk & Impact Statements per asset/system
 - Capacity Review & profile review
 - Capital planning costs/ROM Pricing

- Critical Facility Process, Program, Technology & Best Practices to include reviews of:
 - Maintenance Strategy
 - Critical Work Approval
 - Staff Design, Competency & Training
 - Subcontractor Management
 - Escalation & Incident Management/Planning
 - Critical Document Management
 - EOP & SOP Best Practices
 - Asset & Maintenance Frequency Review
 - Redundancy of Infrastructure Scorecard

The purpose of a risk assessment is to establish the requirements and capacity for supporting a customer's designated Critical Environments. A definition of a Critical Environment for this activity is that it is an area that is used to support a function deemed as *Critical* by the customer for their business. A commonly referred to metric for this type of application is that it must be available 100% of the required time or it will have serious impact to the customer's business operation. This desired metric might only be achieved if many diverse factors can be integrated to enable this outcome.

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A review of the status of the diverse elements that could affect the customer's desired metric attainment is at the core of the assessment process. The results of the audit are summarized in a report that contains recommendations, suggestions, risk & impact levels for a Critical Environment Management plan that will meet the desired customer metric. The customer, before contract execution, defines their specific audit requirements. There are several levels of review and documentation that could be provided to meet the goals of the customer and that specific critical facility.

Global Technical/Critical Environment Services Field Support Team & Comprehensive Continuous Risk Audit Program

One of the most important aspects of any critical environment risk management program is sustainability to maximize ongoing program effectiveness. Following the mobilization and discovery phases, the Global Technical Services Group will assign regional SME's for continuous auditing and technical support for all critical operations. This team will integrate into the operational model to ensure best practices are continuously utilized and technical expertise is applied at the site level. The sample scope of services that the technical team will deliver typically includes:

- Disaster & Business Continuity Planning
- Training Administration & Support
- Method Statement & Procedure Development
- Document & Library Management
- Incident/Root Cause Analysis Reviews
- Environmental Reviews
- Capital Planning Support
- Specialized Troubleshooting & Technical Support
- Continuous Program Compliance/Risk Auditing
- Energy Use Reviews
- Alarm Management & Escalation Process Support

Reporting examples typically include:

- Capacity Reporting
- Incident Reporting & Consolidation
- OEM Field Bulletins Reporting
- Training Certification Reporting
- Critical Space Environmental Reporting
- Maintenance Deferral & Deficiency Reporting
- Change Management & Project Change Reporting

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

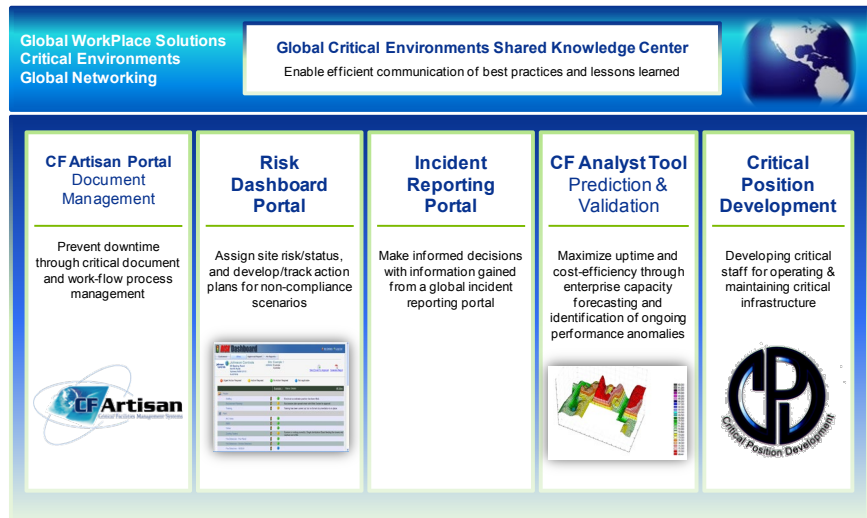
How We Deliver Critical Environment Services over Time

Beginning with the evaluation of a customer’s critical environment requirements through to the auditing of operations, the following summarizes key activities of the Critical Environment Product:



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Specifically, we share best practices among our accounts by teaming our critical facility experts in our Global Operational Excellence Teams with the experience of our field resources to perform on-site data collection, analysis and remediation services. New software tools improve our ability to analyze key performance metrics and report areas of deficiencies and gaps. These tools ensure improved efficiency and reliability for an individual data center or an entire enterprise. Our Critical Facility Management Solutions & Technology are grouped into the following areas and enable effective communication within the critical facility network:



JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

DEN SOUTH CAMPUS DATA CENTER (SCDC)

Critical Infrastructure Operations and Maintenance

Johnson Controls is proposing a multi-tiered approach for the management of the unmanned South Campus modular data center located at Denver International Airport. For frequency and details of the following services refer to agreement **Attachment A Scope of Work**.

O & M Services Included:

- Maintenance Staff for Monday to Friday Site Inspections, General Rounds, HVAC and Minor Maintenance. Four (4) hours per day Monday through Friday (excluding holidays)
- 24/7/365 Remote Monitoring of equipment, environment and site
- Electrical Equipment Testing and Maintenance
- Generator Testing
- Thermography Testing of Electrical Equipment
- HVAC Controls Maintenance
- Fire Suppression System Testing and Maintenance
- HVAC Mechanical Maintenance
- On Site Response 24/7/365 (*2-Hour Response*)
- Generator Fuel Testing and Fuel Polishing
- Generator Engine Service and Maintenance
- DEN staff maintenance and operations training

The O&M agreement is to provide operations and maintenance of the data center critical infrastructure. DEN would be responsible for the building structure, foundation, utilities, telecommunications, and non-critical infrastructure items. JCI as an infrastructure operations and maintenance company would provide service for maintainable items as it relates to the data center critical infrastructure of power, cooling, and auxiliary systems as defined below.

Operations and Maintenance of Systems and Equipment covered under this agreement:

1. Power Distribution (Distribution Transformers, Generators, Paralleling Gear, Input Switchboards, Automatic Transfer Switches, UPS's, batteries, General Service Electrical Panels and distribution of electrical.)
2. HVAC (Air Handling Units, Condensing Units, Hot Aisle Containment System, Fan Coil Units, Humidifiers, Heat Trace, Temperature Controls, Building Automation)
3. Auxiliary Systems (Lighting, fire alarm, fire suppression, emergency power off, JCI DCIM)

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Operations and Maintenance of Systems and Equipment NOT covered and/or provided by others under this agreement:

Building Structure and Foundation
Lift Station
Lightning Protection System
Underground Utilities
XCEL transformers
Security Fence and Gate
Site Work, Landscaping, and Grounds
Snow Removal
Gutters
Refrigerant
Starline Busways
Rack Mounted PDU's
Trash Dumpsters and Trash Removal from Site
Security Systems and door hardware
Refrigerants
Office Furniture
Racks
Rack Security System
IT Equipment and IT Provisioning of Active Gear
Network Hardware (servers, switches, storage, etc.)
IT Data Cabling, cable tray, and network switches and associated Infrastructure
Raritan DCIM software and implementation labor
DEN Furnished Equipment
DP Guardian Periodic Data Center Cleaning Services
Furnishing, replacement, and disposal of the UPS batteries
3rd Party Escorting of Non-JCI subcontractors and suppliers
Shipping and Receiving of Non-JCI Shipments
Space Management Changes
Emergency Communication Systems and work
Utility Bill Management
Mail Delivery

Required Items provided by DEN to JCI onsite staff

Network Connections, Internet, Tele-communication services to JC staff
VPN for remote access by JCI
Telephone and Telephone service provided by DEN for use by JCI staff
Access to onsite BMS operator workstation and printer for use by JCI staff
Access to site, equipment, and systems
Furnish keys as required for access

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Operations and Maintenance Critical Infrastructure Repair Work

For Systems and Equipment listed above to be included under this agreement, JCI shall provide repair work for failed systems or equipment up to a maximum of \$3,500.00 per failure occurrence. The following defines the type of repair work covered under this agreement.

