

**SERVICES AGREEMENT**

**SIEMENS INDUSTRY, INC.**

**[City Hall Panel Migration]**

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and **SIEMENS INDUSTRY, INC., a Delaware corporation** authorized to do business in California (“Contractor”), mutually agree as follows:

1. **Scope of Services.** Contractor shall furnish all labor, materials and equipment for and perform the work of **City Hall Panel Migration** (“Services”). Contractor shall perform the Services in accordance with the provisions and requirements of the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference.

2. **Term.** This Agreement shall be effective on the date first written above and shall remain in effect for six (6) months, unless otherwise terminated pursuant to the provisions herein.

3. **Compensation.** City shall pay Contractor for the performance of the Services during the initial term of this Agreement a Contract Price not to exceed **One Hundred Ten Thousand Three Hundred Fifty-One Dollars and Sixty Cents (\$110,351.60)**, unless an increase is agreed to by the parties. City shall pay Contractor for Services performed to City’s satisfaction on a monthly basis in accordance with the provisions of the Compensation Schedule attached hereto as Exhibit “B” and incorporated herein by this reference. If the term of the Agreement is extended, Contractor’s compensation for the extended term shall be mutually agreed upon in writing by the parties.

4. **General Compliance with Laws.** Contractor shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of Services by Contractor pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations.

5. **Business Tax Certificate.** As a condition of this Agreement, Contractor shall secure a business tax certificate to operate in the City of Riverside pursuant to Chapter 5.04 of the Riverside Municipal Code, and shall also secure any other licenses or permits which may be required.

6. **Business Tax and Penalties.** Contractor acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which is owed, or which becomes owed, by Contractor to City, City reserves the right to withhold and offset said amounts from any payments, refunds or reimbursements owed by City to Contractor under the Agreement. Notice of such withholding and offset shall promptly be given to Contractor by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to City,

writing. In the event of a dispute as to the amount owed or whether such amount is owed to City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

7. **Personnel.** Contractor shall furnish all personnel necessary to perform the Services and shall be responsible for their performance and compensation. The key personnel are listed in Exhibit "C," attached hereto and incorporated herein by reference. Contractor shall furnish qualified personnel to perform the Services.

8. **Assignment and Subcontracting.** Neither party shall assign any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. Contractor acknowledges that any assignment may, at the City's sole discretion, require City Manager and/or City Council approval. Contractor shall not subcontract any portion of the work required by this Agreement without prior written approval by the responsible City Contract Administrator. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including without limitation, the insurance obligations set forth in Section 11. The Contractor acknowledges and agrees that the City is an intended beneficiary of any work performed by any subcontractor for purposes of establishing a duty of care between any subcontractor and the City.

9. **Independent Contractor.** In the performance of this Agreement, Contractor, and Contractor's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Contractor acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Contractor, or to Contractor's employees, subcontractors and agents. Contractor, as an independent contractor, shall be responsible for any and all taxes that apply to Contractor as an employer.

10. **Indemnification.** Contractor shall indemnify and hold harmless the City, and the City's employees, officers, managers, agents and council members from any liability, claim, damage or action whatsoever, arising out of the sole negligence or willful misconduct of Contractor, its officers, employees, subcontractors, agents or including but not limited to property damage, bodily injury, or death. Contractor shall defend, at its sole cost and expense, including but not limited to attorney fees, cost of investigation, defense and settlement or awards, the City and the City's employees, officers, managers, agents and council members in any such action or claim. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of City; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification of City. Contractor's obligations hereunder shall be satisfied when Contractor has provided to City the appropriate form of dismissal (or similar document) relieving the City from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the City.

## 11. Insurance.

11.1 General Provisions. Prior to the City's execution of this Agreement, Contractor shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

11.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations under Section 10 hereof.

11.1.2 Ratings. Any insurance policy or coverage provided by Contractor or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

11.1.3 Cancellation. The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

11.1.4 Adequacy. The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage as Contractor deems adequate, at Contractor's sole expense.

11.2 Workers' Compensation Insurance. By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Contractor shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Contractor is self-insured for such coverage, or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before modification or cancellation thereof.

11.3 Commercial General Liability and Automobile Insurance. Prior to City's execution of this Agreement, Contractor shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Contractor against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by

anyone directly or indirectly employed by, connected with, or acting for or on behalf of Contractor. The City, and its officers, employees and agents, shall be named as additional insureds under the Contractor's insurance policies.

11.3.1 Contractor's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

11.3.2 Contractor's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not limited to, Contractor owned vehicles, Contractor leased vehicles, Contractor's employee vehicles, non-Contractor owned vehicles and hired vehicles.

11.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

11.3.4 The insurance policy or policies shall also comply with the following provisions:

a. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.

b. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

12. **Termination.** City shall have the right to terminate any or all of Contractor's Services and work covered by this Agreement at any time upon thirty (30) calendar days' written notice to Contractor. In the event of such termination, Contractor shall submit Contractor's final written statement of the amount of services provided as of the date of such termination for payment by the City.

Notwithstanding the foregoing, the City may terminate Contractor's performance of this Agreement upon five (5) calendar days' written notice if:

- (1) Contractor fails to promptly begin performance of the Services;
- (2) Contractor fails to perform the Services;
- (3) Contractor discontinues performance of the Services;
- (4) Contractor fails to make payment to employees in accordance with applicable law;
- (5) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;
- (6) Contractor otherwise is guilty of breach of a provision of this Agreement;
- (7) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.
- (8) A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to this Agreement. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

13. **Non-Discrimination.** During Contractor's performance of this Agreement, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, gender, gender identity, genetic information, gender expression, sex or sexual orientation, military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Contractor agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

14. **City's Right to Employ Other Consultants/Contractors.** City reserves the right to employ other Contractors in connection with the Services. If the City is required to employ another contractor to complete Contractor's work, due to the failure of the Contractor to perform, or due to the breach of any of the provisions of this Agreement, the City reserves the right to seek reimbursement from Contractor.

15. **Conflict of Interest.** Contractor, for itself and on behalf of the individuals listed in Exhibit "C", represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, affected by the above-described Services. Contractor further

warrants that neither Contractor, nor the individuals listed in Exhibit "C" have any real property, business interests or income interests that will be affected by this project or, alternatively, that Contractor will file with the City an affidavit disclosing any such interest.

16. **Solicitation.** Contractor warrants that Contractor has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Contractor only for the value of work Contractor has actually performed, or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Contractor the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

17. **Prevailing Wage.** If applicable, pursuant to Section 1771 of the California Labor Code, Contractors are required to pay the general prevailing rates of per diem wages, overtime and holiday wages as determined by the Director of the Department of Industrial Relations and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing wage rates is available on-line at [www.dir.ca.gov/dlsr/DPreWageDetermination.htm](http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm), and is referred to and made a part hereof as though fully set forth herein. California Labor Code Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

18. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

To City

**General Services  
City of Riverside  
Attn: Monique Gordon  
3900 Main Street, 2<sup>nd</sup> Floor  
Riverside, CA 92522**

To Contractor

**Siemens Industry, Inc.  
Attn: Vincent Makuch  
Building Technology Division  
6141 Katella Avenue  
Cypress, CA 90630**

19. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California, County of Riverside and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

20. **Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be agreed in writing.

21. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

22. **Amendments.** This Agreement may be modified or amended only by a written agreement and/or change order executed by the Contractor and City.

23. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

24. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

**[SIGNATURES ON FOLLOWING PAGE.]**

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF RIVERSIDE, a California charter city and municipal corporation

SIEMENS INDUSTRY, INC., a Delaware corporation

By: \_\_\_\_\_  
City Manager

By: *Julie Slick*  
Julie Slick  
[Printed Name]

Attest: \_\_\_\_\_  
City Clerk

*Sales Manager*  
[Title]

Certified as to Availability of Funds

By: *[Signature]*  
Chief Financial Officer

By: **Dirk Glaser**  
Director of Finance  
[Printed Name]

*[Signature]*  
[Title]

Approved as to Form:

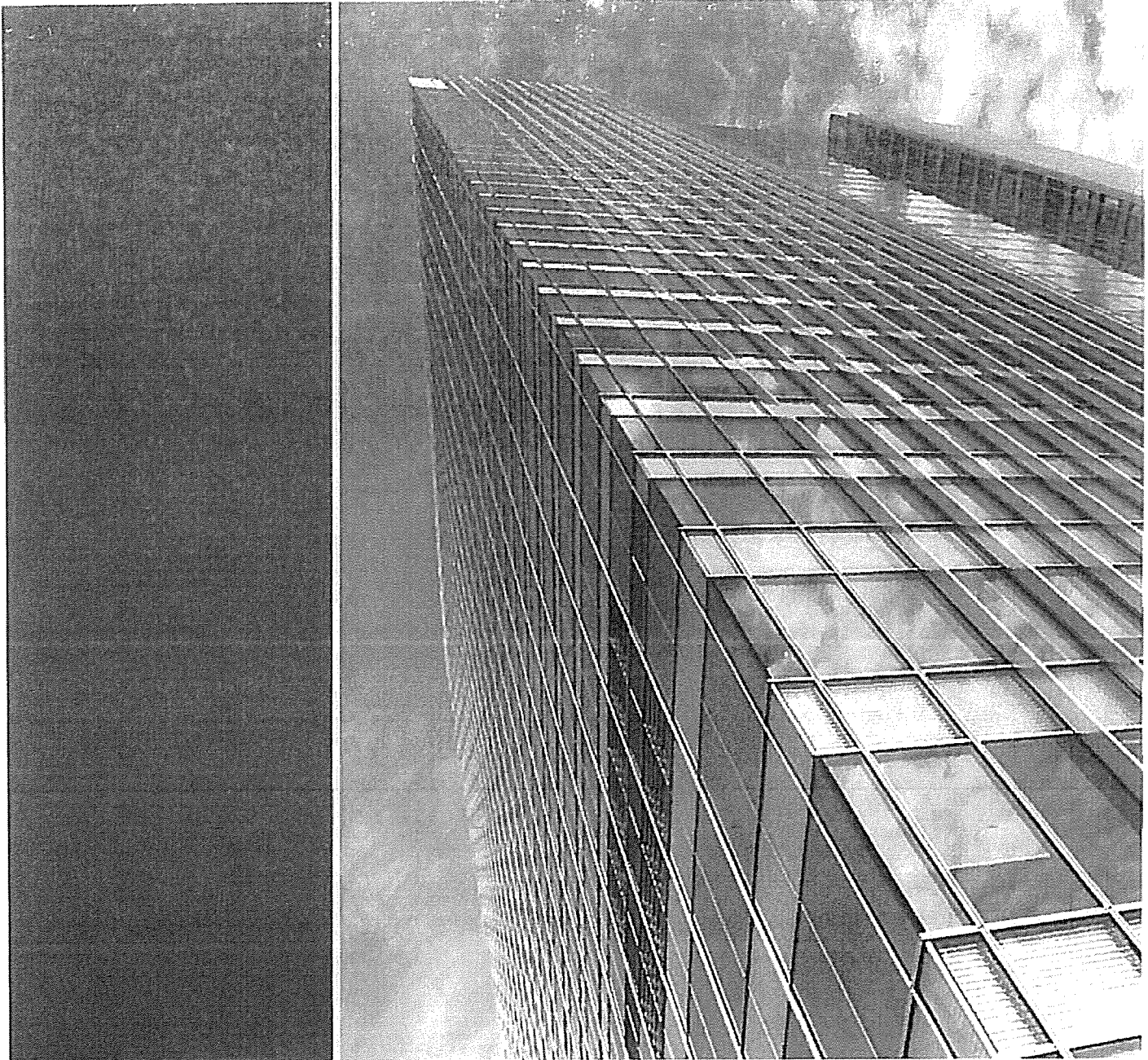
By: *[Signature]*  
RuthAnn M. Salera  
Deputy City Attorney

Digitally signed  
by  
Dirk Glaser  
DN: cn=Dirk Glaser,  
o=SIEMENS



**EXHIBIT "A"**

**SCOPE OF SERVICES**



**BUDGETARY PROPOSAL**

City of Riverside - City Hall Panel Migrations

**PREPARED BY**

Siemens Industry Inc. Building Technologies Division  
Automation Control Team

**PREPARED FOR**

City of Riverside - Facilities Management Division

**DELIVERED ON**

December 18, 2018



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Date: December 18, 2018  
Proposal #: 3204893  
Sales Executive: Vincent Makuch  
Branch Address: 6141 Katella Ave, Cypress, CA 90630  
Telephone: (657) 465-0743  
Email Address: vincent.makuch@siemens.com  
Customer: City of Riverside  
Customer Contact: Ed Luke  
Customer Facility Name: City Hall  
Services shall be provided at 3900 Main Street, Riverside, CA  
Scope of Work: (Detailed Scope of Work on following pages)  
Contract Pricing Includes Sourcewell Bid Documents:



Includes Tax: Yes  
Prevailing Wage: Yes  
Base Bid: \$110,351.60

## Sourcewell Purchasing Solution

The following proposal submitted by Siemens Industry, Inc. utilized the cooperative purchasing solutions that offer savings in both time and money for users by consolidating the efforts of numerous individually prepared solicitations into one national, cooperatively shared process—taking advantage of the aggregation of volume from members nationwide.

