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Contract No. 550-C1299

**COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
FACILITIES MANAGEMENT DIVISION**

AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, acting through the governing body or board thereof (hereinafter referred to as "County"), and **JOHNSON CONTROLS, INC.**, a Wisconsin Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 5757 N. Green Bay Avenue, Milwaukee, Wisconsin 53209, and whose local place of business is 1030 Winding Creek Way, Roseville, California 95678 (hereinafter referred to as "Contractor");

RECITALS

That for and in consideration of the mutual promises, covenants, agreements and conditions herein contained, the parties hereto agree with each other as follows:

1. Contract Documents

The complete Agreement (hereinafter "Contract") between the parties consists of and is set forth in the Contract Documents. The Contract Documents consist of: (a) this Agreement including any Exhibits hereto, and any amendments thereto in accordance with the provisions herein; (b) an executed Subcontractors Listing Form, if applicable; (c) executed Certificate of Insurance forms; (d) an executed California Form 590; (e) an executed Department of the Treasury Internal Revenue Service Form W-9 or County Payee Data Record Form, whichever is applicable; and (f) all executed Change Orders. All obligations of the parties are contained in the Contract Documents, and by acceptance of this Agreement the parties hereto agree to be bound by the provisions of all of said documents. All of said documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa, is to be executed the same as if mentioned in all of them.

2. The Work

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, materials, and all utility and transportation services to perform and complete in a good and workmanlike manner, furnished and installed, and complete and ready for use:

Removal and disposal of two (2) existing storage tanks with built in boilers and furnish all equipment, materials, and labor for the installation of four (4) new 585 gallon storage tanks and three (3) new MODCON 850 hot water boilers, which system is to be designed and installed per the Jail facility's intended use. All work including, engineering plans shall be in accordance with Exhibit "A", marked "Scope of Work", incorporated herein and made by reference a part hereof.

It is further agreed that there exists 2 (TWO) hot water open loops set at different temperatures and that each hot water loop shall be disabled, restarted, tested, and inspected, with new boiler, storage tanks, lines, and pumps **within TWO (2) calendar days**, and it is therefore agreed that if this work is not completed Within the TWO (2) calendar day deadline that the Contractor will provide temporary hot water service to this loop at a temperature to be determined by County of El Dorado staff, prior to the end of the two (2) day deadline.

Prior to dismantling the "Shower" boiler (nearest the wall), Contractor shall be prepared to modify the "Laundry" boiler to service the "Shower" boiler loop, at "Shower" boiler temperatures, in the event the two day deadline can't be met. Furthermore, the Contractor shall have a temporary boiler on standby in the event that the new system can't be installed and the "Laundry" boiler can't be redirected to accomplish the "Shower" boiler function within the deadline.

The Contractor shall be aware that if either of the loops are down more than two days, and a temporary solution is not implemented, the County is required to declare an Emergency with the State and prisoners will need to be relocated at significant expense. Work on this system should not commence unless the Contractor is fully satisfied that all the materials, equipment and labor is available to complete the project within the two day deadline

and all other work as called for, and in the manner designated in, and in strict conformance with the Contract Documents adopted by County as prepared by the Contract Administrator or Project Manager, which includes the terms Engineer and Architect. The Work shall be performed in accordance with all of the terms and conditions of the Contract Documents.

3. Location of Work

Said work is to be performed at:
County of El Dorado
Jail Facility
300 Forni Road
Placerville, CA 95667

4. Submittals

Contractor shall provide County's Contract Administrator with Material Safety Data Sheets (MSDS), Product Data Sheets or other manufacturers' documents including instructions, guarantees and warranties, as applicable, for each product used, installed or applied as part of the Work.

Contractor shall provide and maintain, on-site for the duration of the project, MSDS for all solvents, paints primers, caulks, fillers, patching materials, and other products used for the work of this Project. Contractor shall provide copies of the above referenced MSDS sheets to the County's Contract Administrator forty-eight (48) hours prior to commencement of on-site work. All other submittals shall be provided timely in order to avoid delay to the Project.

5. Project Coordination and Schedule

- A. Work shall be performed during times and hours as mutually agreed to between the Contractor and County Contract Administrator.
- B. The Placerville Jail is a secured facility. Contractor shall coordinate with CA to arrange for escorts on the job-site at least forty-eight (48) hours prior to commencement of on-site work.

6. Protection of Facilities

- A. Contractor shall exercise care to prevent damage to the existing building, grounds and property while performing the Work. Any damage caused as a result of Contractor's operations shall be repaired back to its original condition by Contractor at no additional cost to County.
- B. Contractor shall provide for continuous County occupancy and operation of the facility for the duration of the Project.
- C. Contractor shall provide for public use, and shall limit access to the facility as directed by County's Contract Administrator.