In order for a repair to be covered under the \$3,500 limit,

- Components of the systems must be maintainable items (maintainable from a mechanical, electrical perspective). This includes motors, starters, compressors, disconnects, VFD's, Safety system field devices, HVAC control system devices, and cables, etc., items that can be maintained. This would preclude any non-maintainable items from being covered (floor and wall coverings, walls, roof, hot aisle containment, cage, rack security system, furniture, owner furnished items, etc.).
- Items such as fuses, relays, etc. that we do not do any maintenance on that are outside of the contract coverage.
- The building itself, as a supplied product of Johnson Controls, is out of project warranty.

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

Critical Environments Risk Management Program Support

Deployed and supported by central JCI Data Center Subject Matter Experts

Task	Description
	<p>OVERVIEW: This is a Data Center related solution to deploy the CE Risk Management Program with both onsite and remote activity. The program will be maintained, controlled, managed and audited with onsite and remote CE Data Center SME support.</p>
1	<p>Contract Review Process</p> <p>The purpose of this is to provide a structured approach to reviewing the contract and documenting those items specifically relating Critical Environments.</p>
2	<p>Critical Asset Identification and Condition Coding</p> <p>The purpose of this work instruction is to ensure that for all Critical Sites the Critical Systems and equipment within the facility are identified, condition is assessed and documented.</p>
3	<p>Critical Environment Preventive Maintenance Setup</p> <p>The purpose of this is to ensure that at all locations where Critical Environments are managed the appropriate maintenance routines for critical assets are identified and setup for maintenance execution including predictive and non-intrusive methods</p>
4	<p>Critical Spares Identification & Management</p> <p>This establishes the policies, responsibilities, and procedures for the selection and management of critical spares for critical facility infrastructure equipment at all locations where Critical Environments are managed.</p>
5	<p>Staff Design Process Management</p> <p>The purpose of this is to assist the Facility Manager at all locations where Critical Environments are managed in reviewing the staffing model to ensure that the technical competency and coverage requirements of the staff are consistent with best practices and the client contract.</p>
6	<p>Maintenance, Repair and Capital Replacement Deferral Management</p> <p>The purpose of this work instruction is to ensure that at all locations where Critical Environments are managed, when planned work, maintenance, repair or project work is postponed at the client request for any reason the full potential impact of that decision is documented and acknowledged by the client team.</p>

**JOHNSON CONTROLS PLANNED SERVICE PROPOSAL
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7	<p>Skills Assessment Process Management</p> <p>The purpose of this is to ensure that at all locations where Critical Environments are managed the JCI staff who operate critical systems or supervise work on critical systems undergo a skills assessment. This work instruction determines the current skill levels versus the desired skill levels</p>
8	<p>Operator Certification Plan Setup & Management</p> <p>The purpose of this is to ensure that at all locations where Critical Environments are managed, NO equipment, systems, or procedures will be executed without the operator being certified to perform that function.</p>

Task	Description
9	<p>Risk Management Training Program Management</p> <p>The basis for risk management includes People, Plant, Process and Providers and ensuring operators understand how this links with risk. The purpose of this document is to ensure that at all locations where Critical Environments are managed each staff member that is responsible for maintaining, repairing, and overseeing subcontractors receives training associated with risk management.</p>
10	<p>Vendor and Subcontractor Competency & Suitability Program</p> <p>The purpose of this is to ensure that at all locations where Critical Environments (CE) are managed vendors and subcontractors providing services to Johnson Controls and our clients are competent to perform the required work and that they are suitable to be able to respond to our needs.</p>
11	<p>Critical Environment Subcontractor Access Program</p> <p>The purpose of this is to ensure that at all locations where Critical Environments are managed when subcontractors or vendors are required to perform activities within those facilities there is a method of ensuring their presence is documented and controlled.</p>
12	<p>Critical Environment Onsite Subcontractor Management</p> <p>The purpose of this is to ensure that when a subcontractor is hired to perform work within the critical environment we have the proper levels of subcontractor supervision or controls in place to manage their work.</p>

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13	<p>Critical Work Approval Development</p> <p>To ensure that at all locations where Critical Environments are managed all critical work being performed onsite has been approved to proceed in advance of the planned activity. Johnson Controls performs many critical work activities that have the potential to impact many different customers businesses</p>
14	<p>Method Statement Development & Management (EOPs and SOPs)</p> <p>The purpose of this document is to ensure that at all locations where Critical Environments (CE) are managed we plan all critical work in great detail and ensure that we have effectively planned the critical work activities.</p>
15	<p>Steady State Process Development</p> <p>This will define normal steady state condition of all critical infrastructure for conducting rounds & readings and initiating emergency response</p>
16	<p>Critical Work Rules Development & Management</p> <p>The purpose of this is to ensure that at all locations where Critical Environments are managed we identify, establish, and document Critical Work Rules. In order for expectations to be understood by all parties working within a critical environment a clear set work rules must be developed, documented and communicated to anyone that requires access to the critical space.</p>

Onsite Training

- Coordinate daily, weekly, and monthly visits with DEN AIM for DEN personnel to become familiar with site, equipment, procedures and subcontractors (electrical testing, generator testing, fire suppression testing, etc.) DEN may accompany service personnel to observe maintenance during visits, without causing interruption of service for technical personnel.
- During visits, provide training on Metasys controls, HVAC equipment maintenance, and other critical components within the HVAC systems. DEN may accompany service personnel to observe maintenance during visits, without causing interruption of service for technical personnel.



JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

ATTACHMENT A Scope of Work

This scope of work is an attachment to the planned service agreement and is included as part of the agreement. This is the scope of work which consists of the main responsibilities expected by DEN Technologies for maintenance of the South Campus Data Center. Technologies defines the South Campus Data Center as a critical facility required to support Technologies' customers: other airport divisions, their personnel and systems, and the flying public. Safeguarding and maintaining this critical facility with a defined scope of work with a facility maintenance organization is a requirement of the Technologies Division. Johnson Controls has been identified as a facility maintenance organization that can meet Technologies Division requirements.

This document defines responsibilities and expectations of the DEN Technologies Division. The DEN Technologies and DEN AIM Divisions will assess the service provider's overall performance and compliance based on the formal requirements within the agreement and this scope of work. Since a contractual agreement will also be in place, remedies will be sought within the contract for failing to meet these requirements.

