

# CONTRACT APPROVAL FORM

(Contract Management Use only)

**CONTRACT TRACKING NO.**

CM2617

### CONTRACTOR INFORMATION

Name: Brooks Building Solutions

Address: 4501 Beverly Ave Jacksonville FL 32210

City State Zip

Contractor's Administrator Name: Chad Poole Title: Sales Representative

Tel#: (904) 642-5303 Fax: (904) 641-8722 Email: cpoole@brookssolutions.net

### CONTRACT INFORMATION

Contract Name: Chiller Preventative Maintenance Service Contract Value: \$ 4,540.00

Brief Description: Annual Preventative Maintenance Contract for 2-DIAKIN Chillers (Model AGZ210E) at the RMF Justice Center service to maintain the 10 Year Warranty on Chillers.

Contract Dates : From: 10/1/18 to: 9/30/19 Status:  New  Renew  Amend#  WA/Task Order

How Procured:  Sole Source  Single Source  ITB  RFP  RFQ  Coop.  Other

### If Processing an Amendment:

Contract #: \_\_\_\_\_ Increase Amount of Existing Contract: \_\_\_\_\_

New Contract Dates: \_\_\_\_\_ to \_\_\_\_\_ TOTAL OR AMENDMENT AMOUNT: \_\_\_\_\_

### APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

<p>1. <u>[Signature]</u> <u>10-23-18</u> Department Head Signature Date</p> <p>2. <u>[Signature]</u> <u>10/26/18</u> Contract Management Date</p> <p>3. <u>[Signature]</u> <u>10.29.18</u> Office of Management &amp; Budget Date</p> <p>4. <u>[Signature]</u> <u>10/21/18</u> County Attorney (approved as to form only) Date</p>	<p><u>Justice Center</u> Submitting Department</p> <p><u>01074712-546020</u> <u>ms 10/29/18</u> Funding Source/Acct #</p>
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NASSAU COUNTY MOJ  
25 OCT 18 PM 3:43

Comments: \_\_\_\_\_

### COUNTY MANAGER - FINAL SIGNATURE APPROVAL

[Signature] 10/31/18  
Michael Mullin Date

### RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

- Original: Clerk's Services; Contractor (original or certified copy)
- Copy: Department
- Office of Management & Budget
- Contract Management
- Clerk Finance

Nassau County Board of County Commissioners  
Sole Source/Single Source Certification Form

Vendor Name: Brooks Building Solutions Department: Facilities Maintenance  
Address: 4501 Beverly Ave. Department Head Signature: [Signature]  
Jax, FL, 32210  
Phone: 904-642-5303 Date: 10-1-2018  
Contact Name: Chad Poole Account: 01074712 - 546000  
546020

10/23/18  
Per [Signature]

Description of Commodity:  
Preventative Maintenance Contract for 2 - DIAKIN chillers at the RMF Justice Center for Fiscal Year 18-19. Dates of coverage are Oct. 1-2018 through September 30, 2019.

Check one (1) of the following two (2) choices:

- Sole Source: The required goods or services can only be procured from one vendor.
- Single Source: The required goods or services can be purchased from multiple vendors, but in order to meet certain functional or performance requirements only one economically feasible source exists.

Please check all of the following that apply:

- Purchase can only be obtained from original manufacturer-not available through distributors.
- Only authorized area distributor of the original manufacturer.
- Parts/Equipment are not interchangeable with similar parts of another manufacturer.
- This is the only known source that will meet the specialized needs of this department or perform the intended function.
- This source must be used to meet warranty or service maintenance requirements.
- This source is required for standardization.
- None of the above apply.

Comments/Explanations: (required)

Required to have service and maintenance performed by manufacturer representative contractor to keep 10 year warranty in effect on chillers

Approval:

[Signature] 10/1/18  
County Manager Date

## In House Purchase Order

\*\*All information needs to be complete before requisition can be processed.

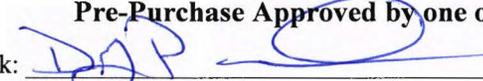
<b>VENDOR INFORMATION</b>		PO/CM# <u>115</u> Funding Acct: <u>0107 4712-546000</u> DATE: 10/1/2018 REQUISITION BY: <u>Bill Howard</u> By signing, I certify this purchase is compliant with the County Purchasing Policy and I have reviewed the quote for accuracy. Request for which Department <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Facilities Maintenance</td> <td style="width: 10%; text-align: center;">x</td> <td style="width: 20%;">DET</td> </tr> <tr> <td>Parks &amp; Recreation</td> <td></td> <td></td> </tr> </table>		Facilities Maintenance	x	DET	Parks & Recreation		
Facilities Maintenance	x			DET					
Parks & Recreation									
If not provided on the Quote.									
Name (Required)	Brooks Building Solutions								
Address	<i>On File</i>								
City, St. Zip									
Phone#									
Fax #									
<b>Documents Attached</b>	Yes	No							

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT PRICE	AMOUNT
1	1 year preventative maintenance	2	\$ 2,270.00	\$4,540.00
	service agreement for	0	\$ -	\$0.00
	manufacturer required			\$0.00
	service to maintain 10 year			\$0.00
	<b>warranty on chillers.</b>			\$0.00
	<b>required to be performed</b>			\$0.00
	<b>by DIAKIN authorized</b>			\$0.00
	<b>service/ manufacturer rep.</b>			\$0.00
	<i>3operational and 1 annual</i>			
	inspections paid semiannually		Total	\$4,540.00

**Total of Purchase Requested**

**Purchases >\$200 but < \$1000 requires pre-purchase approval**

**Pre-Purchase Approved by one of the following**

Douglas Podiak:  Date: \_\_\_\_\_

William Stonebreaker: \_\_\_\_\_ Date: \_\_\_\_\_

Suzie Fontes: \_\_\_\_\_ Date: \_\_\_\_\_

**Project Description**

Facility: Justice Center  
(Building, truck, or equipment #)

**Scope of Work:**

Chiller Maintenance contract SK agreement 80

Attached Quote #

Purchase >\$1000 but <\$5000 = 3 verbal quotes  
Purchase >\$5000 but <\$50000 = 3 written quotes

**Quotes Received**

Vendor	Amount

Nassau County Board of County Commissioners  
Request for Quotation Form

Requesting Department: Facilities Maintenance Department Date: 9-25-18

Department Address: 45195 Musselwhite Road, Callahan, FL, 32011

Contact: Bill Howard

Contact email: bhoward@nassaucountyfl.com

Department Phone: (904)-548-4969 or cell (904)-753-0373

Department Fax: (904)-548-4509

Product(s)/Service(s) to be purchased (list all specifications and requirements):

Please provide the cost for quarterly Preventative Maintenance program for 2 each Diakin Chillers Model AGZ210E at the Robert M Foster Justice Center to meet the required maintenance schedule by the Manufacturer for retaining the 10 year warranty and providing reliable service from the equipment. Dates for service will be from October 2018 to September 30, 2019. First P.M. to be scheduled for December 2019. Equipment Location is 76347 Veterans Way, Yulee, FL, 32097.