A Dropbox file folder maintained by Siemens contract team is available in the link below, which has the complete procurement files. Upon request, Siemens sales executives can deliver any of the requested documents to your team. Our procurement specialists periodically review documentation for compliance and effectiveness. Sourcewell considers price and product change requests based on contract terms.

Siemens Sourcewell Documentation :

<https://www.dropbox.com/sh/a7d2qbmseamxfq4/AACJ5fPWdLaGbJpdSbahPYdra?dl=0>

Sourcewell Contract Numbers:

031517-SIE

Customer Member Number:

2410

City of Riverside

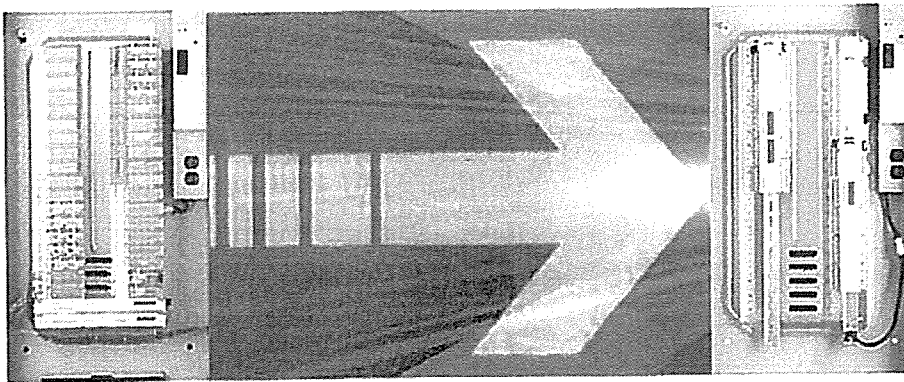
28095 Lincoln Ave, Riverside, CA 92504

Membership Originated on 04/19/2007

## Features of a Fast Forward Migration

### Field Panels Fast Forward Features

Siemens Building Technologies has a road map to *Fast Forward* your Field Panels to the latest platform. The Field Panel migration modernizes your building automation system, giving it enhanced functionality and flexibility. Your existing control components are replaced with the PXC family of controllers. By reusing your existing enclosure, wiring, sensors and actuators, we reduce wiring complexity, minimize downtime, and control migration costs.



Your initial investment in the Siemens automation system many years ago now provides a strong foundation for the future. The *Fast Forward* program allows you to migrate at much lower costs by retaining as much as possible of your existing investment. As the chart below indicates, replacing your old hardware with a new system requires significant additional investments in programming, point databases, hardware, and commissioning. System replacement also requires more of the limited wall space in your mechanical or electrical room, and extended downtime at switch over. The Fast Forward program has been engineered to be cost-effective and minimize the impact to your facility and its occupants.



## Benefits of a Migration Strategy

Siemens Building Technologies has a road map to Fast Forward your system to the latest platform. The migration modernizes your building automation system, giving it enhanced functionality and flexibility. Your existing control components are updated to fully integrate to the Desigo CC Workstation. By reusing your existing field panel enclosures where possible, wiring, sensors and actuators, we reduce wiring complexity, minimize downtime, and control migration costs.

	Rip & Replace	With Siemens Fast Forward Upgrade Program
System Engineering Cost	\$\$\$	
Wiring / Electrical Installation	\$\$\$	
New Communication Network	\$\$\$	
Field Panel Hardware	\$\$\$	\$\$
Field Devices - Sensors & Actuators	\$\$	
Field Wiring	\$\$	
Programming	\$	\$
Workstation Hardware	\$	\$\$
Graphics Creation	\$	\$
Create New Point Database	\$\$	
Tools to Convert Database		\$
System Commissioning	\$\$	
Operator Training for a New System	\$\$	\$
System Startup	\$\$	\$
Extended System Downtime	\$\$\$	
Facility Operation Impact	\$	
<b>Total System Rip &amp; Replace Cost</b>	<b>\$\$\$</b>	
<b>Total System Upgrade Cost</b>		<b>\$</b>



## Scope of Work

The City has requested that Siemens Industry, Inc. provide the following services:

1. Fast Forward their Building Automation System aging MBC, MEC, FLN Control Panels at City Hall
2. Their Current Insight Work Station is running (Rev\_3.13)

## Panels at City Hall

1. Six (6) Siemens MBC Control Panels
2. One (1) MEC Control Panel
3. One (1) FLNC Control Panel

## Provided by Siemens

1. Pre-Work
  1. Download Insight Backup
2. Execution (Cut over)
  1. Fast Forward Migration Tool
  2. Perform the following to create the new panel:
    1. Add new panel to host file on server
    2. Configure new panel and verify connectivity
  3. Remove and replace all MBC with PXC
    1. Re-terminate hardwired points
    2. Re-terminate FLN buses
  4. Migration Scope above includes:
    1. Install a new backplane retrofit kit
    2. Remove existing hardware from the panel
      1. Except for the 24VAC service box to be used to power the new controllers
    3. Re-terminate associated hardwired points
    4. Re-terminate associated FLN bus
    5. Startup panel and perform panel commissioning
    6. Download panel database and PPCL
    7. Run panel reports
    8. Panel cutover field labor
3. Post Work
  1. Verify connectivity and graphics
  2. Verify trends, reports & schedules work correctly
  3. Download New Insight Backup
  4. Provide Final As-built drawing for the new PXC controllers



## Clarifications

1. Siemens will utilize existing MBC panel enclosures. If enclosures are no longer usable, Siemens will inform City of Riverside and the cost for the enclosure replacement will be additional.
2. City of Riverside to provide access to building and all rooms.
3. City of Riverside to provide any parking or necessary permits.
4. *Most Labor during overtime hours and during Saturday to avoid disruption to the City Hall.*
5. Siemens recommends City of Riverside provide (1) facility staff to escort Siemens specialist during project execution for access etc.

## Exclusions

1. Upgrades to the system beyond the scope listed above
2. Graphics / Sequence Upgrade on the main workstation
3. Any existing equipment performance shortfalls or issues
4. Network IP Address assignment (Subnet mask and default gateway)
5. Any repairs to existing equipment, changes in proposed scope, delays in schedule due to existing equipment, access to facility, employee clearance or other undetermined schedules will be considered extra to this proposal  
Ethernet Network, Cabling, Switches, Routers etc.
6. Siemens is bondable; however, the cost for bonds is not included in our proposal
7. Per Project Aggregate insurance coverage is not included in this proposal
  1. It can be provide at an added cost
8. In branch instructor lead training
9. Submittals

## Sell Price

DESCRIPTION	SELL PRICE
Labor	\$34,954.00
Material	\$75,397.60
Total	\$110,351.60





## Payment Terms Acceptance Agreement

The total price of: \$110,351.60 and the estimated return on investment are based on the items outlined in this proposal. ANY statements made herein regarding savings that may be achieved by implementing the services offered in this proposal are estimates only. No warranty, either expressed or implied, shall be construed to arise from such statements, nor shall such statements be construed as constituting a guarantee by Siemens that such savings will occur if the services are implemented.

## Terms and Conditions Disclaimer

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc.: (i) the Proposal and the Contract Terms and Conditions, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter (collectively, hereinafter referred to as the "Agreement") and (ii) in the event of any conflict between the terms and conditions of the Proposal and the terms and conditions of The Contract Terms and Conditions, the Contract Terms and Conditions shall control.

BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

*This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from the delivery date of December 18, 2018. Payment is due within 30 days of invoice date.*

*Payment Terms: 25% mobilization in advance, progress payments*

**Total: \$110,351.60**

Terms and Conditions will match the terms set forth in the service contract between Siemens and the City of Riverside

### **Terms and Conditions (Click to download)**

#### Terms & Conditions

([http://w3.usa.siemens.com/buildingtechnologies/us/en/legal\\_information/Documents/Siemens-Projects-Business-Standard-Terms-and-Conditions-FINAL-US.pdf](http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Projects-Business-Standard-Terms-and-Conditions-FINAL-US.pdf))



**Proposed by:**

Siemens Industry Inc.

\_\_\_\_\_  
Company

VINCENT MAKUCH

\_\_\_\_\_  
Name

3204893

\_\_\_\_\_  
Proposal #

\$110,351.60

\_\_\_\_\_  
Proposal Amount

December 18, 2018

\_\_\_\_\_  
Date

**Accepted by:**

City of Riverside

\_\_\_\_\_  
Company

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Purchase Order #

# **SIEMENS PROJECTS BUSINESS STANDARD TERMS AND CONDITIONS**

## **PREAMBLE**

THESE STANDARD TERMS AND CONDITIONS, entered into by and between the entity identified in Siemens' Proposal ("Buyer" or "Customer") and Siemens Industry, Inc., a Delaware Corporation, through its Building Technologies Division ("Siemens"), are effective as of the Effective Date hereof. These Standard Terms and Conditions incorporate Siemens' Proposal (the "Proposal") and any of Siemens' supplemental terms and conditions (each a "Rider") set forth in Attachment "A," as though Attachment "A" was fully set forth herein.

## **ARTICLE 1** **DEFINITIONS**

### 1.1 Definitions.

As used in this Agreement, the following terms have the meanings set forth below:

"Agreement" has the meaning set forth in Article 19.

"Affiliate" means, as to a specified Person, any other Person that, directly or indirectly, controls or is controlled by or is under common control with the Person in question and, with respect to Siemens or Buyer, is not a competitor of, or in litigation or arbitration with, Siemens or Buyer, as the case may be.

"Applicable Laws" means all applicable laws, including Environmental Laws, treaties, ordinances, rules, regulations and interpretations of any Governmental Authority having jurisdiction over the design, engineering, fabrication, manufacturing, Delivery, assembly, erection, installation, and/or the performance of the Parties' obligations under this Agreement.

"Applicable Permits" means the permits, clearances, licenses, authorizations, consents, filings, exemptions or approvals from or required by any Governmental Authority that are necessary for the performance of the Parties' obligations under this Agreement.

"Asbestos" shall mean and include chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that has been chemically treated and/or altered.

"Attachment 'A'" means the business specific terms set forth in Attachment "A" to this Agreement.

"Business Day" means every day other than a Saturday, Sunday or a day on which banks are permitted or required to remain closed in the State, Commonwealth or Province where the Work is to take place.

"Buyer" means the entity identified in the preamble and signing this Agreement for buyer, including its successors or permitted assigns.

"Buyer Caused Delay" means any delay in Siemens' or its Subcontractors' performance of the Work which is caused by (i) Buyer's or any Buyer Party's failure to timely perform its obligations under this Agreement, or (ii) any other event or cause which is beyond the control or not the responsibility of Siemens or any of its Subcontractors, and is not otherwise a Force Majeure Event.

"Buyer Documents" means all drawings, specifications and other information with respect to the Project and Work to be provided by Buyer in accordance with Buyer's Documents Submission Schedule set forth in Attachment "A."

"Buyer Documents Submission Schedule" means the schedule specified in Attachment "A," identifying the Buyer Documents and the dates by which Buyer shall submit such Buyer Documents to Siemens.

"Buyer Event of Default" has the meaning set forth in Section 14.2.

"Buyer Party" or "Buyer Parties" means Buyer, any Affiliate of Buyer, and any of their respective contractors, subcontractors, employees, laborers, materialmen, agents or representatives which is not a competitor of Siemens.

"Buyer Permits" has the meaning set forth in Section 5.5.

"Contract Price" means the cumulative price payable by Buyer with respect to all Work which Siemens shall perform or provide in connection with this Agreement, as the same is set forth in Section 4.1 of this Agreement.

"Convenience Termination Payment" has the meaning set forth in Section 14.3.

"Default Termination Payment" has the meaning set forth in Section 14.2.

"Delivery," "to Deliver," "Delivering," or "Delivered" means, for each component of any particular Equipment, or initial Spare Parts, being supplied by Siemens to Buyer pursuant to this Agreement, the arrival at the delivery point of such component or to such other location as is mutually agreed by Buyer and Siemens.

"Effective Date" means the last date on which this Agreement became fully executed (either electronically or otherwise).

"Environmental Laws" means applicable national, state, commonwealth, provincial, municipal, and local laws as well as all rules, regulations, codes, standards, permits, directives, or ordinances that impose liability or standards of conduct (including disclosure or notification requirements) concerning the protection of human health or the environment, including, without limitation, all laws affecting, controlling, limiting, regulating, pertaining, or relating to the manufacture, possession, presence, use, generation, storage, transportation, detection, monitoring, treatment, Release, disposal, abatement, cleanup, removal, remediation, or handling of Hazardous Materials.

"Equipment" means the installed physical equipment to be provided by Siemens as described in greater detail in the Proposal.

"Final Completion" means that the Work has been completed including all punch list items.

"Final Completion Date" means the date on which Final Completion of Siemens' scope of Work occurs.

"Force Majeure Event" has the meaning set forth in Section 11.2.

"Governmental Authority" means any federal, state, local or other governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

"Hazardous Materials" means any material, substance, or waste, that, by reason of its composition or characteristics, is hazardous to human health and/or the environment, including any "solid waste" or "hazardous waste," as those terms are defined by the Resource

Conservation and Recovery Act of 1976, as amended, any "hazardous substance," as that term is defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and any other hazardous, toxic or radioactive chemical, waste, byproduct, pollutant, contaminant, compound, product, material or substance, including without limitation, Asbestos, Asbestos containing materials ("ACM"), polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), hydrocarbons, radon, urea, urea formaldehyde, and any other material that is prohibited, controlled, limited or regulated in any manner under any Environmental Laws.