I. Overview

The Technologies Division requires facility operations and maintenance services at the South Campus Data Center that provide maximum equipment and systems uptime within The Uptime Institute's Tier III Concurrent Maintainability requirements, while optimizing energy efficiency, and providing a high level of performance of the cooling and power infrastructure of the Data Center.

II. On-Site Facility Operations and Maintenance Role

This role is defined as the "first responder" for data center facility-related emergencies. This role is also a point of contact for executing operations and maintenance of site infrastructure and associated systems. Other points of contact include DEN AIM facility maintenance management and the DEN Technologies Data Center Manager.

This role requires a dedicated, on-site person with a regular work shift of 4 consecutive hours per day, within normal business hours, defined in this scope of work as from 8:00 AM – 5:00 PM. This coverage shall include Monday through Friday, excluding published holidays.

In the event that the dedicated person is unavailable due to sickness or vacation, a fully certified substitute will perform the normal tasks as described in this scope of work.

III. Daily Tasks (5 days a week/4 Hours per day)

- Daily Rounds, including readings for: UPS, MV/LV Switchgear. Chillers, Pumps, CTs, Pumps, AHU's, Condensers, Battery Room Temperature and visual inspection, Connecting and Disconnecting the Starline Bus System, RF Temperature/Humidity and visual inspection, PDU/RPP, Fire Suppression Testing
- Near Miss/Significant Event Reporting
- Spare Parts Inventory review
- Daily/Weekly Reports – Provided Monthly (Clarified from previous scope)

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- Weekly Reports submitted to DEN AIM and DEN Technologies Data Center Manager, to include:
 - Overall systems status
 - Generator fuel status
 - Spare Part Inventory status
 - Method Statement Development for all critical activity
 - EOP/SOP Development and ongoing administration
 - Subcontractor Site Orientation Training (for new subcontractors)
 - Subcontractor Maintenance and Testing Coordination and Scheduling
 - Subcontractor Escorting
 - Pre Weather/Tornado Related Precautions, as required
 - Integrated 2N Electrical Systems and Generator Testing/Backup Power
 - DCIM and BAS Alarm Review
 - Problem Escalation as Required
 - Critical Equipment Isolation/Restoration
 - Critical Equipment Rotating and verification
 - Critical Work Approval Requests – Change Management (for critical maintenance)
 - Maintenance Deferral Tracking
 - Required Corporate Training (GCES, Safety etc.)
- IV. Monthly/Quarterly/Annual Tasks, which may require additional staff/subcontractors
- Monthly Capacity Information Gathering
 - Monthly Reporting,
 - Overall systems status
 - Generator fuel status
 - Spare Part Inventory status
 - Trends, anticipated activities, upcoming maintenance
 - Concurrent Maintainability status and risks
 - HVAC Maintenance (Monthly, Quarterly, Annually)
 - Condensing Units Tasks (Monthly Operational Inspections)
 - Check system pressures and temperatures.
 - Check refrigerant charge.
 - Check compressor oil level(s).
 - Inspect starter.
 - Check crankcase heater.
 - Visually inspect for refrigerant and oil leaks.
 - Check electrical connections.
 - Check condition of condenser coils.
 - Check condenser fan blades and motors.
 - Check for proper condenser fan rotation.
 - Clean coils as required to maintain proper operation
 - Air Handler Units (Monthly Operational Inspections)
 - Check belt(s).
 - Check coil conditions.
 - Check condensate pan and drain (if accessible).
 - Check filter condition.
 - Visually inspect damper(s).

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- Check for proper fan operation.
 - Change filters as required to maintain proper operation
 - HVAC Controls Maintenance
 - Metasys Controls Service on Workstation, CPU, I/O Panels, Unit Controllers, Field Devices, Sensors, Relays, Transducers
 - Review "System Event Log" to determine alarms, events, and take appropriate corrective action.
 - Critical points verified/calibrated.
 - Maintain On-site Backup Programming
 - Perform Controls tuning, as required.
 - Building Automation System (BAS) Controls Maintenance (Monthly)
 - Generator Service (Monthly)
 - Startup and Test Generators for proper power generation
 - Test voltage, amperage, generator switch controls
 - Report fuel status. Request fuel delivery from DEN, if necessary
 - Fuel Polishing Service (Bi-Annual Service)
 - Electrical Systems Service (Quarterly)
 - Visually inspect power feed connections, unit operation and status
 - Inspect electrical controls for alarms, and irregularities
 - Review alarm history
 - Test equipment for proper operation.
 - Test UPS Banks
 - DEN AIM and DEN Technologies Data Center Manager to replace UPS batteries as determined by DEN. Batteries and replacement to be provided by DEN
 - IT Load Bank Test (Annual)
 - Electrical System Thermography (Annual)
 - Perform predictive infrared testing of all motors, motor control centers, electrical equipment.
 - Prepare report and review with DEN AIM and DEN Technologies Data Center Manager any irregularities. Initiate repairs based on equipment being out of compliance.
 - Fire Suppression Equipment
 - Perform annual testing of fire suppression equipment, charge and operation.
 - Fire Alarm Detection Service (Frequency: 6 & 12 Month Testing)
- V. Remote Monitoring Service of South Campus Data Center Facilities
- 24 x 7 x 365 Monitoring
 - Alarm Monitoring of HVAC and Power Systems
 - Monitor for HVAC controls alarms, out of range set points, equipment failure
 - Dispatch of Johnson Controls On-Call Service Staff or Johnson Controls contact, as required.
 - Facility DCIM Trending /Alarming
 - Monitor equipment for predictive trends (e.g. unable to meet defined points within a pre-defined range, hotspots within the facility) and report to maintenance for response or repair.

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- VI. Emergency Response Service
- 24 x 7 x 365 Emergency Services On Call Service
 - Two (2) hour response time by On Call Service personnel
- VII. Concurrently Maintainable Environment
- The South Campus Data Center was designed to be concurrently maintainable. As such, DEN Technologies Division requires that maintenance activities on facility systems and distribution paths not impact data center operations.
 - Electrical system maintenance must not require termination of utility services at any time. Either electrical side A or B must be available during routine maintenance activities, as the data center was designed with a minimum of N + 1 electrical systems, most at 2N.
 - The HVAC was designed with N + 1 equipment (condensers and AHU). At no time will more than one condenser or AHU be shut down for maintenance.
 - Operator/Technician Certifications
 - No equipment maintenance, systems modifications, or procedures will be executed without the operator/technician being certified to perform that function.
 - Certifications will be monitored by DEN AIM.
- VIII. Documentation
- Asset Management is the responsibility of DEN AIM, assessing and documenting the current condition and serviceability of the assets are shared between DEN AIM and Johnson Controls.
 - Critical spares identification, documentation and management is a shared responsibility between DEN AIM and Johnson Controls.
 - Preventative Maintenance documentation is a shared responsibility between DEN AIM and Johnson Controls.
 - Daily rounds and processes will be developed to define day-to-day responsibilities of all parties working at the data center facility.
- IX. Spare Parts Store
- Johnson Controls and DEN AIM will identify items necessary for a spare parts store to be maintained at an AIM facility.
 - The inventory status of the spare parts store will be communicated to DEN AIM and DEN Technologies in the required monthly status report.
 - DEN AIM and DEN Technologies will determine which division will purchase initial spare parts and which division will replenish spare parts items via internal agreement.

