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STATE PROCUREMENT OFFICE EMERGENCY PROCUREMENT REQUEST

1. TO: Chief Procurement Officer
2. FROM: Hawaii State Public Library System

Department/Division/Agency

Pursuant to §103D-307, HRS, and Subchapter 10, Chapter 3-122, HAR, the Department requests approval for the following:

3. Date December 1, 2006

4. After the fact YES NO

5. Nature of the Emergency

The compressor for Ewa Beach Public and School Library airconditioning system must be replaced for the health and comfort of our patrons and employees and to prevent recurrence of the recent mold problem. This system was installed in 1990 and has a useful life of 15-20 years but has had many problems over the past year. Both Honeywell and DAGS Central Services have recommended the compressor be replaced.

6. Vendor: Honeywell International, Inc.
Address: 250 Ward Avenue, Suite 100
Honolulu, Hawaii 96814

7. Price:
\$74,086.00

8. Description of goods, services, or construction to be purchased

Purchase and installation of a new compressor for the air conditioning system at Ewa Beach Public and School Library.

9. Reason for Vendor Selection

1. Honeywell has agreed to perform the work and provide the labor at no cost to the State and will only charge for the equipment. 2. Honeywell is the current State Air Conditioning Service/Maintenance contractor. 3. Honeywell will be able to install the equipment quickly since it knows the system and can avoid design time.

10. Direct questions to: Keith T. Fujio, ASO

Phone: 586-3700

11. *I certify that the information provided above is to the best of my knowledge, true and correct.*

12/1/2006

Department Head or Designee

Date

12. Chief Procurement Officer's comments:

DAGS-CSD oversees the servicing of this air conditioning unit and annually submits a prioritized report to HSPLS regarding the condition of the A/C equipment along with their recommendations regarding replacement. The agency has the option and the final decision as to whether or not the unit will be replaced. Although this A/C unit was not on this year's list, DAGS-CSD has planned to include it on next year's list for replacement.

13.

APPROVED DISAPPROVED NO ACTION REQUIRED

Chief Procurement Officer

Date

14. E.P.No. 07-16-A

**HONEYWELL International Inc., Honeywell Building Solutions
BUILDING SYSTEMS AGREEMENT**

Proposal Number: 975092905001
Date: September 29, 2005
Agreement Number: 9750210490

By and between
HONEYWELL INTERNATIONAL INC., acting
through and on behalf of its
Honeywell Building Solutions
("Honeywell")

250 Ward Ave #100
Honolulu, HI 96814

STATE OF HAWAII
ATTN DEAN SHIMOMURA

Re: Ewa Beach Library-Replace Condenser, Chiller
and Chill Water Pump
729 Kakoi St
Honolulu, HI 96819

HONEYWELL PROPOSES:

Scope of Work: HONEYWELL shall provide the following equipment and services ("the Work") in accordance with the attached work scope documents and terms and conditions, which form a part of this Agreement. Services HONEYWELL will provide under this Agreement specifically exclude inspection, investigation, discovery, identification, prevention or remediation of Hazardous Substances (as defined in Section 5.1) or Mold (as defined in Section 5.2), conditions caused by Hazardous Substances or Mold, or conditions that might cause or promote the accumulation, concentration, growth or dispersion of Hazardous Substances or Mold.

Honeywell will provide labor only at no cost to the State of Hawaii to change out the existing condenser, chiller, and chill water pump and replace with a new 60 ton air cooled condenser with coating, a 60 ton chiller, and chill water pump and misc material (piping, gauges, thermometer, strainers, etc). The State of Hawaii will be responsible for cost of all material, 1 disconnect, truck rental and subcontractors (electrical and insulators, etc.). Existing electrical disconnects and breakers to be re-used in chiller room. Disconnect located outdoors for condenser to be changed out. Cost for material to be marked up 20% and cost for subcontractors to be marked up 15% per contract specifications. All vendor invoices to be submitted with Honeywell's invoice to the State of Hawaii.

END OF SCOPE OF WORK

Period of Performance: The Work shall commence on TBD ("Effective Date") and shall be completed by TBD ("Completion Date")

Price: SEVENTY FOUR THOUSAND EIGHT SIX AND 00/100 dollars (\$ 74,086.00)

Sales Tax will be invoiced separately Use Tax is included in the Price This sale is tax exempt

Payment: Upon CUSTOMER acceptance of this proposal or contract execution, whichever occurs first, the CUSTOMER shall pay Honeywell the balance of the Price shall be payable in accordance with Terms of Payment article herein.