➤ If additional/alternate scope of service or product is recommended, please provide as a separate attachment: Additional Attachment Yes No

\*All payments for products /services are as per Florida Statutes 218.73 & 218.74 (Terms net 45 days). \*

Please submit written response by: 10-12-18  
(Date)

Faxed / Scanned to Vendor on \_\_\_\_\_ to the attention of \_\_\_\_\_

To be completed by vendor:

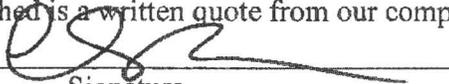
Vendor Name: Brooks Building Solutions.

Address: 4501 Beverly Blvd 32216  
Jack FL.

Phone: 904-642-5303 Fax: \_\_\_\_\_

Contact: Chad Poole

Email: CPoole@Brooksolutions.net

Attached is a written quote from our company, which is valid for \_\_\_\_\_ days.  
 9-26-18  
Signature Date

Comments: \_\_\_\_\_

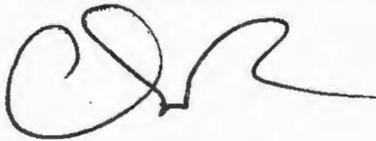
All of the above referenced Insurance coverage is required to remain in force for the duration of this Agreement and for the duration of the warranty period. Accordingly, at the time of submission of final application for payment, Supplier/Vendor shall submit an additional Certificate of Insurance evidencing continuation of such coverage.

If the Supplier/Vendor fails to procure, maintain or pay for the required insurance, Nassau County Board of County Commissioners shall have the right (but not the obligation) to secure same in the name of and for the account of Supplier/Vendor, in which event, Supplier/Vendor shall pay the cost thereof and shall furnish upon demand, all information that may be required to procure such insurance. Nassau County Board of County Commissioners shall have the right to back-charge Supplier/Vendor for the cost of procuring such insurance. The failure of Nassau County Board of County Commissioners to demand certificates of Insurance and endorsements evidencing the required insurance or to identify any deficiency in Supplier/Vendors coverage based on the evidence of insurance provided by the Supplier/Vendor shall not be construed as a waiver by Nassau County Board of County Commissioners of Supplier/Vendor's obligation to procure, maintain and pay for required insurance.

The insurance requirements set forth herein shall in no way limit Supplier/Vendors liability arising out of the work performed under the Agreement or related activities. The inclusions, coverage and limits set forth herein are minimum inclusion, coverage and limits. The required minimum policy limits set forth shall not be construed as a limitation of Supplier/Vendor's right under any policy with higher limits, and no policy maintained by the Supplier/Vendor shall be construed as limiting the type, quality or quantity of insurance coverage that Supplier/Vendor should maintain. Supplier/Vendor shall be responsible for determining appropriate inclusions, coverage and limits, which may be in excess of the minimum requirements set forth herein.

If the insurance of any Supplier/Vendor or any Sub-Supplier/Vendor contains deductible(s), penalty(ies) or self-insured retention(s), the Supplier/Vendor or Sub-Supplier/Vendor whose insurance contains such provision(s) shall be solely responsible for payment of such deductible(s), penalty(ies) or self-insured retention(s).

The failure of Supplier/Vendor to fully and strictly comply at all times with the insurance requirements set forth herein shall be deemed a material breach of the Agreement.



Chad Poole

Brooks Building Solutions

9-26-18

# Attachment A - Nassau County Standard Purchase Order Terms and Conditions

The following General Terms and Conditions shall apply to all purchases by or on behalf of Nassau County unless specifically provided otherwise in writing and signed by an authorized agent of Nassau County:

## 1. Electronic/Facsimile Transmission:

If any Purchase Order is fully executed and is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Vendor.

## 2. Prompt Payment:

Nassau County abides by Florida Statute Chapter 218 with respect to all matters relating to the payment of Vendors. The normal terms of payment will be "Net 45 days" from receipt and acceptance of goods or services from a proper invoice.

## 3. Invoices:

All invoices shall be addressed to the address as indicated on the Purchase Order and must include the Purchase Order number, Vendor's name, address and phone number, and clearly list quantities, item descriptions and units of measure.

## 4. Extra Charges:

No additional charges of any kind, including charges for boxing, packing, transportation or other extras will be allowed unless specifically agreed to in writing by an authorized agent of Nassau County.

## 5. Discount:

Discount will be computed from the date of satisfactory delivery, acceptance, or from receipt of correct invoice, whichever is later.

## 6. Tax Exemption:

Nassau County is tax exempt from Federal Excise Tax and State Sales Tax. Nassau County shall provide tax exemption number upon request by Vendor.

## 7. Entire Agreement:

This Agreement and any attachments and/or addenda hereto that are executed by the County's duly authorized agent constitute the entire and exclusive agreement between the parties. The County's placement of any order is expressly conditioned upon the Vendor's acceptance of these terms and conditions, Vendor's written confirmation, commencing performance, or making deliveries hereunder constitutes such acceptance of these terms. No terms stated by Vendor in accepting or acknowledging any purchase order shall be binding upon the County unless accepted in writing by the County and signed by an authorized County agent.

## 8. Amendment or Modification:

No agreement or understanding that modifies these terms and conditions shall be binding upon the County unless in writing and signed by the County's authorized agent.

## 9. Assignment:

No right or interest in this Agreement shall be assigned by Vendor without the written permission of County and no delegation of any obligation owed by either Vendor or County shall be made without the written permission of the other party.

