

CITY CLERK ORIGINAL

C-8274
01/08/2013

AGREEMENT FOR Fire Alarm and Suppression Systems Maintenance City of Glendale Solicitation No.

This Agreement for Fire Alarms and Suppression System Maintenance ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Johnson Controls, Inc., a Wisconsin corporation, authorized to do business in Arizona, (the "Contractor"), as of the 8 day of January, 2013

RECITALS

- A City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. Arizona State SPIRIT # EPS 060026 (the "Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C City and Contractor desire to memorialize their agreement with this document

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

1. Key Personnel; Sub-contractors.

1.1 **Services.** Contractor will provide all services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City.

1.2 Project Team.

(A) Project Manager.

- (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, complete the Project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement;
- (2) The City must approve the designated Project Manager; and
- (3) To assure the Project schedule is met; Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A.

(B) Project Team.

- (1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."
- (2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.

(C) Discharge, Reassign, Replacement.

- (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.
- (2) Contractor will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.
- (3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

(D) Sub-contractors.

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
- (2) Contractor will remain fully responsible for Sub-contractor's services.
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Contractor's Work.**

3.1 **Standard.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Contractor warrants that:

- (A) Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- (B) Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").

(1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.

(2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 **Compliance.** Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

3.4 Coordination; Interaction.

- (A) For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with any other professionals retained by City on the Project ("Coordinating Project Professionals").
- (B) Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- (C) For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product.

- (A) Ownership. Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- (B) Delivery. Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- (C) City Use.
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.
 - (3) In such case, City shall also remove any seal and title block from the Work Product.

4. Compensation for the Project.

- 4.1 Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$119,262.00 annually, as specifically detailed in **Exhibit B** (the "Compensation").
- 4.2 Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.
 - (A) Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
 - (B) Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

- (C) Notwithstanding any other provision of this Agreement, should any conflict arise between the terms of this Agreement and the terms in the attached Exhibits, the terms of this Agreement shall prevail.

5. Billings and Payment.

5.1 Applications.

- (A) Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- (B) The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

- (A) After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- (B) Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Contractor and its Sub-contractors; and
 - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- (A) If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- (B) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

- (A) Contractor will be equitably compensated for Service and Repair furnished prior to receipt of the termination notice and for reasonable costs incurred.
- (B) Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- (A) Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 5.

- (B) If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages of more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. **Insurance.**

8.1 **Requirements.** Contractor must obtain and maintain the following insurance ("Required Insurance"):

- (A) Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Contractor's Policies"), until each Party's obligations under this Agreement are completed.
- (B) General Liability.
 - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each property damage and contractual property damage.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- (C) Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- (D) Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- (E) Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- (F) Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and

Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.

- (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.
- (G) Other Contractors or Vendors.
- (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
 - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- (H) Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Sub-contractors.

- (A) Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- (B) City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- (C) Contractor and Sub-contractors must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

- (A) To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions

(including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.

- (B) This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- (C) Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

- 9.1 Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 9.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 9.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 9.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

10. Foreign Prohibitions. Contractor certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran.

11. Notices.

11.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- (A) The Notice is in writing; and

- (B) Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
- (C) Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- (D) The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
- (E) Digitalized signatures and copies of signatures will have the same effect as original signatures.

11.2 **Representatives.**

- (A) Contractor. Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Johnson Controls, Inc.
 c/o Bill Knodel
 2032 West 4th Street
 Tempe, Arizona 85281

- (B) City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
 c/o Michelle Woytenko
 6210 West Myrtle Avenue
 Glendale, Arizona 85301
 623-930-2635

With required copy to:

City Manager
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

City Attorney
 City of Glendale
 5850 West Glendale Avenue
 Glendale, Arizona 85301

- (C) Concurrent Notices.
 - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.
- (D) Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

12. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

13. **Entire Agreement; Survival; Counterparts; Signatures.**

13.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- (A) Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- (B) Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
- (C) The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

13.2 **Interpretation.**

- (A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- (B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- (C) The Agreement will be interpreted in accordance with the laws of the State of Arizona.

13.3 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

13.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.

