

Attachment "A" Brooks Building Solutions Proposal and Agreement (Cont.)



PROPOSAL

Alachua County Facilities Maintenance

To: Bryan Schneider, Capitol Projects Coordinator

Project: Alachua County Civil Courthouse Cooling Tower Replacement (Revised)

Date: January 23, 2018

We propose to furnish the following equipment and/or service for the above referenced project. Upon approval, Brooks Building Solutions will invoice for 35% of the project amount for material purchase and mobilization. Brooks Building Solutions standard terms and conditions apply to this quotation.

This proposal includes:

- Remove and dispose of (2) existing Evapco cooling towers
- Clean and prep existing structural steel surface for new cooling towers
- Provide and install (2) new Evapco direct replacement cooling towers
- Evapco Cooling towers to include:
 - All stainless-steel construction
 - Additional flange outlet on bottom for equalizer line connection
 - Flanged inlet and outlet
 - Motor davit for future motor replacement use
- Provide all necessary rigging services
- Provide and install new condenser water piping as necessary
- Provide and install equalizer line
- Make all necessary electrical modification
- Start towers and check for proper operations
- NCPA fees included in total price
- Bond fees included in total price
- All work to be performed after normal working hours

This proposal does not include:

- Engineering services of any kind
- Providing or install new structural steel
- Painting existing structural steel
- Police road block services
- Anything not specifically listed in the proposal inclusion section above

Total Price: One Hundred Ninety-Four Thousand One Hundred Twenty-One and 00/100 Dollars \$194,121.00

*This proposal is valid for Thirty (30) days from date of issue.

*Full freight allowed, and all applicable taxes are included.

Brooks Building Solutions, Inc.

Alachua County Facilities Maintenance

Keith Jordan

Keith Jordan

Date: _____

Date: _____

BROOKS BUILDING SOLUTIONS TERMS AND CONDITIONS

1. **Equipment Condition.** Customer represents and warrants to BBS that the Equipment is in proper working condition upon execution of the Agreement. BBS may inspect the Equipment within sixty (60) days of the effective date hereof (unless such inspection cannot be performed due to seasonal or other conditions, in which case BBS shall have sixty (60) days from the first date on which such inspection is able to be performed) and inform Customer in writing of any malfunctions or defects in the Equipment. BBS shall make recommendations and assist Customer in restoring the Equipment to proper operating condition, however, Customer shall be solely responsible for all costs associated with such restoration.
2. **Payment and Taxes.** Payment of any invoice issued by BBS in connection with this Agreement shall be due upon receipt. BBS reserves the right to require cash payment or other alternative method of payment prior to completion of work if BBS determines, in its sole discretion, that the Customer or Customer's assignee's financial condition at any time justifies such payment. BBS reserves the right to suspend or terminate the Services anytime payments have not been paid in accordance with this Agreement. In addition to the Contract Price, the Customer shall pay BBS any applicable taxes or government charges which may be required in connection with the service or material furnished under this Agreement.
3. **Working Hours.** All Services, including major repairs, will be performed between 8 a.m. to 5 p.m. Monday through Friday unless otherwise agreed. BBS shall have the option to bill for Services performed outside of the foregoing hours at the Overtime Rate. As used herein, the "Overtime Rate" shall mean 1 and a half time the standard rate. The Holiday Rate shall mean 2 times the standard rate.
4. **Response Time.** BBS will respond to all calls within a four (4) hour time period or sooner.
5. **Additional Service.** Additional services or parts requested by Customer will be provided upon receipt of Customer's written authorization and invoiced at BBS's prevailing labor rate for the service area, plus mileage and consumables.

In the event BBS is required to make any repairs, replacements, or emergency calls occasioned by improper operation or misuse of the Equipment or any cause beyond BBS's control, including but not limited to thermostat setting, air balancing or equipment resetting, Customer shall reimburse BBS for all expenses incurred in making such repairs, replacements, or emergency calls.