## 10. Fiscal Year Funding Appropriations:

**10.1 Specified Period:** Unless otherwise provided by law, a purchase order for supplies or services may be entered into for any period of time deemed to be in the best interest of County, provided the term of the purchase order and conditions of renewal and extension, if any, are

included in the solicitations and funds are available for the initial fiscal period of the purchase order. Payment and performance obligations for succeeding fiscal periods shall be subject to annual appropriations by the Board of County Commissioners of Nassau County.

**10.2** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the purchase order shall be cancelled and Vendor shall be entitled to reimbursement for the reasonable value of any work performed to the date of cancellation.

#### **11. Time of the Essence:**

Time is of the essence in all Purchasing Agreements. If completed deliveries are not made at the time agreed, the County reserves the right to cancel or purchase elsewhere and hold Vendor accountable for all damages sustained. If delivery dates cannot be met, Vendor agrees to advise the County, in writing, of the earliest possible shipping date for acceptance by the County. This provision is not in lieu of, and the County does not waive, any remedies provided by law.

#### **12. Failure to Perform:**

Failure of the Vendor to perform as specified under any Purchasing Order may be cause for termination of that Purchasing Order. The County reserves the right (in addition to its other remedies) to cancel the Purchase Order with respect to goods/services not provided to purchase goods/services from another source and to hold Vendor accountable for all damages sustained.

#### **13. Termination for Convenience:**

The County may terminate for its convenience at any time, in whole or in part any Purchase Order. In such event, County shall be liable only for materials or components procured, or work done or supplies partially fabricated with the authorization of the Purchasing Agreement. In no event shall County be liable for incidental or consequential damages by reasons of such termination.

All prices must be F.O.B. Destination, freight prepaid. Vendor assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage.

#### **16. Risk of Loss:**

All shipments will include an itemized list of each package's content, and reference to County's Purchase Order Number.

Regardless of F.O.B. point, Vendor agrees to bear all risk of loss, injury or destruction of goods and materials ordered which may for any reason occur prior to acceptance by the County. No such loss, injury or destruction shall release Vendor from any obligations under the Purchasing Agreement.

#### **17. Inspection:**

Goods and Materials must be properly packaged. Damaged goods and materials will not be accepted, or if the damage is not readily apparent at the time of delivery, the goods shall be returned to Vendor at no cost to the County. The County reserves the right to inspect the goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery. The cost of inspection of goods rightfully rejected shall be charged to the Vendor. If reasonable inspection disclosed that part of the goods received are defective or nonconforming, the County shall have the right to cancel any unshipped portion of the order.

#### **18. Quantity:**

The quantities of goods/services as indicated on the face of the Purchase Order must not be exceeded without prior written authorization from the County. Excess quantities may be returned to Vendor at Vendor's expense.

#### **19. Warranty:**

Vendor warrants that all goods provided by Vendor under the Purchase Agreement shall be merchantable. All goods provided shall be of good quality within the description given by the County, shall be fit for their ordinary purpose,

shall be adequately contained and packaged with the description given by the County, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Vendor or on the container or label. Vendor warrants the goods and services are suitable for and will perform in accordance with the purposes for which they were intended. In addition, Vendor warrants that the goods/services furnished hereunder are free of any claims or liens of whatever nature whether rightful or otherwise, or any person, corporation, partnership, or association.

#### 20. Non-Waiver of Rights:

No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

#### 21. Indemnification:

Vendor agrees to indemnify and save harmless the County, its officers, agents, and employees from and against any and all liability, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the performance of this Agreement whether by act or because of or due to the mere existence of this Agreement between the parties.

#### 22. Insurance:

Vendor shall carry insurance in the categories and coverage amounts as provided in Attachment B -- General Information and Insurance Requirements.

#### 23. Patents and Copyrights:

Vendor shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product or device which is the subject of patent rights or copyrights. Vendor agrees at its own expense, to hold harmless and to defend County and its

agents against any claims, suits, or proceedings brought against County for patent or copyright infringement occasioned by the manufacture, sale, or use of materials supplied under this agreement and to indemnify County against any damages occasioned by such claims whether justified or unjustified.

#### 24. Website Incorporation:

Nassau County expressly states that it will not be bound by any content on the Vendor's website, even if the Vendor's documentation specifically referenced that content and attempts to incorporate it into any other communication unless the County has actual knowledge of such content and has expressly agreed to be bound by it in writing that has been signed by an authorized representative of the County.

#### 25. Compliance with Laws:

Vendor certifies that in performing its obligations under any and all Purchasing Agreements that they will comply with all applicable provisions of the federal, state and local laws, regulations, rules and orders.

#### 26. Public Entity Crimes

In accordance with Section 287.133, Florida Statutes, Vendor certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services with the thirty-six (36) months immediately preceding the date hereof.

#### 27. Governing Law:

All Purchasing Agreements between the parties shall be governed by and construed according to the laws of the State of Florida and all applicable portions of the Florida Uniform Commercial Code. Venue for any action related to all Agreements between the parties shall be in Nassau County, Florida.

#### 28. Anti-Discrimination:

Vendor agrees that it will not discriminate in employment, employee development, or employee advancement because of religious or political opinions or affiliations, race, color,

national origin, sex, age, physical handicaps, or other factors, except where such factor is a bonafied occupational qualification or is required by State and/or Federal Law.

#### **29. Force Majeure:**

Performance of any obligation under this Agreement must be suspended by either party without liability, to the extent that an act of God, war, riot, fire, explosions, accidents, floods, sabotage, inability to obtain fuel or power, governmental laws, regulations, or orders, any labor trouble, such as strike, lockout, or injunction (whether or not such labor event is within the reasonable control of such party) or any other cause beyond the reasonable control of the party that delays, prevents, restricts, or limits the performance of this Agreement. The affected party shall invoke this provision by promptly notifying the other party of the nature and estimated duration or the suspension period. At County's option, the Agreement may be terminated or modified to account for the Force Majeure event. If the County fails to modify the Agreement with thirty (30) days of receipt of notification from the Vendor, the Agreement lapses with respect to any deliveries affected.

#### **30. Public Records:**

**30.1 Public Records Requirement:** The County is a public agency subject to Chapter 119, Florida Statutes. Under this agreement, to the extent that the contractor is providing services to the County, and pursuant to Section 119.0701, Florida Statutes, the contractor shall;

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the

contract if the contractor does not transfer the records to the public agency.