"Import Duties" means any taxes, customs duties, fees, imposts and governmental charges of any kind that are payable upon or in relation to the importation of the components of the Equipment into the Country where the Work is to occur. Import Duties do not include any property, license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment, or their sale, their value or their use, or any services (including any Services, as that term may be defined in Attachment "A" (if applicable)) performed in connection therewith imposed by any federal, state or local Governmental Authority in the location where the Work is to be performed.

"Indemnitor" has the meaning set forth in Section 15.1.

"Indemnitee" has the meaning set forth in Section 15.1.

"Intellectual Property Rights" means, with respect to any technology, all related patent rights (including rights in or arising from any pending patent applications), copyrights, rights of use and exploitation in copyrights, neighboring rights, (sui generis) data base rights, inventions, mask works, trade secret rights, trade dress rights, trademark rights, and any other rights analogous to those set forth herein worldwide, and any other proprietary rights relating therein or thereto.

"Lien" means: (a) any mortgage, charge, lien, pledge, hypothecation, title retention arrangement or other security interest, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation; (b) any easement, servitude, restrictive covenant, equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, license to use or occupy, or assignment of income; or (c) any agreement to create any of the foregoing or allow any of the foregoing to exist.

"Maintenance Service" shall mean the scheduled and unscheduled maintenance, replacement and repair of components of the Equipment in accordance with the Siemens manuals and revisions thereto, Siemens' technical service bulletins and revisions thereto, and other technical documentation supplied by Siemens to Buyer.

"Notice to Proceed" shall mean the written notice issued by Buyer to Siemens stating that Siemens may begin the Work.

"Outside Notice to Proceed Date" means that date certain identified in the Proposal where Siemens can begin Work and still complete the Work in accordance with the Work Schedule.

"Party" or "Parties" means, respectively, Buyer, Siemens or both, as the context requires.

"Patent Cooperation Treaty" means an international patent law treaty, concluded in 1970, that provides a unified procedure for filing patent applications to protect inventions in each of its more than one hundred and forty-five (145) contracting states.

"Person" or "Persons" means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.

"Proposal" means the document that is made part of this Agreement that describes the Work and the pricing applicable to the Project.

"Project" is as identified in the Proposal.

"Project Site" means the particular site designated by Buyer on which the Project shall be located.

"Project Infrastructure" has the meaning specified in Section 5.1.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Materials into the environment, including the abandonment or discard of barrels, containers, and other closed receptacles containing any Hazardous Materials.

"Scope Change" includes where Siemens determines, after receipt of a request for a change, that the change request of Buyer is technically and commercially feasible and requires a change in the scope of Work, Contract Price or the Work Schedule, or (b) Buyer fails to perform its obligations under Article 5 or other provisions of this Agreement and such failure results in increased costs to Siemens or delays Siemens' performance of the Work and/or ability to meet the milestones contained in the Work Schedule, including any guaranteed dates set forth therein, or (c) for any other event set forth in this Agreement for which Siemens has the right to a change in the scope of Work, Contract Price or the Work Schedule; in which case Siemens shall be entitled to a Scope Change Order.

"Scope Change Order" has the meaning set forth in Section 9.2.

"Service and Maintenance Agreement" has the meaning set forth in Section 5.8.

"Siemens" means the Siemens entity identified in the preamble and signing this Agreement, including its successors and permitted assigns.

"Siemens Event of Default" has the meaning set forth in Section 14.1.

"Siemens Parties" means Siemens, any Affiliate of Siemens, and any of their respective Subcontractors, employees, laborers, materialmen, agents or representatives, and "Siemens Party" means any of the foregoing.

"Siemens Permits" has the meaning set forth in Section 2.4.

"Spare Parts" means the types and quantities of spare parts for repair of the Work that Buyer is purchasing pursuant to this Agreement.

"Subcontractor(s)" means any Person of any tier supplying material, equipment, labor, goods or services to Siemens in connection with the Work and obligations of Siemens under the Agreement.

"Substantial Completion" or "Substantially Complete" means that the Work, or any identifiable portion thereof, which is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work, such that the Buyer will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work for its intended purpose with only punch list items remaining.

"Termination for Cause" has the meaning set forth in Section 14.1.

"Warranty" or "Warranties" has the meaning set forth in Section 10.1.

"Warranty Period" has the meaning set forth in Section 10.4.

"Work" means Siemens' scope of work with respect to the Equipment, Major Components, Spare Parts and associated Services and other work supplied by or on account of Siemens and its Subcontractors pursuant to its obligations specified in this Agreement and as identified as Siemens' responsibility in the Proposal.

"Work Schedule" means that certain schedule governing Siemens' provision of the Work and Buyer's performance of certain obligations, attached hereto as an exhibit to Attachment "A," as modified and replaced mutually between the Parties.

## **ARTICLE 2 PERFORMANCE OF THE WORK AND OBLIGATIONS OF SIEMENS**

### **2.1 Work to be Performed by Siemens.**

#### **2.1.1 General.**

Buyer hereby retains Siemens as an independent contractor, not an agent or employee of Buyer, to perform and provide, or cause to be performed and provided, and Siemens hereby agrees to perform and provide, or cause to be performed or provided, all of the Work specified as being within Siemens' scope of Work, all in accordance with the terms and conditions of this Agreement.

#### **2.1.2 Standard of Care.**

The Work shall be conducted in a manner consistent with the degree of care and skill ordinarily exercised by reputable firms performing the same or similar work in the same locale acting under similar circumstances or conditions.

#### **2.1.3 Work Schedule.**

Buyer shall issue a Notice to Proceed to Siemens on or prior to the Outside Notice to Proceed Date and Siemens shall conduct the Work in accordance with the Work Schedule set forth in this Agreement.

If at any time prior to issuance of Notice to Proceed, Buyer notifies Siemens in writing that the timing of the Project has changed so that the Work Schedule is no longer accurate, Siemens and Buyer shall negotiate in good faith to undertake a Scope Change Order, amending the Work Schedule and amending the corresponding Outside Notice to Proceed Date, based on the equitable adjustment necessary to overcome any delays and taking into account any prior committed orders that Siemens must fulfill. Any references herein to the Outside Notice to Proceed Date shall be deemed to be the Outside Notice to Proceed Date, as adjusted in accordance with the foregoing. If Buyer has not issued the Notice to Proceed to Siemens by the Outside Notice to Proceed Date, Siemens shall have no obligation to maintain the Work Schedule or abide by any milestone dates set forth therein.

### **2.2 Scheduling and Monitoring of Milestones.**

#### **2.2.1 Generally.**

Except to the extent that Siemens is entitled to a Scope Change Order or other relief provided for in this Agreement, Siemens shall perform its Work in accordance with the Work Schedule. Further, Siemens shall provide periodic reports to Buyer concerning the status of Siemens' activities, including information pertaining to the progress of the Work and any circumstances known at the time of reporting which could be anticipated to cause a material deviation from the Work Schedule.

#### **2.2.2 Timing of Deliveries and Storage.**

(a) Siemens may Deliver components of the Equipment up to thirty (30) days earlier than the dates specified therefor on the Work Schedule.

(b) If (i) Buyer requests, in writing, that any component of the Equipment be placed in storage and designates the storage location, or (ii) Buyer fails or is unable to accommodate Delivery of the Equipment at the Project Site, then Siemens shall, following the arrival of the components of such Equipment at the port of import into North America or the completion of the components if the manufacturing/assembly is performed within North America, transport the applicable components of the Equipment to the storage location designated in writing by Buyer, if possible, or to a storage location selected by Siemens if either Buyer has not designated a storage location or transportation to the storage location designated in writing by Buyer is impracticable. Any such storage shall be in accordance with Siemens' maintenance procedures. The Delivery of any components of the Equipment placed into storage in accordance with this provision shall be deemed to have occurred upon arrival onboard carrier of such components of the Equipment into storage. Buyer shall be responsible for all additional costs incurred by Siemens in transporting such components of the Equipment to the storage location, as well as all additional expenses incurred by Siemens as a result of such storage, including, but not limited to, unloading, preparation for and placement into storage, handling, storage costs, inspection, preservation and standstill maintenance (if applicable), taxes, and insurance. Such costs plus 10 percent (10%) to cover Siemens' administrative expenses shall be paid by Buyer within thirty (30) days after the date of Siemens' invoice therefor.

(c) Provided that Buyer has timely made each payment when due and provided Siemens at least thirty (30) days prior written notice of its request, Siemens shall arrange for removal of components of the Equipment from the storage location and shall transport such components to the Project Site. Buyer shall be responsible for all costs incurred by Siemens in removing such components of the Equipment from storage and the extra costs of transporting such components of the Equipment to the Project Site. Such costs plus 10 percent (10%) to cover Siemens' administrative expenses shall be paid by Buyer within thirty (30) days after the date of Siemens' invoice therefor.

(d) The Work Schedule applicable to any Equipment being held in storage in accordance with Section 2.2.2(b) shall be subject to equitable adjustment in accordance with Article 9. The Work Schedule applicable to any Equipment not placed in storage shall be equitably extended to the extent reasonably required as a result of the storage of the other Equipment.

### 2.3 Siemens Documents.

Except as otherwise provided in this Agreement, within fifteen (15) days of receipt of any Siemens Document required to be submitted to Buyer for review under this Agreement, Buyer shall notify Siemens of any resulting comments or questions. If Buyer fails to respond within such period, then such drawing or document shall be deemed to have been reviewed and approved by Buyer as submitted. Siemens shall, within fifteen (15) days of Buyer's notification of any comments or questions on any Siemens Document respond to Buyer's comments or questions; provided that Siemens shall not be required to change the design of the Equipment pursuant to such Buyer comments or questions.

### 2.4 Permits.

Subject to Section 5.5, Siemens shall obtain and maintain the Applicable Permits required to be obtained by Siemens in its name to perform the Work under Applicable Laws (the "Siemens Permits"). If any Siemens Permit (or application therefor) requires action by Buyer, Buyer shall, upon the request of Siemens, take such action as is reasonably appropriate.

### 2.5 Siemens' Labor.

Siemens shall be responsible for the conduct and deeds of its labor and its Subcontractor's labor in the performance of the Work under this Agreement. However, Siemens shall not interfere with any members of any police, military or security force in the execution of their duties.



## 2.6 Safety, Emergencies.

### 2.6.1 Safety.

Siemens may suspend its performance of the Work at the Project Site, if, in the reasonable opinion of Siemens, based upon industry standards and Siemens' applicable safety programs, conditions at the Project Site for which Siemens is not responsible become unsafe for the continued performance of the Work and such conditions are not rectified by Buyer immediately. Siemens shall resume its performance of the Work promptly after the unsafe conditions are rectified by Buyer. Siemens shall be entitled to a Scope Change Order to compensate Siemens for the increased cost of its performance and/or schedule delay resulting from such suspension of the Work.

### 2.6.2 Emergencies.

In the event of any emergency endangering persons or property relating to or as a result of the performance of the Work, Siemens and Buyer shall take such action as may be reasonable and necessary to prevent, avoid or reduce the likelihood of injury, damage or loss, and shall, as soon as possible, report any such incidents, including responses thereto, to the other Party

## 2.7 Hazardous Materials.

The Work does not include, either directly or indirectly, performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal, or treatment of Hazardous Materials. Further, Siemens shall not, either itself or through any Siemens Party, bring any Hazardous Materials onto the Project Site or incorporate any Hazardous Material into the Work, other than those Hazardous Materials to be used by Siemens or any Siemens Party in a manner that complies with applicable Environmental Laws. To the extent that the negligent Release of any Hazardous Materials brought onto the Project Site by Siemens or any Siemens Party is caused by Siemens or any Siemens Party while on the Project Site, Siemens shall bear the responsibility and liability for such Release to the extent of its or the Siemens Parties' negligence as set forth herein.

Siemens shall maintain an updated file of the material safety data sheets for all Hazardous Materials either used in connection with performance of Siemens' Work or used by or on behalf of Siemens or any Siemens Party at the Project Site. Siemens shall deliver an update of such file(s) to Buyer as requested in writing by Buyer no more than thirty (30) days after such written request, or more frequently as the Parties may agree in writing.

In the event that Siemens encounters any Hazardous Materials or other hazardous conditions at the Project Site, Siemens shall immediately stop Work in the area affected and report the condition to Buyer. Siemens shall not have any liability arising from pre-existing Hazardous Materials present or howsoever occurring at, on or under the Project Site, or Hazardous Materials that migrate onto or are introduced upon the Project Site by Buyer, any Buyer Party, any contractor of Buyer, or any third party, other than due to the willful misconduct of Siemens or a Siemens Party that directly results in the Release thereof. In no event shall Siemens be required or construed to take title, ownership, or responsibility for such Hazardous Materials. Buyer shall be solely responsible for all such Hazardous Materials and shall comply with applicable Environmental Laws and the terms of Section 5.7 in connection therewith. To the extent that such Hazardous Materials impact Siemens' schedule or cost to complete the Work, Siemens shall be entitled to a Scope Change Order for such impact.

