AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Superior Alarm & Fire Protection Sales and Monitoring Agreement; Account #61-01-0130; Gunnison County Library at 307 N. Wisconsin, Gunnison, CO 81230; $240

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County Library / Superior Alarm & Fire Protection

Term Begins: 5/8/2013 **Term Ends:** **Grant Contract #:**

Summary:
Superior Alarm & Fire Protection Sales and Monitoring Agreement; Account #61-01-0130; Gunnison County Library at 307 N. Wisconsin, Gunnison, CO 81230; $240

Fiscal Impact: $240

Submitted by: Brenda Wiseman **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Reviewed by: Bcowan Discharge Date: 6/10/2013

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reviewed by: ATrezise Discharge Date: 6/10/2013 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: MBirnie Discharge Date: 6/10/2013

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 6/18/2013 Follow Up Agenda Date: N/A

Revised April 2013

PLEASE SIGN AND RETURN

SUPERIOR ALARM & FIRE PROTECTION

P.O. BOX 1706 • MONTROSE, COLORADO 81402
(970) 249-4537 • Fax (970) 240-0366

Sales and Monitoring Agreement
Account: 61-01-0130

This Agreement is entered into on this 8th **day** of May, ***2013*** and between Superior Alarm & Fire Protection, hereafter referred to as "Company," and **Gunnison County Library, 307 N. Wisconsin, Gunnison, CO 81230,** hereafter referred to as "Client.

1. INSTALLATION AND SERVICES: Approximate installation starting date is within thirty (30) days of receipt of signed contract. Cutting holes preparatory to the installation of wiring and/or delivery of equipment shall constitute substantial commencement of the work to be performed. Upon completion of the installation, Company shall instruct Client in the proper use of the equipment.

Company shall provide the following:

[N/A] A. Sell and install an alarm System, "System", as described on the attached estimate # () dated (), 20(__).

[X] B. Monitoring for the System (See Paragraphs 7 and 8).

2. PAYMENT AND TERMS: Client agrees to pay to Company:

2.1 For installation and sale of the System, as specified on the estimate, the sum of *XXX* Dollars and xx/100 ($*xx.00*), payable *(Upon Receipt of Invoice)*.

2.2 For monitoring, the sum of (***20.00***) (zero ***Dollars***) payable in advance ***(please indicate preference)***

Quarterly (***60.00***)_____ Semi Annually (***120.00***)_____ Annually (***240.00***) _____

commencing with the first full calendar month following the completion of the installation. In addition, the Client shall pay the pro rata share of the monitoring charge for the month in which the System is activated.

2.3 This Agreement shall automatically be renewed for periods of two (2) years each unless either party notifies the other in writing of its intention to terminate this Agreement not less than thirty (30) days prior to the expiration of the original term or any renewal term. Company may increase the monitoring charge for any renewal period by giving the Client thirty (30) days prior notice.

3. CANCELLATION [RESIDENTAL ONLY] The Client may cancel this Agreement at any time prior to midnight of the third business day after the date of the transaction and prior to any installation having been started within this time frame.

4. LIMITED WARRANTY:

4.1 What is covered: Within one (1) year form the date the installation is completed, Company shall replace or repair any defective part in the System without charge to the Client. Company may use new or used parts of equal quality at the time of replacement. Repair or replacement is Company's sole liability under this warranty. THIS WARRANTY IS EXTENDED TO THE ORIGINAL CLIENT ONLY.

4.2 How to receive service: To obtain warranty service, contact Company's service department at the telephone number set forth above, and fully describes the problem. Warranty service shall be provided Monday through Friday, excluding national holidays, between the hours of 8:00am and 5:00pm. Service is available at other times at the Company's premium labor rate with a one (1) hour minimum charge.

4.3 What is excluded: Except as stated in paragraph 4.1, Company makes no express warranties as to any matter whatsoever, including, without limitation, the condition of the equipment, its merchantability, or its fitness for any particular purpose. Company does not represent or warrant that the System may not be compromised or circumvented; or that the System will prevent any loss by burglary, hold-up, fire or otherwise/or that the System will in all cases provide the protection for which it is installed. This warranty does not cover any damage to the System caused by intrusion, fire, acts of God, accident, misuse, or unauthorized repair service or modification, or any service call caused by the Client's failure to properly close the premises or secure the System. This warranty is void if anyone other than Company's authorized agent opens or tampers with the transmission equipment. Company shall not be liable for consequential damages. Except for Company's obligation to repair the System, Company's liability under this warranty is expressly limited by section 21 of this Agreement. Client understands: That any affirmation of fact or promise made by Company shall not be deemed to create an express warranty; that Client is not relying on Company's skill or judgment in selecting or furnishing a System suitable for any particular purpose and that there are no express warranties which extend beyond those on the face of this Agreement.