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy and duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

#### **30.2 Request for Records; Noncompliance**

- (a) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- (b) If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- (c) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10, Florida Statutes.

#### **30.3 Civil Action:**

(a) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

- (1) The court determines that the contractor unlawfully refused to

comply with the public records request within a reasonable time; and

- (2) At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, the public agency and to the contractor.

(b) A notice complies with subparagraph(1)(b), if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

### 31. Advertising:

Vendor shall not publicly disseminate any information concerning any Agreement without prior written approval from the County, including but not limited to, mentioning the Agreement in a press release or other promotional material, identifying the County as a reference, or otherwise linking the Vendor's name and either a description of the Agreement or the name of the County in any material published, either in print or electronically, to any entity that is not a party to the Agreement, except potential or actual authorized distributors, dealers, resellers, or service representative.

### 32. Relationship of Parties:

Nothing in this Agreement shall create a partnership, joint venture or establish the relationship of principal and agent or any other relationship of similar nature between the parties. The parties to this Agreement shall be considered independent contractors and neither party is granted the right or authority to assume or create any obligation on behalf of or in the name of the other.

### 33. Severability:

If a court deems any provision of the Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

### 34. Notices:

All notices, consents, request and other communications hereunder shall be in writing and shall be sent by hand delivery, or by certified or registered mail (return receipt requested) to the address below. Notices shall be deemed given: (i) at the time delivered, if personally delivered; (ii) at the time received, if mailed; and (iii) one (1) business day after timely delivery to the courier, if by overnight courier service. In the event either party needs to change addresses they may do so by sending written notice to the other party.

Nassau County Contract Management  
Attention: Procurement Manager  
96135 Nassau Place, Suite 6  
Yulee, Florida 32097

## Attachment B - General Information and Insurance Requirements

### GENERAL INFORMATION AND MINIMUM INSURANCE REQUIREMENTS

#### COMMERCIAL GENERAL LIABILITY INSURANCE

The Supplier/Vendor shall purchase and maintain at the Supplier/Vendor's expense Commercial General Liability Insurance coverage (ISO or comparable Occurrence Form) for the life of this Contract. Modified Occurrence or Claims Made forms are not acceptable.

The Limits of this insurance shall not be less than the following limits:

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Fire Damage Limit (any one fire)	\$ 300,000
Medical Expense Limit (any one person)	\$ 10,000
Products & Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products & Completed Operations) Applies Per Project	\$2,000,000

General liability coverage shall continue to apply to "bodily injury" and to "property damage" occurring after all work on the Site of the covered operations to be performed by or on behalf of the additional insureds has been completed and shall continue after that portion of "your work" out of which the injury or damage arises has been put to its intended use.

#### WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

The Supplier/Vendor shall purchase and maintain at the Supplier/Vendor's expense Workers' Compensation and Employer's Liability Insurance coverage for the life of this Contract.

The Limits of this insurance shall not be less than the following limits:

Part One – Workers' Compensation Insurance – Unlimited

Statutory Benefits as provided in the Florida Statutes and

Part Two – Employer's Liability Insurance

Bodily Injury By Accident	\$500,000 Each Accident
Bodily Injury By Disease	\$500,000 Policy Limit
Bodily Injury By Disease	\$500,000 Each Employee

\*If leased employees are used, policy must include an Alternate Employer's Endorsement

**AUTOMOBILE LIABILITY INSURANCE**

The Supplier/Vendor shall purchase and maintain at the Supplier/Vendor's expense Automobile Liability insurance coverage for the life of this Contract.

The Limits of this Insurance shall not be less than the following limits:

Combined Single Limit – Each Accident	\$1,000,000
---------------------------------------	-------------

Covered Automobiles shall include any auto owned or operated by the insured Supplier/Vendor, insured Sub-Sub-Supplier/Vendor including autos which are leased, hired, rented or borrowed, including autos owned by their employees which are used in connection with the business of the respective Supplier/Vendor or Sub-Sub-Supplier/Vendor.

**UMBRELLA LIABILITY INSURANCE**

The Supplier/Vendor shall purchase and maintain at the Supplier/Vendor's expense Umbrella Liability (Umbrella Form) insurance coverage for the life of this Contract.

The Limits of this Insurance shall not be less than the following limits:

Each Occurrence Limit	\$1,000,000
Aggregate Limit	\$1,000,000

Supplier/Vendor shall require each of his Sub-Supplier/Vendors to likewise purchase and maintain at their expense Commercial General Liability Insurance, Workers' Compensation and Employer's Liability coverage,

Automobile Liability Insurance and Umbrella Liability Insurance coverage meeting the same limit and requirements as the Supplier/Vendors Insurance.

Certificates of Insurance acceptable to Nassau County Board of County Commissioners for the Supplier/Vendor's insurance must be received within five (5) days of Notification of Selection and at time of signing Agreement.

Certificates of Insurance and the Insurance policies required for this Agreement shall contain an endorsement that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Nassau County Board of County Commissioners.

Certificates of Insurance and the Insurance policies required for this Agreement will include a provision that policies, except Workers' Compensation, are primary and non-contributory to any insurance maintained by the Supplier/Vendor.

Nassau County Board of County Commissioners must be named as an Additional Insured and endorsed onto the Commercial General Liability (CGL), Auto Liability and Umbrella Liability policy (ies). A copy of the endorsement(s) must be supplied to Nassau County Board of County Commissioners ten (10) days following the execution of the agreement or prior to the first date of services, whichever comes first.

CGL policy Additional Insured Endorsement must include Ongoing and Completed Operations (Form CG2010 11 84 OR Form CG2010 04 13 and GC2037 04 13 edition or equivalent). Other Additional Insured forms might be acceptable but only if modified to delete the word "ongoing" and insert the sentence "Operations include ongoing and completed operations".

CGL policy shall not be endorsed with Exclusion - Damage to Work performed by Sub-Supplier/Vendors on Your Behalf (CG2294 or CG2295)

CGL policy shall not be endorsed with Contractual Liability Limitation Endorsement (CG2139) or Amendment of Insured Contract Definition (CG 2426)

CGL policy shall not be endorsed with Exclusion - Damage to Premises Rented to you (CG 2145)

CGL policy shall include broad form contractual liability coverage for the Supplier/Vendors covenants to and indemnification of the Authority under this Contract

Certificates of Insurance and the Insurance policies required for this Agreement shall contain a provision under General Liability, Auto Liability and Workers' Compensation to include a Waiver of Subrogation clause in favor of Nassau County Board of County Commissioners.