- D. Contractor shall provide for work by other contractors and County.
- E. Contractor shall coordinate the use of the premises, including the storage of materials, tools and equipment with County's Contract Administrator.

7. **Safety**

Contractor shall maintain safe conditions at the jobsite for the duration of the Work for the public, County staff and all persons performing the Work. Other safety measures shall include, but not be limited to the following:

- A. Providing safe accessibility to all building entrances, keeping all sidewalks, active doors, corridors or other walkways, driveways or any emergency vehicle access clear for the duration of the Project.
- B. Keeping flammable rags, if applicable, in a sealed container and removing them from the site at the end of each work day.

8. **Contract Price**

As compensation agreed upon for said Work, County shall pay or cause to be paid to Contractor, in full, and for the full contract price and compensation for said completion of the Work, including without limitation, all bonds and insurance, **THE NOT TO EXCEED SUM OF TWO HUNDRED SIXTEEN THOUSAND NINE HUNDRED NINETY THREE DOLLARS (\$216,993.00)** which sum constitutes the Contract Price for the complete Project (the "Contract Price").

9. **Time of Completion**

Time is of the essence. The Work under the Contract shall be completed **within thirty (30) Calendar Days** from the date specified in the official Notice to Proceed with the Work, unless an extension of time or suspension of Work is authorized in writing in accordance with a Contract Change Order.

It is agreed by the parties to this Contract that in case all the Work called for under the Contract in all parts and requirements is not finished or completed within the number of calendar days as set forth above, damage will be sustained by County, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which County will sustain in the event of and by reason of the delay; and it is therefore agreed that Contractor will pay to County the sum of **ONE THOUSAND DOLLARS (\$1,000.00)** per calendar day, as liquidated damages and not as a penalty, for each and every calendar day's delay in finishing the work in excess of the number of calendar days prescribed herein; and Contractor agrees to pay the liquidated damages herein provided for, and further agrees that County may deduct the amount thereof from any moneys due or that may become due Contractor under the Contract.

10. **Payment**

Payment shall be made to Contractor as follows:

ONE LUMP SUM UPON COMPLETION AND ACCEPTANCE OF PROJECT

Retention of 5% of the total Contract Price will be held at the option of County. Payment by County as herein provided shall not be construed as an absolute acceptance of defects in the Work or improper materials.

11. **Performance Bond**

As a part of the execution of this Contract, Contractor shall furnish a bond of a surety company authorized to do business in the State of California, conditioned upon the faithful performance of all covenants and stipulations under this Contract. The amount of this bond shall be one hundred percent (100%) of the total Contract Price and shall be executed upon the form provided by County.

12. Payment Bond

As a part of the execution of this Contract, Contractor shall furnish a bond of a surety company authorized to do business in the State of California, conditioned upon the payment in full of all claims for labor and materials in accordance with the provisions of the law of the State of California. The amount of this bond shall be one hundred percent (100%) of the total Contract Price and shall be executed upon the form provided by County.

13. Notification of Surety Company

The surety company shall familiarize itself with all of the conditions and provisions of this Contract, and shall waive the right of special notification of any change or modifications of this Contract or extension of time, or of decreased or increased work, or of the cancellation of the Contract, or of any other act or acts by County or its authorized agents, under the terms of this Contract; and failure to so notify the aforesaid surety company of changes shall in no way relieve the surety company of its obligation under this Contract.

14. Payment of Prevailing Wages

Contractor shall pay and require payment of wages according to a scale of prevailing wage rates determined by California law, which scale is on file at County's Department of Transportation, Construction Division, and shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810 and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Contractor and any subcontractor employed under this Contract shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

15. Apprentices

Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on the public works contract. Responsibility for compliance with this section lies with Contractor.

It is County policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

16. Certified Payroll

As required under the provisions of Labor Code Section 1776, Contractor and any subcontractors shall keep accurate payroll records as follows:

1. The payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or subcontractors in connection with this Project.

2. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of Contractor as follows:

a. Make available or furnish to the employee or his or her authorized representative on request.

- b. Make available for inspection or furnished upon request to a representative of County, the State Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State Department of Industrial Relations.
- c. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either County, the State Division of Labor Standards Enforcement, or the State Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, subcontractor, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

17. Records Examination and Audit Requirements

Contractor and its subcontractors, if any are authorized hereunder, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Contract, including but not limited to, the costs of administering the various aspects of the Contract. In accordance with Government Code Section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date that final payment by County and all other pending matters are closed. Representatives of County, the State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers and records that are pertinent to the Contract for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

18. Payment of all Federal, State or City Taxes

Any federal, state or city tax payable on the articles furnished by Contractor under the Contract shall be included in the Contract Price and paid by Contractor.

