

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

May 20, 2025

FROM

ANDREW GOLDFRACH, ARMC Chief Executive Officer, Arrowhead Regional Medical Center

SUBJECT

Agreements with Johnson Controls, Inc. for Network Automation Engines

RECOMMENDATION(S)

1. Approve the following agreements with Johnson Controls, Inc., including non-standard terms, for the purchase of 17 network automation engines and use of associated software, in the total amount of \$247,491:
 - a. Quotation No. 1-1OHMSJYF Terms and Conditions, **(Contract No. 25-336)**
 - b. General End User License Agreement, **(Contract No. 25-337)**
 - c. Terms of Use, **(Contract No. 25-338)**
2. Authorize the ARMC Chief Executive Officer of the Arrowhead Regional Medical Center to electronically accept Johnson Controls, Inc.'s General End User License Agreement, Terms of Use, and any subsequent non-substantive updates to the General End User License Agreement and Terms of Use, subject to County Counsel review.
(Presenter: Andrew Goldfrach, ARMC Chief Executive Officer, 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 the equipment, in the amount of \$247,491, plus applicable taxes 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 Arrowhead Regional Medical Center's (ARMC) 2024-25 budget.

BACKGROUND INFORMATION

This equipment purchase is to replace the current Network Automation Engines (NAE) which are now obsolete and no longer supported. ARMC currently utilizes 53 NAEs to operate the Metasys® Building Automation System (BAS), a world-class technology system, which provides modern building energy management efficiency, connecting Heating, Ventilation, and Air Conditioning (HVAC), lighting, security and protection systems with communication on a single platform.

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ARMC plans to replace the remaining 36 NAEs over the next 2 years. The NAEs were installed when the hospital was built in 1996. Only Johnson Controls, Inc. (JCI) NAE's will work with ARMC's current BAS.

The JCI Quotation No. 1-10HMSJYF Terms and Conditions (Agreement) is JCI's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. JCI is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. Governing law of the Agreement is the State of Delaware.
 - The County standard contract requires California governing law.
 - Potential Impact: The Agreement will be interpreted under Delaware law. Any questions, issues or claims arising under this Agreement will require the County to hire outside counsel competent to advise on Delaware law, which may result in fees that exceed the total Agreement amount.
2. JCI may assign the Agreement without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: JCI could assign the Agreement to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the Agreement. County Counsel cannot advise on whether and to what extent Delaware law may permit or restrict a party's right to assign without an express provision in the Agreement.
3. There is no provision in the Agreement addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Delaware law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the Agreement.
4. JCI shall have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be submitted to a court of law or arbitrated. Arbitration will be held in Milwaukee, Wisconsin. The costs of arbitration shall be borne equally by the parties. If JCI prevails in any collection action, County will pay all of JCI's reasonable collection costs (including legal fees and expenses).
 - The County standard contract does not require arbitration.
 - Potential Impact: Binding arbitration decisions are not appealable. In addition, disputes that might otherwise be settled in small claims court would incur arbitration costs that could exceed the costs of a small claims action, and the Agreement amount. County Counsel cannot advise on whether and to what extent such arbitration provisions may be enforceable against a government entity under Delaware law.

5. The Agreement requires mutual indemnities against any and all claims which may arise in connection with the execution of the work herein specified and which are caused, by the negligent act or omission of the indemnifying party.
 - The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: By agreeing to indemnify JCI, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against JCI without such limitations and the County could be responsible to defend and reimburse JCI for costs, expenses, and damages, which could exceed the total Agreement amount. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand this Agreement term.
6. The Agreement does not require JCI to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
 - County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that JCI will be financially responsible for claims that may arise under the Agreement, which could result in expenses to the County that exceed the total Agreement amount.
7. JCI's maximum liability to the County is limited to amounts payable under the agreement, without exclusion.
 - The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the Agreement amount leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Delaware law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
8. Each party's right to bring legal claims is limited to one year after the claim first arose. Claims not subject to the one-year limitation include JCI's claims for unpaid: (1) contract amounts, (2) change order amounts (approved or requested) and (3) delays and/or work inefficiencies.
 - The County standard contract does not include a limit on the time to bring action.
 - Potential Impact: Limiting the County's ability to bring suit to 1 year amounts to a waiver of the statute of limitations for claims and shortens the period of time in which the County may file a lawsuit under the Agreement. JCI's right to bring claims for non-payment is not similarly limited, so JCI may bring such claims any time within the statute of limitations. County Counsel cannot advise on, whether and to what extent, Delaware law may allow parties to contractually agree to override the statute of limitations on claims.
9. Payment terms are upfront 30% deposit due Net 30 days from date of invoice or 2% NET 10 date of invoice. Late payment permits JCI to, without notice: (i) suspend, discontinue or terminate performing any services and/or withhold further deliveries of equipment and other materials, terminate or suspend any unpaid software licenses,