6. **Repair or Replacement.** BBS shall not be responsible for repair or replacement of any HVAC or EMCS equipment that is damaged by any disaster or weather catastrophes (i.e., floods, tornados, hurricanes, etc.), vandalism, acts of God, other contractors, maintenance personnel, tenants, or any other party. BBS shall not be required to perform tests, install any items of equipment or make modifications that may be recommended or directed by insurance companies, government, state, municipal or other authorities. However, in the event any such recommendations occur, BBS, at its option, may submit a proposal to Customer for performance of such work. BBS shall not be required to repair or replace equipment that has not been properly maintained.
7. **Hazardous Materials.** BBS is not responsible for the identification, detection, abatement, encapsulating or removal of asbestos, mold, or products or materials containing asbestos, mold, or similar hazardous substances. In the event that BBS encounters any asbestos, mold product or any hazardous material in the course of performing its work, BBS may suspend its work and remove its employees from the project site until such product or material, and any hazards connected with it, are abated. BBS shall receive an extension of time to complete its work and compensation for delays encountered as a result of such hazardous materials.
8. **BBS Devices.** During the Term and in combination with certain services, BBS may elect to install, attach to Customer equipment, or provide portable devices (hardware and/or software) (each a "BBS Device") that shall remain the sole property of BBS. No BBS Device installed or attached to real property shall become a fixture thereof. Customer shall not acquire any right, title or interest in or to an BBS Device.
9. **Force Majeure.** Neither party shall have any liability hereunder for delays caused occasioned by a Force Majeure. As used herein, "Force Majeure" shall mean an event, casualty, occurrence, condition, or circumstance of any kind or nature reasonably beyond the control of either party, having a direct, material adverse effect on a party's ability to perform any of its obligations under this Agreement, in full or in part and which, with the exercise of due care, such party could not reasonably have been expected to avoid, including, without limitation, compliance in good faith with any applicable domestic or foreign government regulation or order whether or not it proves to be invalid, acts of God, acts or omissions of any governmental authority, war, blockage, insurrection, riot, sabotage, terrorist activity, fire, explosion, flood, nuclear emergency, epidemic, landslide, earthquake, or similar cataclysmic occurrence, hurricane, or tornado.
10. **Customer Covenants and Obligations.** Customer covenants and agrees, at all times during the term hereof, to:
 - (a) Provide a safe work environment;
 - (b) Permit access to Customer's site, and use of building services including but not limited to: water, elevators, receiving dock facilities, electrical service and local telephone service;
 - (c) Keep areas adjacent to Equipment free of extraneous material, move any stock, fixtures, walls or partitions that may be necessary to perform the specified service;
 - (d) Promptly notify BBS of any unusual operating conditions;
 - (e) Upon mutual agreement of a timely schedule, allow BBS to stop and start Equipment necessary to perform service;
 - (f) Provide the daily, routine, Equipment operation (if not part of this Agreement) including availability of routine Equipment log readings;
 - (g) Operate the Equipment properly and in accordance with instructions; and
 - (h) Assume responsibility and pay extra for all service and material required for repair or replacement due to electrical power failure, low voltage, power surges, burned out main or branch fuses, or low water pressure or water damage.
11. **Equipment Condition and Recommended Service.** Upon the initial scheduled operating and/or initial annual stop inspection should BBS determine the need for repairs or replacement, BBS will provide the Customer in writing an "Equipment condition" report, which includes recommendations for corrections and the price for repairs in addition to this Agreement. In the event BBS recommends certain services (that are not included herein or upon initial inspection), and the Customer does not elect to have such services properly performed in a timely fashion, BBS shall not be responsible for any Equipment or control failures, operability and any long-term damage that may result. BBS at its option will either continue to maintain equipment and/or controls to the best of its ability, without any responsibility, or remove such equipment from this Agreement, adjusting the price accordingly.

12. Termination.

- (a) **Early Termination by Customer.** Customer shall have the right to terminate this Agreement upon a breach of BBS's obligations hereunder which is not cured within thirty (30) days following written notice and opportunity to cure.

(b) Early Termination by BBS. BBS shall have the right to terminate this Agreement upon any breach of Customer's obligations hereunder that is not cured within thirty (30) days following written notice and opportunity to cure. BBS shall have the right to immediately terminate this Agreement upon the commencement of any voluntary or involuntary proceedings in bankruptcy or receivership by or against Customer, or in the event Customer shall become insolvent, make a general assignment for the benefit of creditors, or shall fail to pay its debts as and when they become due.

(c) Effect of Termination or Expiration. Upon early termination or expiration of this Agreement, BBS shall be given immediate access to Customer locations to disconnect and remove any BBS personal proprietary property or devices as well as remove all BBS owned parts, tools and personal property. Additionally, Customer agrees to pay BBS for all costs incurred by BBS in connection with this Agreement through the effective date of termination.