## 2.8 Clean-up.

As soon as practicable after the achievement of the final milestone for the Project, Siemens shall remove all of its equipment and materials, not constituting deliverables hereunder or part of the Equipment or required for the service and maintenance of the Equipment, from the Project Site and shall, consistent with the provisions of Section 5.7 hereof, collect the waste material and rubbish resulting from the Work for disposal by Buyer.

2.9 Buyer's Right to Inspect; Correction of Defects.

Siemens shall promptly correct any part of the Work that is found during any inspection by Buyer or Buyer's authorized representatives not to be in conformance with the requirements of this Agreement, regardless of the stage of its completion or the time or place of the discovery of such nonconformance, in accordance with, and subject to, the provisions of Article 10.

2.10 No Liens

Except for Buyer's failure to make payments required under this Agreement, including for Scope Changes, to resolve other claims of Siemens within a reasonable time period after learning of such claims, or as permitted pursuant to Section 13.1, Siemens shall not directly or indirectly create, incur, assume or suffer to be created by any Siemens Party any claim, Lien, charge or encumbrance on the Project Site, any Equipment, or any part thereof. Siemens shall promptly pay or discharge, and discharge of record, any such claim, Lien or encumbrance for labor, materials, supplies or other charges which, if unpaid, might be or become a Lien upon the Project Site, any Equipment, or any component thereof. In the event a Subcontractor files a Lien against the Project Site, any Equipment, or any component thereof, Siemens shall, within thirty (30) days of the date of filing thereof, either (i) pay or discharge such claim and have such Lien removed, or (ii) obtain bonds in accordance with Applicable Laws from a reputable surety company sufficient to remove or discharge such claim or Lien. Siemens shall notify Buyer in writing of the assertion of any Lien or encumbrance against the Project Site, any Equipment or any part thereof promptly upon learning of such Lien or encumbrance. Upon the failure of Siemens promptly to pay, discharge, or bond over any Lien or encumbrance as required hereby within thirty (30) days of written notice of the existence thereof from Buyer, Buyer may, but shall not be obligated to, pay, discharge or obtain a bond, or security for such Lien or encumbrance and, upon such payment, discharge, or posting of security therefor, shall be entitled to promptly recover from Siemens the amount thereof together with the actual direct costs incurred by Buyer in connection with such payment or discharge, with such actual direct costs to be substantiated to the reasonable satisfaction of Siemens, or set off such amounts against any sums owed by Buyer pursuant to this Agreement to Siemens.

2.11 Compliance with Real Property Rights.

Siemens shall only be obligated to comply with the real property restrictions specifically identified in this Agreement. In the event that real property rights are identified after the Effective Date hereof and compliance with such real property rights is both technically feasible and commercially practicable, Siemens will comply with such real property rights and shall be entitled to an equitable adjustment in the Contract Price and Siemens' Work Schedule in accordance with Article 9 in connection therewith.

**ARTICLE 3  
SUBCONTRACTORS**

Buyer acknowledges that Siemens intends to have portions of the Work performed by Subcontractors qualified to perform such Work pursuant to written subcontracts between Siemens and such Subcontractors. No contractual relationship shall exist between Buyer and any Subcontractor with respect to the Work. Siemens shall not have any responsibility, duty or authority to direct, supervise or oversee any contractors of Buyer or their work or to provide the means, methods or sequence of their work or to stop their work. Siemens' Work and/or presence at a site shall not relieve Buyer's subcontractors of their responsibility to Buyer or to others. Siemens shall not be liable for the failure of Buyer's contractors or others to fulfill their responsibilities, and Buyer agrees to indemnify, hold harmless and defend Siemens against any claims arising out of such failures.

**ARTICLE 4  
CONTRACT PRICE AND PAYMENTS TO SIEMENS**

4.1 Contract Price and Payment.

The total Contract Price is as set forth and defined more specifically in the Proposal. Buyer shall pay the total Contract Price to Siemens in accordance with the Proposal. Each payment, except for the initial payment, shall be made by wire transfer, pursuant to wire transfer instructions to be provided by Siemens to Buyer, within thirty (30) days from the date of the Siemens invoice therefor or by such other payment method acceptable to Siemens.

The Contract Price is based upon Buyer performing its obligations set forth in this Agreement.

The Contract Price, schedule, warranty and guarantee obligations are based upon unrestricted working hours at, and free access seven (7) days a week, twenty-four (24) hours a day, to the Project Site, including free access to any components requiring assembly by Siemens as part of Siemens' scope of Work.

#### 4.2 Taxes.

The Contract Price does not include any Import Duties levied upon the Equipment or any federal, state, or local (other than net income taxes imposed on Siemens) property, license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment or their sale, their value or their use, or any Services performed in connection therewith. Buyer agrees to pay or reimburse Siemens for any such Import Duties and any such license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes, which Siemens or its Subcontractors are required to pay, including any property taxes incurred on inventory purchased by Siemens for the Project which are applicable as a result of any Project delay caused by Buyer.

Should Buyer be exempt from any sales and/or use taxes, it shall provide Siemens with valid exemption documentation upon the Effective Date of the Agreement for the state(s) in which the Delivery of the Equipment shall take place. Siemens shall not collect sales and/or use taxes from Buyer if Siemens is provided such valid exemption documentation for its files.

To the extent that Siemens is required by Applicable Laws to pay or collect from Buyer sales/use, value added or other similar transactional taxes, Siemens shall, at the time of their incurrence, invoice and collect the entire amount of such taxes due from Buyer and remit such amount to the applicable taxing authority as required by Applicable Laws. At the written request of Buyer and provided that a valid exemption certificate is provided to Siemens by Buyer, Siemens shall claim any and all applicable tax exemptions, credits or deductions relating to the Work available to itself or Buyer, including, but not limited to, any sale-for-resale exemption and any manufacturing machinery and/or equipment exemption.

At the written request and expense of Buyer, Siemens agrees to take such action as may be reasonably required to allow the Work, including the Equipment and any other property included within the applicable Project, to qualify for applicable exemption from sales and/or use taxes. In the event that an assessment for any such property, license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes is levied against Siemens for the Project, Siemens shall promptly notify Buyer and furnish to Buyer a copy of such assessment notification. If Buyer determines that the assessment should be contested and so notifies Siemens in writing and coordinates such contest with the Siemens Tax Department, Buyer may, at Buyer's sole cost and expense, file such documents as are necessary to contest such assessment. Buyer shall coordinate with the Siemens Tax Department, any such contest or other action regarding any such assessment, and Buyer shall pay any penalties or interest in respect thereof. Siemens shall cooperate with and assist Buyer, at Buyer's expense, in any such contest or other tax assessment proceeding.

Buyer shall remain liable for any such taxes that actually become due and shall indemnify and reimburse Siemens for any costs or expenses incurred by Siemens relating thereto, including the amount of such taxes, and any interest and penalties; provided that Buyer's indemnification and reimbursement obligations shall not cover amounts accrued or incurred by or levied upon Siemens due to Siemens' failure to timely submit exemption certificates properly provided by Buyer to the proper Governmental

Authority. Buyer shall not withhold any tax assessment reimbursements from Siemens while Buyer is contesting or otherwise challenging any such tax assessments.

#### 4.3 Disputed Invoices.

If there is any dispute about any amount invoiced by Siemens, the amount not in dispute shall be promptly paid and any disputed amount that is ultimately determined to have been payable shall be paid with interest calculated at the rate of one and one-half percent (1.5%) per month, limited by the maximum rate permitted by Applicable Law. The date of the original invoice on which there was a disputed amount, shall determine the date upon which the disputed amount first became due and payable, irrespective of whether any subsequent invoice is issued or reissued in connection with the resolution and payment of the disputed amount.

#### 4.4 Payment Dates.

Notwithstanding any provision to the contrary in this Article 4, in the event that a payment to be made under this Agreement falls due on any day that is not a Business Day, the payment shall be deemed due on the first (1st) Business Day thereafter.

### **ARTICLE 5 BUYER'S RESPONSIBILITIES**

Siemens' performance is contingent upon Buyer timely fulfilling all of its obligations under this Agreement. These obligations include the Buyer supplying all documents and approvals needed for Siemens to perform, including, but not limited to, technical information and data, drawing and document approvals, and necessary commercial documentation. Siemens may request a Scope Change Order for an equitable adjustment in prices and times for performance, as well as for any additional costs or any delay resulting from the failure of Buyer or Buyer's contractors, successors or assigns to meet these obligations.

At no cost to Siemens, Buyer shall provide the following:

#### 5.1 Project Site.

Buyer shall construct and maintain, subject to Siemens' approval, as applicable: the Project Site, roads and other necessary civil infrastructure, crane hardstandings and equipment lay-down and staging areas, including necessary repair, watering (dust control), dewatering, and snow and ice removal during the performance of the Work (the "Project Infrastructure"). Prior to the commencement of the Work at the Project Site and at any time during the performance of such Work, including during the Warranty Period, Siemens may inspect the Project Site to determine if the Project Site has been constructed in accordance with this Agreement, as it may have been modified by the final approved Project Infrastructure. If Siemens reasonably determines that Project Infrastructure deviates from the final approved Project Infrastructure, Siemens may require Buyer to correct such deviations prior to the commencement of the Work at the Project Site or otherwise suspend the Work at the Project Site until such deviations are corrected by Buyer. All delays in the performance of the Work and costs incurred by Siemens as a result of such suspension shall entitle Siemens to an equitable Scope Change Order in accordance with Section 9.2.

#### 5.2 Security for Equipment at the Project Site.

Buyer shall provide, at its cost, security for all components of the Work, materials, supplies and other equipment required to assemble, erect, install and Commission the Work and any other property owned or leased by Buyer, Siemens or any of its Subcontractors located at the Project Site.

#### 5.3 Storage of Spare Parts.

If purchased pursuant to this Agreement, Buyer shall, until the expiration of the Warranty Period: (i) store

the Spare Parts purchased by Buyer and supplied by Siemens under this Agreement in a suitable location at the Project Site at no cost or expense to Siemens, (ii) provide Siemens with reasonable access to such Spare Parts, and (iii) take all commercially reasonable steps to ensure that such Spare Parts are secure, undamaged and available to Siemens when needed.

#### 5.4 Effect of Buyer Delay or Non-performance.

Buyer shall perform those obligations required of Buyer as set forth in this Agreement and in the Proposal. Any delay by Buyer in completing its obligations shall be a Buyer Caused Delay, which shall entitle Siemens to a Scope Change Order pursuant to Article 9. When offloading of the Equipment from Delivery conveyances is in Buyer's scope, if Buyer fails to offload any of the Equipment from the Delivery conveyances within the time provided for in this Agreement, then Buyer shall reimburse Siemens for the applicable demurrage charges resulting therefrom and Siemens shall not be held responsible for any delays in Deliveries, including liquidated damages for late Delivery, resulting from Buyer's failure to timely offload Equipment, including components thereof, and other items supplied by Siemens. Any late payment by Buyer shall accrue interest at one and one-half percent (1.5%) per month, limited by the maximum rate permitted by Applicable Law. Siemens may suspend or terminate this Agreement for Buyer convenience if Buyer fails to pay within thirty (30) days of its receipt of Siemens' invoice.

#### 5.5 Permits, Licenses and Approvals.

Buyer shall obtain and maintain the Applicable Permits, licenses and approvals required to be obtained for the zoning and construction of the Project, including, but not limited to, all building permits, all Project Site permits required for the erection, installation, Commissioning, use and Substantial Completion of the Work, all permits, licenses and approvals necessary to move the construction equipment (including cranes, if applicable) and Delivery conveyances within the Project Site, and all permits, licenses and approvals otherwise necessary for the ownership, operation and maintenance of the Work and the Project (the "Buyer Permits"). Buyer shall promptly provide Siemens with copies of all Buyer Permits whose contents or requirements might impact the performance of the Work. Buyer shall assist Siemens in obtaining required visas, work permits and custom clearance for its or its Subcontractor's personnel and their equipment.

#### 5.6 Project Work Schedule.

For Siemens' information, Buyer shall provide Siemens with a written schedule showing all of the work being performed by or on behalf of Buyer for the Project and shall further provide Siemens with progress reports, in accordance with the agreed reporting schedule of actual progress of the work at the Project Site, showing in detail the progress to date and the then-current scheduling of all major elements of the work to be performed by or on behalf of Buyer for the Project, setting forth the dates by which work not being performed by Siemens, but nonetheless impacting Siemens' Work, are expected to be completed.

#### 5.7 Hazardous Materials.

Prior to any Work being conducted at the Project Site, Buyer shall: (a) identify to Siemens the presence, location and quantity of ACM at the Project Site; and (b) either certify that the work area associated with Siemens' scope of Work is free of ACM or take such action as may be required under Environmental Laws to abate the ACM and, thereafter, certify that the work area associated with Siemens' scope of Work is free of ACM. Siemens makes no representation that it is licensed to abate ACM and shall not be obligated to install, disturb, handle, or remove any ACM.

Further, Buyer represents and warrants that, prior to the execution of this Agreement, Buyer has notified Siemens in writing of any and all Hazardous Materials known to be present on the Project Site and has: (a) expressly identified the nature and location of such Hazardous Materials to Siemens, including the provision of a map identifying the same; and (b) provided a copy of any Project Site policies related to such pre-existing Hazardous Materials, including, without limitation, material safety data sheets, chemical hygiene plans, laboratory procedures, or other items covered or required to be disclosed or maintained

pursuant to applicable Environmental Laws.

