

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND JOHNSON CONTROLS, INC.

THIS AGREEMENT, entered into this ____ day of _____, 2004, by and between the **COUNTY OF SAN MATEO**, hereinafter called "County," and **JOHNSON CONTROLS, INC.**, hereinafter called "Contractor";

WITNESSETH:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of maintenance and repair services of the security and alarm systems located at Maguire Correctional Facility, Women's Correctional Center and the Sheriff's Transportation/Court Security Division; and

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits.

The following exhibits are attached hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Exhibit C – Terms and conditions

2. Services to be performed by Contractor.

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments.

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed **NINE HUNDRED SEVENTY SIX THOUSAND FOUR HUNDRED THIRTY SIX DOLLARS AND TWENTY-FIVE CENTS, [\$976,436.25]**.

4. Term and Termination.

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **SEPTEMBER 1, 2004 through AUGUST 31, 2009.**

This Agreement may be terminated by Contractor, the Sheriff or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. **Availability of Funds.**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the county learns of said unavailability of outside funding.

6. **Relationship of Parties.**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. **Assignability and Subcontracting.**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

8. **Hold Harmless.**

Contractor agrees to indemnify, defend, and hold County and its owners, officers, directors, employees, and agents, harmless from any and all claims, suits, demands, costs, fines, penalties, legal expenses, or any other actions of any kind or nature resulting from: [a] any breach or default by Contractor of any obligation to be performed by Contractor pursuant to the terms of this Agreement with County; or [b] injury to any person (including, but not limited to bodily injury, mental anguish or death) or damages to any property, caused by or arising from the negligent or intentional acts or omissions of Contractor or its agents, employees, or representatives with respect to the goods and/or services supplied by Contractor to County pursuant to this Agreement, unless any of such claims or damages were also caused by or the result of negligent or intentional acts or omissions of County, its agents, employees, representatives, other subcontractors, or other persons acting on behalf of or at the request of County, in which case the principles of comparative fault and indemnity shall be applied to equitably apportion indemnity.

9. **Insurance.**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

A. **Worker's Compensation and Employer's Liability Insurance.** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

B. **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement

such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- 1) Comprehensive General Liability \$1,000,000
- 2) Motor Vehicle Liability Insurance \$1,000,000
- 3) Professional Liability \$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses.

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated there under, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination.

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to:
 - 1) termination of this Agreement;
 - 2) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - 3) liquidated damages of \$2,500 per violation;
 - 4) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. **Retention of Records.**

Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

13. **Merger Clause.**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

14. **Controlling Law.**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

15. **Notices.**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

In the case of County, to:

San Mateo County Sheriff's Office
Don Horsley, Sheriff
400 County Center
Redwood City, CA 94063

In the case of Contractor, to:

Steve Sandoval, Account Executive / Security
Johnson Controls, Inc.
3526 Breakwater Court
Hayward, CA 94545

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

*A Political Sub-division of the
State of California*

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

JOHNSON CONTROLS, INC.

By: _____

(Printed Name)

Date: _____

EXHIBIT A - SERVICES

AGREEMENT BETWEEN COUNTY OF SAN MATEO AND JOHNSON CONTROLS, INC.

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

1. SCOPE OF WORK

Provide repair labor, material services and preventative maintenance for the Security and Alarm Systems located at the following Sheriff's Office facilities.

A. Maguire Correctional Facility [MCF]

- 1) Preventative maintenance performed twice weekly.
- 2) Systems, preventative maintenance (PM) and repair costs:

	PM	Repair
- Access Door Controls (<i>upgraded</i>)	\$4,320	Warranty
- Custom Control Panels	\$8,640	\$22,600
- Access Intercom	\$4,320	\$19,842
- Closed Circuit TV (CCTV)	\$8,640	\$21,845
- Communications System (<i>intercom</i>)	\$1,080	\$8,255
- Intrusion/Tamper Alarms	\$1,080	\$1,942
- MATV	\$1,080	\$1,790
- Visitor Intercom (phones)	\$1,080	\$2,540
- Electronic UPS System	\$1,080	\$3,940
- Intake Video Recording System	\$1,080	\$2,820
ANNUAL MCF TOTAL	\$32,400	\$85,574

- 3) Upgrade Thorn Access Control with Johnson Controls Cardkey P2000LE Security Management System.

Access Door Controls – Upgrade	\$41,950
- (<i>one-time cost</i>)	

B. Women's Correctional Center [WCC]

- 1) Preventative maintenance performed once a month.
- 2) Systems, preventative maintenance (PM) and repair costs:

	PM	Repair
- CCTV Surveillance System	\$6,840	\$12,682
- Custom Electronics (<i>upgraded</i>)	\$8,640	\$19,840
ANNUAL WCC TOTAL	\$15,480	\$32,520

- 3) Upgrade locking Control System with a new Custom Panel and electronics:

- Locking Control System	\$39,628
- Hardware Upgrade for 12 doors	\$18,804

One-time Total Upgrade Cost	\$58,432.00
------------------------------------	--------------------

C. Transportation / Court Security Division

- 1) Preventative maintenance performed twice yearly.
- 2) System, annual preventative maintenance (PM) and repair costs:

	PM	Repair
- Closed Circuit TV (CCTV)	\$6,480	\$14,845
ANNUAL TOTAL	\$6,480	\$14,845

EXHIBIT B – PAYMENTS AND RATES

AGREEMENT BETWEEN COUNTY OF SAN MATEO AND JOHNSON CONTROLS, INC.