5. INSTALLATION OF SYSTEM: Client shall permit Company to install the System described on the estimate. Company agrees to install the System in a workmanlike manner in accordance with the following conditions; (A) The premises shall be available without interruption during Company's normal installation hours. (B) Company may make any preparation such as drilling holes, driving nails, or making attachments or doing other things necessary for the installation of the System. (C) The Client has approved the location of the control panel, on/off switches, audible devices, transformers and all protective devices. Any changes of location requested by the Client after installation has commenced or required because of obstructions or obstacles will be at the Client's expense. (D) Client understands that because of construction, decoration or furnishing of the premises, Company may determine in its sole discretion that it will be impractical to conceal the wiring; in such cases, the wiring will be exposed. (E) Client shall provide 110 volts AC electrical power outlets at the designated locations for alarm equipment requiring AC power. If not available, they shall be installed by Company for an additional charge. (F) The Client shall provide for lifting and replacing carpeting, if required, for the installation of floor mat switches or wiring. (G) Client shall at his own expense make any necessary repairs or changes to Client's premises as requested by Company to facilitate the installation and operation of the System. Any error or omission in the installation of the System must be called to the attention of Company in writing within five (5) days after completion of the installation, otherwise the installation shall be deemed totally satisfactory to and accepted by the Client. Company assumes no liability for delay in installation of the System or for interruption of service due to strikes, storms, earthquakes, fires, power failures, interruption or unavailability of telephone service, acts of God, acts of the Client, or for any other cause beyond the control of Company and Company will not be required to supply service to the Client while interruption of service due to any such cause may continue.

6. MONITORING AND COMPANY NOTIFICATION: If monitoring service is provided per Paragraph 1.B, Company shall cause Client's System to be connected to Company's monitoring facility. Upon receipt of a signal from the System, the Monitoring Facility shall make every reasonable effort to notify the appropriate police department, sheriff's department, fire department, or other authorities and / or the person or persons whose names and telephone numbers have been provided in writing to the Company unless there is reasonable cause to assume that an emergency condition does not exist. Company may elect to call Client first on burglar and fire alarm signals to verify the nature of the emergency before notifying the appropriate emergency personnel.

7. TRANSMISSION LINES: The Client shall pay all charges made by any telephone utility for installation and service charges of telephone lines connecting the Client's protected premise to the monitoring facility, including the installation of a utility-provided jack. The Client understands that the signals from the Client's System are transmitted over the Client's regular telephone service, and in the event the Client's telephone service is out of order, disconnected, placed on vacation, or otherwise interrupted, the signals from the Client's System will not be received at the monitoring facility during any such interruption in telephone service and the interruption will not be known to the Company. The Client further understands that signals are transmitted over the telephone company or other transmission lines which are wholly beyond the control and jurisdiction of Company and are maintained and serviced by the applicable telephone utility.

8. AUDIBLE ALARMS: if the Client's System has an audible alarm device, Company shall install a device that will automatically shut-off the alarm after it has sounded for not more than twelve (12) minutes.

9. FALSE ALARMS: in the event an excessive number of false alarms are caused by the Client's carelessness, malicious action or accidental use of the alarm System, or in the event the Client in any manner misuses or abuses the System, Company may in its sole discretion deem this situation to be a material breach of contract on the part of the Client and at its option, in addition to all other legal remedies set forth below, be excused from further performance upon the giving of ten (10) days written notice to Client. Company's excuse from performance shall not affect its right to recover damages from the Client. In the event a fine, penalty or fee is assessed against Company by any governmental or municipal agency as a result of any alarm originating from the Client's premises, the Client agrees to reimburse Company for the same. In the event Company dispatches a serviceman to respond to an alarm originating from the Client's premises, where the Client has intentionally, accidentally or negligently activated the alarm signal and no alarm condition exists, then the Client shall pay Company a reasonable sum based on Company's then prevailing labor rate for each such response. The Client represents that he fully understands that the equipment, because of its sensitivity and nature, is subject to the influence of external events which are not within the control of Company and which may cause the alarm to activate. Any or all such alarms shall not excuse any of the obligations of the Clients as stated in this Agreement.

10. CLIENT'S ACCEPTANCE OF CONTRACT: The Client acknowledges that: He/She agrees to and has read this entire Agreement and all attachments, including the provisions on the reverse side which are incorporated in this Agreement. ***Client understands that installation will not commence until authorized contract is received by Superior Alarm & Fire Protection.***

_____ _____

Superior Alarm & Fire Protection Date Customer Date

11. AFTER WARRANTY REPAIR: At the expiration of Company's limited warranty, all repairs including all parts and labor shall be at the Client's expense. The Client agrees to pay for all materials, parts and labor used for said repairs at Company's then prevailing rates with a minimum one (1) hour charge for each visit to the Client's premises. The Client shall pay such charges upon completion of the work.