Buyer shall also be responsible for the handling, storage, and disposal of all regulated Hazardous Materials at its expense. Buyer shall furnish Siemens with appropriate containers for regulated Hazardous Materials and shall designate a waste storage facility at the Project Site where such containers are to be placed by Siemens for removal and disposal by Buyer. Buyer shall handle, store, and dispose of regulated Hazardous Materials in accordance with all Environmental Laws.

In the event that any Hazardous Materials, including ACM, are encountered at the Project Site which are not the responsibility of Siemens under Section 2.9, Siemens shall immediately stop all Work in the affected area and Buyer shall promptly, in accordance with all applicable Environmental Laws and at its sole cost and expense, remove or render harmless, or take other actions as may be necessary to remediate the hazards associated with any such Hazardous Material, including, without limitation, signing and listing Buyer (or the appropriate Buyer Party) as the generator of the Hazardous Materials on any waste manifest that may be required by Environmental Laws. Siemens' Work in the affected area shall not be resumed until Buyer has complied with the foregoing obligations. Further, if the existence and remedying of such Hazardous Materials results in an increase in Siemens' costs and/or impacts Siemens' ability to meet its obligations, guarantees, or the Work Schedule under the Agreement, Siemens shall be entitled to a Scope Change Order in accordance with the applicable provisions of Article 9, increasing the Contract Price and providing an equitable extension of the Work Schedule and other provisions of the Agreement affected thereby or otherwise affected by Buyer's non-compliance, commensurate with the time reasonably required to overcome such delay and added cost, including without limitation, overtime charges for labor and equipment.

#### 5.8 Service and Maintenance Agreement.

Buyer and Siemens may elect to execute a Service and Maintenance Agreement for the Work under which Siemens shall provide the Maintenance Service for the Work ("Service and Maintenance Agreement"). The Maintenance and Service Agreement shall specify the price and payment terms for the services; the location(s) where the services are to be performed; Buyer's requirements; the equipment, materials, components and items of any kind for which Siemens is to provide services under the Service and Maintenance Agreement; and the warranty for the services being provided.

#### 5.9 Transportation Infrastructure and Access.

Buyer is responsible for having all necessary structural modifications, upgrades and/or repairs to public roads and other transportation infrastructure that may be required to permit the transport of the Equipment to the Project Site made and any other deviations from Siemens' requirements corrected prior to the commencement of, and during, the Delivery of the components of the Work to the Project Site. In addition, Buyer shall provide Siemens with all required legal and physical access to the Project Site, including obtaining and maintaining all private rights-of-way and private access rights, including the removal, lowering or raising of power lines and the safe passage over buried wires, cables and pipes.

#### 5.10 Buyer Documents.

Buyer shall submit to Siemens those Buyer Documents set forth in and in accordance with Buyers Documents Submission Schedule set forth as an exhibit to Attachment "A."

#### 5.11 Permanent Facilities.

When Buyer is required pursuant to Attachment "A" to provide a permanent facility, Buyer shall have the permanent Project Site facilities available at least thirty (30) days prior to the date required by the Work Schedule. These permanent facilities shall be substantially similar to the facilities diagrams set forth in this Agreement or an exhibit hereto. The permanent Project Site facilities shall also include the telecommunication requirements and services as specified in the Services and Maintenance Agreement,

or if no Services and Maintenance Agreement, in Attachment "A."

5.12 Temporary Facilities.

Buyer shall provide and maintain site electricity, water, sanitary facilities and a construction office, with data connections, phone connections and appropriate clean room.

5.13 Payments

Buyer shall pay all undisputed invoices within thirty (30) days of receipt of invoice from Siemens.

5.14 Single Point of Contact and Notification

Buyer shall designate a contact person with authority to act for the Buyer and respond in emergency situations. Buyer shall notify Siemens as soon as practicable, but in no event more that twenty-four (24) hours, after any change in Project Site conditions, approvals, permits or licenses which affect the Work. If such person cannot be reached, any request for Work received from an employee or agent of Buyer will be deemed authorized by Buyer.

5.15 Export Import Compliance.

Buyer acknowledges that Siemens is required to comply with applicable export / import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the Equipment, including any export / import license requirements. Buyer agrees that Equipment will not at any time directly or indirectly be used, exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export / import laws and regulations. Siemens' continuing performance hereunder is conditioned on compliance with such export / import laws and regulations at all times.

**ARTICLE 6**

**[See Attachment "A" if applicable]**

**ARTICLE 7**

**[See Attachment "A" if applicable]**

**ARTICLE 8**

**LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SIEMENS IS NOT LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

SIEMENS' MAXIMUM LIABILITY UNDER THIS AGREEMENT IS THE ACTUAL PURCHASE PRICE RECEIVED BY SIEMENS FOR THE EQUIPMENT THAT GAVE RISE TO THE CLAIM.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 8 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SIEMENS HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND

LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 8 EXTEND TO SIEMENS' AFFILIATES (AND THEIR EMPLOYEES), PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS OF ANY TIER (AND THEIR EMPLOYEES), AGENTS, AND SUCCESSORS AND ASSIGNS.

## **ARTICLE 9 CHANGES TO THE WORK**

- 9.1. Siemens shall deliver and/or perform the Work in accordance with the Applicable Laws in effect on the Effective Date.
- 9.2. No change will be made to the scope of Work unless Buyer and Siemens agree in writing to the change and any resulting price, schedule or other contractual modifications associated therewith ("Scope Change Order"). If any change to any law, rule, regulation, order, code, standard or requirement impacts Siemens' obligations or performance under this Agreement, Siemens may request a Scope Change Order for an equitable adjustment in the price and time of performance.

## **ARTICLE 10 WARRANTY**

### 10.1. Warranties.

Siemens warrants that: (i) the Equipment is free from defects in material and workmanship; (ii) the Equipment is in compliance with Siemens' specifications that are attached to, or expressly incorporated into this Agreement; and (iii) at the time of delivery, Siemens has title to the Equipment free and clear of liens and encumbrances (collectively, the "Warranties"). The Warranties do not apply to software furnished by Siemens. The sole and exclusive warranties for any software are set forth in the Software License/Warranty Addendum, if applicable.

### 10.2. Conditions to the Warranties.

The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Equipment other than by Siemens or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Equipment in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement; (iii) compliance with all generally accepted industry standards; (iv) Buyer discontinuing use of the Equipment after it has, or should have had, knowledge of any defect; (v) Buyer providing prompt written notice of any warranty claims within the Warranty Period described below; (vi) at Siemens' discretion, Buyer either removing and shipping the Equipment or non-conforming part thereof to Siemens, at Buyer's expense, or granting Siemens reasonable access to the Equipment to assess the warranty claims; (vii) Equipment not having been subjected to accident (including force majeure), alteration, abuse or misuse; (viii) Buyer not being in default of any payment obligation and (ix) Buyer allowing Siemens the opportunity to review the operating and maintenance records relating to the Equipment and the facility its incorporated into, if applicable.

### 10.3. Exclusions from Warranty Coverage.

The Warranties do not apply to any equipment not provided by Siemens under this Agreement.

Any Equipment that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Warranties and is provided to Buyer "as is" with no warranties of any kind. Normal wear and tear is excluded, including any expendable items that comprise part of the Equipment (such as fuses, light bulbs and lamps). Siemens does not warrant or guarantee that any Equipment will be secure from cyber threats, hacking or similar malicious activity. Equipment that is networked, connected to the



internet, or otherwise connected to computers or other devices must be appropriately protected by Buyer and/or end user against unauthorized access.

#### 10.4. Warranty Period.

Buyer must provide written notice of any claims for breach of Warranties by the earlier of twelve (12) months from initial operation of the Equipment or eighteen (18) months from shipment ("Warranty Period"). Additionally, absent written notice within the Warranty Period, any use or possession of the Equipment after expiration of the Warranty Period is conclusive evidence that the Warranties have been satisfied.

#### 10.5 Remedies.

Buyer's sole and exclusive remedies for breach of the Warranties are limited, at Siemens' discretion, to repair or replacement of the Equipment, or its non-conforming parts, within a reasonable time period, or refund of all or part of the purchase price applicable to the non-conforming part. The warranty on repaired or replaced parts is limited to the remainder of the original Warranty Period. Unless Siemens agrees otherwise in writing, Buyer will be responsible for any costs associated with: (i) gaining access to the Equipment; (ii) removal, disassembly, replacement, installation, or reinstallation of any equipment, materials or structures to permit Siemens to perform its warranty obligations; (iii) transportation to and from the Siemens factory or repair facility; and (iv) damage to equipment components or parts resulting in whole or in part from non-compliance by the Buyer with Section 10.2 hereof or from their deteriorated condition. All exchanged Equipment replaced under this Warranty will become the property of Siemens.

#### 10.6 Transferability.

The Warranties are only transferable during the Warranty Period and only to the Equipment's initial end-user.

10.7 THE WARRANTIES IN THIS ARTICLE 10 ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 8 ABOVE. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

### **ARTICLE 11** **DELAYS; EXCUSED PERFORMANCE**

#### 11.1 Change in Law and Buyer Caused Delay.

As the Work is performed, conditions may change or circumstances outside Siemens' reasonable control (including changes of Applicable Law) may develop which would require Siemens to expend additional costs, effort or time to complete the Work, in which case Siemens will notify Buyer and an equitable adjustment will be made to Siemens' Contract Price and Work Schedule pursuant to Article 9. In the event conditions or circumstances require the Work to be suspended or terminated, Siemens shall be compensated for Work performed and for costs reasonably incurred in connection with the suspension or termination.

#### 11.2 Force Majeure.

If Siemens' performance is delayed by any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, cyber-attacks, terrorist attacks, failure of normal sources of supply, or acts or inaction of government ("Force Majeure Event"), Siemens' time of performance will be extended by a period equal to the length of the delay plus any consequences of the delay and Siemens will get its reasonable costs for such extension of time pursuant to Article 9. Siemens will notify Buyer within a reasonable time after becoming aware of any such delay.

**ARTICLE 12**  
**INSURANCE**

**12.1 Siemens' Insurance Coverage.**

- (a) Siemens shall maintain in full force and effect the following insurance coverage and limits specified below commencing ten (10) days after Buyer's issuance of a Notice to Proceed and continuing until the Final Completion Date. Siemens shall provide Buyer applicable insurance certificates of such coverage prior to the shipment of any Equipment to the Project Site or the commencement of any Work at the Project Site. The required limits of insurance may be satisfied with any combination of primary and excess coverage.
- (b) Siemens or Siemens' insurance carrier shall endeavor to provide Buyer with thirty (30) Days' prior Notice of cancellation, termination or material alteration of any insurance coverage set forth in this Article 12. In addition, Siemens' insurance shall be maintained with insurance companies having an A.M. Best rating of "A-" or better and a financial size category of "VII" or higher (or a comparable rating by any other rating entity reasonably acceptable to Buyer and evidenced by Buyer's written confirmation, which acceptance shall not be unreasonably withheld). Siemens shall provide Buyer applicable insurance certificates of such coverage prior to Siemens' or its Subcontractor's commencement of any Work at the Project Site.
- (c) Siemens has the responsibility and obligation to procure and maintain the following insurance policies:
  - (i) Workers' Compensation Insurance in accordance with Applicable Laws and regulations applicable to the jurisdiction in which the Work is performed;
  - (ii) Employer's Liability Insurance with a limit of One Million Dollars (\$1,000,000) per accident, per employee for occupational disease, and in the aggregate for occupational disease;
  - (iii) Commercial General Liability Insurance with coverage written for bodily injury and broad form property damage on an "occurrence" basis with a limit of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate. This policy shall include blanket contractual coverage, railroad protective liability coverage, and coverage for premises, operations, explosion, collapse and underground (XCU) hazards, and products/completed operations. Siemens shall name Buyer as an additional insured to the extent bodily injury (including death) or third party property damage results from the negligent acts or omissions of Siemens or Siemens' Subcontractors and require that this policy contain a "separation of insureds" clause.

**12.2 Subcontractor's Insurance Coverage.**

Siemens shall require its Subcontractors performing Work at the Project Site to maintain the types, coverage and limits of insurance which are reasonable in accordance with prudent industry practice and commensurate with the Work to be performed by such Subcontractor.

**12.3 Buyer's Insurance Coverage.**

Buyer shall maintain in full force and effect the insurance coverage and limits specified below from the date of Siemens' or its Subcontractor's commencement of Work at the Project Site and continuing until the end of the Warranty Period. Buyer or Buyer's insurance carrier shall endeavor to provide Siemens with thirty (30) Days' prior Notice of cancellation, termination or material alteration of any insurance coverage set forth in this Article 12. In addition, Buyer's Insurance shall be maintained with insurance companies having an A.M. Best rating of "A-" or better and a financial size category of "VII" or higher (or a comparable rating by any other rating entity reasonably acceptable to Siemens and evidenced by Siemens' written confirmation, which acceptance shall not be unreasonably withheld). Buyer shall

provide Siemens applicable insurance certificates of such coverage prior to Siemens' or its Subcontractor's commencement of any Work at the Project Site. The required limits of insurance may be satisfied with any combination of primary and excess coverage.