Validity Period: Unless otherwise indicated, this proposal is valid for thirty (30) days from the above referenced proposal date.
[] This proposal is valid through **October 29, 2005**.

Acceptance: This proposal and the pages attached shall become an Agreement only upon signature below by an authorized representative of HONEYWELL and CUSTOMER.

SUBMITTED BY: _____
(SIGNATURE)

NAME: **JAMES T QUILINDERINO**
TITLE: **FITTER FOREMAN**

HONEYWELL INTERNATIONAL INC., Honeywell Building Solutions

PART A. Standard Terms and Conditions

1. WORKING HOURS

1.1 Unless otherwise stated, all labor and services under this Agreement will be performed during the hours of 8:00 a.m. - 4:30 p.m. local time Monday through Friday, excluding federal holidays. If for any reason CUSTOMER requests HONEYWELL to furnish any such labor or services outside of the hours of 8:00 a.m. - 4:30 p.m. local time Monday through Friday (or on federal holidays), any overtime or other additional expense occasioned thereby, such as repairs or material costs not included in this Agreement, shall be billed to and paid by CUSTOMER.

2. TAXES

2.1 CUSTOMER agrees to pay the amount of any new or increased taxes or governmental charges upon labor or the production, shipment, sale, installation, or use of equipment or software which become effective after the date of this Agreement. If CUSTOMER claims any such taxes do not apply to transactions covered by this Agreement, CUSTOMER shall provide HONEYWELL with a tax exemption certificate acceptable to the applicable taxing authorities.

3. PROPRIETARY INFORMATION

3.1 All proprietary information (as defined herein) obtained by CUSTOMER from HONEYWELL in connection with this Agreement shall remain the property of HONEYWELL, and CUSTOMER shall not divulge such information to any third party without prior written consent of HONEYWELL. As used herein, the term "proprietary information" shall mean written information (or oral information reduced to writing), or information in machine-readable form, including but not limited to software supplied to CUSTOMER hereunder which HONEYWELL deems proprietary or confidential and characterizes as proprietary at the time of disclosure to CUSTOMER by marking or labeling the same "Proprietary," "Confidential," or "Sensitive." The CUSTOMER shall incur no obligations hereunder with respect to proprietary information which (a) was in the CUSTOMER'S possession or was known to the CUSTOMER prior to its receipt from HONEYWELL, (b) is independently developed by the CUSTOMER without the utilization of such confidential information of HONEYWELL, (c) is or becomes public knowledge through no fault of the CUSTOMER, (d) is or becomes available to the CUSTOMER from a source other than HONEYWELL, (e) is or becomes available on an unrestricted basis to a third party from HONEYWELL or from someone acting under its control, (f) is received by CUSTOMER after notification to HONEYWELL that the CUSTOMER will not accept any further information.

3.2 CUSTOMER agrees that HONEYWELL may use nonproprietary information pertaining to the Agreement, and the work performed under the Agreement, for press releases, case studies, data analysis, promotional purposes, and other similar documents or statements to be publicly released, as long as HONEYWELL submits any such document or statement to CUSTOMER for its approval, which shall not be unreasonably withheld.

4. INSURANCE OBLIGATIONS

4.1 HONEYWELL shall maintain Commercial General and Automobile Liability Insurance applicable to the Services for not less than the following limits of liability:

Commercial General Liability Combined Single Limit	\$1,000,000 \$10,000,000	Each Occurrence Product & Completed Operations Aggregate
Commercial Automobile Liability Combined Single Limit	\$1,000,000	Each Occurrence
Workers' Compensation	Statutory	

4.2 CUSTOMER shall be responsible for maintaining its own liability and property insurance.

5. HAZARDOUS SUBSTANCES, MOLD AND UNSAFE WORKING CONDITIONS

5.1 "Hazardous substance" includes all of the following, and any by-product of or from any of the following, whether naturally occurring or manufactured, in quantities, conditions or concentrations that have, are alleged to have, or are believed to have an adverse effect on human health, habitability of a Site, or the environment: (a) any dangerous, hazardous or toxic pollutant, contaminant, chemical, material or substance defined as hazardous or toxic or as a pollutant or contaminant under state or federal law, (b) any petroleum product, nuclear fuel or material, carcinogen, asbestos, urea formaldehyde, foamed-in-place insulation, polychlorinated biphenyl (PCBs), and (c) any other chemical or biological material or organism, that has, is alleged to have, or is believed to have an adverse effect on human health, habitability of a Site, or the environment.