All Certificates of Insurance shall be dated and shall show the name of the Insured Supplier/Vendor, the specific job by name and job number, the name of the Insurer, the policy number assigned its effective date and its termination date and a list of any exclusionary endorsements.

All Insurers must be authorized to transact insurance business in the State of Florida as provided by Florida Statute 624.09(1) and the most recent Rating Classification/Financial Category of the insurer as published in the latest edition of "Best's Key Rating Guide" (Property-Casualty) must be at least A- or above.



Nassau County Board of County Commissioners  
Nassau County, Florida

Attn: Purchasing

Daikin Procurement

September 26, 2018

Daikin and Brooks Building Solutions have been working together over the years to insure that we serve our customers in the best possible manner. As we continue to grow our overall capabilities we have developed a new approach to the market which we believe will enhance the services offered to you.

Effective July 2012, Brooks Building Solutions and Daikin entered into an agreement where Brooks Building Solutions will represent Daikin in terms of servicing and maintaining our full line of products and will be the sole source provider of these services for Northern Florida.

Brooks Building Solutions will have the full support of our technical resource centers should any unusual problems occur and also full access to our training center that will insure Brooks Building Solutions people are fully trained and capable of servicing and maintaining this equipment

Please issue purchase orders for the Daikin maintenance contracts directly to Brooks Building Solutions. If there are any questions, please do not hesitate to contact us at your earliest convenience.

Best Regards

***Al Ward***

Al Ward  
Vice President  
Daikin

**Daikin**  
World Headquarters  
13600 Industrial Park Boulevard  
Minneapolis, MN 55441  
763-553-5330



**Brooks**  
Building Solutions

**PREVENTATIVE MAINTENANCE SERVICE AGREEMENT**

**9/26/18**

**For  
(2) Daikin Model AGZ210E  
At  
Robert M. Foster Justice Center**

***Proposed For:***

***Bill Howard  
Nassau County Facility Maintenance  
45195 Musslewhite Rd  
Callahan, FL 32011***

***Submitted by: Brooks Building Solutions, Inc.  
Chad Poole***

**PREVENTATIVE MAINTENANCE SERVICE AGREEMENT  
BETWEEN  
NASSAU COUNTY FACILITY MAINTENANCE (“CUSTOMER”)  
AND  
BROOKS BUILDING SOLUTIONS, INC. (“BBS”)**

**EFFECTIVE DATE: 10/1/2018**

THIS PREVENTATIVE MAINTENANCE SERVICES AGREEMENT (this “Agreement”) entered into by and between Customer and BBS applies solely to the equipment listed on Exhibit A attached hereto (the “Equipment”). The parties hereto agree as follows:

**PREVENTATIVE MAINTENANCE SERVICES**

BBS will provide preventative maintenance services on the Equipment. Services will also include (3) operational and (1) annual inspection on the Equipment at Customer’s Robert M. Foster Justice Center located at 76347 Veterans Way, Yulee, FL 32097. The specific tasks to be performed are detailed on Exhibit B attached hereto (collectively, the “Services”).

**TERM**

The initial term of this Agreement shall be one (1) years beginning 10/1/2018 and ending 9/30/2019, unless earlier terminated as provided herein. Customer has the option to extend the agreement for three (3) additional, one (1) year terms, on the same terms and conditions set forth herein, provided, however, the Contract Price shall be subject to annual escalation of four percent (4%).

**CONTRACT PRICE AND PAYMENT**

BBS, Inc. will provide the Services for Customer in exchange for the following compensation (the “Contract Price”):

Four Thousand Five Hundred Fourty and 00/100 Dollars **\$4,540.00**

Customer shall pay BBS Semi-annually on 10/1/2018 and 4/1/2019, in advance, the sum of **\$2,270.00**

**PERSONNEL**

BBS will perform the Services using factory-trained technicians who specialize in HVAC, refrigeration and electronic system maintenance and repair service.

**REPAIR AND ADDITIONAL SERVICES**

Repair service is **NOT** included.

**REPORTS**

We will provide a detailed report of the services performed on each inspection and or repair. This report will include equipment log readings taken during inspection, condition of equipment, repairs and/or services performed.

## **EMERGENCY SERVICE**

Emergency call out service is not included but will be available on a 24-hour basis.

## **ADDITIONAL SERVICES**

In addition, this Agreement may include related services that supplement and complement the mechanical, electrical, and EMCS control system required by this Agreement. These may include additional repair, retrofit, preventative maintenance, diagnostic services, electrical services, remote monitoring and control services, analytical services, “turnkey” mechanical, electrical, and controls installations, and/or professional services including design and engineering as required for equipment replacement or to resolve operational and maintenance issues. Any such additional services must be authorized by Customer in writing. All additional services will be invoiced by BBS, and payable by Customer.

## **EXCLUSIONS**

The following services are not included as part of this Agreement:

- Overtime, Weekends or Holidays
- DDC Controls
- Pump And Pump Systems
- Water Treat

## **PROPOSAL EXPIRATION DATE:**

Upon submission to Customer by BBS, this proposal shall be valid for thirty (30) days from date first stated above. Upon execution by Customer, this Agreement shall constitute a valid, binding contract by and between the parties hereto.

## **TERMS AND CONDITIONS**

This agreement is subject to the additional Terms and Conditions attached hereto as Exhibit C. In the event of a conflict between the terms set forth herein and the Terms and Conditions, the terms set forth herein shall control.

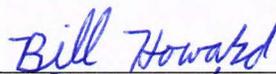
***SIGNATURES APPEAR ON FOLLOWING PAGE***

IN WITNESS WHEREOF, this Preventative Maintenance Service Agreement is executed by the parties hereto as of the date set forth below.

BROOKS BUILDING SOLUTIONS, INC.

