

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SAN BERNARDINO  
AND RECORD OF ACTION**

July 28, 2020

**FROM**

**WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center**

**SUBJECT**

Agreements with Johnson Controls, Inc. for Maintenance and Repairs for Fire Alarm Systems

**RECOMMENDATION(S)**

1. Approve **Agreement No. 20-603** with Johnson Controls, Inc. for regular preventative maintenance of the fire alarm systems in the amount not to exceed \$413,605, for the five-year period of July 28, 2020 through July 27, 2025, and the Rider to the preventative maintenance agreement.
2. Approve **Agreement No. 20-604** with Johnson Controls, Inc. for unforeseen repairs for the fire alarm systems in the amount of \$150,000 total, for the five year period of July 28, 2020 through July 27, 2025.

(Presenter: William L. Gilbert, Director, 580-6150)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The cost of \$563,605 is funded by State Medi-Cal, Federal Medicare, private insurances, and other departmental revenue. Funding sources may change in the future pending any legislative activity related to the repeal and/or replacement of the Affordable Care Act. Adequate appropriation and revenue have been included in the Arrowhead Regional Medical Center (ARMC) 2020-21 budget and will be included in future recommended budgets.

The cost of the agreements will be paid as follows:

Year	Preventative Maintenance	Unforeseen Repair	Annual Cost
Year 1	\$ 79,790	\$ 30,000	\$ 109,790
Year 2	79,790	30,000	109,790
Year 3	82,185	30,000	112,185
Year 4	84,650	30,000	114,650
Year 5	87,190	30,000	117,190
Total	\$ 413,605	\$ 150,000	\$ 563,605

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**BACKGROUND INFORMATION**

Approval of the agreements and the Rider with Johnson Controls, Inc. will allow for the provision of regular preventative maintenance and unexpected repairs of the fire alarm systems at ARMC. These fire alarm system must be tested regularly in accordance with National Fire Protection Agency (NFPA) standards. The preventative maintenance agreement covers all required quarterly and annual testing of the system. Testing includes, but is not limited to: activation of smoke detectors, pull stations, duct detectors, flow alarms, and fire doors. The unforeseen repair agreement will allow for small repairs to the fire alarm system that can be completed for \$45,000 or less per project. As a hospital, we rely on the fire alarm systems to work correctly to ensure that all occupants, including those who will require assistance, have sufficient time for evacuation.

The agreements are based on the County's standard contracts, but the terms of the preventative maintenance agreement were modified in the Rider based on the parties' negotiations to include the following non-standard terms:

Indemnification

Johnson Control, Inc. (JCI) will indemnify the County only for claims that are caused by JCI's negligent acts or willful misconduct.

- The County standard contract term requires the vendor to indemnify the County for all claims regardless of cause, except for those caused by the County's willful misconduct, or the County's active or sole negligence.
- Potential Implications: If a claim arises out of conduct other than JCI's negligent acts or willful misconduct, JCI will have no contractual obligation to defend or indemnify the County, resulting in the County being financially liable to defend and pay the claim, which may exceed the total contract amount.

Limitations of Liability

JCI caps its liability at the greater of \$3 million or the total amounts paid by the County for the 12 month period prior to the date the claim arose.

- The County standard contract does not limit the vendor's liability.
- Potential Implications: Claims could exceed the liability cap, leaving the County financially liable for the excess, which could exceed the contract amount.

JCI will not be liable for any special, incidental, consequential, punitive, or indirect damages, lost profits, business interruption, or data loss.

- The County standard contract does not limit the vendor's liability.
- Potential Implications: By agreeing to this provision, the County is contractually waiving the right to recover the damages at issue in any claim against JCI, leaving the County financially liable for these damages.

Insurance

The agreement does not require JCI to meet the County insurance standards, and does not require JCI to name the County as an additional insured or to waive subrogation of rights. However, JCI will maintain the statutorily required limits for a workers' compensation insurance policy, commercial general liability insurance policy with limits of \$1 million per occurrence and

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\$2 million in aggregate, and comprehensive commercial automobile liability insurance of \$ 1million for a combined single limit.

- The County standard contract requires vendors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
- Potential Impact: The agreement does not include all of the County's standard insurance requirements. This means that the County has no assurance of an insurance company to support JCI's financial responsibilities relating to certain claims that may arise, which could result in expenses to the County that exceed the total contract amount. Without adding the County as an additional insured, the County will be unable to turn to JCI's insurer directly to make a claim under the policy. Additionally, no waiver of subrogation may allow JCI's insurers to bring suit against the County, which could result in expenses that exceed the total contract amount.

Payment

The Rider provides that payment is due 45 days of the date of an invoice.

- The County's standard contract payment term is net 60 days.
- Potential Impact: ARMC administration must be mindful of this provision and ensure payment is made in a timely manner. Notably, there are no provisions providing for any interest or penalty payments if payment is not made within 45 days.

ARMC recommends approval of the agreements and Rider (including the non-standard terms) for preventative maintenance and unforeseen repair services to ensure that the fire alarm and life safety systems are maintained, tested and work correctly as these systems protect County employees and residents from fire while at ARMC.

**PROCUREMENT**

This non-competitive procurement is approved by Purchasing as a proprietary system to Johnson Controls, Inc. Johnson Controls has access to all special functions of the system, replacement parts, and specialist knowledge.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5465) on July 20, 2020; Purchasing Department (Ariel Gill, Lead Buyer, 777-0722) on July 10, 2020; ARMC Finance (Chen Wu, Finance and Budget Officer; 580-3165) on July 7, 2020; Finance (Yael Verduzco, Administrative Analyst, 387-5285) on July 10, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on July 13, 2020.

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Record of Action of the Board of Supervisors  
County of San Bernardino

**APPROVED (CONSENT CALENDAR)**

Moved: Josie Gonzales Seconded: Robert A. Lovingood  
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY  \_\_\_\_\_  
DATED: July 28, 2020



cc: ARMC- Gilbert w/agree  
Contractor- C/O ARMC w/agree  
File- w/agree  
la 07/29/2020