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DEN CONCOURSE A DATA CENTER (CADC)

Multiple Tiered Approach to Data Center Management

Johnson Controls is proposing a multi-tiered approach for the management of the data center located on Concourse A at Denver International Airport.

- On-site Maintenance Staff two 4 hour days per week for Site Inspections, General Rounds, HVAC and Minor Maintenance.
- 24/7/365 Remote Monitoring of equipment, environment and site by JCI Remote Operations Center (ROC)
- Semi-Annual Electrical Equipment Testing and Maintenance
- Semi-Annual UPS Service
- Annual Thermography Testing of Electrical Equipment
- Quarterly HVAC equipment and Temperature Controls Maintenance
- 4 Hour On Site Response 24/7/365 Supported by Local HVAC Mechanics, Controls Technicians, and Electrical subcontractor.

This plan avoids the cost of a full time operations staff but supplements the DEN facilities staff that provides various maintenance tasks in and for the CADC.

Maintenance Staff Operations

Weekly the JCI maintenance staff will perform the following onsite duties:

- Review DEN facilities documentation of regularly scheduled equipment inspections
- Inspect equipment for alarms, function, unusual noises, vibration and wear
- Visually inspect HVAC and electrical equipment
- Check for proper operation
- Log any issues in maintenance handbook
- Operation
- Verify with Remote Operation Center any issues or trends from evening preceding shift
- Notify customer of any irregularities
- Repair Maintenance: Initiate any repairs if required or call electrical contractor or HVAC controls specialist to address immediately. Any major repairs (Repair incident above \$3,500.00 of labor or material cost) will be quoted and invoiced separately and approved prior to commencing repairs. Minor repairs (Repair incident under \$ 3,500.00 of labor and material cost) that can be performed on site are included in the pricing of this agreement.
- Monthly Reporting,
 - Overall systems status
 - Critical Event Report
 - ROC Report
 - Trends, anticipated activities, upcoming maintenance

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Documentation

- Asset Management is the responsibility of DEN.
- Critical spares identification, documentation and management is a shared responsibility between DEN and Johnson Controls.
- Preventative Maintenance documentation is a shared responsibility between DEN and Johnson Controls.
- Daily rounds and processes performed by DEN will be co-developed to define day-to-day responsibilities and documentation. JCI shall review logs and trends weekly and document with critical environments process.
- In order to provide complete Critical Environments Operation Package documentation of excluded maintenance must be provided from DEN to JCI on a weekly basis.

REMOTE MONITORING OF EQUIPMENT AND ENVIRONMENT

24/7/365 Monitor via our Remote Operations Center conditions and equipment at the site.

- Alarm Monitoring
- Monitor for HVAC controls alarms, out of range set points, equipment failure
- Dispatch 24/7/365 Service or Controls Technician to site
- Facility Trending
- Monitor equipment for predictive trends (e.g. unable to meet defined points within a range, certain hotspots within the facility) and report to maintenance for repairs

SEMI-ANNUAL ELECTRICAL EQUIPMENT TESTING

Electrical Panelboards, Circuit Breakers, and Transformers (Semi-Annual)

- Visually inspect power feed connections, panel boards and circuit breakers
- Inspect electrical controls
- Test equipment for proper operation.

Electrical System Thermography (Annual)

- Perform predictive infrared testing of all motors, motor control centers, electrical equipment.
- Prepare report and review with DEN AIM and DEN Technologies Data Center Manager any irregularities. Initiate repairs based on equipment being out of compliance.

UPS (Daily performed by DEN facilities; reports submitted to JCI) *

- Review fault codes and record operation (Daily)
- Validate Room Environment operation(Daily)
- Check cabinet for vibration and overheating (Daily)
- Check air filter
- * DEN to provide daily service unless JCI manager is onsite to perform the service

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HVAC EQUIPMENT MAINTENANCE

In Row Cooling Units DataAire CRAC 101 -109 (Quarterly)

- Inspect wiring
- Check for proper fan operation
- Check condensate pan and pump
- Record Amp Draw

Exhaust Fan (Semi-Annual)

- Lubricate Fan Bearings semi-annual
- Check belt

Heat Exchanger (Semi-Annual)

- Inspect and clean Heat Exchanger fins
- Verify heat exchanger operation

Air Cooled Scroll Chiller - York YLAA (Monthly unless designated below)

- Check Oil Level
- Perform Oil Analysis (Annual)
- Test and validate chiller controls operation (Review Operation History)
- Condenser Coil Cleaning (Semi-Annual)
- Microchannel Coil Cleaning (Semi-Annual)
- Check On-Board battery

BAS Temperature Controls Honeywell EBI system / Metasys (Monthly)

- Set up Critical trends and alarms in Metasys connected to ROC (Connect CADC Metasys data points to DEN primary server)
- Review "System Event Log" to determine alarms, events, and take appropriate corrective action.
- Critical points verified/calibrated.
- Review ROC system operation and logs
- Set up reports and alarms for CADC.

Mini-Plus Ceiling Cooling Unit (Data Aire)

- Check and replace Air Filter (annual, filter provided by DEN)
- Check Belt Tension

GF Chilled Water Downflow Unit (DataAire gForce) (Quarterly)

- Check Air Filter and replace Air Filter (annual, filter provided by DEN)
- Check condensate drain and pump
- Check Space humidity
- Check electrical fuses and connections

24/7/365 4 HOUR EMERGENCY SERVICE RESPONSE

- Provide 4 Hour on site emergency response with onsite operator, south campus O & M manager, and controls technician or electrical maintenance personnel for emergency support

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CONTRACT SCOPE OF WORK EXCLUSIONS

The following items are excluded from the scope of work.

- Generator Maintenance
- Fuel Polishing
- Generator Batteries materials and labor
- UPS Batteries material and labor
- Starline Busway
- Rack Mounted PDU's
- Racks
- DEN CCA central AHU equipment and controls that provides make up air to the CADC
- Daily rounds and logs (By DEN)
- Fire Alarm and Suppression
- Security Systems
- Integrated Electrical and HVAC Testing
- Lighting
- Spare Parts
- Training
- Refrigerant
- Energy Star Reporting
- CMMS Data Entry

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Schedule A

Pricing:

Contract Start Date: **July 17, 2021.**

JCI Annual Service Prices:

July 17, 2021 – July 16, 2022	\$451,736.00
July 17, 2022– July 16, 2023	\$470,797.00
July 17, 2023– July 16, 2024	\$490,621.00
Three (3) Year Total Service Price:	\$1,413,154.00

Terms and Conditions:

- Pricing is based on monthly invoicing in arrears and Johnson Controls Standard Terms and Conditions.
- Pricing is based on DEN entering into a mutually agreeable contract directly with Johnson Controls, Inc.
- Material and use taxes are included in the above pricing.
- Trip charges, mileage rates are included in the above pricing.
- Minor Repair is defined as a repair event with a price under \$3,500.00 which is included in the pricing above.
- Major Repair is defined as a repair event over \$3,500 which will be quoted to the customer prior to incurring costs and is excluded from the above pricing.
- Pricing for labor is consistent with City and County Denver Prevailing Wage regulations.
- Pricing is inclusive of City and County of Denver certified payroll requirements.