NASSAU COUNTY FACILITY  
MAINTENANCE

By:   
Name: Chad Peew  
Title: Sales  
Date: 11/1/2018

By:   
Name: Bill Howard  
Title: Facilities maintenance supervisor  
Date: 11/1/2018

**EXHIBIT A**  
**EQUIPMENT**

**Building #1**

<b>EQUIPMENT</b>	<b>MANUFACTURER</b>	<b>MODEL #</b>	<b>SERIAL #</b>	<b>CONDITION</b>
Chiller-1	Daikin	AZG210E		NEW 2017
Chiller2	Daikin	AZG210E		NEW 2017

## EXHIBIT B SERVICES

### Air-Cooled Chillers

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**Brooks Building Solutions will perform the following procedures, as applicable:**

#### **Annual Inspection**

- ✓ Inspect for refrigerant and oil leaks.
- ✓ Inspect vibration eliminators and water piping for leaks.
- ✓ Check operation of main starter, and control panel
- ✓ Check flow switch operation
- ✓ Check freeze protection, evaporator and piping heaters, glycol content.
- ✓ Check and blow down water piping strainers.
- ✓ Check refrigerant charge and adjust if necessary.
- ✓ Check compressor oil presence in sight glass, if applicable.
- ✓ Inspect and tighten electrical connections.
- ✓ Visually inspect all non-moving parts for conditions of wear and rust
- ✓ Check relays and operating/safety controls.
- ✓ Check crankcase heater operation.
- ✓ Inspect clamps and machine for vibration
- ✓ Meg hermetic motor.
- ✓ Check operation of electronic expansion valve.
- ✓ Perform MicroTech check, log, and last fault analysis, analyzes performance.
- ✓ Clean condenser coils and remove debris from around condenser.
- ✓ Check condenser fan operation.
- ✓ Perform Oil analysis test
- ✓ Provide customer with documentation of work performed.

#### **Operating Inspection**

- ✓ Inspect for refrigerant and oil leaks.
- ✓ Inspect vibration eliminators and inspect water piping for leaks.
- ✓ Check and blow down water piping strainers.
- ✓ Check refrigerant in sight glass.
- ✓ Check compressor oil presence in sight glass, if applicable.
- ✓ Inspect and tighten electrical connections.
- ✓ Check relays and operating/safety controls.
- ✓ Check crankcase heater operation.
- ✓ Perform MicroTech check, log, and last fault analysis, analyzes performance.
- ✓ Check condenser coils, clean debris from around condenser.
- ✓ Take and record waterside pressure drops across vessel.
- ✓ Log operating conditions.

**\*\*Include chiller services that may not be listed but needed to maintain factory 10-year warranty.**

**EXHIBIT C**  
**BROOKS BUILDING SOLUTIONS**  
**TERMS AND CONDITIONS**

Revised: June 1, 2018

THESE TERMS AND CONDITIONS ARE SUBJECT TO CHANGE FROM TIME TO TIME, WITHOUT NOTICE, IN THE SOLE DISCRETION OF BROOKS BUILDING SOLUTIONS, INC. ("BBS" OR "WE", "US", "OUR"). CHANGES AND AMENDMENTS TO THESE TERMS AND CONDITIONS WILL BE POSTED TO OUR WEBSITE (<https://brookssolutions.net/about/terms-and-conditions/>). YOU WILL RECEIVE NO OTHER NOTICE OF CHANGES OR AMENDMENTS TO THESE TERMS AND CONDITIONS. These Terms and Conditions posted on our website shall govern and take precedence over any other version of Terms and Conditions that may be included in any other Agreement (as defined below).

**General**

1. **Application.** These Terms and Conditions ("Terms") apply to any sale of equipment, materials, parts, or supplies ("Goods") and/or services ("Services") sold and furnished by BBS (together, the "Goods and Services") and covered by any BBS proposal, purchase order, invoice, service agreement and/or other agreement (which, when combined with these Terms and any other documents incorporated by reference, will constitute the "Agreement"). As used herein, the term "Customer" refers to any party who enters into an Agreement with BBS by which BBS agrees to sell or furnish Goods and Services to such party and acceptance of these Terms is an express condition of such a sale.
2. **Payment and Taxes.** Payment of any invoice issued by BBS in connection with this Agreement shall be due upon receipt. BBS reserves the right to require cash payment or other alternative method of payment prior to completion of work if BBS determines, in its sole discretion, that the Customer's financial condition at any time justifies such payment. BBS reserves the right to suspend or terminate the Services anytime payments have not been paid in accordance with this Agreement. In addition to the contract price, the Customer shall pay BBS any applicable taxes or government charges which may be required in connection with the service or material furnished under this Agreement. Payments not received within thirty (30) days of the date due, BBS shall accrue interest at the rate of 1.5% per month until paid.
3. **Customer's Covenants and Obligations.** Customer covenants and agrees, at all times during the term hereof, to:
  - (a) Provide a safe work environment;
  - (b) Permit access to Customer's site, and use of building services including but not limited to: water, elevators, receiving dock facilities, electrical service and local telephone service;
  - (c) Keep areas adjacent to Goods free of extraneous material, move any stock, fixtures, walls or partitions that may be necessary to perform the specified Service;
  - (d) Promptly notify BBS of any unusual operating conditions;
  - (e) Upon mutual agreement of a timely schedule, allow BBS to stop and start equipment as necessary to perform Service;
  - (f) Provide the daily, routine, equipment operation (if not part of this Agreement) including availability of routine Equipment log readings;
  - (g) Operate the equipment properly and in accordance with instructions; and
  - (h) Assume responsibility and pay extra for all service and material required for repair or replacement due to electrical power failure, low voltage, power surges, burned out main or branch fuses, or low water pressure or water damage.
4. **Hazardous Materials.** BBS is not responsible for the identification, detection, abatement, encapsulating or removal of asbestos, mold, or products or materials containing asbestos, mold, or similar hazardous substances. In the event that BBS encounters any asbestos, mold product or any hazardous material in the course of performing its work, BBS may suspend its work and remove its employees from the project site until such product or material, and any hazards connected with it, are abated. BBS shall receive an extension of time to complete its work and compensation for delays encountered as a result of such hazardous materials.
5. **BBS Devices.** During the Term and in combination with certain services, BBS may elect to install, attach to Customer equipment, or provide portable devices (hardware and/or software) (each a "BBS Device") that shall remain the sole property of BBS. No BBS Device installed or attached to real property shall become a fixture thereof. Customer shall not acquire any right, title or interest in or to a BBS Device.
6. **Force Majeure.** Neither party shall have any liability hereunder for delays caused occasioned by a Force Majeure. As used herein, "Force Majeure" shall mean an event, casualty, occurrence, condition, or circumstance of any kind or nature reasonably beyond the control of either party, having a direct, material adverse effect on a party's ability to perform any of its obligations under this Agreement, in full or in part and which, with the exercise of due care, such party could not reasonably have been expected to avoid, including, without limitation, compliance in good faith with any applicable domestic or foreign government regulation or order whether or not it proves to be invalid, acts of God, acts or omissions of any governmental authority, war, blockage, insurrection, riot, sabotage, terrorist activity, fire, explosion, flood, nuclear emergency, epidemic, landslide, earthquake, or similar cataclysmic occurrence, hurricane, or tornado.
7. **Termination.**
  - (a) **Early Termination by Customer.** Customer shall have the right to terminate this Agreement upon a breach of BBS' obligations hereunder which is not cured within thirty (30) days following written notice and opportunity to cure.
  - (b) **Early Termination by BBS.** BBS shall have the right to terminate this Agreement upon any breach of Customer's obligations hereunder that is not cured within thirty (30) days following written notice and opportunity to cure. BBS shall have the right to immediately terminate this Agreement upon the commencement of any voluntary or involuntary proceedings in bankruptcy or receivership by or against Customer, or in the event Customer shall become insolvent, make a general assignment for the benefit of creditors, or shall fail to pay its debts as and when they become due.
  - (c) **Effect of Termination or Expiration.** Upon early termination or expiration of this Agreement, BBS shall be given immediate access to Customer locations to disconnect and remove any BBS personal proprietary property or devices as well as remove all BBS owned parts, tools and personal property. Additionally, Customer agrees to pay BBS for all costs incurred by BBS in connection with this Agreement through the effective date of termination.
8. **Non-Solicitation.** Customer shall not, for whatever reason, directly or indirectly, whether for its or his own account or for the account of any other person or entity: (i) employ or engage any employee of BBS (each a "BBS Employee"), solicit for employment or engagement a BBS Employee, or encourage a BBS Employee to leave his or her employment or engagement at BBS; or (ii) in any way interfere with the relationship between BBS and any BBS Employee working at BBS. Should Customer employ or engage any BBS Employee, Customer shall pay to BBS liquidated damages of two (2) times the annual salary of such BBS Employee. The parties agree that in the event a BBS Employee is employed or engaged by Customer, BBS will suffer damages which are difficult to ascertain and that such amount is a reasonable estimate of BBS' damages and is not a penalty.