and/or suspend JCI's obligations under or terminate the Agreement; and (ii) charge interest on the unpaid amounts at a rate of 1.5% per month until paid in full.

- County standard payment terms are Net 60 days with no interest or late payment penalties.
- Potential Impact: County standard processing time is 60 days or more. Failing to pay within the applicable period may result in a material breach of the Agreement, which could allow JCI to terminate the Agreement and seek other legal remedies, which could exceed the Agreement amount.

The JCI General End User License (EULA) is JCI's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. JCI is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. Governing law of the EULA is the State of Wisconsin.
 - The County standard contract requires California governing law.
 - Potential Impact: The EULA will be interpreted under Wisconsin law. Any questions, issues or claims arising under this EULA will require the County to hire outside counsel competent to advise on Wisconsin law, which may result in fees that exceed the total EULA amount.
2. JCI may assign the EULA without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: JCI could assign the EULA to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the EULA. County Counsel cannot advise on whether and to what extent Wisconsin law may permit or restrict a party's right to assign without an express provision in the EULA.
3. There is no provision in the EULA addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Wisconsin law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the EULA.
4. The County is required to indemnify, defend, and hold JCI harmless from third-party claims arising out of: (i) the use or combination of the software with any third party hardware, software, products, data or other materials, including your own systems and data; (ii) modification or alteration of the software by anyone other than JCI; (iii) use of the software in excess of the rights granted in the Agreement; or (iv) any third party software. In addition, the County will defend, indemnify, and hold JCI harmless from any and all liabilities arising out of the County's failure to comply with restrictions that neither the Software nor any direct product thereof violate any US export/import laws, including

export or re-export or import the Software: (a) to any country to which the United States or European Union has embargoed or restricted the export of goods or services or to any national of any such country, wherever located, who intends to transmit or transport the software back to such country; (b) to any user who you know or have reason to know will utilize the software in the design, development or production of nuclear, chemical or biological weapons; or (c) to any user who has been prohibited from participating in export transactions by any federal or national agency of the U.S. government or European Union.

- The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: By agreeing to indemnify JCI, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against JCI without such limitations and the County could be responsible to defend and reimburse JCI for costs, expenses, and damages, which could exceed the total EULA amount. County Counsel cannot advise on, whether and to what extent, Wisconsin law may limit or expand this EULA term.
5. The EULA does not require JCI to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
- County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that JCI will be financially responsible for claims that may arise under the EULA, which could result in expenses to the County that exceed the total EULA amount.
6. JCI's maximum liability to the County is limited to amounts paid by the County for the software in the 3 months preceding the event giving rise to the claim without exclusions.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the EULA amount leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Wisconsin law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
7. Payment terms are Net 30 days from date of invoice with late fees of 1.5% per month.
- County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: County standard processing time is 60 days or more. Failing to pay within the applicable period may result in a material breach of the EULA, which could allow JCI to terminate the EULA and seek other legal remedies, which could exceed the EULA amount.
8. Venue for disputes arising under the Agreement is in Milwaukee, Wisconsin.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having a venue in Milwaukee, Wisconsin may result in additional expenses that exceed the amount of the Agreement.