12. INTERRUPTION OR CANCELLATION OF SERVICE: Company assumes no liability for interruption of monitoring, warranty or repair service due to strikes, riots, floods, storms, earthquakes, fires, power failures, insurrection, interruption or unavailability of telephone service, acts of God, or for any other cause beyond the control of Company and will not be required to supply monitoring and/or service to the Client while interruption of service due to any such cause may continue. This Agreement may be suspended or cancelled, without notice at the option of Company, if the Company, the Client's premises or the System are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service or in the event Company is unable to render service as a result of any action by any governmental authority.

13. INCREASES IN TAXES AND UTILITY CHARGES: The Client understands that all charges listed in this Agreement are based upon existing federal, state and local taxes and utility charges, including telephone Company line charges, if any. Company shall have the right, at any time, to increase the monitoring charges provided for in this Agreement, to reflect any additional taxes, fees or charges which may be imposed on Company in the future by any utility or governmental agency relating to the service(s) provided under the terms of the Agreement, and the Client agrees to pay the same.

14. CLIENT'S DUTY AS TO USE OF SYSTEM: The Client shall carefully and properly test and set the burglar alarm System immediately prior to the securing of the premises, test all batteries in wireless devices, and test signal transmission functions of the System during the term of this Agreement no less often than monthly, all in accordance with Company's instruction. If any defect in operation of the System develops, or in the event of a power failure or other interruption at the Client's premises, the Client shall notify Company immediately. All batteries in any wireless devices must be replaced by Client on an annual basis. If space protection (i.e., Ultra-Sonic, Microwave, Infra-Red, etc.) is a part of said System, the Client shall walk test the System in the manner recommended by Company. When any device or protection is used, including but not limited to space protection, which is affected by turbulence of air, occupied airspace change, or other disturbing conditions, the Client shall turn off or remove all things, animate or inanimate, including but not limited to all forced air heaters, air conditioners, horns, bells, animals and any other sources of air turbulence or movement which may interfere with the effectiveness of the System when it is armed. The Client shall notify Company of any remodeling or other changes to the protected premises that may affect the operation of the System, and shall pay for any modifications to the System necessitated by such changes. The Client shall obtain, and keep in good standing, pay for, all licenses or permits imposed by any government agency necessary for the installation and continued operation and monitoring of the System.

15. AUTHORIZED PERSONNEL: The Client agrees to furnish Company with a written list of the names, titles, addresses, and telephone numbers of all persons authorized to enter or remain on the premises and/or be notified in the event of an alarm. All changes, revisions and modifications to the above shall be supplied to Company in writing.

16. ASSIGNEES/SUBCONTRACTORS: Company shall have the right to assign this Agreement to any other person, firm or corporation without notice to the Client and shall have the further right to subcontract any installation, monitoring, repair service or other services which it may perform. The Client acknowledges that this Agreement, and particularly those paragraphs relating to Company's maximum liability, liquidated damages, and third party indemnification, inure to the benefit of and are applicable to any assignees and/or subcontractors of Company, and that they bind the Client with respect to said assignees and/or subcontractors with the same force and effect as they bind the Client to Company.

17. DEFAULT BY CLIENT: Expiration, Termination: If Client fails to pay any amount within ten (10) days after the same is due and payable, or if the Client fails to perform any other provisions within ten (10) days after Company shall have requested in writing performance thereof, or if any proceeding in bankruptcy, receivership or insolvency shall be commenced by or against the Client or his property, or if the Client makes any assignment for the benefit of creditors, Company shall have the right to discontinue installation, monitoring, and other services and recover from the Client all sums Company may be entitled to under the law. Upon expiration or termination of this Agreement for any reason, Company is authorized to disconnect the Client's System from the Company's monitoring equipment and revoke Company's signs and decals. Company shall be authorized to enter onto the premises of the Client for that purpose.

18. DELINQUENCY: Reconnect Charges: In the event any payment due and payable is more than ten (10) days delinquent, Company may impose and collect from the Client a delinquency charge in the maximum amount permitted by law. If the alarm is deactivated because of the Client's past due balance, and if the Client desires to have the System reactivated, the Client agrees to pay in advance to Company a reconnect charge to be fixed by Company in a reasonable amount.