5.2 "Mold" means any type or form of fungus or biological material or agent, including mold, mildew, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing.

5.3 "Covered Equipment" means the equipment covered by the Services to be performed by HONEYWELL under this Agreement, and is limited to the equipment included in the respective work scope attachments.

5.4 Suspension and Termination on Discovery of Hazardous Substances or Mold. HONEYWELL shall have the right to suspend performance of its Services under this Agreement if HONEYWELL discovers or otherwise becomes aware of Hazardous Substances or Mold, or conditions HONEYWELL reasonably believes may cause Hazardous Substances or Mold to be released, accumulated, concentrated or dispersed at a Site, under circumstances that HONEYWELL reasonably believes may be hazardous, violate applicable laws, or give rise to claims of any kind against CUSTOMER or HONEYWELL ("Adverse Circumstances"). If HONEYWELL suspends performance under this Section 5.4, HONEYWELL shall not be obligated to continue its Services until CUSTOMER provides evidence that Hazardous Substances or Mold do not exist at the Site under Adverse Circumstances. HONEYWELL shall have the right to terminate this Agreement with respect to any Site immediately upon determination that Hazardous Substances or Mold are present at the Site under Adverse Circumstances that CUSTOMER cannot or will not remove or otherwise remediate within sixty (60) days after discovery. The right to suspend or terminate performance under this Section 5.4 is solely for the benefit of HONEYWELL. Nothing in this Section 5.4 shall be construed to require HONEYWELL to discover or report Hazardous Substances, Mold or Adverse Circumstances. Failure of HONEYWELL to discover, report, or suspend or terminate upon discovery of Hazardous Substances, Mold or Adverse Circumstances, shall not relieve CUSTOMER of its indemnification obligations under Section 5.10 of this Agreement.

5.5 Except as discussed below, CUSTOMER represents and warrants that at the sites where HONEYWELL will undertake work or provide Services, there are no Hazardous Substances, except those generated, labeled, stored, used, and disposed in strict accordance with applicable law.

5.6 CUSTOMER has not observed or received notice from any source (including without limitation formal or informal complaints of employees or visitors) of (a) Hazardous Substances or Mold, either airborne or on or within the walls, floors, ceilings, heating, ventilation and air conditioning systems, plumbing systems, structure, and other components of the Site, or within furniture, fixtures, equipment, containers or pipelines in a Site, or (b) conditions that, to CUSTOMER'S knowledge, might cause or promote accumulation, concentration, growth or dispersion of Hazardous Substances or Mold on or within such locations.

5.7 In areas in which HONEYWELL will be performing its Services, there are no conditions or circumstances subject to special precautions or equipment required by federal, state or local health or safety regulations or unsafe working conditions.

Exceptions to Representations and Warranties in 5.5, 5.6, and 5.7

CUSTOMER shall notify HONEYWELL of any changes in conditions or regulations that occur during the course of this Agreement that affect the foregoing representations and warranties, including without limitation discovery of Hazardous Substances or Mold at a Site.

5.8 CUSTOMER acknowledges that CUSTOMER has not retained HONEYWELL to discover, inspect, investigate, identify, prevent or remediate Hazardous Substances or Mold, conditions caused by Hazardous Substances or Mold, or conditions that might cause or promote accumulation, concentration, growth or dispersion of Hazardous Substances or Mold. CUSTOMER agrees that HONEYWELL shall not be responsible for any such discovery, inspection, investigation, identification, prevention or remediation, or for any damages arising from or related to the existence of Hazardous Substances or Mold at a Site.