- (a) Workers' Compensation Insurance in accordance with Applicable Laws and regulations applicable to the jurisdiction in which the Work is performed.
- (b) Employer's Liability Insurance with a limit of One Million Dollars (\$1,000,000) per accident, per employee for occupational disease, and in the aggregate for occupational disease;
- (c) Commercial General Liability Insurance with a limit of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate. This policy shall include blanket contractual coverage, railroad protective liability coverage, and coverage for premises, operations, explosion, collapse and underground (XCU) hazards, and products/completed operations. Buyer shall name Siemens and its Affiliates as additional insureds to the extent bodily injury (including death) or third party property damage results from the negligent acts or omissions of Buyer or Buyer's subcontractors. This policy shall contain a "separation of insureds" clause.
- (d) Builders' Risk Insurance coverage protecting all property and Equipment intended to be incorporated into the Work, in the course of construction and commissioning defined in the Work, on an "all-risk," replacement cost basis, with appropriate coverage sub-limits which are customary or otherwise required by the insurers, upon commencement of Work at the Project Site and continuing coverage and limits until the Final Completion Date. Buyer shall name Siemens, its Affiliates and Subcontractors as additional insureds. The Builders' Risk Insurance policy will include:
  - (i) property coverage for the Work at the Project Site, which insurance shall be written on a LEG 2/96 basis or better and include coverage for removal of debris and shall insure the buildings, structures, boiler and machinery, equipment, facilities, fixtures, rolling stock, electronic equipment and media and other properties constituting a part of the Work (whether above or below the surface of the ground) in an amount equal to the total constructed value; and
  - (ii) off-Project Site (local staging area) coverage for such property to insure values at risk, with appropriate sub-limits which are customary or otherwise required by the insurers; and

The Builder's Risk Insurance policy shall also provide that it is primary without right of contribution from any other insurance that might otherwise be available to an insured Party prior to the Final Completion Date.

- (e) Operating property insurance coverage protecting all property of Buyer at the Project Site (including Equipment supplied as part of the Work), on a primary, all-risk, replacement cost basis, commencing at the Final Completion Date. The operating property insurance policy shall be written on a LEG 2/96 basis or better and include coverage for removal of debris and shall insure the buildings, structures, boiler and machinery, equipment, facilities, fixtures, rolling stock, electronic equipment and media and other property of Buyer at the Project Site (whether above or below the surface of the ground) in an amount equal to the total constructed value. Buyer shall name Siemens, its Affiliates and Subcontractors as additional insureds.

12.4 Waiver of Rights. In regard to insurance maintained by either Party, including any property insurance, each such Party hereby waives, for itself and its insurers, all rights of recovery and subrogation which may arise against the other Party and its Affiliates as a result of a payment made by an insurer.

#### 12.5 Cooperation Between the Parties.

- (a) Each Party agrees to provide the other Party reasonable cooperation and assistance in the procurement of any property insurance required by the Agreement or otherwise to be procured in connection with the Work.
- (b) Siemens agrees to provide such reasonable assistance and documentation as Buyer may request in connection with claims Buyer may make under its property insurance policies purchased in connection with the facility for damage or events that occur after the Effective Date and prior to the expiration of the Warranty Period. Such assistance will be provided under the responsibility, and at the cost, of Buyer.
- (c) Notwithstanding Article 12.5(a) and Article 12.5(b), neither Party shall be required to provide confidential or proprietary information to a third party. If the disclosing Party agrees to provide such information, the third party shall first be required to execute a confidentiality agreement with the disclosing Party in a form reasonably acceptable to the disclosing Party.

### **ARTICLE 13** **TITLE AND RISK OF LOSS**

#### 13.1 Title to Equipment.

Siemens warrants that (i) legal title to and ownership of the Equipment (excluding, however, the Intellectual Property Rights) shall upon Delivery be free and clear of any and all Liens, claims, security interests or other encumbrances; and (ii) such Intellectual Property Rights shall be free and clear of any and all Liens, claims, security interests or other encumbrances that would in any way interfere with Buyer's use thereof that is permitted by this Agreement. Except as set forth in the next sentence, title to each component or Spare Part of the Equipment shall pass to Buyer on Delivery of such component or of such Spare Part and title to all Services performed by Siemens at the Project Site shall pass to Buyer upon performance thereof by Siemens, subject only to any Lien of Siemens that may arise under Applicable Laws that is not otherwise prohibited hereunder. Notwithstanding the foregoing or any other provision of this Agreement, the Intellectual Property Rights are not sold to Buyer and title thereto shall not be transferred to Buyer; rather, Siemens shall retain sole and exclusive title to the Intellectual Property Rights, and grants to Buyer a license to use the Intellectual Property Rights in accordance with the terms and conditions set forth in Section 13.2 and Article 18 of this Agreement.

#### 13.2 Title to Copies of Drawings.

Title to copies of drawings which are required to be provided to Buyer hereunder which are owned by Siemens shall be automatically transferred to Buyer when such copies of the drawings are provided to the Buyer by Siemens. However, title to the underlying Intellectual Property Rights contained in such drawings shall not be transferred to Buyer; rather, title to such Intellectual Property Rights shall be retained solely by Siemens or its licensor, and Siemens hereby grants Buyer, subject to the terms and conditions of this Agreement and timely payment of all undisputed amounts due hereunder, an irrevocable, royalty-free, non-exclusive license, subject to Buyer's ongoing compliance with this Section 13.2 and the confidentiality provisions of this Agreement, which authorizes Buyer to use and reproduce such drawings for the purpose of completing assembly, erection, Mechanical Completion and installation of the Equipment, or constructing, operating, maintaining and repairing the Equipment supplied under this Agreement; provided that (i) such drawings shall not be used to manufacture similar equipment (ii) any third parties who are permitted to access such drawings shall obtain such access solely for the authorized purposes in connection with the Project, and shall first agree to abide by the license and confidentiality restrictions set forth in this Section 13.2 and in Article 18. Any permitted Buyer or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 13.2. Buyer may retain the necessary number of copies of all such documents solely for purposes of construction, operation, maintenance and repair of the Units. Any costs to register such licenses in the location where the Project is being performed shall be paid by Buyer. Buyer and its permitted assignees shall not use the

Intellectual Property Rights referred to in this Section 13.2 for any purpose other than as expressly authorized herein.

### 13.3 Risk of Loss.

Irrespective of the passage of title as provided in Section 13.1, and except for loss or damage due to uninsurable events for which Buyer shall be responsible, Siemens shall bear the risk of loss and damage with respect to the Equipment, components of the Equipment, Spare Parts and all other materials, equipment and components to be supplied by Siemens, or that are within the care, custody and control of Siemens, wherever located, that have been or will be incorporated into the Work or Services, until Delivery of such Equipment, Spare Parts, other materials, equipment and components supplied by Siemens, Work or Services. Upon Delivery, risk of loss and damage pursuant to this Section 13.3 shall transfer to Buyer and Buyer shall assume full and exclusive custody and control of such components of the Unit and Spare Parts, other materials, equipment and components supplied by Siemens, and of all Work and Services; provided that Buyer's assumption of risk of loss and damage shall not obviate Siemens' obligations to correct any Warranty non-conformances in accordance with Article 10.

## **ARTICLE 14 DEFAULT, TERMINATION AND SUSPENSION**

### 14.1 Siemens Defaults.

The occurrence of any one or more of the following events shall constitute an event of default by Siemens hereunder (each, a "Siemens Event of Default"):

- (a) Siemens makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Laws and, in the case of any such involuntary proceeding, instituted against Siemens but not by Siemens, that is not dismissed or stayed within forty-five (45) days after it is commenced;
- (b) Siemens fails to make prompt payments required to be made by Siemens to Buyer under this Agreement, which failure continues for thirty (30) days after receipt of written notice of such non-payment from Buyer;
- (c) Siemens has made a material misrepresentation under the Agreement that is likely to have a material adverse effect on its ability to perform its obligations hereunder and such representation is not made true within thirty (30) days after receipt of written notice thereof from Buyer; or
- (d) Siemens is otherwise in material default of any provision of this Agreement or has materially failed to perform its obligations under this Agreement; provided that if such material default of this Agreement or material failure to perform this Agreement can be cured within a commercially reasonable timeframe, Siemens shall be permitted such period of time within which to accomplish such cure, so long as Siemens commences such cure efforts within thirty (30) days after written notice from Buyer and thereafter diligently proceeds to complete such cure within such time period.

Upon the occurrence and during the continuation of any Siemens Event of Default hereunder, Buyer, in addition to its right to pursue any other remedy given under the Agreement, shall have the right to terminate this Agreement upon not less than five (5) days prior written notice to Siemens (a "Termination for Cause"); A Termination for Cause shall be effective upon the sixth day following delivery of Buyer's notice with respect thereto. Subject to the provisions of Section 14.5.2, in the event of a termination by Buyer under this Section 14.1, Buyer may employ any other Person, other than employees of Siemens or its Affiliates, to complete the Work by whatever reasonable method that Buyer may deem necessary. Buyer shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement suppliers and contractors, determine the total cost (including such other contractors'

fees) to Buyer for completing the Work, including all sums previously paid or then owed to Siemens pursuant to the Agreement. In contracting with such replacement suppliers and contractors, Buyer shall, to the extent practicable, cause the Work to be completed in accordance with this Agreement and shall employ reasonable efforts to mitigate the costs incurred in connection with completion of the Work. If the sum of the Contract Price and the maximum liquidated damages assessed are less than the sum of (i) the direct costs incurred by Buyer to complete the Work, (ii) all other direct damages suffered by Buyer as a result of the Siemens Event of Default, and (iii) all amounts previously paid to Siemens pursuant to this Agreement, Siemens shall, subject to and not to exceed the limitations upon Siemens' liability set forth in Article 8, pay to Buyer within thirty (30) days following receipt of an original invoice therefor the amount of such difference. Any amount owed by Buyer to Siemens for the level of completion of the Work achieved by Siemens prior to Buyer's termination under this Section 14.1 shall be retained by Buyer until after completion of the Work and applied by Buyer to pay any amounts and damages owed by Siemens pursuant to this Section 14.1. Any excess shall be remitted to Siemens within thirty (30) days after the Work is finally completed. If the Agreement is terminated by Buyer pursuant to this Section 14.1, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate. For the avoidance of doubt, Buyer understands and agrees that if Buyer terminates this Agreement pursuant to this Section 14.1, the foregoing is Buyer's exclusive remedy for such termination.

If termination occurs under this Section 14.1 prior to Delivery of the Work, then within thirty (30) days from the effective date of such termination, Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement) or (b) certify in writing to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

#### 14.2 Buyer Default.

The occurrence of any one or more of the following events shall constitute an event of default by Buyer hereunder (each, a "Buyer Event of Default"):

- (a) Buyer's failure to pay to Siemens any required payment, which failure continues for ten (10) days after receipt of written notice of the failure to make the payment has been received by Buyer from Siemens;
- (b) Buyer makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Laws and, in the case of any such involuntary proceeding, instituted against Buyer but not by Buyer, that is not dismissed or stayed within forty-five (45) days after it is commenced;
- (c) Buyer has made a material misrepresentation under the Agreement that is likely to have a material adverse effect on its ability to perform its obligations hereunder and such representation is not made true within fifteen (15) Business Days after receipt of written notice thereof from Siemens;
- (d) Any of the financing parties terminates its financing arrangements with Buyer or any Buyer Affiliate for the Project; or
- (e) Buyer is otherwise in material default of any provision of this Agreement or has materially failed to perform its obligations under this Agreement; provided that if such material default of this Agreement or material failure to perform this Agreement can be cured within a commercially reasonable timeframe, Buyer shall be permitted such period of time within which to accomplish such cure, so long as Buyer commences such cure efforts within fifteen (15) days after notice from Siemens and thereafter diligently proceeds to complete such cure within such time period.

Upon the occurrence and during the continuation of a Buyer Event of Default, Siemens, in addition to its

right to pursue any other remedy given under the Agreement, shall have the right to terminate this Agreement upon not less than five (5) days prior written notice to Buyer. In the event of such termination by Siemens, Siemens shall be entitled to either (a) payment of the sum set forth in the termination payment schedule if applicable or (b) the Contract Price less any savings, and any additional cost and expenses incurred by Siemens due to such termination (the "Default Termination Payment"). Siemens shall submit an invoice to Buyer for the Default Termination Payment, including supporting documentation for the damages and other amounts due and owing to Siemens prior to the termination and the costs incurred by Siemens in effectuating the termination, and Buyer shall pay such invoice by wire transfer within thirty (30) days after the date of such invoice. All payments of the Contract Price made by Buyer and received by Siemens prior to the effective date of termination shall be credited toward the Default Termination Payment. Without limiting Siemens' other rights herein, Siemens may, in lieu of such termination, suspend its performance of the Work after such five (5) day period. In such event, Buyer shall be responsible for all costs incurred by Siemens as a result of such suspension plus reasonable profit thereon. If the Agreement is terminated by Siemens pursuant to this Section 14.2, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate.