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

14. Claims. Any claim arising from the performance or non-performance of this Agreement, whether based upon contract, negligence, and strict liability or otherwise, shall be brought pursuant to Section 15, within one (1) year from the date the claim arose.

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

(a) Mediation. The parties shall endeavor to settle the Dispute by mediation in accordance with the then current mediation rules of the American Arbitration Association ("AAA"). The mediation process shall be initiated by a party giving a Notice of Request for Mediation ("Request") to the other party, specifying the scope of the requested mediation. If the parties are unable to agree upon a mediator within ten (10) days of the date of the Request, then they shall request AAA to appoint a mediator, and the parties hereby agree to such mediator's service. The mediator's compensation and expenses shall be advanced equally by the parties. The place of mediation shall be Jacksonville, Florida, at any location as the mediator directs, having due regard for the convenience of the parties and of the mediator. All applicable statutes of limitation shall be tolled during the existence of any AAA mediation under this Section 15(a).

(b) Arbitration. If the Dispute has not been resolved pursuant to Section 15(a) within ninety (90) days of the commencement of such procedure (this period may be extended by mutual agreement), which commencement is a condition precedent to the initiation of proceedings under this Section 15(b), or if either party will not continue with said procedure, then the Dispute, including the arbitrability of the Dispute or any issue, shall be settled by binding arbitration in accordance with then current arbitration rules of AAA by a sole arbitrator appointed by the parties, or if the parties cannot agree upon an arbitrator, by an arbitrator appointed by AAA. The arbitrator shall have experience in the construction industry and shall have served previously as an adjudicator of business disputes. Pending final award, arbitrator compensation and expenses shall be advanced equally by all parties. The arbitration shall be governed by the United States Arbitration Act, to the exclusion of any provisions of State law inconsistent therewith or that would produce a different result. The place of arbitration shall be Jacksonville, Florida, at any location as the arbitrator directs, having due regard of the convenience of the parties, of witnesses and of the arbitrator. The arbitrator shall determine the rights and obligations of the parties according to the substantive laws of the State of Florida, excluding conflict of law principles, and shall give effect to applicable statutes of limitation. The arbitrator may consolidate arbitrations involving common questions of law or fact. The arbitrator may make any order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense that justice requires. The arbitrator may make final, interim, interlocutory and partial awards, and may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including but not limited to specific performance and the awarding of attorneys' fees and costs, but the arbitrator is not empowered to award damages in excess of liquidated or actual damages, whichever is applicable, nor is the arbitrator empowered to award punitive damages. Judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction.

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

17. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. Neither party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party.

18. Amendments. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each of the parties.

WAIBEL/BROOKS / NCPA Contract #: 02-45

NCPA RQN #2017-9545484031

PROJECT: Alachua County Civil Courthouse Cooling Tower Replacement

EQUIPMENT

DESCRIPTION	EQUIPMENT LIST	NCPA DISCOUNT	NETS	M/U**	
	Evapco Cooing Tower	\$116,837.88	0.85		\$99,312.20
				Equip. Total	\$99,312.20

LABOR

TCPN LABOR CLASSIFICATION

	<u>LABOR RATE / HR</u>	<u>Overtime</u>	<u>HRS</u>	
Brooks HVAC technician	\$130.04	1.5	56	\$10,923.36
Brooks HVAC technician	\$130.04	2.0	16	\$4,161.28
Brooks HVAC Helper	\$101.81	1.5	56	\$8,552.04
Brooks HVAC Helper	\$101.81	2.0	16	\$3,257.92
Electrician	\$197.97	1.5	32	\$9,502.56
Brooks Project Manager	\$147.07	1.5	16	\$3,529.68
Brooks Project Manager	\$147.07	2.0	16	\$4,706.24
Brooks Project Manager	\$147.07	1.0	8	\$1,176.56
Brooks Project Administrator	\$107.47	1.0	30	\$3,224.10

TOTAL LABOR \$49,033.74

MISCELLANEOUS MATERIAL

Mat'l (sub, etc.)	\$28,750.00	M/U 1.300	\$37,375.00
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SUB-TOTAL \$185,720.94

Bond \$4,735.00

Sales Tax \$12,389.73

TOTAL NCPA SELL PRICE: \$202,845.67

ACTUAL SELL PRICE: \$176,996.27

Bond \$4,735.00

Sales Tax \$12,389.73

ACTUAL SELL PRICE W/SALES TAX & BOND \$194,121.00