5.9 CUSTOMER acknowledges that the operation of the Covered Equipment may control or affect temperature, humidity, and ventilation at the Site, which may adversely affect accumulation, concentration, growth or dispersion of Hazardous Substances or Mold, whether or not there are defects in the Covered Equipment or the Services. CUSTOMER agrees that HONEYWELL is responsible for maintaining the Covered Equipment in a good working order in accordance with manufacturer's specifications and recommendations, but HONEYWELL is not responsible for determining whether the Covered Equipment or the temperature, humidity and ventilation settings used by CUSTOMER, are appropriate for CUSTOMER and the Site except as specifically provided in an attached Work Scope Document. HONEYWELL shall not be responsible for any adverse affects of temperature, humidity and ventilation conditions created by the Covered Equipment.

5.10 TO THE FULLEST EXTENT ALLOWED BY LAW, CUSTOMER SHALL INDEMNIFY AND HOLD HONEYWELL HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND COSTS OF WHATEVER NATURE, INCLUDING BUT NOT LIMITED TO, CONSULTANTS' AND ATTORNEYS' FEES, DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE, FINES, PENALTIES, CLEANUP COSTS AND COSTS ASSOCIATED WITH DELAY OR WORK STOPPAGE, THAT IN ANY WAY RESULTS FROM OR ARISES UNDER THE BREACH OF THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION 5, THE EXISTENCE OF MOLD OR A HAZARDOUS SUBSTANCE AT A SITE, OR THE OCCURRENCE OR EXISTENCE OF THE SITUATIONS OR CONDITIONS DESCRIBED IN THIS SECTION 5, WHETHER OR NOT CUSTOMER PROVIDES HONEYWELL ADVANCE NOTICE OF THE EXISTENCE OR OCCURRENCE AND REGARDLESS OF WHEN THE HAZARDOUS SUBSTANCE OR OCCURRENCE IS DISCOVERED OR OCCURS. THIS INDEMNIFICATION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON. NOTHING IN THIS SECTION 5.10 SHALL BE CONSTRUED TO REQUIRE THAT CUSTOMER INDEMNIFY AND HOLD HARMLESS HONEYWELL FROM CLAIMS AND COSTS RESULTING FROM THE NEGLIGENT USE BY HONEYWELL OF ANY HAZARDOUS SUBSTANCE BROUGHT TO THE SITE BY HONEYWELL (AND CUSTOMER ACKNOWLEDGES THAT HONEYWELL MAY BRING TO THE SITE LUBRICANTS OR OTHER MATERIALS THAT ARE ROUTINELY USED IN PERFORMING MAINTENANCE AND THAT MAY BE CLASSIFIED AS HAZARDOUS).

5.11 CUSTOMER shall be responsible for the containment of any and all refrigerant stored on or about the premises. CUSTOMER accepts all responsibility for and agrees to indemnify HONEYWELL against any and all claims, damages, or causes of action that arise out of the storage, consumption, loss and/or disposal of refrigerant, except to the extent HONEYWELL has brought refrigerant onsite and is directly and solely negligent for its mishandling.

6. WARRANTY AND LIMITATION OF LIABILITY

6.1 HONEYWELL will replace or repair any product HONEYWELL provides under this Agreement that fails within the warranty period (one) 1 year because of defective workmanship or materials, except to the extent the failure results from CUSTOMER negligence, or from fire, lightning, water damage, or any other cause beyond the control of HONEYWELL. This warranty applies to all products HONEYWELL provides under this Agreement, whether or not manufactured by HONEYWELL. The warranty is effective as of the date of CUSTOMER acceptance of the product or the date CUSTOMER begins beneficial use of the product, whichever occurs first.

6.2 THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE, AND HONEYWELL EXPRESSLY DISCLAIMS AND CUSTOMER EXPRESSLY WAIVES ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF WORKMANSHIP, CONSTRUCTION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES, EQUIPMENT, AND MATERIALS PROVIDED HEREUNDER. HONEYWELL SHALL NOT BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, LOSS OF VALUE, ADVERSE HEALTH EFFECT OR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, ARISING FROM, OR RELATING TO, THIS LIMITED WARRANTY OR ITS BREACH.