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. SCHEDULE OF CHARGES.

A. Total Cost for Maintenance \$823,160.00

<i>\$165,753 – 4% = Discounted Rate for the first TWO years.</i>	1 st Year	\$158,800
	2 nd Year	\$158,800
<i>A 3% cost of living & material increase for Years 3, 4 & 5 of the Contract Term.</i>	3 rd Year	\$163,564
	4 th Year	\$168,471
	5 th Year	\$173,525

B. Total Cost for Upgrades \$131,135

Locking Control System [WCC]	\$39,628
Hardware Upgrades for 12 Doors [WCC]	\$18,804
Access Control	\$41,950
Maguire Intake DVR System	\$29,753
<i>Fee to amortize upgrades over the length of the Contract.</i>	\$1,000

C. 5-Year Interest Total - \$22,141.25

The upgrades (Section B. above) are amortized over the term of the contract.

2. PAYMENTS

The total cost for Contractor's services during the term of this agreement is \$976,436.25. This amount will be paid to Contractor in 20 quarterly installments as follows:

Contract Year	Quarterly (4) Payment Amount	Yearly Payment Total
1 st : September 1, 2004 through August 31, 2005	\$47,363.81	\$189,455.25
2 nd : September 1, 2005 through August 31, 2006	\$47,363.81	\$189,455.25
3 rd : September 1, 2006 through August 31, 2007	\$48,554.82	\$194,219.25
4 th : September 1, 2007 through August 31, 2008	\$49,781.56	\$199,126.25
5 th : September 1, 2008 through August 31, 2009	\$51,045.06	\$204,180.25
FIVE-YEAR CONTRACT TOTAL		\$976,436.25

EXHIBIT C - TERMS AND CONDITIONS

AGREEMENT BETWEEN COUNTY OF SAN MATEO AND JOHNSON CONTROLS, INC.

By accepting this contract, Purchaser agrees to be bound by the following terms and conditions:

1. **Scope of Work.** This contract is based upon the use of straight time labor only. Plastering, patching and painting are excluded. "In-line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Johnson, shall be distributed and installed by others under Johnson's supervision but at no additional cost to Johnson. Purchaser agrees to provide Johnson with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. Johnson agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge Johnson for any costs or expenses without Johnson's written consent.
2. Unless specifically noted in the statement of the scope of work or services undertaken by Johnson under this agreement, Johnson's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment Hazards or dangerous substances, to include but not limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by Johnson shall not operate to compel Johnson to perform any work relating to Hazards without Johnson's express written consent.
3. **Materials.** If the materials or equipment included in this contract become temporarily or permanently unavailable for reason beyond the control and without the fault of Johnson, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, Johnson shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefore.
4. **Warranty.** Johnson warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from delivery of said equipment, or if installed by Johnson, for a period of two (1) year from installation. Johnson warrants that for equipment furnished and/or installed but not manufactured by Johnson, Johnson will extend the same warranty terms and conditions which Johnson receives from the manufacturer of said equipment.

For equipment installed by Johnson, if Purchaser provides written notice to Johnson of any such defect within thirty (30) days after the appearance or discovery of such defect, Johnson shall, at its option, repair or replace the defective equipment. For equipment not installed by Johnson, if Purchaser returns the defective equipment to Johnson within thirty (30) days after appearance or discovery of such defect, Johnson shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for equipment not installed by Johnson shall be borne by Purchaser. The warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

5. **Mutual Waiver of Consequential Damages.** The parties hereto waive all claims against each other for any special, indirect, or consequential damages arising out of or relating to this agreement Contract. This mutual waiver is applicable, without limitation, to all consequential damages due to either parties' termination of the Contract in accordance with its terms.
6. **Taxes.** The price of this contract does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. Purchaser shall pay, in addition to the stated price, all taxes not legally required to be paid by Johnson or, alternatively, shall provide Johnson with acceptable tax exemption certificates. Johnson shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of work.
7. **Force Majeure.** Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: acts of God; acts of government agencies; earthquakes, floods; strikes; labor disputes; fire; explosions or other casualties; terrorism; thefts; vandalism or other third party criminal acts; riots; war; or unavailability of parts, materials or supplies.
8. **Compliance with Laws.** Johnson shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work.
Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.
9. **Insurance.** Insurance coverage in excess of Johnson's standard limits will be furnished when requested and required. No credit will be given or premium paid by Johnson for insurance afforded by others.
10. **Occupational Safety and Health.** The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project site.
11. **Entire Agreement.** This contract, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
12. **Changes.** No change or modification of any of the terms and conditions stated herein shall be binding upon Johnson unless accepted by Johnson in writing.