19. RETENTION OF TITLE AND RIGHT OF ACCESS: The System shall remain the personal property of Company until fully paid for by the Client, and the Client agrees to perform all acts which may be necessary to assure the retention of title to the System by Company. All signs and decals bearing Company's name shall remain the sole property of Company. Should the Client default on any payment for the System, then the Client authorizes and empowers the Company to remove the System, signs and decals from the Client's premises. Such removal, if made by the Company, shall not be deemed a waiver of Company's rights to damages Company sustained as a result of the Client's default and Company shall have the right to enforce any other legal remedy or right. Furthermore, Company shall be in no way obligated to restore the premises to its original condition or redecorate the premises in the event the System is removed as a result of the Client's default in payment or otherwise. Risk of loss of the System shall pass to the Client upon delivery to premises of such System.

20. CHANGES TO THE SYSTEM; ADDITIONAL PROTECTION: The costs of any additions, changes and variances in the System as herein contracted for or as originally installed made at the request of or made necessary or required by the Client's action, or which may be demanded or required by any governmental agency, insurance interests, or inspection and ratings bureaus, are to be borne by the Client. The Client acknowledges that he has chosen the System and that additional protection is available and may be obtained from Company over and above that provided herein at an additional cost to the Client.

21. COMPANY IS NOT AN INSURER: LIQUIDATED DAMAGES: LIMITATION OF LABILITY:

21.1 The following is understood and agreed to by the Client and Company: A) that Company is not an insurer; B) that insurance, if any, shall be obtained by the Client; C) that the payment provided for pursuant to this Agreement are based solely on the value of the System and services as set forth in the Agreement and are unrelated to the value of the Client's property or the property of others located on the Client's premises; D) that Company makes no guaranty or warranty, including any implied warranty of merchantability or fitness that the equipment or services supplied will avert or prevent occurrences or consequences there from which the System or service is designed to detect or avert. The Client understands and agrees that it is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from Company's negligence, or a failure to perform any of the obligations herein including, but not limited to, installation, warranty or repair service, monitoring, or the failure of the System to properly operate with resulting loss to the Client because of, among other things:

21.1.1. The uncertain amount or value of the Client's property or the property of others kept on the premises which may be lost, stolen, destroyed, damaged or otherwise affected by occurrences which the System or service is designed to detect or avert;

21.1.2. The uncertainty of the response time of any police or fire department, or others should they be dispatched as a result of a signal being received or any audible device sounding;

21.1.3. The inability to ascertain what portion, if any, of any property loss or personal injury, or death would be proximately caused by Company's failure to perform or by its equipment to operate;

21.1.4. The nature of the service to be performed by Company. The Client understands and agrees that if Company should be found liable for loss or damage due from (i) failure of Company to perform any of the obligations herein , including, but not limited to, installation, repair or warranty service, monitoring, (ii) the failure of the service or equipment in any respect whatsoever, or (iii) Company's active or passive negligence, Company's liability shall be limited to a sum equal to the total of six times the monthly monitoring charge or Two Hundred and Fifty Dollars ($250.00), whichever is the greater, as liquidated damages and not as a penalty and this liability shall be exclusive; and that the provision of this section shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to persons or property, from performance or non-performance of the obligations imposed by this Agreement, or from negligence, active or otherwise, of Company, its agents, servants, assigns, employees or subcontractors

22. THIRD PARTY INDEMNIFICATION: When the Client ordinarily has the property of others in his custody, or the System extends to protect other persons or their property, the Client agrees to and shall indemnify, defend and hold harmless Company, its employees, agents and subcontractors for and against all claims brought by parties other than the parties to this Agreement. This provision shall apply to all claims regardless of cause including Company's performance or failure to perform and including defects in products, design, installation, warranty service, monitoring, or operation or non-operation of the System, whether based upon active or passive negligence, warranty, contribution, indemnification or strict or product liability on the part of Company, its employees or agents. However, this provision shall not apply to claims for loss or damage which occur while an employee of Company is on the Client's premises and which are directly and solely caused by said employee, or for claims for loss or damage made during the installation of the System.

23. PURCHASE ORDERS: It is understood and agreed by and between the parties, that if there is any conflict between this Agreement and the Client's purchase order, or any other document, this Agreement will govern, whether such purchase order or other document is prior or subsequent to this Agreement.

24. INVALID PROVISION: In the event any of the terms or provisions of this Agreement shall be declared to be invalid or inoperative, all of the remaining terms and provisions shall remain in full force and effect.

25. ENTIRE INTEGRATED AGREEMENT: MODIFICATION; ALTERATIONS; WAIVER: This writing is intended by the parties as a final expression of their Agreement and as a complete and exclusive statement of the terms thereof. This Agreement supersedes all prior representations, understandings or Agreements of the parties and the parties rely only upon the contents of this Agreement in executing it. This Agreement can only be modified by a writing signed by the parties or their duly authorized agent. No waiver of a breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach.