

Attachment B
ADDITIONAL TERMS AND CONDITIONS
FOR ARMC FIRE ALARM PANEL SYSTEM UPGRADE PROJECT

1. LIQUIDATED DAMAGES

County and Contractor recognize that time is of the essence in this Agreement and that the County may suffer financial loss, including but not limited to, the loss of grant funds, additional contract administration expenses, and loss of public use if the Work is not completed within the time stated in the Contract, including any extensions agreed to by the parties.

Contractor and County agree to liquidate damages with respect to Contractor's failure to achieve completion of the Work within the time stated in the Contract and proposal furnished by Johnson controls, Inc. **The project shall be completed within 16 months of the start date specified in the notice to proceed.** The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate County solely for Contractor's failure to meet the deadline for Final Completion and shall not excuse Contractor from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

In the event that Contractor fails to achieve final completion of the Project within the time stated in the Contract AND/OR Contractor fails to achieve completion of each Project Phase within the time allowed for that Project Phase Contractor agrees to pay County **\$600 per day** for each calendar day that final completion is delayed.

Contractor acknowledges and agrees that the foregoing liquidated damages have been set based on an evaluation by County of damages that it will incur in the event of the late completion of the Work. Contractor and County agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of actual damages incurred by the County due to a delay in completion of the Work. Accordingly, the County and Contractor have agreed to such liquidated damages to fix Contractor's costs and to avoid later disputes. It is understood and agreed by Contractor that any liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.

It is further mutually agreed that County shall have the right to deduct liquidated damages against progress payments that the County may owe Contractor. In the event the remaining unpaid progress payments the County owes Contractor are insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to County.

2. PAYMENT AND PERFORMANCE BONDS

Contractor will furnish a Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the not-to-exceed amount of the Contract, and a Performance Bond in an amount equal to one hundred percent (100%) of the total not-to-exceed amount of the Contract. The Bonds must be on County approved bond forms and be secured from a surety company satisfactory to the County within seven (7) calendar days of the award of the Contract. The Bonds shall remain in full force and effect for a period of one (1) year following the date of final acceptance of the Project by County. The Performance Bond shall name the County as beneficiary under the bond.

3. Ownership and Use of Drawings, Specifications and Other Instruments of Service

Ownership of Contract Documents. All Drawings, Specification, plans, sketches and other documents, including copies thereof, furnished by the County are and shall remain the property of the County and may be required to be returned to the County at the Contractor's expense. They are to be used only with

respect to this Project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the County's common law copyright or other reserved rights.

Contractor's Assignment of Copyrights. Project related documents created, prepared, or issued by Contractor, or its Sub-consultants, including any Drawings, Specifications, and electronic data are "work for hire", and shall become the property of the County when prepared and shall be delivered to County whenever requested. The Contractor hereby assigns to the County, without reservation, all copyrights to all Project related documents, models, photographs, and other written expressions created by the Contractor.

Submissions to County. A copy of every technical memorandum and report prepared by Contractor shall be submitted to the County to demonstrate progress toward completion of Work. In the event County rejects or has comments on any such work product, County shall identify specific requirements for satisfactory completion by Contractor. Contractor shall provide County with Project related documents in reproducible or electronic format, upon County's written request. All Project related documents shall be turned over to County upon termination of this Agreement or Final Completion, whichever occurs first.

4. County's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract or fails to carry out Work in accordance with the Contract, the County may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the County to stop the Work shall not give rise to a duty on the part of the County to exercise this right for the benefit of the Contractor or any other person or entity. The County's right to stop the Work is in addition to and without prejudice to any other rights or remedies of the County.

5. County's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract and fails within a forty-eight (48) hour period after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may after such forty-eight (48) hour period give the Contractor a second written notice to correct such deficiencies within a second forty-eight (48) hour period. If the Contractor within such second forty-eight (48) hour period after receipt of such second notice fails to commence and continue to correct any deficiencies, the County, without prejudice to other remedies the County may have, may correct such deficiencies. In such case an appropriate Contract Amendment shall be issued deducting from payments then or thereafter due the Contractor, the cost of correcting such deficiencies, including compensation for any additional design services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County. The County's right to carry out the Work is in addition to and without prejudice to any other rights or remedies of the County.

6. Suspension of Operations

In addition to the County's right to stop the Work set forth in this Contract, the Contractor shall, upon receipt of County's written notice and within the time stated therein, suspend shipment and delivery of material and stop any part or all of the Work and operations under the Contract for such period or periods of time as the County may deem advisable and designate in said notice. Upon receipt of such notice to suspend operations, the Contractor shall immediately confer with the County concerning the probable duration of such suspension and stoppage, delays, and extensions of time resulting therefrom as well as the reduction and possible elimination of the Contractor's field cost and such other costs and expenses as may result directly from such Work stoppage. Upon written notice from the County to resume operations, the Contractor shall promptly resume all or any part of the Work and operations including securing of materials required by said resumption notice.

7. Authority of the Real Estate Services Department – Project Management

- 7.1 The Director of the Real Estate Services Department, or his/her designee, shall represent the County and shall decide, within the provisions of the Specifications and Drawings, all questions which may arise concerning the quality or acceptability of materials furnished and Work performed.
- 7.2 In all cases requiring interpretation of the Drawings and/or Specifications, the decision of the Director of the Real Estate Services Department, or his/her designee, shall be final.
- 7.3 Final determination of the acceptable fulfillment of the Contract on the part of the Contractor shall be made by the Director of the Real Estate Services Department, or his/her designee.
- 7.4 The Director of the Real Estate Services Department, or his/her designee, is authorized to represent the County regarding any suspension or termination of this Contract. The County of San Bernardino Board of Supervisors must approve any assignment or amendment of this Contract.

8. Coordination

The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and staging of its equipment in areas and locations approved by County. Where the proper and most effective space requirements, locations, and routing cannot be made as indicated in the Contract, the Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

9. Labor Discipline/Skilled Labor

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

None but skilled workmen shall be employed on any portion of the Work. When required in writing by the County, the Contractor or Sub-consultant shall discharge any person who is, in the reasonable opinion of the County, incompetent, unfaithful, disorderly or otherwise unsatisfactory, and shall not again employ such discharged person on the Work except with the written consent of the County. Such discharge shall not be the basis of any claim for compensation or damages against the County or any of its officers or agents.

10. Procurement and Installation of Materials and Equipment

Contractor shall: (i) place orders for all materials and equipment, taking into account current market and delivery conditions necessary to meet the Project Schedule; (ii) purchase and expedite the procurement of long lead time items to obtain their delivery by the required dates; and (iii) arrange for alternate sources for the supply of critical materials and equipment to maintain the schedule. Should Contractor fail in this duty, County reserves the right to order such materials and equipment as the County may deem advisable to maintain the schedule for the Project and all expenses shall be charged to and paid for by Contractor within the not-to-exceed Contract amount. Contractor shall keep the County informed of the status of procurement and shall promptly notify County in writing of any materials or equipment which may not be available within the time scheduled or necessary for the Project. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, the Contractor shall meet with all others involved, including, but not limited to, County, and Sub-consultants before installation, to plan the most effective and efficient method of overall installation.

11. Coordination

Contractor expressly acknowledges that County, its own forces, and County's Separate Contractors (meaning contractors performing work at site under separate contract with the County) may be working

simultaneously with Contractor on the Project during certain periods of time in certain portions of the Project Site. Contractor and County will take all steps necessary in connection with the construction Work not to interfere with the use and occupancy of the Project Site by County's Separate Contractors and personnel to minimize any interruption of services to such person, including, without limitation, utilities, ingress and egress, and parking. Contractor further agrees to coordinate its construction activities with all others performing work on the Project Site, including deliveries, storage, and installation. Contractor shall meet and consult with County from time to time at County's request to insure that Contractor and County are fully advised of all other construction activities on the Project Site, and Contractor shall take such steps as are reasonably necessary at County's request to coordinate its Work with the Work of County's Separate Contractors on the Project Site.

12. Stop Notice Claims

If at any time there shall be evidence of the existence, whether or not same has been asserted, of any stop notice, or claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Contractor to perform this Contract, and if the County might become liable for the discharge of or satisfaction of such stop notice or claim, then the County shall have the right to retain out of any payment then due or thereafter to become due, in addition to the amounts set forth above, an amount sufficient to discharge such stop notice or satisfy such claim and to reimburse the County and the Project Manager(s) of the County for all costs and expenses in connection therewith, including attorneys' fees. Further, the County, in its sole discretion, shall have the right to discharge or satisfy such stop notice or claim and pay all costs and expenses in connection therewith if the Contractor does not have such stop notice or claim discharged or satisfied within ten (10) calendar days after receiving notice to remove the stop notice or claim from County or unless some other procedure for discharge or satisfaction of such claim is agreed between County and Contractor. If the amounts retained are insufficient for the aforesaid purposes, or if such stop notice or claim remains undischarged or unsatisfied after all payments have been made to the Contractor, then the Contractor shall refund to the County all monies that may have been paid, or need to be paid, to discharge such stop notice or satisfy such claims, including the costs, expenses, and attorney's fees in connection therewith.