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Planned Service Agreement

Customer Name: DENVER INTERNATIONAL AIRPORT SOUTH DATA CENTER
Address: 8500 Pena Boulevard Denver CO
Proposal Date: 6/17/2021
Estimate #:

Scope of Service

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

Services and Equipment Covered List

Only the Services and Equipment Covered listed in this proposal with the exclusions listed will be covered as part of this Agreement. Any changes to the Services List or Equipment Covered must be agreed upon in writing by both Parties.

Term / Automatic Renewal

This Agreement takes effect on 7/17/2021 and will continue until 7/16/2024 ("Original Term"). The Agreement will automatically renew on a year-to-year basis for three years after the Original Term ends unless the Customer or JCI gives the other written notice it does not want to renew. The notice must be delivered at least forty-five (45) days prior to the end of the Original Term or of any renewal period. The Original Term and any renewal periods are sometimes collectively referred to in this Agreement as the "Term". Renewal price adjustments are discussed in the Terms and Conditions.

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Price and Payment Terms

The total Contract Price for JCI's Services during the 1st year of the Original Term is \$451,736.00. This amount will be paid to JCI in Monthly installments. Pricing for each subsequent year of a multiyear original term is set forth in the Supplemental Price and Payment Terms. All payments will be due and payable within 30 days of the invoice date and such timely payment by Customer shall be a condition precedent to JCI's obligation to perform its Services. A penalty of one and a half percent (1.5%) of the amount due per month shall accrue for payments received after the payment due date. Renewal price adjustments are set forth in the Terms and Conditions.

Multi-year Pricing

Year 1	\$451,736.00
Year 2	\$470,797.00
Year 3	\$490,621.00

Pricing is valid until July 31, 2021.

JOHNSON CONTROLS Inc.

By: Rey Medina

By: _____

Signature

Rey Medina

Signature: _____

Title: Account Executive

Date: 6/17/2021

Title: _____

Date: _____

Signature: _____

Customer PO#: _____

Title: _____

Date: _____

JCI Branch: Denver CO Service - 0825

Address: 10289 W CENTENNIAL RD

LITTLETON CO 80127-4216

Branch Phone: (866) 819-0233

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TERMS AND CONDITIONS DEFINITIONS

CONNECTED EQUIPMENT SERVICES means a data-analytics and monitoring Software platform that uses a cellular or network connection to gather equipment performance data to assist JCI in advising Customer on such equipment's health, performance or potential malfunction.

CONTRACT PRICE means the price that Customer shall pay to JCI for the Services.

COVERED EQUIPMENT means the equipment for which Services are to be provided under this Agreement. Covered Equipment is set forth in Schedule A - Equipment List.

EQUIPMENT FAILURE means the failure, under normal and expected working conditions, of moving parts or electric or electronic components of the Covered Equipment that are necessary for its operation.

PREMISES means those Customer premises where the Covered Equipment is located or Services performed pursuant to this Agreement.

REMOTE MONITORING SERVICES means remote monitoring of Covered Equipment and/or systems including building automation, HVAC equipment, and fire alarm, intrusion, and/or other life safety systems for alarm and event notifications using a UL Certified Central Station.

REMOTE OPERATIONS CENTER (ROC) is the department at JCI that remotely monitors alarm and industrial (HVAC) process signals.

REMOTE OPERATING SERVICES means remote interrogation, modification and/or operation of building automation, HVAC equipment, and/or other Covered Equipment.

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

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

SCHEDULED SERVICE MATERIALS are the materials required to perform Scheduled Service Visits on Covered Equipment, unless excluded from the Agreement.

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

SERVICES are the work, materials, labor, service visits, and repairs to be provided by JCI pursuant to this Agreement except that the Services do not include the Connected Equipment Services or the provision of other software products or digital or cloud services, which are provided under separate terms and conditions referenced in Section P.

A. JCI'S SERVICES FOR COVERED EQUIPMENT

1. **BASIC COVERAGE** means Scheduled Service Visits, plus Scheduled Service Materials (unless excluded from this Agreement). No parts, equipment, Repair Labor or Repair Materials are provided for under BASIC COVERAGE.

2. **PREMIUM COVERAGE** means BASIC COVERAGE plus Repair Labor, plus Repair Materials (unless excluded from the Agreement). If Customer has ordered PREMIUM COVERAGE, JCI will inspect the Covered Equipment within forty-five (45) days of the date of this Agreement, or as seasonal or operational conditions permit. JCI will then advise Customer if JCI finds any Covered Equipment not in working order or in need of repair. With Customer's approval, JCI will perform the work necessary to put the Covered Equipment in proper working condition, subject to the terms of this Agreement. Customer will pay for such work at JCI's standard rates for parts and labor in effect at the time that the work is performed. If Customer does not want JCI to perform the work identified as necessary by JCI, any equipment thereby affected will be removed from the list of Covered Equipment, and the Contract Price will be adjusted accordingly. Should Customer not make JCI's recommended repairs or proceed with the modified PREMIUM COVERAGE, JCI reserves the right to invoice Customer for the cost of the initial equipment inspection.

3. **EXTENDED SERVICE** means Services performed outside JCI's normal business hours and is available only if Customer has PREMIUM COVERAGE. Extended Service is available either 24/5 or 24/7, at Customer's election. The price for Extended Service, if chosen by Customer, is part of the total Contract Price.

4. **JCI CONNECTED EQUIPMENT SERVICES.** Certain equipment sold hereunder includes by default JCI's Connected Equipment Services. **If Customer's equipment includes Connected Equipment Services, such services will be on by default and the remote connection will continue to connect to Customer's Equipment through the full equipment lifecycle, unless Customer specifically requests in writing that JCI disable the remote connection or JCI discontinues or removes such remote connection.** For more information on whether your particular equipment includes Connected Equipment Services, a subscription to such services and the cost, if any, of such subscription, please see your applicable order, quote, proposal, or purchase documentation or talk to your JCI sales representative. If Customer's equipment includes Connected

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Equipment Services, JCI will provide a cellular modem or other gateway device ("Gateway Device") owned by JCI or Customer will supply a network connection suitable to establish a remote connection with Customer's applicable equipment to permit JCI to use Connected Equipment Services to perform first-year and extended warranty services as well as other services, including troubleshooting, quarterly health reports, remote diagnostic and monitoring and aftermarket services. For certain subscriptions, Customer will be able to access equipment information from a mobile or smart device using Connected Equipment Service's mobile or web app. Any Gateway Devices provided hereunder shall remain JCI's property, and JCI may upon reasonable notice access and remove such Gateway Device and discontinue services in accordance with the Software Terms. If Customer does not permit JCI to connect via a connection validated by JCI for the equipment and a service representative must therefore be dispatched to the Customer site, then the Customer will pay JCI at JCI's then-current standard applicable contract regular time and/or overtime rate for services performed by the service representative. **Customer acknowledges that, while Connected Equipment Services generally improve equipment performance and services, Connected Equipment Services does not prevent all potential malfunction, insure against all loss or guarantee a certain level of performance and that JCI shall not be responsible for any injury, loss, or damage caused by any act or omission of JCI related to or arising from the monitoring of the equipment under Connected Equipment Services.**