6.3 HONEYWELL makes no representation or warranty, express, implied or otherwise, regarding Hazardous Substances or Mold. HONEYWELL shall have no duty, obligation or liability, all of which CUSTOMER expressly waives, for any damage or claim, whether known or unknown, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effect or any special, consequential, punitive, exemplary or other damages, regardless of whether such damages may be caused by or otherwise associated with defects in the Services, in whole or in part due to or arising from any investigation, testing, analysis, monitoring, cleaning, removal, disposal, abatement, remediation, decontamination, repair, replacement, relocation, loss of use of building, or equipment and systems, or personal injury, death or disease in any way associated with Hazardous Substances or Mold.

7. INDEMNITY

7.1 HONEYWELL agrees to indemnify and hold CUSTOMER and its agents and employees harmless from all claims for bodily injury and property damages to the extent such claims result from or arise under HONEYWELL'S negligent actions or willful misconduct in its performance of the Work required under this Agreement, provided that such indemnity obligation is valid only to the extent (i) CUSTOMER gives HONEYWELL immediate notice in writing of any such claims and permits HONEYWELL, through consent of its choice and HONEYWELL'S sole cost and expense, to answer the claims and defend any related suit and (ii) CUSTOMER gives HONEYWELL all needed information, assistance and authority, at HONEYWELL'S expense, to enable HONEYWELL to defend such suit. HONEYWELL shall not be responsible for any settlement without its written consent. HONEYWELL shall not be liable for loss or damage caused by the negligence of CUSTOMER or any other party or such party's employees or agents. This obligation shall survive termination of this Agreement. Notwithstanding the foregoing, CUSTOMER agrees that HONEYWELL will not be responsible for any damages caused by Mold or any other fungus or biological material or agent, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effect or any special, consequential, punitive, exemplary or other damages, regardless of whether such damages may be caused by or otherwise associated with defects in the Services.

8. LIMITATION OF LIABILITY

8.1 IN NO EVENT SHALL HONEYWELL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING FROM, RELATING TO, OR CONNECTED WITH THE SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS PROVIDED HEREUNDER.

8.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF A PORTION OF THE SERVICES INVOLVES THE INSTALLATION AND/OR MAINTENANCE OF SYSTEMS ASSOCIATED WITH SECURITY AND/OR THE DETECTION OF AND/OR REDUCTION OF RISK OF LOSS ASSOCIATED WITH FIRE, HONEYWELL'S TOTAL LIABILITY ARISING OUT OF OR AS A RESULT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THIS AGREEMENT.

9. EXCUSABLE DELAYS

9.1 HONEYWELL shall not be liable for damages caused by delay or interruption in Services due to fire, flood, corrosive substances in the air, strike, lockout, dispute with workmen, inability to obtain material or services, commotion, war, acts of God, the presence of Hazardous Substances or Mold, or any other cause beyond HONEYWELL'S reasonable control. Should any part of the system or any Equipment be damaged by fire, water, lightning, acts of God, the presence of Hazardous Substances or Mold, third parties or any other cause beyond the control of HONEYWELL, any repairs or replacement shall be paid for by CUSTOMER. In the event of any such delay, date of shipment or performance shall be extended by a period equal to the time lost by reason of such delay, and HONEYWELL shall be entitled to recover from CUSTOMER its reasonable costs, overhead, and profit arising from such delay.

10. PATENT INDEMNITY

10.1 HONEYWELL shall, at its expense, defend or, at its option, settle any suit that may be instituted against CUSTOMER for alleged infringement of any United States patents related to the hardware or software manufactured and provided by HONEYWELL under this Agreement ("the equipment"), provided that a) such alleged infringement consists only in the use of such equipment by itself and not as part of, or in combination with, any other devices, parts or software not provided by HONEYWELL hereunder, b) CUSTOMER gives HONEYWELL immediate notice in writing of any such suit and permits HONEYWELL, through counsel of its choice, to answer the charge of infringement and defend such suit, and c) CUSTOMER gives HONEYWELL all needed information, assistance and authority, at HONEYWELL'S expense, to enable HONEYWELL to defend such suit

10.2 If such a suit has occurred, or in HONEYWELL'S opinion is likely to occur, HONEYWELL may, at its election and expense: a) obtain for CUSTOMER the right to continue using such equipment, b) replace, correct or modify it so that it is not infringing, or c) remove such equipment and grant CUSTOMER a credit therefore, as depreciated

10.3 In the case of a final award of damages in any such suit, HONEYWELL will pay such award. HONEYWELL shall not, however, be responsible for any settlement made without its written consent

10.4 THIS ARTICLE STATES HONEYWELL'S TOTAL LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT BY THE HARDWARE MANUFACTURED AND PROVIDED BY HONEYWELL HEREUNDER.