19. Compliance with all Applicable Laws

Contractor shall conform to and abide by all Federal, State and local building, labor and safety laws, ordinances, rules and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in the Contract Documents, including but not limited to the plans and specifications, is to be construed to permit work not conforming to these codes, laws and regulations.

20. Nondiscrimination

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

21. Reporting Accidents

Contractor shall prepare and submit (within 24 hours of such incidents) reports of accidents at the site and anywhere else the work is in progress in which bodily injury is sustained or property loss in excess of Five Hundred Dollars (\$500.00) occurs.

22. Workers' Compensation

Contractor shall comply with Labor Code Sections 3700 et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Signed: Kennel J. Ollila Dated: 4/26/12

23. Deviation from Plans and Specifications

No deviation shall be made from the plans and/or the specifications, if any, without the prior written approval of County.

24. Unity of Plans and Specifications

The plans and specifications, if any, are one document, and any work shown or mentioned, in one and not in the other, or vice versa, shall be furnished or performed as though mentioned or shown in both.

25. Relocation of Utilities

As required by Section 4215 of the California Government Code, County will assume responsibility for the removal, relocation, and protection of main or trunk-line utility facilities existing on the construction site, if such facilities are not shown in the plans and specifications, and County shall compensate Contractor for the costs of locating and repairing damage to such facilities not due to the failure of Contractor to exercise reasonable care.

Nothing herein shall be deemed to require County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.

If Contractor, while performing the Work under the Contract, discovers utility facilities not identified in the Contract Documents, including the plans or specifications, Contractor shall immediately notify the Contract Administrator or Project Manager. County shall not be liable for Contractor's performance of unauthorized work.

26. Notice of Discovery of Hazardous Waste or Unusual Conditions

- A. Contractor shall promptly, and before the following conditions are disturbed, notify County in writing, in the event Contractor encounters, after excavating to a depth of greater than four (4) feet, any of the following:
1. Material that Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; or
 2. Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
 3. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.
- B. County shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for performance of any part of the Work, an adjustment, excluding loss of anticipated profits, will be made and the Contract will be modified by a Change Order. County will notify Contractor of County's determination as to whether or not an adjustment of the Contract is warranted.
- C. In the event a dispute arises between County and Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between Contractor and County.

27. Subcontracting

The provisions of Sections 4100-4114, inclusive, of the Public Contract Code regarding subcontracting shall apply to this Contract, and Contractor represents that it will comply with all provisions therein. For the purposes of this Contract, no subcontractors are authorized to perform any portion of the Work.

28. Additional Work

County reserves the right to make such alterations, deviations, additions to or deletions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of work or to delete any items or portion of work, as may be deemed by the Contract Administrator or Project Manager to be necessary or advisable, and to require such additional work to be required for the proper completion of the whole Work contemplated.

Any such changes will be set forth in a Contract Change Order (Change Order) which will specify the additional work, adjustment of performance time, if any, and basis for additional compensation, if any. Any Change Order shall not become effective until approved by the Director of Transportation, or where required, by the Board of Supervisors.

29. Termination by County for Convenience

County reserves the right to terminate the Contract at any time upon determination by County's representative that termination of the Contract is in the best interest of County. County shall issue Contractor a written notice specifying that the Contract is to be terminated.

Upon receipt of said written notice, Contractor shall stop all work under the Contract except: (1) work specifically directed to be completed prior to termination, (2) work the Inspector deems necessary to secure the Project for termination, (3) removal of equipment and plant from the site of the Work, (4) action that is necessary to protect materials from damage, (5) disposal of materials not yet used in the Work as directed by County, and (6) clean up of the site.

If the Contract is terminated for County's convenience as provided herein, all finished or unfinished work and materials previously paid for shall, at the option of County, become its property. Contractor shall be paid an amount which reflects costs incurred for work provided to the date of notification of termination. In addition, Contractor shall be paid the reasonable cost, as solely judged by County, and without profit, for all work performed to secure the Project for termination.

30. Termination by County for Cause

If Contractor is adjudged as bankrupt or insolvent, or makes a general assignment for the benefit of its creditors or if a trustee or receiver is appointed for Contractor or for any of its property, or if Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or on more than one occasion fails to supply sufficient skilled workmen or suitable material or equipment, or on more than one occasion fails to make prompt payments to subcontractors for labor, materials, or equipment, or disregards the authority of County's representative, or the Engineer, if one is appointed, or otherwise violates any provision of the Contract Documents, then County may, without prejudice to any other right or remedy and after giving Contractor a minimum of ten (10) days from delivery of a written termination notice, terminate the services of Contractor and take equipment and machinery thereon owned by Contractor and finish the Work by whatever method County may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished.