5. REMOTE MONITORING SERVICES OR REMOTE OPERATING SERVICES. If Remote Monitoring Services or Remote Operating Services are provided, Customer agrees to furnish JCI with a list of the names, titles, addresses, email addresses, and phone numbers of all persons authorized to be contacted by, or be able to contact the ROC to perform specific agreed upon actions with the appropriate authority. If JCI's Services include "Remote Monitoring Services with Open and Close," Customer also agrees to furnish JCI with Customer's daily and holiday opening and closing schedules. Customer agrees to maintain and update the call lists with accurate information. Customer further agrees to notify JCI of such changes as soon as possible. JCI/ROC is not responsible to find new contacts/numbers if the contacts on the call lists cannot be reached. A maximum of three contacts are allowed for any time of the day. If none of those contacts can be reached, then neither JCI nor the ROC are responsible for damages. Customer is responsible for any and all costs and expenses arising from Customer's failure to provide timely updates for any of the contact information submitted to the ROC.

6. CUSTOMER SERVICE INFORMATION PORTAL. Customer may be able to utilize JCI's Customer Service Information Portal during the term of the Agreement, pursuant to the then applicable Terms of Use Agreement.

B. OUT OF SCOPE SERVICES

If, during any Service Visit, JCI detects a defect in any of Customer's equipment that is not Covered Equipment under this Agreement (an "Out of Scope Defect"), JCI may (but shall have no obligation to) notify Customer of such Out of Scope Defect. If Customer elects for JCI to repair such Out of Scope Defect, or if JCI otherwise performs any Services or provides any materials, parts, or equipment outside the scope of the Services (collectively, "Out of Scope Services"), Customer shall direct JCI to perform such Out of Scope Services in writing, and Customer shall pay for such Out of Scope Services at JCI's standard fees or hourly rates. If, after receiving notice of an Out of Scope Defect, Customer elects not to engage JCI to repair such Out of Scope Defect, Customer shall defend and indemnify JCI from and against any and all losses, damages, claims, costs and expenses arising directly or indirectly out of such Out of Scope Defect. Any Out of Scope Services performed by JCI at the direction of Customer pursuant to this Section shall be subject to the terms of this Agreement.

C. EXCLUSIONS

JCI's Services and warranty obligations expressly exclude:

- (a) the repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slats/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
- (b) disposal of hazardous wastes (except as otherwise expressly provided herein);
- (c) disinfecting of chiller condenser water systems and other components for biohazards, such as but not limited to, Legionella unless explicitly set forth in the scope of services between the parties. Unless explicitly provide for within the scope of services, this is Out of Scope Services and the Customer's exclusive responsibility to make arrangements for such services with a provider other than JCI. Mentions of chiller tube cleaning, condenser cleaning, cooling tower cleaning or boiler tube cleaning in any scope of services, only involve work to remove normal buildup of debris and scale using tube brush cleaning, pressure washing or acid flushing. Reference to such cleaning does not include chemical cleaning, disinfection or chemical water treatment required to eliminate, control or disinfect against biohazards such as but not limited to Legionella;
- (d) refrigerant; supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as ribbons, bulbs and paper;
- (e) the furnishing of materials and supplies for painting or refinishing equipment;
- (f) the repair or replacement of wire in conduit, buried cable/transmission lines, or the like, if not normally replaced or maintained on a scheduled basis;
- (g) replacement of obsolete parts; and
- (h) damages of any kind, including but not limited to personal injury, death, property damage, and the costs of repairs or service resulting from:
 - abuse, misuse, alterations, adjustments, attachments, combinations, modifications, or repairs to Covered Equipment not performed, provided, or approved in writing by JCI;
 - equipment not covered by this Agreement or attachments made to Covered Equipment;
 - acts or omissions of the Customer, including but not limited to the failure of the Customer to fulfill the Customer Obligations and

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Commitments to JCI as described in Section F of this Agreement, operator error, Customer's failure to conduct preventive maintenance, issues resulting from Customer's previous denial of JCI access to the Covered Equipment, and Customer's failure to keep the site clean and free of dust, sand, or other particles or debris, unless such conditions are previously expressly acknowledged by JCI in writing;

- use of the Covered Equipment in a manner or environment, or for any purpose, for which it was not designed by the manufacturer;
- site-related and environmental conditions, including but not limited to power failures and fluctuations in electrical current (or "power surges") and biohazards such as but not limited to Legionella associated with condenser water, cooling tower systems and subcomponent systems;
- the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather;
- issues or failures not specifically covered by this Agreement; or
- occurrences beyond JCI's reasonable control and without JCI's fault or negligence.

D. PAYMENT TERMS; PRICE ADJUSTMENTS

Fees and other amounts due hereunder are due upon receipt of the invoice and shall be paid by Customer within thirty (30) days. Such payment is a condition precedent to JCI's obligation to perform Services under the Agreement. Any invoice disputes must be identified in writing by Customer within 21 days of the date of invoice. Payments of any disputed amounts are due and payable upon resolution. All other amounts remain due within 30 days. Failure by Customer to make payments when due will give JCI, without prejudice to any other right or remedy, the right to: (i) to stop performing any Services, withhold deliveries of Equipment and other materials, terminate or suspend any software licenses provided hereunder and/or terminate this Agreement; and (ii) charge Customer interest on the amounts unpaid at a rate equal to the lesser of one and one-half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full. Customer will pay all of JCI's reasonable collection costs (including legal fees and expenses). In the event of Customer's default, the balance of any outstanding amounts will be immediately due and payable.

JCI may increase prices upon notice to the Customer to reflect increases in material and labor costs. In issuing any purchase order related to this Agreement, and notwithstanding any language to the contrary therein, Customer acknowledges and agrees that any and all JCI invoices for an amount greater than \$25,000 shall be paid only via wire transfer, check, or money order. If this Agreement is renewed, JCI will provide Customer with notice of any adjustments in the Contract Price applicable to any renewal period no later than forty-five (45) days prior to the commencement of that renewal period. Unless Customer terminates the Agreement at least thirty (30) days prior to the start of such renewal period, the adjusted price shall be the price for the renewal period.

E. WARRANTIES

JCI warrants its Services will be provided in a good and workmanlike manner for 90 days from the date of Services. If JCI receives written notice of a breach of this warranty prior to the end of this warranty period, JCI will re-perform any non-conforming Services at no additional charge within a commercially reasonable time of the notification.

JCI warrants that equipment manufactured or labeled by Johnson Controls, Inc. shall be free from defects in material and workmanship arising from normal usage for a period of 90 days. If JCI installs or furnishes a piece of equipment under this Agreement, and that equipment is covered by a warranty from a manufacturer other than JCI, JCI will transfer the benefits of that manufacturer's warranty, if any, to Customer and such warranty remedies are exclusive for that equipment. All transportation charges incurred in connection with the warranty for equipment and/or materials not covered under this Agreement shall be borne by Customer. Except as provided herein, if JCI receives written notice of a breach of this warranty prior to the end of this warranty period, JCI will repair or replace (at JCI's option) the defective equipment.