Within thirty (30) days from the effective date of such termination, Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement) or (b) certify to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

#### 14.3 Termination for Buyer's Convenience.

In addition to any other termination rights available to Buyer under this Agreement, Buyer shall have the right to terminate the Delivery of Work in the event that Buyer terminates the construction of the Project due to the economic unfeasibility of the Project for Buyer upon fifteen (15) days prior written notice to Siemens. Buyer shall pay Siemens either (a) the sum set forth in the termination payment schedule if applicable or (b) that portion of the Contract Price reflecting the amount of Work performed, man hours expended and materials acquired at the date of termination. These charges will also include the expenses associated with the termination, including, but not limited to, any additional expense incurred by reason of termination or cancellation of agreements between Siemens and its suppliers and Subcontractors, and any applicable cost allocated in contemplation of performance (the "Convenience Termination Payment"). All payments of the Contract Price made by Buyer and received by Siemens prior to the date of termination shall be credited toward the Convenience Termination Payment. Siemens shall submit an invoice to Buyer for the Convenience Termination Payment and Buyer shall pay such invoice by wire transfer within thirty (30) days after the date of such invoice. If the Agreement is terminated by Buyer pursuant to this Section 14.3, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate.

Within thirty (30) days from the effective date of such termination, Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement) or (b) certify to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

#### 14.4 Termination Due to Force Majeure Event.

If Siemens is entirely prevented from performing the Work for a time period of one hundred eighty (180) aggregate days as a result of the occurrence of a Force Majeure Event suffered by Siemens, then either Party may terminate this Agreement with respect to the Work that has not been erected by the effective date of such termination at no cost or penalty, other than Buyer's obligation to pay Siemens either (a) the sum set forth in the termination payment schedule if applicable or (b) that portion of the Contract Price reflecting the amount of work performed, man hours expended and materials acquired at the date of termination. These charges will also include the expenses associated with the termination, including, but not limited to, any additional expense incurred by reason of termination or cancellation of agreements between Siemens and its suppliers, and any applicable cost allocated in contemplation of performance; provided, however, that nothing in this Section 14.4 shall relieve or excuse either Party from its

obligations under Article 11 in respect of the occurrence of a Force Majeure Event. If the Agreement is terminated pursuant to this Section 14.4, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate.

Within thirty (30) days from the effective date of such termination, Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement) or (b) certify to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

#### 14.5 Actions Required Following Termination.

##### 14.5.1 Discontinuation of Work.

Upon termination of this Agreement, Siemens shall promptly discontinue the Work and take such steps as are reasonably necessary to preserve and protect any Work completed and in progress at the Project Site, and then remove its personnel and equipment from the Project Site, and for a termination for a Siemens Event of Default, Buyer shall be entitled to take exclusive possession of the Work Delivered or en route to the Project Site; provided, however, that if the cause of the termination is other than due to a Siemens Event of Default, Buyer shall pay on Siemens' demand made from time to time all amounts reasonably requested by Siemens to cover Siemens' costs incurred in performing Siemens' obligations pursuant to this Section 14.5.1.

##### 14.5.2 Cancellation and Transfer of Subcontracts and Other Rights.

Upon termination of this Agreement by Buyer pursuant to Section 14.1, if requested by Buyer, Siemens shall use reasonable efforts to (a) deliver and assign to Buyer any and all Subcontracts made by Siemens in performance of the Work and provide to Buyer (without charge) all rights, if any, it has obtained from Subcontractors to use patented or proprietary materials in completing, operating and maintaining the Work. Except as provided herein, no action taken by Buyer or Siemens after the termination of this Agreement shall prejudice any other rights or remedies of Buyer or Siemens provided by this Agreement upon such termination.

### **ARTICLE 15** **INDEMNITIES**

#### 15.1 Mutual Indemnity.

Siemens and Buyer (each as an "Indemnitor") shall indemnify the other ("Indemnitee") from and against all third party claims alleging bodily injury, death or damage to a third party's tangible property, but only to the extent caused by the Indemnitor's negligent acts or omissions. If the injury or damage is caused by the parties' joint or contributory negligence, the loss and/or expenses shall be borne by each party in proportion to its degree of fault. No part of the Equipment(s) or Buyer's Project Site is considered third party property.

Indemnitee shall provide the Indemnitor with prompt written notice of and shall not acknowledge any third party claims covered by this Article 15. Indemnitor has the unrestricted right to select and hire counsel and the exclusive right to conduct the legal defense and/or settle the claim on the Indemnitee's behalf. The Indemnitee shall not make any admission(s) which might be prejudicial to the Indemnitor and shall not enter into a settlement without the express permission of the Indemnitor.

#### 15.2 Buyer's Environmental Release and Indemnity.

Buyer, on behalf of itself, all Buyer Parties, and the predecessors and successors in interest, insurers, and assigns of each of them, shall defend, release, indemnify and hold harmless Siemens, all Siemens Parties, and the successors and assigns of each of them (each, an Indemnitee under this Section 15.2) from and against any and all liability arising under Environmental Laws or as a result of any Hazardous



Materials at or any environmental condition of the Project Site, except to the extent for which Siemens is responsible under Section 2.7, including, without limitation, fines and penalties, reasonable fees for attorneys, consultants or other professionals, and the costs of reporting, investigation, monitoring, containment, cleanup, storage, disposal, transportation and any other remedial actions arising under applicable Environmental Laws that are incurred by any Indemnitee hereunder for and as a result of: (i) death or bodily injury to any person, (ii) destruction or damage to any property, (iii) contamination of or adverse effects on the environment, including a Release of any kind, (iv) any violation by Buyer or any Buyer Party of Environmental Laws, and/or (v) a breach by Buyer or any Buyer Party of any legal duty arising under applicable Environmental Laws or any obligations under the environmental provisions of this Agreement. This release and indemnity shall survive the termination or expiration of this Agreement and shall be construed as broadly as possible under applicable Environmental Laws.

## **ARTICLE 16 REPRESENTATIONS**

### **16.1 Siemens Representations.**

Siemens represents that on the Effective Date:

#### **16.1.1 Organization.**

It is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in the jurisdictions in which the nature of the business conducted by it as pertains to or has bearing upon its performance of this Agreement makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

#### **16.1.2 No Violation of Law; Litigation.**

It is not in violation of any Applicable Laws or judgment entered by any Governmental Authority which violations, individually or in the aggregate, would materially and adversely affect its performance of any of its obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority now pending or (to the best knowledge of Siemens) threatened against Siemens which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of Siemens to perform under this Agreement.

#### **16.1.3 Permits.**

It is or will be prior to performing any Work on the Project Site the holder of the governmental consents, Siemens Permits or other authorizations required in Siemens' name to permit it to perform the Work and operate or conduct its business now and as contemplated by this Agreement.

#### **16.1.4 No Breach.**

None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof and thereof shall conflict with or result in a breach of, or require any consent under, the charter or by-laws of Siemens, or any Applicable Laws or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Siemens is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

#### **16.1.5 Corporate Action.**

It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Siemens of this Agreement have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by Siemens and constitutes the legal, valid and binding obligation of Siemens enforceable in accordance with its

terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

## 16.2 Buyer's Representations

Buyer represents that on the Effective Date:

### 16.2.1 Organization.

It is as identified in the Proposal and is a duly organized, validly existing and in good standing under the laws of the State or Commonwealth identified in the Proposal, and is qualified to do business in all jurisdictions in which the nature of the business conducted by it as pertains to or has bearing upon its performance of this Agreement makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

### 16.2.2 No Violation of Law; Litigation.

It is not in violation of any Applicable Laws or judgment entered by any Governmental Authority which violations, individually or in the aggregate, would materially and adversely affect its performance of any of its obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority now pending or (to the best knowledge of Buyer) threatened against Buyer which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of Buyer to perform under this Agreement.

### 16.2.3 No Breach.

None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof and thereof shall conflict with or result in a breach of, or require any consent under, the governing documents of Buyer, or any Applicable Laws or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Buyer is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

### 16.2.4 Corporate Action.

It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

### 16.2.5 Permits.

It is or will be prior to the commencement of performance of any Work by Siemens on the Project Site the holder of all governmental consents, Buyer Permits or other authorizations required to permit it to undertake and operate its business and the Project as contemplated by this Agreement.

### 16.2.6 Nuclear.

Unless expressly authorized in writing by Siemens, the Equipment must not be used in or in connection with a nuclear facility or application. If Buyer uses any Equipment in connection with any nuclear facility or activity, it does so at its own risk and Buyer will indemnify, defend and hold Siemens harmless, and waives and will require its insurers to waive all right of recovery against Siemens for any damage, loss, destruction, injury or

death resulting from a "nuclear incident," as defined in the Atomic Energy Act of 1954, as amended, whether or not due to Siemens' negligence. Siemens' consent to Buyer's use of the Equipment in connection with any nuclear facility or application will be subject to additional terms and conditions that Siemens deems necessary to protect its interests.

#### **ARTICLE 17**

#### **PATENT AND COPYRIGHT INFRINGEMENT**

Siemens will, at its option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any Equipment or use thereof for its intended purpose constitutes an infringement of any Patent Cooperation Treaty country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Equipment is delivered by Siemens. Buyer will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Buyer shall not acknowledge any such third party proceedings defined under this Article 17. Siemens shall have the full and exclusive authority to defend and settle such claim(s) and will pay the damages and costs awarded in any suit or proceeding so defended. Buyer shall not make any admission(s) which might be prejudicial to Siemens and shall not enter into a settlement without Siemens' consent. Siemens is not responsible for any settlement made without its prior written consent. If the Equipment, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Siemens will, at its option and expense, either: (i) procure for Buyer the right to continue using said Equipment; (ii) replace it with substantially equivalent non-infringing Equipment; or (iii) modify the Equipment so it is non-infringing.

Siemens will have no duty or obligation under this Article 17 if the Equipment is: (i) supplied according to Buyer's design or instructions and compliance therewith has caused Siemens to deviate from its normal course of performance; (ii) modified by Buyer or its contractors after delivery; or (iii) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer must protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under this Article 17.

THIS ARTICLE 17 IS AN EXCLUSIVE STATEMENT OF SIEMENS' DUTIES AND BUYER'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

#### **ARTICLE 18**

#### **CONFIDENTIALITY**

(a) Both during and for a period of ten (10) years after the term of this Agreement, the parties will: (i) treat as confidential all information obtained from the disclosing party, (ii) use such confidential information for its intended purpose only, and (iii) all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, manufacturing schedule information, technical data, drawings, flow charts, program listings, software, plans and projections. Neither party may disclose or refer to the work to be performed under this Agreement in any manner that identifies the other party without advance written permission. However, Siemens has the right to share confidential information with its Affiliates and subcontractors, provided those recipients are subject to the same confidentiality obligations set forth herein.

(b) Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was previously known to the receiving party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are in the possession of the receiving party upon the date of this Agreement; (iv) was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's confidential information; or (v) is required to

be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, provided that the party required to disclose by law will promptly advise the originating party of any requirement to make such disclosure to allow the originating party the opportunity to obtain a protective order and assist the originating party in so doing.

## **ARTICLE 19** **MISCELLANEOUS PROVISIONS**

### **19.1 Entire Agreement.**

This agreement, including Attachment "A" and all Exhibits thereto (the "Agreement") contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and/or contemporaneous agreements and commitments with respect thereto. There are no other understandings, oral or written, nor other terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement. Any modification to the Agreement must be in writing and executed by both Parties.

### **19.2 Applicable Law and Jurisdiction.**

This Agreement is governed by and construed in accordance with the laws of the State or Commonwealth where the Project Site is located, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BOTH SIEMENS AND BUYER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT. Each party agrees that claims and disputes arising out of this Agreement must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which either Buyer or Siemens maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

### **19.3 Notice.**

All notices, reports, demands, claims, elections, requests and other official communications required or permitted by this Agreement or by law to be served upon or given to a Party by the other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given to and received by the other Party when delivered by first class registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized courier, in each case addressed to those respective representatives of each Party as identified in the Proposal.

The Parties, by like notice in writing, may designate, from time to time, another address, addressee or office to which notices shall be delivered pursuant to this Agreement, which change of address shall become effective five (5) Business Days after delivery of such Notice.

### **19.4 No Rights in Third Parties.**

Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other Person, except as specifically provided herein with respect to Subcontractors.

### **19.5 Compliance with Laws.**

The Parties agree to comply with all Applicable Laws, including but not limited to those relating to the manufacture, purchase, resale, exportation, transfer, assignment or use of the Equipment.

#### 19.6 Conflicting Provisions.

In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (1) Duly authorized and executed Scope Change Orders and written amendments to the Agreement executed by both Parties, with the latest ones having precedence over the earlier ones;
- (2) This Agreement including Attachment "A" as equal priority; and
- (3) The Exhibits to this Agreement or Attachment "A."

Any differing or additional terms and conditions in any purchase order or other document are of no force and effect unless specifically accepted in writing by the Parties. Siemens' failure to object to any such additional, different or conflicting terms does not operate as a waiver of the terms of this Agreement.

#### 19.7 Right of Waiver.

Each Party, in its sole discretion, shall have the right, but shall have no obligation, to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however, that such waiver is in writing. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

#### 19.8 No Partnership Created.

Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Siemens and Buyer.

#### 19.9 Captions; Shortened Names for Convenience.

The captions contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein. Similarly, the references to "Buyer" and "Siemens" in this Agreement are shorthand used for convenience only.