9. **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL BBS, ITS SUBSIDIARIES, AFFILIATED ENTITIES, OFFICERS, EMPLOYEES, AGENTS, OR ITS SUPPLIERS (EITHER JOINTLY OR SEVERALY) BE LIABLE TO COMPANY OR ANY OTHER PERSON, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL DAMAGES OR OTHER LOSS OF ANY CHARACTER, RELATING TO THE SERVICES PROVIDED HEREUNDER, THIS AGREEMENT OR ACTIVITIES RELATING THERETO EVEN IF BBS SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMIT OF THE AGGREGATE LIABILITY OF BBS FOR DIRECT DAMAGES SHALL NOT EXCEED THE CONSIDERATION PAID BY CUSTOMER FOR THE GOODS AND/OR SERVICES, SUBJECT TO BBS' RIGHT OF REMOVAL AND RETURN OF EQUIPMENT PROVIDED UNDER THIS AGREEMENT TO BBS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE THEN BBS' LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW.

10. **Claims.** Any claim arising from the performance or non-performance of this Agreement, whether based upon contract, negligence, and strict liability or otherwise, shall be brought pursuant to Section **Error! Reference source not found.**, within one (1) year from the date the claim arose.

11. **Disputes.** Any controversy or claim (each a "Dispute") arising out of or relating to this Agreement, or the breach thereof, which cannot be settled by good faith negotiation between the parties hereto, shall be settled in accordance with the following:

(a) **Mediation.** The parties shall endeavor to settle the Dispute by mediation in accordance with the then current mediation rules of the American Arbitration Association ("AAA"). The mediation process shall be initiated by a party giving a Notice of Request for Mediation ("Request") to the other party, specifying the scope of the requested mediation. If the parties are unable to agree upon a mediator within ten (10) days of the date of the Request, then they shall request AAA to appoint a mediator, and the parties hereby agree to such mediator's service. The mediator's compensation and expenses shall be advanced equally by the parties. The place of mediation shall be Jacksonville, Florida, at any location as the mediator directs, having due regard for the convenience of the parties and of the mediator. All applicable statutes of limitation shall be tolled during the existence of any AAA mediation under this Section 11(a).

(b) **Arbitration.** If the Dispute has not been resolved pursuant to Section 11(a) within ninety (90) days of the commencement of such procedure (this period may be extended by mutual agreement), which commencement is a condition precedent to the initiation of proceedings under this Section 11(b), or if either party will not continue with said procedure, then the Dispute, including the arbitrability of the Dispute or any issue, shall be settled by binding arbitration in accordance with then current Construction Industry Arbitration Rules of AAA by a sole arbitrator appointed by the parties, or if the parties cannot agree upon an arbitrator, by an arbitrator appointed by AAA. The arbitrator shall have experience in the construction industry and shall have served previously as an adjudicator of business disputes. Pending final award, arbitrator compensation and expenses shall be advanced equally by all parties. The arbitration shall be governed by the United States Arbitration Act, to the exclusion of any provisions of State law inconsistent therewith or that would produce a different result. The place of arbitration shall be Jacksonville, Florida, at any location as the arbitrator directs, having due regard of the convenience of the parties, of witnesses and of the arbitrator. The arbitrator shall determine the rights and obligations of the parties according to the substantive laws of the State of Florida, excluding conflict of law principles, and shall give effect to applicable statutes of limitation. The arbitrator may consolidate arbitrations involving common questions of law or fact. The arbitrator may make any order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense that justice requires. The arbitrator may make final, interim, interlocutory and partial awards, and may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including but not limited to specific performance and the awarding of attorneys' fees and costs to the prevailing party. The arbitrator is not empowered to award damages in excess of liquidated or actual damages, whichever is applicable, nor is the arbitrator empowered to award punitive or consequential damages. Judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction.