The County may release any payments withheld due to a stop notice claim if the Contractor obtains a release bond that is: (i) issued by a surety acceptable to County admitted to issue surety bonds by the California Department of Insurance; (ii) is in form and substance satisfactory to the County; and (ii) is in an amount of not less than 125% of the amount of any stop notice claim. The County reserves the right to require Contractor to obtain a stop notice release bond that meets the above requirements.

13. Safety Precautions and Programs

The Contractor is responsible for establishing, maintaining, and supervising the necessary safety precautions needed to permit the performance of the Work without endangering public safety and property. A Site Specific Safety Program and the Contractor's Safety Policy must be prepared and submitted for the County's review and comments. Contractor shall comply with the review comments of County. The Site Specific Safety Program shall include the following:

- 13.1 The identity of Contractor's safety officer;
- 13.2 The schedule for the Contractor's safety inspections;
- 13.3 The type and frequency of training conducted for Contractor's personnel including tailgate meeting, lifting training, emergency procedure, etc.;
- 13.4 A list of any possible fire hazards and the firefighting equipment for the particular Site;
- 13.5 Written procedures in the event of an injury, fire, hazardous material experience, or other emergency during construction; and

Contractor shall also comply with any safety requirements required by insurers providing coverage for the Project. Notwithstanding the foregoing, Contractor specifically assumes all risk of damages or injury to any persons or property, wherever located, resulting from any action or operation of the Contractor or Contractor's Sub-consultants.

14. Prevailing Wage and Labor Code Requirements

- 14.1 Pursuant to California Labor Code, Part VII, Chapter 1, Article 2, Sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Work is to be performed. Copies of said rates are on file with the Real Estate Services Department – Project Management, County of San Bernardino, will be made available for inspection during regular business hours, are included elsewhere in the specifications for the Work in the Project, and are also available online at www.dir.ca.gov/dlsr/DPreWageDetermination.htm. The wage rate for any classification not listed, but which may be required to execute the Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Section 1773.2 of the California Labor Code, the Contractor shall post, at appropriate and conspicuous locations on the jobsite, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code Sections 1773, et seq.
- 14.2 There shall be paid each worker of the Contractor, or any Sub-consultant, engaged in the Work, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Sub-consultant and such worker.
- 14.3 The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed by the Contractor or by any Sub-consultant in connection with the Work. Pursuant to California Labor Code Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
- 14.4 Pursuant to California Labor Code Section 1776, the Contractor and each Sub-consultant, shall keep accurate certified payroll records, showing 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 them in connection with the Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or Sub-consultant has complied with the requirements of the California Labor Code Sections 1771, 1811, and 1815 for any Work performed by his or her employees on the Project. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
- (a) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
 - (b) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations;
 - (c) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Sub-consultant and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
 - (d) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and

- (e) copies provided to the public, by the County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any Sub-consultant, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.

14.5 In the event Contractor does not comply with the requirements of this Section, the Contractor shall have ten (10) days in which to comply, subsequent to a receipt of written notice specifying in what respects the Contractor must comply herewith. Should non-compliance still be evident after a ten (10) day period, the Contractor shall, as a penalty to the County, forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the Contract Sum then due or to become due to the Contractor.

14.6 Pursuant to California Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code Section 1811, the time of service of any worker employed at any time by the Contractor or by a Sub-consultant, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Sub-consultant, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

14.7 The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Work by the Contractor or any Sub-consultant, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

14.8 Any work performed by workers necessary to be performed after regular work hours or on Sundays or other holidays shall be performed without adjustment to the not-to-exceed Contract amount.

14.9 Any apprentices employed to perform any of the Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the Work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code Section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code Sections 3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

14.10 Contractor agrees to comply with the prevailing wage requirements in Attachment 3.

15 Background Check And Security Requirements

Security is a concern of the County. A "background check" by the San Bernardino County Sheriff's Administration office for each onsite Contractor representative/employee/worker and sub-consultant will be required for this project. The Contractor who is awarded the project will be required to complete the required background process for each worker (including all sub-consultants) that will work at or visit the facility. Completed "background check" forms shall be returned directly to the Project Manager's office for processing. Processing of these forms will take 2-4 weeks. No onsite work will be allowed prior to authorization. Disqualifying background information includes, but is not limited to, character/moral turpitude violations,

theft/related offenses, affiliation with criminal elements, felony convictions, current (pending) criminal cases, active arrest warrants and any information that would prohibit each worker access to Criminal Offender Record Information or California Law Enforcement Telecommunication systems as outlined by the California Department of Justice.

Individual fingerprinting is part of this process and will be provided at the San Bernardino Sheriff's Office (SBSO) headquarters. Fingerprinting will be scheduled upon Sheriff receiving the completed applications. The cost of all background checks will be compensated by the project. If the Contractor is unable to adequately obtain a workforce who can pass the background check process within 15 working days and prior to the Project start meeting, County may terminate the contract immediately.