The JCI Terms of Service (TOS) is JCI's standard commercial contract, which includes terms that differ from the standard County contract and omits certain County standard contract terms. JCI is unwilling to negotiate these terms. The non-standard and missing terms include the following:

1. Governing law of the TOS is the State of Wisconsin.
 - The County standard contract requires California governing law.
 - Potential Impact: The TOS will be interpreted under Wisconsin law. Any questions, issues or claims arising under this TOS will require the County to hire outside counsel competent to advise on Wisconsin law, which may result in fees that exceed the total TOS amount.
2. All disputes except for small claims actions will be resolved by binding arbitration in Milwaukee, Wisconsin.
 - The County standard contract does not require arbitration.
 - Potential Impact: Binding arbitration decisions are not appealable. County Counsel cannot advise on whether and to what extent such arbitration provisions may be enforceable against a government entity under Delaware law.
3. JCI may assign the TOS without notice to the County and without the County's approval.
 - The County standard contract requires that the County must approve any assignment of the contract.
 - Potential Impact: JCI could assign the TOS to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the TOS. County Counsel cannot advise on whether and to what extent Wisconsin law may permit or restrict a party's right to assign without an express provision in the TOS.
4. There is no provision in the TOS addressing each party's responsibility for paying attorneys' fees.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: County Counsel cannot advise on, whether and to what extent, Wisconsin law may affect a party's requirement to pay the prevailing party's attorneys' fees and costs in a legal action where no specific provision is provided in the TOS.
5. The County is required to indemnify, defend, and hold JCI harmless from third-party claims arising out of: (a) the use or combination of the Service with any hardware, software, products, information, data, or other materials not provided by us, including your own systems and Customer Data; (b) modification or alteration of the Service by anyone other than JCI or its agents, or if by JCI or its agents, modifications or alterations made at your instruction; (c) your breach of this Agreement or misuse of the Service or use of the Service in excess of the rights granted in this Agreement; (d) use of infringing aspects of the Service after we have notified you of the alleged infringement, provided you with a non-infringing alternative, or after we have terminated the Agreement, or (e) any third party software. In addition, the County will defend, indemnify, and hold JCI

harmless from any and all liabilities arising out of the County's breach of the TOS or any allegation that the materials or content that the County submits under the TOS, including County data, infringes, misappropriates or violates the intellectual property rights of a third party

- The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - Potential Impact: By agreeing to indemnify JCI, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against JCI without such limitations and the County could be responsible to defend and reimburse JCI for costs, expenses, and damages, which could exceed the total TOS amount. County Counsel cannot advise on, whether and to what extent, Wisconsin law may limit or expand this TOS term.
6. The TOS does not require JCI to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
- County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - Potential Impact: The County has no assurance that JCI will be financially responsible for claims that may arise under the TOS, which could result in expenses to the County that exceed the total TOS amount.
7. JCI's maximum liability to the County is limited to fees paid for the service in the 12 months preceding the event giving rise to the claim without exclusions.
- The County standard contract does not include a limitation of liability.
 - Potential Impact: Claims could exceed the liability cap and the TOS amount leaving the County financially liable for the excess. County Counsel cannot advise on, whether and to what extent, Wisconsin law may limit or expand the exclusion of limits to the extent prohibited by applicable law.
8. Payment terms are Net 30 days from date of invoice with late fees of 1.5% per month.
- County standard payment terms are Net 60 days with no interest or late payment penalties.
 - Potential Impact: County standard processing time is 60 days or more. Failing to pay within the applicable period may result in a material breach of the TOS, which could allow JCI to terminate the TOS and seek other legal remedies, which could exceed the TOS amount.
9. Venue for disputes arising under the Agreement is in Milwaukee County, Wisconsin.
- County Policy 11-05 requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having a venue in Milwaukee, Wisconsin may result in additional expenses that exceed the amount of the Agreement.

ARMC recommends approval of the Agreement, EULA, and TOS with Johnson Controls, for the purchase of 17 NAEs to ensure the ongoing performance of these systems and to assure that ARMC's staff and patients are protected.

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PROCUREMENT

The Purchasing Department supports this non-competitive procurement based on equipment/system compatibility for the Johnson Controls NAE's. The equipment used in the entire campus of ARMC's Building Automation System (BAS) is proprietary equipment to Johnson Controls Inc. Only Johnson Control's NAE will work with our current BAS.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on April 7, 2025; Risk Management (Gregory Ustaszewski, Staff Analyst, 386-9008) on April 28, 2025; Purchasing (Veronica Pedace, Buyer III, 387-2464) on April 22, 2025; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on April 28, 2025; Finance (Jenny Yang, Administrative Analyst, 387-4884) on May 1, 2025; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on May 1, 2025.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Col. Paul Cook (Ret.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 20, 2025



cc: ARMC - Goldfrach w/agree
Contractor - c/o ARMC w/agree
File - w/agree
CCM 05/23/2025