Without prejudice to other rights or remedies County may have, if Contractor fails to begin delivery of materials and equipment, to commence Work within the time specified, to maintain the rate of delivery of material, to execute the Work in the manner and at such locations as specified, or fails to maintain a work program which will ensure County's interest, or, if Contractor is not carrying out the intent of the Contract, an Inspector's written notice may be served upon Contractor demanding satisfactory compliance with the Contract. If Contractor does not comply with such notice within five (5) days after receiving it, or after starting to comply, fails to continue, County may exclude it from the premises and take possession of all material and equipment, and complete the Work by County's own forces, by letting the unfinished Work to another Contractor, or by a combination of such methods.

Where Contractor's services have been so terminated by County, said termination shall not affect any right of County against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by County due Contractor will not release Contractor from compliance with the Contract Documents.

If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If the sums under the Contract are insufficient for completion, Contractor shall pay to County within five (5) days after the completion, all costs in excess of the Contract Price. In any event, the cost of completing the Work shall be charged against Contractor and may be deducted from any money due or becoming due from County.

The provisions of this Article shall be in addition to all other rights and remedies available to County under law.

If after notice of termination, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued. The Contract shall be equitably adjusted to compensate for such termination.

31. Successors and Assigns

This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor and to the successors in interest of County in the same manner as if such parties had been expressly named herein.

32. Assignment of Contract

Neither the Contract, this Agreement, nor any part thereof, or any monies due or to become due hereunder, may be assigned by Contractor without the written approval of County. County may assign this Contract to a lender, or any third party that assumes the obligations of County hereunder.

33. Amendments

This Agreement may be amended by mutual consent of the parties hereto. Said amendment shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

34. Separate Contracts

County reserves the right to let other contracts in connection with the Work. Contractor shall afford all other such contractors reasonable opportunity for storage of their materials, shall provide that the execution of its work properly connects and coordinates with theirs, and shall cooperate with them to the end of facilitating the Work.

35. Indemnity

To the fullest extent allowed by law, Contractor shall defend, indemnify, and hold County and its officers, directors, and employees harmless against and from any and all claims, suits, losses, damages, and liability for damages, including attorney's fees and other costs of defense brought for or on account of injuries to or death of any person, including but not limited to, workers and the public, or on account of injuries to or death of County employees, or damage to property, or any economic, consequential or special damages which are claimed or which shall in any way arise out of or be connected with Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractors or employees of any of these, except for the active, or sole negligence of County, its officers, directors, and employees, or where expressly prescribed by statute.

The duty to indemnify and hold harmless County specifically includes the duties to defend set forth in Section 2778 of the Civil Code. The insurance obligations of Contractor are separate, independent obligations under the Contract Documents, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Contract Documents.

36. Insurance

GENERAL INSURANCE REQUIREMENTS: Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
2. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability.

3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by Contractor in performance of the Contract.
4. In the event Contractor is a licensed professional and is performing professional services under this Contract, Professional Liability Insurance is required with a limit of liability of not less than One Million Dollars (\$1,000,000).
5. Explosion, Collapse and Underground coverage is required when the scope of work includes XCU exposures.

PROOF OF INSURANCE REQUIREMENTS:

1. Contractor shall furnish proof of coverage satisfactory to County's Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
2. The County of El Dorado, its officers, officials, employees, and volunteers shall be included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies. Proof that County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to Contractor's insurance policy naming County as additional insured.
3. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Contract for not less than three (3) years following completion of performance of this Contract.
4. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
5. Contractor shall require each of its subcontractors to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance and Workers' Compensation Insurance of the types and in the amounts specified above, or shall insure the activities of its subcontractors in its own policy in like amounts. Contractor shall also require each of its subcontractors to name Contractor and the County of El Dorado as additional insureds on each subcontractor's general and excess liability insurance policies. Upon request by County Contractor shall furnish proof of coverage satisfactory to County as evidence that the subcontractor insurance required herein is being maintained.

INSURANCE NOTIFICATION REQUIREMENTS:

1. Contractor agrees that no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to County at the Chief Administrative Office, 330 Fair Lane, Placerville, California 95667.
2. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement, inclusive of the guarantee/warranty period specified herein below. In the event said insurance coverage expires at any time or times during the term of this Contract, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division.

ADDITIONAL STANDARDS: Certificates shall meet such additional standards as may be determined by County's Department of Transportation either independently or in consultation with County's Risk Management Division, as essential for protection of County.

COMMENCEMENT OF PERFORMANCE: Contractor shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved.

MATERIAL BREACH: Failure of Contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.

REPORTING PROVISIONS: Any failure to comply with the reporting provisions of the policies shall not affect the coverage provided to County, its officers, officials, employees or volunteers.