13.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

13.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

13.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. **Term.** The term of this Agreement commences upon the effective date and continues for a one-year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four years, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. There are no automatic renewals of this Agreement.

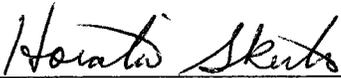
15. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Compensation
Exhibit C	Dispute Resolution

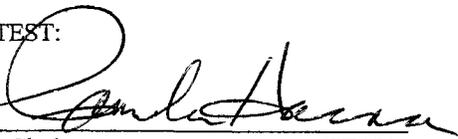
The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation



Horatio Skeete, Acting City Manager

ATTEST:



City Clerk (SEAL)

APPROVED AS TO FORM:



City Attorney

Johnson Controls, Inc.,
a Wisconsin corporation



By: WILLIAM F. KNODALL
Its: BRANCH MANAGER

EXHIBIT A

Fire Alarm and Suppression Systems Maintenance

PROJECT

[See attached]

I. Executive Summary

Johnson Controls Inc. appreciates the opportunity to partner with the City of Glendale on the **Annual** test and inspection of the fire alarm and fire protection system located at various Glendale owned/operated facilities as identified below. A separate proposal is being submitted for the quarterly testing.

Your current fire alarm and fire protection system has served you for many years and in order to ensure optimal performance of your system and protect your investment, Johnson Controls is providing a proposal for a Planned Service Agreement.

This Johnson Controls Inc. Planned Service Agreement (PSA) for your building Life Safety System provides our recommended services that ensure the system is performing optimally, maintain the integrity and reliability of the system. This will reduce system downtime, limit costs associated with system maintenance, and provide the top level of service your organization deserves. It is designed to assist in code compliance issues (where applicable) as well as to assure an extended equipment life. We understand that in order to exceed your expectations, your fire alarm and fire protection system must operate properly and it must be tested to fulfill necessary code requirements.

Once again, Johnson Controls, Inc. is pleased to submit the following Planned Service Agreement proposal for your review and consideration. We look forward to starting our relationship with you and providing the highest level of professional service.

II. Proposed Service

Equipment

Johnson Controls will provide a functional test and inspection of the fire alarm and fire protection equipment during the scheduled service dates. The testing will be completed via diagnostic tools inherent to the system(s) as well as the functional application. The inspection will determine if the system is functioning properly and operating according to the manufacturer's requirements. The equipment will also be checked for damage, misalignment and proper connections. If a problem is detected during the inspection it will be immediately documented and corrected based on the terms of the agreement.

Consumables are not included within this proposal unless otherwise stated.

Compliance Assurance Services

Here is what to expect from Johnson Controls Compliance Assurance Services:

- A partnership in understanding and meeting of the code compliance issues related to your facility (see list below of common codes which may apply).
- Mutually agreed upon testing frequency and schedules.
- Repairs, component replacement, and corrective maintenance of the covered equipment based on the terms of the agreement.

- Expert understanding of the full range of system adaptability, from variations in use of existing components to major modifications of total system configuration.
- Support from an organization motivated to help you handle unexpected problems, changes in your facility and opportunities for improvements.

INCL.	CODE	DESCRIPTION
	NFPA 10	Portable Fire Extinguishers
X	NFPA 13	Wet/Dry Automatic Extinguishing System
	NFPA 17 / 17A	Dry (17)/ Wet (17A) Chemical Extinguishing Systems
X	NFPA 25	Water-Based Fire Protection Systems
X	NFPA 72	National Fire Alarm Code
	NFPA 90A	Air Conditioning and & Ventilating
	NFPA 92A	Smoke Control Systems
	NFPA 204	Smoke and Heat Venting

Emergency Service

Johnson Controls, Inc. will provide telephone response within two (2) Hours, and will be on-site to provide emergency service within eight (8) hours. Non-emergency calls, as mutually determined by the City of Glendale and Johnson Controls, Inc. will be scheduled for the next business day. Johnson Controls, Inc. defines business hours as 8am-5pm Monday – Friday excluding holidays.