These warranties do not extend to any Services or equipment that have been misused, altered, or repaired by Customer or third parties without the supervision of and prior written approval of JCI, or if JCI serial numbers or warranty decals have been removed or altered. All replaced parts or equipment shall become JCI's property. This warranty is not assignable. Warranty service will be provided during normal business hours, excluding holidays. The remedies set forth herein shall be Customer's sole and exclusive remedy with regards to any warranty claim under this Agreement. Any lawsuit based upon the warranty must be brought no later than one (1) year after the expiration of the applicable warranty period. This limitation is in lieu of any other applicable statute of limitations. **CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THESE WARRANTIES ARE JCI'S SOLE WARRANTIES AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** JCI makes no and specifically disclaims all representations or warranties that the services, products, software or third party product or software will be secure from cyber threats, hacking or other similar malicious activity.

F. CUSTOMER OBLIGATIONS AND COMMITMENTS TO JCI

1. Customer warrants it has given JCI all information concerning the condition of the Covered Equipment. The Customer agrees and warrants that, during the Term of this Agreement, Customer will:
 - (1) operate the Covered Equipment according to the manufacturer's and/or JCI's recommendations;
 - (2) keep accurate and current work logs and information about the Covered Equipment as recommended by the manufacturer and/or JCI;
 - (3) provide an adequate environment for Covered Equipment as recommended by the manufacturer and/or JCI, including, but not limited to adequate space, electrical power, water supply, air conditioning, and humidity control;
 - (4) notify JCI immediately of any Covered Equipment malfunction, breakdown, or other condition affecting the operation of the Covered

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Equipment;

- (5) provide JCI with safe access to its Premises and Covered Equipment at all reasonable and necessary times for the performance of the Services;
- (6) allow JCI to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that JCI can perform the Services required under this Agreement;
- (7) as applicable, provide proper condenser, cooling tower and boiler water treatment for the proper functioning of Covered Equipment and protect against any environmental issues and instances of biohazards such as but not limited to Legionella;
- (8) carefully and properly set and test the intrusion alarm system each night or at such other time as Customer shall close the Premises;
- (9) obtain all necessary licenses and permits required for and pay all taxes associated with the Services;
- (10) notify JCI immediately of any claimed inadequacy in, or failure of, the Covered Equipment or other condition affecting the operation of the Covered Equipment;
- (11) furnish any necessary 110 volt A/C power and electrical outlets at its expense;
- (12) properly maintain, repair, service, and assure the proper operation of any other property, system, equipment, or device of Customer or others to which the Covered Equipment may be attached or connected, in accordance with manufacturer recommendations, insurance carrier requirements, or the requirements of any fire rating bureau, agency, or other authorities having jurisdiction thereof;
- (13) not tamper with, alter, adjust, disturb, injure, remove, or otherwise interfere with any Covered Equipment (including any related software) and not permit the same to be done; and
- (14) refrain from causing false alarms, and reimburse JCI for any fine, penalty, or fee paid by or assessed against JCI by any governmental or municipal agency as a result thereof.
- (15) be solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply JCI secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Customer and/or end user against unauthorized access.
- (16) take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

2. Customer acknowledges and understands that unless water treatment for biohazards (such as Legionella) is explicitly included in the services JCI is providing, it is Customer's responsibility to provide such treatment. Customer also acknowledges that its failure to meet the above obligations will relieve JCI of any responsibility for any Covered Equipment breakdown, or any necessary repair or replacement of any Covered Equipment. If Customer breaches any of these obligations, JCI shall have the right, upon written notice to Customer, to suspend its Services until Customer cures such breach. In addition, Customer shall be responsible for paying or reimbursing JCI for any costs associated with corrective work required as a result of Customer's breach of these obligations.

G. FORCE MAJEURE

JCI shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, failure to render services, or any other failure by JCI to perform an obligation under this Agreement, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of JCI, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of JCI. If JCI's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, JCI shall be excused from performance under the Agreement. Without limiting the generality of the foregoing, if JCI is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, JCI will be entitled to extend the relevant completion date by the amount of time that JCI was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases JCI's cost to perform the services, Customer is obligated to reimburse JCI for such increased costs, including, without limitation, costs incurred by JCI for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by JCI in connection with the Force Majeure Event.

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H. TERMINATION

1. Remote Monitoring Services and Remote Operating Services may be immediately canceled by either party if JCI's Remote Operations Center, connecting wires, or monitoring systems are destroyed by fire or other catastrophe, or where the Premises are so substantially damaged that it is impractical to continue Services.
2. If either party fails to perform any of its obligations under this Agreement, the other party shall provide written notice thereof to the party alleged to be in default. Should the party alleged to be in default fail to respond in writing or take action to cure the alleged default within ten (10) days of receiving such written notice, the notifying party may terminate this Agreement by providing written notice of such termination.
3. JCI may terminate this Agreement and discontinue any Services if JCI is unable to obtain or continue to support technologies, equipment or component parts that are discontinued, become obsolete or are otherwise not commercially available. JCI will not be liable for any damages or subject to any penalty as a result of any such termination.
4. Upon termination of this Agreement for any reason, Customer shall pay to JCI all undisputed amounts owed through the date of termination within thirty (30) days of such termination. Customer shall also provide JCI with reasonable access to the Premises to remove the Gateway Device and any other JCI property and to un-program any intrusion, fire, or life safety system, as applicable. Customer shall be liable for all fees, costs, and expenses that JCI may incur in connection with the enforcement of this Agreement, including without limitation, reasonable attorney fees, collection agency fees, and court costs.
5. If the Agreement is for a multi-year term, either party may terminate the Agreement after the first full year of Services by giving the other party no less than forty-five (45) days written notice; provided, however, that if Customer has ordered PREMIUM COVERAGE, Customer may terminate the Agreement only upon JCI's written consent.

J. ASBESTOS, MOLD, BIOHAZARDS, AND HAZARDOUS MATERIALS

"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 or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product or polychlorinated biphenyls. "Hazardous Materials" specifically includes mold, lead-based paints, biohazards such as but not limited to Legionella and asbestos-containing materials ("ACM").

Neither Customer nor JCI desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of ACM.

JCI will be responsible for removing or disposing of any Hazardous Materials that it uses in providing the Services ("JCI Hazardous Materials") and for the remediation of any areas affected by the release of JCI Hazardous Materials. For other Hazardous Materials that may be present at its facilities ("Non-JCI Hazardous Materials"), Customer shall supply JCI with any information in its possession relating to the presence of Hazardous Materials if their presence may affect JCI's performance of the Services. If either Customer or JCI becomes aware of or suspects the presence of Non-JCI Hazardous Materials that may interfere with JCI's Services, it shall immediately stop the Services in the affected area and notify the other party. As between Customer and JCI, Customer shall be responsible at its sole expense for removing and disposing of Non-JCI Hazardous Materials from its facilities and for the remediation of any areas impacted by the release of the Non-JCI Hazardous Materials and must provide a certificate of abatement before JCI will be obligated to perform or continue its Services, unless JCI had actual knowledge that Non-JCI Hazardous Materials were present and acted in disregard of that knowledge, in which case (i) JCI shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Hazardous Materials, and (ii) Customer shall remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from JCI's performance of the Services. Customer shall defend and indemnify JCI against any losses, costs, damages, expenses, and claims arising out of its failure to comply with this Section M.