#### 19.10 Counterparts and Facsimile Execution.

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties, with all such counterparts together constituting but one and the same instrument. Facsimile or electronic pdf signatures of the Parties shall be deemed to constitute original signatures, and executed facsimile copies hereof shall be deemed to constitute duplicate originals.

#### 19.11 Joint Effort.

Preparation of the Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Each Party represents that it has obtained the professional advice (including legal, tax and accounting advice on Applicable Laws and regulations) as it has deemed appropriate or convenient.

#### 19.12 Appendixes.

All appendixes, attachments, or exhibits referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

#### 19.13 Rules of Interpretation.

In the interpretation of the Agreement, unless the context specifically otherwise requires, the following rules shall apply:

- (a) words importing persons shall include firms and corporations and vice versa;
- (b) words importing the singular shall include the plural and vice versa;
- (c) the headings to the Articles or Sections are for convenience only and do not affect the interpretation of the Agreement; and
- (d) all references to documents or other instruments include all amendments and replacements thereof and supplements thereto, to the extent such amendments, replacements and supplements have been incorporated into the Agreement by means of a Scope Change Order.

#### 19.14 Communications.

Unless otherwise specified, wherever provision is made for the giving or issue of any notification, instruction, consent, approval, certificate or determination by any person, such communication shall be made in the form of a notice. The word "notify" and "notification" shall be construed accordingly.

#### 19.15 Hiring.

If, during or within ninety (90) days after the term of this Agreement, Buyer engages any Siemens employee who has performed work under this or any other agreement between Buyer and Siemens, Buyer shall pay Siemens an amount equal to the employee's latest annual salary.

#### 19.16 Non-waiver of Default.

Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Buyer, Siemens may decline to make further shipments. If Siemens elects to continue to make shipments, Siemens' actions shall not constitute a waiver of any default by Buyer or in any way affect Siemens' legal remedies for any such default. Any waiver of Siemens to require strict compliance with the provisions of this contract shall be in writing and any failure of Siemens to require such strict compliance shall not be deemed a waiver of Siemens' right to insist upon strict compliance thereafter.

#### 19.17 Non-Waiver.

Any waiver by a party of strict compliance with this Agreement must be in writing, and any failure by the parties to require strict compliance in one instance will not waive its right to insist on strict compliance thereafter.

#### 19.18 Modification of Terms.

This Agreement may only be modified by a written instrument signed by authorized representatives of both parties.

#### 19.19 Assignment.

Neither party may assign all or part of this Agreement, or any rights or obligations under this Agreement, without the prior written consent of the other; but either party may assign its rights and obligations, without recourse or consent, to any parent, wholly owned subsidiary, or affiliate or affiliate's successor organization (whether as a result of reorganization, restructuring or sale of substantially all of a party's assets). However, Buyer shall not assign this Agreement to: a competitor of Siemens; an entity in litigation with Siemens; or an entity lacking the financial capability to satisfy Buyer's obligations. Any assignee expressly assumes the

performance of any obligation assigned. Siemens may grant a security interest in this Agreement and/or assign proceeds of this Agreement without Buyer's consent.

19.20 Severability.

If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the parties' original intent.

19.21 Survival.

The articles titled "Patent and Copyright Infringement," "Limitation of Liability," "Confidentiality," "Title and Risk of Loss," "Indemnities," "Export / Import Compliance," and "Nuclear" survive termination, expiration or cancellation of this Agreement.

**EXHIBIT "B"**  
**COMPENSATION**

**Sell Price**

DESCRIPTION	SELL PRICE
Labor	\$34,954.00
Material	\$75,397.60
<b>Total</b>	<b>\$110,351.60</b>



**EXHIBIT "C"**

**KEY PERSONNEL**

**Authorized Signer for your organization**

Name: Julie Slick Title: Sales Manager

Email: julie.slick@siemens.com Phone: (714) 331-5860

The person identified here must have proper authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer.

**Who prepared your RFP response?**

Name: Vincent Makuch Title: Sr. Account Executive

Email: vincent.makuch@siemens.com Phone: (657) 465-0743

**Who is your company's primary contact person for this proposal?**

Name: Vincent Makuch Title: Sr. Account Executive

Email: vincent.makuch@siemens.com Phone: (657) 465-0743

<b>Siemens Industry, Inc.</b> Division: Building Technologies	<i>BT Delegation of Signature Authority Form</i> George Burck  Form Governance Office	Document Number: C04_99_FM0121 Page: 1 of 3
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## BT Delegation of Signature Authority Form

Status: Published

Version: 1.1

Date: 05 December 2014

**Author(s):**

George Burck

Version	Date	Author	Description of Change
1.0	10/03/2011	George Burck	Initial version
1.1	12/05/2014	George Burck	Added sections for "Valid Until Date", "Transaction Value" and "Type of Document".

Restricted

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**DELEGATION OF SIGNATURE AUTHORITY FORM  
SIEMENS INDUSTRY, INC.  
BUILDING TECHNOLOGIES DIVISION**

I, Jenny Fuss, Pacific Zone FBA on behalf of **Siemens Industry, Inc. (SII)**, for its Building Technologies Division (and as of April 1<sup>st</sup>, 2019: Smart Infrastructure), by the authority vested in me as Pacific Zone FBA to sign or countersign and otherwise execute in the name, or on behalf of the SII Building Technologies Division, the documents listed below for and on behalf of the SII Building Technologies Division, do hereby delegate to and acknowledge that the following person(s) may exercise such authority for and on my behalf.

**Name(s) / Title(s):**

*Miriam Borrelli – Branch FBA for branches: San Francisco and Sacramento*

*Abbas Kazmi – Branch FBA for branches: Anchorage (incl. Hawaii), Seattle and Portland*

*Dirk Glaser – Branch FBA for branches: Los Angeles, San Diego and PC Pacific BPS*

**Valid Until:** September 30, 2020

**Transactional Limit:** \$999,999.99

*(Cannot exceed the transaction limit assigned to the person making the delegation)*

**Type of document (indicate with an “x” all documents covered under this delegation):**

Project Bids / Proposals:	<u>          x          </u>
Customer Contracts / Agreements:	<u>          x          </u>
Project Certificates / Affidavits:	<u>          x          </u>
Releases and Waiver of Liens/ Bonds:	<u>          x          </u>

**Any releases, compromises or settlements in connection with claims or disputes arising out of any such transactions above < \$1'0M**

**Other (state the document):** **Bookings according to LoA booking approval matrix up to \$3'5M**  
[https://documentcenter.apps-ishare.usa.siemens.com/Published%20Documents/BT\\_TurboSales\\_Booking\\_Approvals\\_Matrix.pdf#search=Booking%20approval](https://documentcenter.apps-ishare.usa.siemens.com/Published%20Documents/BT_TurboSales_Booking_Approvals_Matrix.pdf#search=Booking%20approval)

**LoA (Limit of Authority) is BRC3 which is up to EUR 1'0M**

I further designate and acknowledge that the signature(s) of the person(s) delegated above is (are) binding upon the SII Building Technologies Division in the above identified circumstances and shall have the same force and effect as would my signature.

Effective Date: February 11, 2019

**Fuss Jenny**  
Digitally signed by Fuss Jenny  
DN: cn=Fuss Jenny, o=Siemens,  
email=jenny.fuss@siemens.com  
Reason: Zone FBA Pacific  
Date: 2019.02.11 18:08:27 -08'00'

---

Signature  
**Jenny FUss**  
**Zone FBA**

*The person making the delegation is responsible for retaining a copy of the document delegating their authority for future reference. In addition, it is the responsibility of the FBA within that area of responsibility to maintain records of the "Fixed or Temporary Delegations to a Deputy" within their organization. For example, the Business Unit/Business Line/Location FBA is responsible for documenting the delegations assigned within their Business Unit/Business Line/Location. The Business Unit/Business Line/Location/HQ FBA's are responsible for maintaining records for fixed delegations within their organizations and filing the original with the Legal Department.*

*Signature authority cannot be delegated to a non-employee of Siemens. Delegations are automatically void when the employee leaves the organizational unit concerned or changes to a different field of responsibility from the one for which the authorization was granted. In such a case, the employee's disciplinary superior is responsible for the prompt deletion of authorizations. If a delegation is wilfully misused, it must be immediately withdrawn.*

**DELEGATION OF SIGNATURE AUTHORITY FORM  
SIEMENS INDUSTRY, INC.  
BUILDING TECHNOLOGIES DIVISION**

I **Andrew Krynen**, on behalf of **Siemens Industry, Inc. (SII)**, for its **Building Technologies Division**, by virtue of the authority vested in me as **Pacific Zone Vice President** to sign or countersign and otherwise execute in the name, or on behalf of the SII Building Technologies Division, the documents listed below for and on behalf of the SII Building Technologies Division, do hereby delegate to and acknowledge that the following person(s) may exercise such authority for and on my behalf.

**Effective Date:** October 15<sup>th</sup>, 2016

**Name(s) / Title(s):**

Eric Ackerman, Los Angeles Branch General Manager  
Devin Ernst, San Diego Branch General Manager  
Larry Hillman, San Francisco Branch General Manager  
Brian Klee, Sacramento Branch General Manager  
Dan Holmes, Portland Branch General Manager  
Craig Engelbrecht, Seattle Branch General Manager  
Leverette Hoover, Alaska General Manager

**Valid Until:** *Fixed Delegation*

**Transactional Limit:** \$1,000,000

*(Cannot exceed the transaction limit assigned to the person making the delegation)*

**Type of document (indicate with an "x" all documents covered under this delegation):**

<b>Project Bids / Proposals:</b>	<u>    X    </u>
<b>Customer Contracts / Agreements:</b>	<u>    X    </u>
<b>Project Certificates / Affidavits:</b>	<u>    X    </u>
<b>Releases and Waiver of Liens:</b>	<u>    X    </u>
<b>Other (state the document):</b>	_____

I further designate and acknowledge that the signature(s) of the person(s) delegated above is (are) binding upon the SII Building Technologies Division in the above identified circumstances and shall have the same force and effect as would my signature.

*Andrew Krynen*

\_\_\_\_\_  
Signature

*The person making the delegation is responsible for retaining a copy of the document delegating their authority for future reference. In addition, it is the responsibility of the FBA within that area of responsibility to maintain records of the "Fixed or Temporary Delegations to a Deputy" within their organization. For example, the Business Unit/Business Line/Location FBA is responsible for documenting the delegations assigned within their Business Unit/Business Line/Location. The Business Unit/Business Line/Location/HQ FBA's are responsible for maintaining records for fixed delegations within their organizations and filing the original with the Legal Department.*

*Signature authority cannot be delegated to a non-employee of Siemens. Delegations are automatically void when the employee leaves the organizational unit concerned or changes to a different field of responsibility from the one for which the authorization was granted. In such a case, the employee's disciplinary superior is responsible for the prompt deletion of authorizations. If a delegation is wilfully misused, it must be immediately withdrawn.*

**DELEGATION OF SIGNATURE AUTHORITY FORM  
SIEMENS INDUSTRY, INC.  
BUILDING TECHNOLOGIES DIVISION**

I, **Eric Ackermann**, on behalf of **Siemens Industry, Inc. (SII)**, for its **Building Technologies Division**, by virtue of the authority vested in me as **Los Angeles Branch Manager** to sign or countersign and otherwise execute in the name, or on behalf of the SII Building Technologies Division, the documents listed below for and on behalf of the SII Building Technologies Division, do hereby delegate to and acknowledge that the following person(s) may exercise such authority for and on my behalf.

**Effective Date: June 11<sup>th</sup>, 2018**

**Name(s) / Title(s):**

William Romano: Sales Manager  
Julie Slick: Sales Manager  
Greg Sippell: Sales Manager  
Virginia Tingle: Sales Manager

**Valid Until:** *Fixed Delegation*

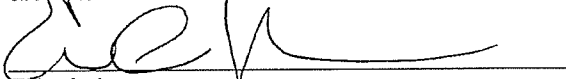
**Transactional Limit: \$1,000,000**

*(Cannot exceed the transaction limit assigned to the person making the delegation)*

**Type of document (indicate with an "x" all documents covered under this delegation):**

**Project Bids / Proposals: X**  
**Customer Contracts / Agreements: X**  
**Project Certificates / Affidavits: X**

I further designate and acknowledge that the signature(s) of the person(s) delegated above is (are) binding upon the SII Building Technologies Division in the above identified circumstances and shall have the same force and effect as would my signature.

  
Eric Ackermann  
Branch Manager – Los Angeles

*The person making the delegation is responsible for retaining a copy of the document delegating their authority for future reference. In addition, it is the responsibility of the FBA within that area of responsibility to maintain records of the "Fixed or Temporary Delegations to a Deputy" within their organization. For example, the Business Unit/Business Line/Location FBA is responsible for documenting the delegations assigned within their Business Unit/Business Line/Location. The Business Unit/Business Line/Location/HQ FBA's are responsible for maintaining records for fixed delegations within their organizations and filing the original with the Legal Department. Signature authority cannot be delegated to a non-employee of Siemens. Delegations are automatically void when the employee leaves the organizational unit concerned or changes to a different field of responsibility from the one for which the authorization was granted. In such a case, the employee's disciplinary superior is responsible for the prompt deletion of authorizations. If a delegation is wilfully misused, it must be immediately withdrawn.*