11. SOFTWARE LICENSE

11.1 All software provided in connection with this Agreement shall be licensed and not sold. The end user of the software will be required to sign a license agreement with provisions limiting use of the software to the equipment provided under these specifications, limiting copying, preserving confidentiality, and prohibiting transfer to a third party. Licenses of this type are standard for computer-based equipment of the type covered by this Agreement. CUSTOMER shall be expected to grant HONEYWELL access to the end user for purposes of obtaining the necessary software license.

12. DISPUTE RESOLUTION

12.1 With the exception of any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of fire and/or security systems, the Parties agree that any controversy or claim between HONEYWELL and CUSTOMER arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration, conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of systems associated with security and/or the detection of, and/or reduction of risk of loss associated with fire shall be resolved in a court of competent jurisdiction.

ARTICLE 13. ACCEPTANCE

13.1 This proposal and the pages attached shall become an Agreement only upon signature below by HONEYWELL and CUSTOMER. The terms and conditions are expressly limited to the provisions hereof, including Honeywell's Standard Terms and Conditions attached hereto, notwithstanding receipt of, or acknowledgment by, HONEYWELL of any purchase order, specification, or other document issued by CUSTOMER. Any additional or different terms set forth or referenced in CUSTOMER'S purchase order are hereby objected to by HONEYWELL and shall be deemed a material alteration of these terms and shall not be a part of any resulting order.

ARTICLE 14. MISCELLANEOUS

14.1 This Agreement represents the entire Agreement between CUSTOMER and HONEYWELL for the Work described herein and supersedes all prior negotiations, representations or Agreements between the Parties related to the work described herein.

14.2 None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order or other document unilaterally issued by CUSTOMER that relates to the subject matter of this Agreement. This Agreement may be amended only by written instrument signed by both Parties.

14.3 This Agreement shall be governed by the law of the State where the work is to be performed.

14.4 Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon HONEYWELL and CUSTOMER, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

14.5 CUSTOMER may not assign its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of HONEYWELL. HONEYWELL may assign its right to receive payment to a third party.

PART B. Special Terms and Conditions

15. TERMS OF PAYMENT

15.1 Subject to HONEYWELL'S approval of CUSTOMER'S credit, payment terms are as follows:
Progress Payments - HONEYWELL will invoice at least monthly for all materials delivered to the job site or to an off-site storage facility and for all installation, labor, and services performed, both on and off the job site. CUSTOMER agrees to pay the full amounts invoiced, less retainage, upon receipt of the invoice at the address specified by the CUSTOMER. Invoices not paid within thirty (30) days of the invoice date are past due and accrue interest from the invoice date to the date of payment at the rate of one percent (1%) per month, compounded monthly, or the highest legal rate then allowed.
Retainage - CUSTOMER shall not withhold, as retainage, a greater percentage than is withheld from CUSTOMER under a prime contract, if applicable. CUSTOMER shall pay all retainage to HONEYWELL within 30 days after HONEYWELL'S work is substantially complete.
Suspension of work - If HONEYWELL, having performed work per Agreement requirements, does not receive payment within thirty (30) days after submission of a HONEYWELL invoice, HONEYWELL may suspend work until CUSTOMER provides remedy.

16. WORK BY OTHERS

16.1 Unless otherwise indicated, the following items are to be furnished and installed by others: electric wiring and accessories, all in-line devices (including but not limited to flow tubes, hand valves, orifice plates, orifice flanges, etc.), pipe and pipe penetrations including flanges for mounting pressure and level transmitters, temperature sensors, vacuum breakers, gauge glasses, water columns, equipment foundations, riggings, steam tracings, and all other items and work of like nature. Automatic valve bodies and dampers furnished by HONEYWELL are to be installed by others.

17. DELIVERY

17.1 Delivery of equipment not agreed on the face hereof to be installed by or with the assistance of HONEYWELL shall be F O B at HONEYWELL'S factory, warehouse, or office selected by HONEYWELL. Delivery of equipment agreed on the face hereof to be installed by or with the assistance of HONEYWELL shall be C I F at site of installation.