PRIMARY COVERAGE: Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

PREMIUM PAYMENTS: The insurance companies shall have no recourse against County, its officers, agents, employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

CONTRACTOR'S OBLIGATIONS: Contractor's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.

37. Licenses

Contractor warrants and represents that it holds a valid California license pursuant to the Contractors' State License Law (Business and Professions Code Sections 7000, et seq.), that its license is in good standing and that it possesses a Class A, General Engineering, Class B General Building, Class C-4 Boiler, Hot water and Steam Fitting, Class C-7 Low Voltage systems, Class C-10 Electrical, Class C-20 Warm-air Heating, ventilating and Air-Conditioning, Class C-36 Plumbing, Class C-38 Refrigeration, and Class C-43 Sheet Metal Licenses as required by the categories and type of the Work. Copies of Contractor's State Contractors' license must be provided with this Agreement.

38. Business License

County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

39. Cleaning Up

Contractor shall not allow the site of the Work to become littered with trash, rubbish or waste material, but shall maintain the site of Work in a neat and orderly condition throughout the performance of the Work. At the end of each work day, Contractor shall clean up all debris and waste materials generated by the Work and shall properly dispose of all trash, rubbish and waste materials off site at no additional cost to County.

40. Access to the Work

County, and any state or local authorities having jurisdiction over the Project, shall at all times have access to the Work.

41. **Acceptance of Work**

The Work will be accepted by County in writing when the whole shall have been completed satisfactorily, as determined by County or its duly authorized representative. Acceptance of the Work shall not constitute an acceptance of latent defects nor relieve Contractor of responsibility for any act or omission which is a violation of the Contract.

42. **Resolution of Claims**

Contractor's attention is invited to Public Contract Code Sections 20104, et seq., for resolution of construction claims, and specifically Section 20104.2. Claims pertaining to this Contract shall be governed by the provisions of those sections.

43. **Environmental and Toxic Warranty**

Contractor warrants that its operations concerning the Project are not and will not be in violation of any applicable federal, state, or local environmental statute, law, or regulation dealing with hazardous materials substances or toxic substances.

44. **Guarantee**

Final Guarantee: Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year. Contractor warrants and guarantees for a period of one (1) year from the date of Acceptance of the Work that the Work is free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the Work resulting from such defects. County will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, County may do so and charge Contractor the cost thereby incurred.

Extended Guarantees: If a guaranty exceeding one (1) year is provided by the supplier or manufacturer of any equipment or materials used in this Project, then the guarantee for such equipment or materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by its suppliers or manufacturers.

Warranty: Contractor warrants to County that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract, that the Work will be free from defects or flaws and is of the highest quality of workmanship and that the Work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

If within one (1) year from the date of the Acceptance of the Work or such longer period of time as may be prescribed by law or regulations or by the terms of any applicable special guarantee required by the contract documents, any work is found to be defective, Contractor shall promptly, without cost to County and in accordance with County's written instruction, correct such defective work. If work is rejected by County, defective material or work will be removed from site and replaced with non-defective materials or work. If Contractor is unable to promptly and properly correct any defective work, County may at its option have the work corrected by such other means as County deems appropriate and hold Contractor liable for all direct, indirect and consequential costs caused by such defective work. Said warranty shall apply to all work found to be "defective" which is attributable to the quality or quantity of the materials used, the quality of the workmanship or for performance of the Contract.

45. **Notice**

Any notice or other correspondence required to be given under this Agreement by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Notices personally delivered during normal business hours shall be deemed received on the actual date of delivery; mailed notices shall be deemed received one (1) day after affixed postmark. Notices and correspondence to County shall be in duplicate and shall be delivered to it as follows:

To County:
Chief Administrative Office
Facilities Management Division
Placerville, California 95667

Attn.: Russell Fackrell
Facilities Manager

Notices and correspondence to Contractor shall be delivered when personally delivered to, or if mailed, addressed to Contractor at:

Johnson Controls, Inc.
1030 Winding Creek Way
Suite 100
Roseville, California 95678

Attn.: Kenneth Elkington
Metro Branch Manager - Service

Either party may change its address for notices by giving written notice pursuant to this Article.

46. **California Residency (Form 590)**

All independent Contractors providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any Agreement/Contract exceeding \$1,500.00.

47. **County Payee Data Record Form**

All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

48. **Venue**

The Contract Documents and all provisions thereto shall be governed by the laws of the State of California. Any litigation arising herein shall be brought in the County of El Dorado.

49. **Contract Administrator**

The County Officer or employee with responsibility for administering this Agreement is Russell Fackrell, Facilities Manager, Chief Administrative Office, or successor.