Any labor performed on equipment or services outside of this contract's Equipment List or Terms and Conditions are charged at our current billing rate. Our rates are subject to change without notice:

Service Time	When Applicable	Hourly Rate
Business Hours	Monday-Friday 8:00 a.m. to 5:00 p.m.	\$95.00
After Hours	Monday-Friday 5:00 p.m. to 8:00 a.m./Saturday	\$142.50
Sunday/Holiday	Sunday and all official Johnson Controls holidays	\$190.00

Documentation

Johnson Controls, Inc. will document each on-line and on-site service call and furnish a copy showing time, date, and a brief description of activity. Work orders for on-site system preventive maintenance will list the inspection date, individual to report to, equipment identification, equipment location, work to be performed and any special instructions. All documentation will be stored on an on site service log.

III. Program Implementation

Maintained Components

Fire Alarm System Equipment

Control Panels

Initiating Devices

Notification Devices

See EXHIBIT B of the Fire/Security Installation and Services Agreement for an equipment schedule with quantities

Scheduled Services

Johnson Controls, Inc. will provide schedule service visits on an **annual** basis. Scheduling will consider specific facility requirements, seasonal considerations, and compliance with codes. All covered equipment is serviced as determined in the agreement once each year, unless otherwise noted in Exhibit B.

Customer Support

In order to better serve the technical support needs of our valued customers, a dedicated staff of trained professionals in the Johnson Controls, Inc. 24 hours a day, seven days a week response center, with access through our toll free number 866-854-4544. The critical nature of our customers' facilities makes this a high value service, allowing us to significantly reduce the downtime of your Life-Safety System(s). The high standards with which your facility is managed, dictates that we are positioned to provide the fastest and highest level of response. Our highly trained and experienced service team has enabled Johnson Controls, Inc. to meet this customer challenge.

Consultative Strategies

We offer consultative services focused on strategies, risk analysis, threat assessment, and business continuity planning, for an additional fee. Through understanding vulnerabilities of your unique business operations, high risk factors are recognized and addressed proactively to support sustainability of your business. Contact us for additional information on our consultative service strategies.

• IV. Summary

Once again, Johnson Controls, Inc. is pleased to submit the following Planned Service Agreement proposal for your review and consideration. We look forward to providing the highest level of professional service. If you have any questions or need additional information, do not hesitate to contact me.

The pricing in this proposal includes the fire alarm and fire protection equipment included in the existing contract and assumes all work is "bundled" together. As part of this price the existing contract term would be extended, with a new contract start date of July 1, 2008

Thank you for the opportunity to propose our services. If you have any questions need additional information, do not hesitate to contact me.

Sincerely,



Mikael J. Greenlief
General Manager
Arizona Fire and Security
Johnson Controls, Inc.

EXHIBIT B

Fire Alarm and Suppression Systems Maintenance

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Selected from the list of service providers found on the Arizona State Spirit contract; the compensation is based upon a price per square footage of City's buildings. Additional services (repairs) are billed at an hourly rate (see attached detail), but will not exceed the total contract price.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$119,262.00 annually.

DETAILED PROJECT COMPENSATION

See attachment.

V. . Fire/Security Installation and Services Agreement

Johnson Controls, Inc.
Branch Office Address
2032 W. 4th Street
Tempe, AZ 85382
Telephone No. 480-446-2695

State License Number

148866

**FIRE/SECURITY INSTALLATION
AND SERVICES AGREEMENT**

Customer: City of Glendale Address: 6210 W. Myrtle Avenue Glendale, AZ 85301 Telephone Number: 623-930-2647	Customer's Facility: Various Glendale, AZ 85301 Arizona State SPIRIT # EPS 066026	Agreement No. 8827-7043 Effective Date: 07/01/10 623-930-2647
Customer Representative and Contact Information Ron Gouger		623-930-2647

Scope of Agreement. Customer has selected and herewith appoints Johnson Controls, Inc. ("JCI" or "Johnson Controls") to provide the systems and perform the services that are selected below. JCI will install the systems and perform the services at the Customer's facility identified above (the "Premises"). Pursuant to the terms and conditions of this Agreement, JCI will install or cause to be installed the systems selected below (herein referred to as the "Work" or the "System") and will provide monitoring, repair, inspection and/or response services as selected below (herein referred to as the "Services"). A complete list of equipment included with each selected system is identified in Exhibit A "Schedule of Installed Equipment". A separate list of equipment that is the subject of the Services to be provided herein is attached hereto as Exhibit B "Services Schedule of Equipment". This Fire/Security Installation and Services Agreement includes these terms, the General Terms and Conditions and all other parts, exhibits, and schedules which together are incorporated herein and comprise the Agreement Documents.