18. DAMAGE OR LOSS

18.1 HONEYWELL shall not be liable for damage to or loss of equipment and software after delivery to destination determined by this Agreement or any applicable prime contract. If thereafter, and prior to payment in full to HONEYWELL by CUSTOMER, any such equipment or software is damaged or destroyed by any cause whatsoever, other than by the fault of HONEYWELL, the CUSTOMER agrees promptly to pay or reimburse HONEYWELL for such loss.

19. TERMINATION

19.1 By Customer CUSTOMER may terminate this Agreement for cause if HONEYWELL defaults in the performance of any material term of this Agreement, or fails or neglects to carry forward the Work in accordance with this Agreement, after giving HONEYWELL written notice of its intent to terminate. If HONEYWELL has not, within seven (7) business days after receipt of such notice, acted to remedy and make good such deficiencies, CUSTOMER may terminate this Agreement and take possession of the site together with all materials thereon, and move to complete the Work itself expeditiously. Upon request of HONEYWELL, CUSTOMER will furnish to HONEYWELL a detailed accounting of the costs incurred by CUSTOMER in finishing the Work. If the unpaid balance of the contract price exceeds the expense of finishing the Work, the excess shall be paid to HONEYWELL, but if the expense exceeds the unpaid balance, HONEYWELL shall pay the difference to CUSTOMER.

19.2 By Honeywell HONEYWELL may terminate this Agreement for cause (including, but not limited to, CUSTOMER'S failure to make payments as agreed herein) after giving CUSTOMER written notice of its intent to terminate. If, within seven (7) days following receipt of such notice, CUSTOMER fails to make the payments then due, or otherwise fails to cure or perform its obligations, HONEYWELL may, by written notice to CUSTOMER, terminate this Agreement and recover from CUSTOMER payment for Work executed and for losses sustained for materials, tools, construction equipment and machinery, including but not limited to, reasonable overhead, profit and applicable damages.

20. CHANGES IN THE WORK

20.1 A Change Order is a written order signed by CUSTOMER and HONEYWELL authorizing a change in the Work or adjustment in the price or a change to the schedule.

20.2 CUSTOMER may request HONEYWELL to submit proposals for changes in the Work, subject to acceptance by HONEYWELL. If CUSTOMER chooses to proceed, such changes in the Work will be authorized by a Change Order. Unless otherwise specifically agreed to in writing by both parties, if HONEYWELL submits a proposal pursuant to such request but CUSTOMER chooses not to proceed, CUSTOMER shall issue a Change Order to reimburse HONEYWELL for any and all costs incurred in preparing the proposal.

20.3 HONEYWELL may make a written request to CUSTOMER to modify this Agreement based on the receipt of, or the discovery of, information that that HONEYWELL believes will cause a change to the scope, price, schedule, level of performance, or other facet of the Agreement. HONEYWELL will submit its request to CUSTOMER within a reasonable time after receipt of, or the discovery of, information that HONEYWELL believes will cause a change to the scope, price, schedule, level of performance, or other facet of the Agreement. This request shall be submitted by HONEYWELL before proceeding to execute the Work, except in an emergency endangering life or property, in which case HONEYWELL shall have the authority to act, in its discretion, to prevent threatened damage, injury or loss. HONEYWELL'S request will include information necessary to substantiate the effect of the change and any impacts to the Work, including any change in schedule or contract price. If HONEYWELL'S request is acceptable to CUSTOMER, CUSTOMER will issue a Change Order consistent therewith. If CUSTOMER and HONEYWELL cannot agree on the amount of the adjustment in the Price, or the Schedule, it shall be determined pursuant to the Dispute Resolution article of this Agreement. Any change in the Price or the Schedule resulting from such claim shall be authorized by Change Order.

THIS AGREEMENT IS HEREBY ACCEPTED IN ACCORDANCE WITH ARTICLE 13:

CUSTOMER _____

HONEYWELL INTERNATIONAL INC.,
Honeywell Building Solutions

(SIGNATURE)

(SIGNATURE)

BY: _____
TITLE: _____
DATE: _____

BY: JOSEPH K. TRAVIS, JR
TITLE: FIELD SERVICE LEADER
DATE: _____