50. Authorized Signatures

The parties to this Agreement warrant and represent that the undersigned individuals executing this Agreement on their respective behalves are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

51. Partial Invalidity

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

52. Entire Agreement

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

Contract Administrator Concurrence:

By: 
Russell Fackrell
Facilities Manager
Chief Administrative Office

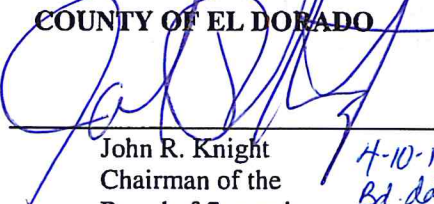
Dated: 5/1/12

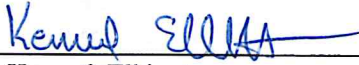
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

COUNTY

CONTRACTOR

Dated: 4-10-12 board date Dated: 4/26/12

By:  COUNTY OF EL DORADO
John R. Knight
Chairman of the Board of Supervisors
4-10-12 Bd. date

By:  JOHNSON CONTROLS, INC.
Kenneth Elkington
Metro Branch Manager - Service

By: *see following*
Corporate Secretary

ATTEST: Terri Daly,
Acting Clerk of the Board of Supervisors

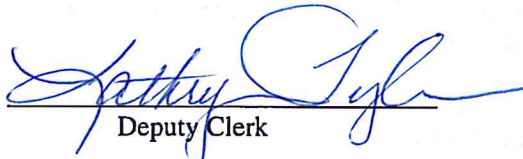
By: 
Deputy Clerk

Exhibit "A"
Scope of Work

Due to the failed burner on the PVI boiler the following scope is to replace the combustion chamber along with fire tube and burner assembly;

- **Shut down, isolate, drain and demo existing PVI boilers**
- **Boiler will have to be cut in place so and removed through roof access double doors via crane**
- **Run new gas line from main and install isolation valves**
- **Install two (2) new MODCON 850 hot water boilers with 85 GPM taco pump (domestic hot water and kitchen/laundry)**
- **Run electrical to boilers and pumps with electrical disconnects to isolate**
- **Install four (4) 585 gallon storage tanks to be piped in series with the new boilers**
- **Anchor and support all equipment and piping per code requirements**
- **Pressure test gas and water piping installed**
- **Install tank thermostat for boilers start stop operation**
- **Insulate tank and piping disturbed**
- **Perform start up and check complete operation**
- **Install a 3rd boiler with pump to be redundant back up for both loops with manual isolation valves so that in the case of a failure could be opened to direct water to either loop**
- **Provide and Install two (2) expansion tanks and necessary piping to comply with boiler warranty.**

Prior to the commencement of any work identified herein, Contractor will provide three (3) original engineered stamped sets of plans.

Five year limited warranty on manufacturer's materials in accordance with Exhibit "B", marked "VWH Limited Warranty", incorporated herein and made by reference a part hereof.

Contractor will provide a five year extended warranty that covers the cost of all repairs to the MODCON hot water boilers, storage tanks, expansion tanks, and related parts at no additional cost to the County as long as County has entered into a separate five year agreement for the annual preventative maintenance of all systems and related components.

DELEGATION OF AUTHORITY

The undersigned, President of Johnson Controls, Inc., a Wisconsin corporation (the "Company"), pursuant to the authority vested in him by a certain resolution adopted by the Board of Directors of the Company on January 23, 1980 hereby authorizes

Kenneth J. Elkington
Metro Branch Manager - Service

to perform, on behalf of the Company, the acts described below:

To execute and deliver any and all contracts for the performance of work, sale of goods, and furnishing of services, and any other instruments in connection therewith and in the ordinary course of business.

This authority does not extend to:

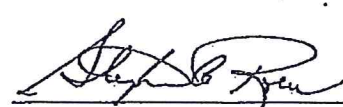
- a. the execution of surety, performance or bid bonds;
- b. the collection, receipt and recovery of monies due or to become due to the Company and the issuance of receipts and releases for the payment thereof;
- c. the signing of any notes, contracts, or any other agreement to borrow money in the name of the Company, or any form of guaranty for the payment or performance of obligations of any subsidiary, affiliate, or joint venture of the Company; and
- d. the signing, on behalf of the company, of any deeds, abstracts, offers to purchase or any other instruments pertaining to the purchase or sale of real property.

This authority shall remain in full force and effect until September 4, 2012.

Signed at Milwaukee, Wisconsin, this 5 day of March, 2012.

ATTEST:


Secretary


President



Authorization for
Kenneth Elkington
to sign w/o Corp.
See signature

EXHIBIT "B"



Advanced Heating and Hot Water Systems

P.O. Box 429 · 120 Braley Road · East Freetown, MA 02717 · 508-763-8071 · Fax: 508-763-3769

VWH Limited Warranty

Five year warranty to assure your complete satisfaction.