K. CUSTOMER DATA

Customer data obtained from the Services is owned by and shall belong to Customer. JCI will access and use Customer data to provide Services to Customer. Except as set forth herein, JCI will not disclose to any third party any individual Customer data acquired through performance of the Services without Customer's consent. Customer agrees that JCI and its subsidiaries, affiliates and approved third party contractors and developers may collect and use Customer data for any reason, as long as any external use of the data is on a de-identified basis that does not personally identify Customer or any individual. Customer hereby grants JCI a perpetual, worldwide, irrevocable, royalty free license to use, modify, manipulate, sublicense, and create derivative works from such data. JCI shall retain all rights to any intellectual property, data, materials and products created as a result of its performance of Services.

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

JOHNSON CONTROLS PLANNED SERVICE PROPOSAL DENVER INTERNATIONAL AIRPORT SOUTH CAMPUS & CONCOURSE A DATA CENTER

M. SOFTWARE AND DIGITAL SERVICES

Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, JCI's standard terms for such Software and Software related professional services in effect from time to time at <https://www.johnsoncontrols.com/techterms> (collectively, the "Software Terms"). Applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, JCI and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto.

N. MISCELLANEOUS PROVISIONS

1. All notices required to be given hereunder shall be in writing and shall be considered properly given if: (a) delivered in person, (b) sent via the United States Postal Service, postage prepaid, registered or certified with return receipt requested, (c) sent by overnight delivery service (e.g., FedEx, UPS), or (d) sent by facsimile, email or other electronic means and confirmed by facsimile, return email or telephone.
2. This Agreement may not be assigned by Customer without JCI's prior written consent. JCI shall have the right to assign this Agreement to any other person, firm, or corporation without Customer's consent. JCI shall also have the right, in its sole discretion, to subcontract any portion of the Services. This Agreement inures to the benefit of and is applicable to any assignees or subcontractors of JCI, and is binding upon Customer with respect to said assignees or subcontractors with the same force and effect as it binds Customer to JCI.
3. This Agreement shall be subject to and governed by the laws of the State where the Services are performed.
4. If any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
5. This Agreement is the entire contract between JCI and Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between the parties.
6. Customer acknowledges and agrees that any purchase order issued by Customer in connection with this Agreement is intended only to establish payment authority for Customer's internal accounting purposes and shall not be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included or referenced in Customer's purchase order will have any force or effect and these terms and conditions shall control. Customer's acceptance of any Services shall constitute an acceptance of these terms and conditions. Any proposal for additional or different terms, whether in Customer's purchase order or any other document, unless expressly accepted in writing by JCI, is hereby objected to and rejected.
7. If there are any changes to Customer's facilities or operations, or to applicable regulations, laws, codes, taxes, or utility charges, that materially affect JCI's performance of the Services or its pricing thereof, JCI shall have the right to an equitable and appropriate adjustment to the scope, pricing, and other affected terms of this Agreement.
8. No claim or cause of action, whether known or unknown, shall be brought against JCI more than one year after the claim first arose. Except as provided for herein, JCI's claims must also be brought within one year. Claims for unpaid contract amounts are not subject to the one-year limitation.

EXHIBIT B

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
PROFESSIONAL SERVICES AGREEMENT**

A. Certificate Holder

The certificate shall be issued to: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard, Suite 8810
Denver CO 80249
Attn: Risk Management

B. Acceptable Certificate of Insurance Form and Submission Instructions

Please read these requirements carefully to ensure proper documentation and receipt of your certificate(s) of insurance.

- ACORD FORM (or equivalent) certificate is required.
- SUBMIT via emailed in pdf format to: contractadmininvoices@flydenver.com
- ELECTRONIC CERTIFICATES are required, hard copy documents will not be accepted.
- THIRD PARTY SOFTWARE may be implemented during the term of this Agreement to manage insurance compliance and documents with required use by Vendor of such system.
- REFERENCE on the certificate must include the DEN assigned Contract Number.

C. Coverages and Limits

1. Commercial General Liability:

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, host liquor, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per location aggregate must be maintained.

- a. Coverage shall include contractual liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.

2. Business Automobile Liability:

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises.
- d. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.

- e. If Contractor is an individual or represents that Contractor does not own any motor vehicles and/or Contractor's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.
 - f. If Contractor will be completing all services to DEN under this Agreement remotely, this requirement will be waived.
3. **Workers' Compensation and Employer's Liability Insurance:**
Contractor shall maintain workers compensation coverage in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- a. If Contractor is a sole proprietor, Workers' Compensation and Employer's Liability is exempt under the Colorado Workers' Compensation Act. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage and executing all required documentation with the State of Colorado.
4. **Technology Errors and Omissions, Network Security, and Privacy Liability (Cyber):**
Contractor shall maintain a limit no less than \$10,000,000 each claim and annual aggregate.
- a. Coverage shall include negligent acts, errors, mistakes and omissions arising out of the scope of services of this Agreement performed by Contractor, or any person employed or contracted by Contractor.
 - b. Coverage shall include, but not be limited to, liability arising from theft, dissemination and/or use of personal, private, confidential, information subject to a non-disclosure agreement, including information stored or transmitted, privacy or cyber laws, damage to or destruction of information, intentional and/or unintentional release of private information, alteration of information, extortion and network security, introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon, advertising injury, personal injury (including invasion of privacy), intellectual property offenses related to internet, forensic investigations and business interruption coverage.
5. **Unmanned Aerial Vehicle (UAV) Liability:**
If Contractor desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:
- a. Express written permission must be granted by DEN.
 - b. Express written permission must be granted by the Federal Aviation Administration (FAA).
 - c. Drone equipment must be properly registered with the FAA.
 - d. Drone operator(s) must be properly licensed by the FAA.
 - e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit each occurrence for bodily injury and property damage.
6. **Excess/Umbrella Liability:**
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project and/or Contract Number and project description shall be noted on the Certificate of Insurance.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, agents, employees and volunteers as Additional Insureds by policy endorsement.

F. Waiver of Subrogation

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, agents, employees and volunteers by policy endorsement.

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within seven (7) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer's as verification.

H. Additional Provisions

1. Deductibles, Self-Insured Retentions, or any other type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City is included under all policies where Additional Insured status is required.
5. The insurance requirements under this Agreement shall be the greater of (i) the minimum limits and coverage specified hereunder or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Contractor. It is agreed that the insurance requirements set forth herein shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums set forth in this Agreement.
6. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
7. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required minimum per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage remains in force.
8. Certificates of Insurance must (i) specify the issuing companies, policy numbers and policy periods for each required form of coverage, (ii) be issued and signed by an authorized entity and (iii) be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.

10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
12. No material changes, modifications or interlineations to insurance coverage required by this Agreement shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring DEN is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.
14. Contractor's failure to maintain the insurance required by this Agreement shall be the basis for immediate termination of this Agreement at DEN's sole discretion and without penalty to the City.