Type of System: (check all boxes that apply): Access Control Burglar/Intrusion CCTV Fire Alarm Intercom/Voice Call Other Fire Suppression

Services: (check all boxes that apply): Basic Coverage (Scheduled Services) Premium Coverage (Scheduled Service Visit and Repair) Central Station Monitoring
 Central Station Monitoring with Open and Close DECLINE ALL SERVICES

Extended Service Options if "Premium Coverage" is selected:

On-Site repair services will be provided at Customer's facility during JCI's normal business hours, unless one of the following options is selected:

- 24-5 Extended Service-JCI will provide on-site response 24 hours a day, 5 days a week (Monday thru Friday, except JCI holidays).
 24-7 Extended Service-JCI will provide on-site response 24 hours a day, 7 days a week (including holidays).

Pricing and Payment Terms. Customer agrees to pay JCI for the Work performed and the Services provided as set forth below. For Services, JCI shall invoice and Customer shall pay upon receipt of invoice and in advance of performance of the Services.

PRICE FOR THE WORK

Work Price \$ _____
Tel Co. Installation charge \$ _____
Taxes \$ _____
TOTAL PRICE for WORK \$ _____
DEPOSIT RECEIVED (due upon execution of agreement): \$ _____
BALANCE (due upon installation of system): \$ _____

PRICE FOR THE SERVICES

Invoice Period: Monthly Quarterly Semi-annual Annually
Year 1 Price \$101,946.00
Year 2 Price \$106,023.00
Year 3 Price \$110,264.00
Year 4 Price \$114,675.00
Year 5 Price \$119,262.00
Tel. Co. charge annually contract term \$ _____
Taxes annually contract term \$ _____
TOTAL PRICE for SERVICES \$522,170.00

Handwritten notes: "CW 7/28/10" and "AB 7/28/10" with a signature.

Term/Automatic Renewal. This Agreement is for an original term of five (5) years and shall begin on the Effective Date identified above ("Original Term"). The Work will begin on 07/01/10 and the parties agree that the Work shall be deemed completed as of the date on which the System is installed and becomes operational. The Services will begin on 07/01/10, if applicable, upon completion of the Work. Unless terminated earlier as provided herein, this Agreement will automatically renew on a year-to-year basis after the Original Term ends unless Customer or JCI gives the other written notice of non-renewal. The notice must be delivered at least thirty (30) days prior to the expiration of the Original Term or any renewal year. Any price adjustments for renewal years are described in the General Terms and Conditions.

Entire Agreement. It is agreed and understood by the parties that this Agreement constitutes the entire agreement between the parties, and supersedes any previous agreements or understandings. There are no agreements, understandings or covenants between the parties of any kind, express or implied, oral or otherwise, pertaining to the Work, the System, or the Services hereunder that have not been set forth or specified herein. This Agreement may not be changed, modified or varied except by a writing signed by an authorized representative from each party. This Agreement shall not become binding on JCI unless signed by an authorized representative of JCI.

JOHNSON CONTROLS, INC.

By: Mikael J. Greenleaf Date: 7/28/10

Name: [Signature]
Title: Arizona General Manager

CUSTOMER: City of Glendale

By: [Signature] Date: 7/16/10

Name: Michelle Hertenko
Title: Deputy Safety Field Operations Director

GENERAL TERMS AND CONDITIONS FOLLOW

EXHIBIT C

Fire Alarm and Suppression System Maintenance

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
- (A) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - (B) The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - (C) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
- (A) The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - (B) The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.
4. **Exceptions.**
- 4.1 Third Party Claims. City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.
- 4.2 Liens. City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.