HTP warrants each VWH to be free from defects in material and workmanship according to the following terms, conditions and time periods. **UNLESS OTHERWISE NOTED THESE WARRANTIES COMMENCE ON THE DATE OF INSTALLATION.**

COVERAGE

- A. During the first year after the date of installation, HTP warrants that it will repair or replace, at its option, without charge, any defective VWH or malfunctioning component thereof that is found to have failed due to manufacturer's defect. HTP will **NOT** accept claims from the purchaser for labor costs incurred as a result of the repair, replacement, removal, or reinstallation of a VWH or any component thereof. It is expressly agreed between HTP and the purchaser that repair or replacement are the exclusive remedies of the purchaser.
- B. During the second through fifth year after the date of installation, HTP warrants that it will repair or replace, at its option, without charge, any defective VWH that is found to have failed due to manufacturer's defect. No other component of the VWH will be replaced during this period (with exception to the blower motor, which will have a limited warranty of 3 years). HTP will **NOT** accept claims from the purchaser for labor costs incurred as a result of the repair, replacement, removal, or reinstallation of a VWH or any component thereof. It is expressly agreed between HTP and the purchaser that repair or replacement are the exclusive remedies of the purchaser.
- C. Should a defect or malfunction result in a leakage of water within the above-stated warranty periods due to defective material or workmanship, malfunction or failure to comply with the above warranty, such as defects or malfunctioning having been verified by an authorized HTP representative, then HTP will replace the defective or malfunctioning VWH with a replacement VWH of the nearest comparable model available at the time of replacement.
- D. If HTP is unable to repair or replace a VWH so as to conform to this warranty after a reasonable number of attempts, HTP will then provide, at its option, a replacement unit. These remedies are the purchaser's exclusive remedies for breach of warranty.
- E. If, at the time of a request for service the purchaser cannot provide a copy of the original sales receipt or the warranty card registration, the warranty period for the VWH shall then be deemed to have commenced thirty (30) days after the date of manufacture of the VWH and **NOT** the date of installation of the VWH.

OWNER'S RESPONSIBILITIES

The owner or installer must:

1. To avoid the exclusion list in this warranty, it is recommended that the VWH be maintained in accordance to the maintenance procedure listed in the installation manual. Preventive maintenance can help to avoid any unnecessary breakdown of your appliance and keep your appliance running at its optimum efficiency.
2. All related heating components must be maintained in good operating condition.
3. All lines must be checked to confirm that all condensate drains properly from the unit.
4. Operate the VWH at pressures not exceeding the working pressure shown on the rating plate.
5. Use the VWH in a system with a properly sized and installed thermal expansion tank.
6. Make provisions so if the VWH or any component part or connection thereto should leak, the resulting flow of water will not cause damage to the area in which it is installed.

WARRANTY EXCLUSIONS

HTP does not warrant:

1. All labor charges incurred by any person in connection with the examination or replacement of parts claimed by the purchaser to be defective.
2. Any failed components of the heat system not manufactured by HTP as part of the VWH.
3. VWHs repaired or altered without prior written approval of HTP so as to affect adversely their reliability.
4. Any damages, defects or malfunctions resulting from improper maintenance, misuse, abuse, accident, negligence, freezing and the like.
5. Any damage or failure resulting from hard water scale buildup on the tank heat exchanger tubes.
6. Any damage or failure resulting from contaminated air, including, but not limited to, sheetrock particles, plasterboard particles, dirt or dust, being introduced into the VWH or its components including, but not limited to, the outside tubes of the heat exchanger.
7. Damages, malfunctions, or failures resulting from failure to install the VWH in accordance with applicable building codes/ordinances or good plumbing and electrical trade practices.

8. Damages, malfunctions, or failures resulting from improper installation, failure to operate the VWH at pressures not exceeding the working pressure shown on the rating plate, or failure to maintain and operate the VWH in accordance with the manufacturer's printed instructions.
9. Failure to operate the VWH in a system with a properly sized and installed thermal expansion tank.
10. Failures or performance problems caused by improper sizing of the water heater, expansion device, or piping.
11. Any damage or failure resulting from improper water chemistry. WATER CHEMISTRY REQUIREMENTS – Sodium less than 20mGL. Water pH between 6.0 and 8.0. Hardness less than 7 grains. Chlorine concentration less than 200 ppm.
12. Components of the VWH that are not defective, but must be replaced during the warranty period as a result of reasonable wear and tear.
13. Components of the VWH that are subject to warranties, if any, given by their manufacturers, HTP does not adopt these warranties.
14. Malfunctions resulting from, or repairs necessitated by, flood, fire, wind, or lightning, or uses of the VWH for purposes other than that for which it was designed.
15. Any unit purchased from an unauthorized dealer or any online retailer.