12. **Entire Agreement.** This Agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, with respect to the subject matter hereof.

13. **Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. Customer may not assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of BBS.

#### **Service and Repairs**

These Service and Repairs Terms ("Services Terms") incorporate in their entirety by this reference Sections 1 through 13 above and include the following:

14. **Working Hours.** All Services, including major repairs, will be performed between 8 a.m. to 5 p.m. Monday through Friday unless otherwise agreed. Services performed outside of the foregoing hours shall be billed at the Overtime Rate or Holiday Rate, as applicable. As used herein, the "Overtime Rate" shall mean one and one-half (1 1/2) times the standard rate. The "Holiday Rate" shall mean two (2) times the standard rate and shall apply to all Services performed at any time on a federal holiday.

15. **Response Time.** BBS will use commercially reasonable efforts to respond to all calls within a four (4) hour time period.

16. **Additional Service.** Additional services or parts requested by Customer will be provided upon receipt of Customer's written authorization and invoiced at BBS' prevailing labor rate for the service area, plus mileage and consumables. In the event BBS is required to make any repairs, replacements, or emergency calls occasioned by improper operation or misuse of the Goods or any cause beyond BBS' control, including but not limited to thermostat setting, air balancing or equipment resetting, Customer shall reimburse BBS for all expenses incurred in making such repairs, replacements, or emergency calls.

17. **Repair or Replacement.** Notwithstanding any warranty provisions, BBS shall not be responsible for repair or replacement of any heating, ventilation, and air conditioning ("HVAC") or energy management and control systems ("EMCS") equipment that is damaged by any disaster or weather catastrophes (i.e., floods, tornados, hurricanes, etc.), vandalism, acts of God, other contractors, maintenance personnel, tenants, or any other party. BBS shall not be required to perform tests, install any items of equipment or make modifications that may be recommended or directed by insurance companies, government, state, municipal or other authorities. However, in the event any such recommendations occur, BBS, at its option, may submit a proposal to Customer for performance of such work. BBS shall not be required to repair or replace equipment that has not been properly maintained.

18. **Equipment Condition and Recommended Service.** Upon any scheduled operating and/or stop inspection should BBS determine the need for repairs or replacement, BBS will provide the Customer in writing an "Equipment Condition" report, in addition to this Agreement, which includes recommendations for corrections and the price for repairs. In the event BBS recommends certain Services or repairs, and the Customer does not elect to have such Services properly performed in a timely fashion, BBS shall not be responsible for any resulting Equipment or control failures, operability and any long-term damage that may result. BBS at its option will either continue to maintain equipment and/or controls to the best of its ability, without any responsibility, or remove such Equipment from this Agreement, adjusting the price accordingly

#### **Construction and New Sales**

These Construction Terms ("Construction Terms") incorporate in their entirety by this reference Sections 1 through 13 above and include the following:

19. **The Work.** BBS will supervise, perform and direct construction services in connection with a separate written construction agreement executed by BBS and Customer (the "Work"). The Work will be performed using BBS's best efforts, skill and attention. BBS shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement in accordance with best industry practices, unless the Agreement provides other specific instructions concerning these matters. BBS shall perform the Work in a good and workmanlike manner consistent with best industry standards in full compliance with all applicable governmental laws, codes and regulations, and shall prosecute such Work through to completion with reasonable due diligence and continuity.

20. **Provision and Payment.** Unless otherwise provided, BBS shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

21. **Warranty.** For a period of one (1) year from the date of final approval of the Work (the "Warranty Period"), BBS warrants to Customer that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Agreement, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Agreement. BBS's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by BBS, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. BBS does not warrant any appliances or the heating and air conditioning equipment. Customer agrees to rely solely on the warranty of the respective manufacturers of such equipment. THERE ARE NO OTHER WARRANTIES EXPRESS OR IMPLIED EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION.

22. **Fees and Taxes.** Unless otherwise provided, BBS shall pay all sales, consumer, use, and other similar taxes that have been legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, and shall secure and pay for the permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

23. **Condition of Site.** BBS shall keep the work site and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work, BBS shall remove from and about the work site waste materials, rubbish, BBS's tools, construction equipment, machinery and surplus materials.

24. **Access and Instructions.** BBS shall provide Customer access to the Work in preparation and progress wherever located. BBS shall comply with all reasonable instructions and requirements of Customer provided same are not inconsistent with this Agreement.

#### **Parts**

These Parts Terms ("Parts Terms") incorporate in their entirety by this reference Sections 1 through 13 above and include the following specific provisions:

25. **Condition of Goods.** Customer represents and warrants to BBS that the Goods are in proper working condition upon execution of the Agreement. BBS may inspect the Goods within sixty (60) days of the effective date of the Agreement (unless such inspection cannot be performed due to seasonal or other conditions, in which case BBS shall have sixty (60) days from the first date on which such inspection is able to be performed) and inform Customer in writing of any malfunctions or defects in the Goods. BBS shall make recommendations and assist Customer in restoring the Goods to proper operating condition, however, Customer shall be solely responsible for all costs associated with such restoration.

26. **Suitability.** Before using any Goods, Customer shall determine the suitability of such Goods for Customer's intended use. Customer shall assume all risk and liability whatsoever resulting from the use of the Goods.

#### **Material and Workmanship Warranty.**

(a) **Sole Express Warranty.** BBS warrants that the Goods conform to BBS' proposal and any specifications directly incorporated into the Agreement. Parts sold by BBS are new and warranted against defects in material and workmanship in accordance with the terms and conditions of the Original Equipment Manufacturer ("OEM") warranty.

(b) **Exclusive Remedy.** In the event of a defect in material or BBS' workmanship, BBS' sole obligation is to repair or provide replacement parts for the Goods, at its option. All parts to be shipped F.O.B. point of manufacture. Removal and reinstallation expenses for replacement parts are the responsibility of the Customer and will be billed at BBS' then prevailing labor rates. Repair or replacement does not alter or extend limits on liability and warranty established at sale. If BBS fails to so repair or replace, BBS' liability shall not exceed the contract price of the specific defective Goods. It is agreed that there is no failure of essential purpose of this warranty so long as BBS is willing to repair or replace defective Goods.