PROCEDURES FOR WARRANTY SERVICE REQUESTS

At the time a claim is filed, the purchaser must present a copy of the original sales receipt. Contact the retailer from whom the VWH was purchased. All alleged defective or malfunctioning parts must be returned to HTP via trade channels. If all warranty conditions are satisfied, HTP will provide replacement parts to the retailer. If you have questions about the coverage of this warranty, please contact HTP at the address stated below:

HTP
P.O. Box 429
120 Braley Road
East Freetown, MA. 02717
Attention: Warranty Service Department
(800) 323-9651

SERVICE, LABOR AND SHIPPING COSTS

This warranty does not extend to shipping charges, delivery expenses, or administrative fees incurred by the purchaser in repairing or replacing the VWH. This warranty does not extend to labor costs beyond the coverage specified in this warranty document.

LIMITATIONS OF YOUR HTP WARRANTY AND REMEDIES

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN CONTRACT OR TORT, WHETHER OR NOT ARISING FROM HTP'S NEGLIGENCE, ACTUAL OR IMPUTED. THE REMEDIES OF THE PURCHASER SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ANY OTHER REMEDIES INCLUDING WITHOUT LIMITATION, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SAID INCIDENTAL AND CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, LOST PROFIT OR DAMAGES ALLEGED TO HAVE BEEN CAUSED BY ANY FAILURE OF HTP TO MEET ANY OBLIGATION UNDER THIS AGREEMENT INCLUDING THE OBLIGATION TO REPAIR AND REPLACE SET FORTH ABOVE. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTIES, REMEDIES OR THIS LIMITATION WILL BE BINDING UPON HTP. UNLESS IN WRITING AND SIGNED BY A DULY AUTHORIZED OFFICER OF HTP. THE WARRANTIES STATED HEREIN ARE NOT TRANSFERABLE AND SHALL BE FOR THE BENEFIT OF THE ORIGINAL PURCHASER OF A VWH ONLY.

NO OTHER WARRANTIES

Your HTP warranty gives you specific legal rights, and you may also have other rights that vary from state to state. Some states do not allow the exclusion or limitation of incidental or consequential damages so this limitation or exclusion may not apply to you.

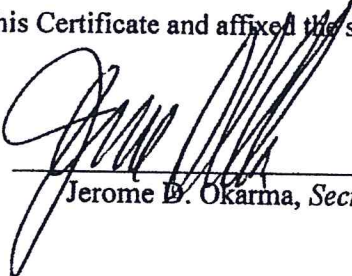
These are the only written warranties applicable to the VWH manufactured and sold by HTP. HTP neither assumes nor authorizes anyone to assume for it any other obligation or liability in connection with said VWHs. HTP reserves the right to change specifications or discontinue models without notice.

OFFICER'S CERTIFICATE

I, Jerome D. Okarma, Secretary of Johnson Controls, Inc., a Wisconsin corporation (the "Corporation"), do hereby certify that:

1. I am the duly elected and acting Secretary of Johnson Controls, Inc., a Wisconsin corporation, and the keeper of its corporate records and minutes;
2. Attached hereto is a true and complete copy of a *Delegation of Authority* issued to **Kenneth Elkington**, Metro Branch Manager-Service on August 11, 2011; and
3. Said *Delegation of Authority* is, at the date hereof, in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have executed this Certificate and affixed the seal of Johnson Controls, Inc. on this 30th day of January 2012.



Jerome D. Okarma, Secretary

[Corporate Seal]





DELEGATION OF AUTHORITY

The undersigned, President of Johnson Controls, Inc., a Wisconsin corporation, pursuant to the authority vested in him by a certain resolution adopted by the Board of Directors of the Company on January 23, 1980, hereby authorizes

Kenneth Elkington
Metro Branch Manager - Service

to perform, on behalf of the Company, the acts described below:

To execute and deliver any and all contracts for the performance of work, sale of goods, and furnishing of services, and any other instruments in connection therewith and in the ordinary course of business.

This authority does not extend to:


- a. the execution of surety, performance or bid bonds;
- b. the signing of any notes, contracts, or any other agreement to borrow money in the name of the Company;
- c. the signing, on behalf of the company, of any deeds, abstracts, offers to purchase or any other instruments pertaining to the purchase or sale of real property; and

This authority shall remain in full force and effect until February 10, 2012.


Signed and sealed at Milwaukee, Wisconsin, this 11 day of August, 2011.



Stephen A. Roell, President

Attest.


Jerome D. Okanna, Secretary



JOHNSON CONTROLS
CORPORATE SEAL
MILWAUKEE, WI

