




ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

July 8, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: Leonard F. Kowalski, Executive Engineer 

Subject: Contract ROB-008
Preventive Maintenance Checks for 15 Robicon Drives
At Sturgeon Point Water Treatment Plant (7)
Windom Pump Station (4)
Van de Water Raw Water Pumping Station (2)
R. F. Ball Pumping Station (2)
ECWA Project No. 202000007

The following material is attached:

- Blue Authorization Form indicating the requested Board action and approvals needed.
- Preventative Maintenance Service Agreement for Siemens Variable Frequency Drives for the above referenced project (2 copies) with Siemens Industry, Inc., for execution by Chairman.
- Sole Source justification form with supporting documents. Siemens Industry, Inc. is a Sole Source for the above described equipment.

The Authority owns and operates 15 Siemens (Robicon) drives contained at four separate sites, as listed above. These sites are critical to the operation of the Authority's distribution system. The drives are used to adjust the speeds of the pumps to modify flows and pressures within the distribution system. The automation of the SCADA system is highly dependent the use of drives and this contract used to ensure that the drives are properly maintained. Drives are specialized equipment and it is critical to have the services provided by the manufacture to ensure the drives are functioning properly during periods of high demand.

Siemens will provide on-site labor to perform preventative maintenance checks on the equipment. The preventative maintenance checks will consist of inspection, cleaning, component testing/evaluation, cleaning/re-tightening of electrical connections, calibration, and tuning of each drive.

LFK:jmf

Attachments

cc: R.Stoll

M.Wymer

S.Aiple

L.Lester

CONT-ROB-008-2001-X-01

SOLE SOURCE JUSTIFICATION

Requisition Item: Professional Services Contract – Siemens (Robicon) – Preventative Maintenance for 15 Robicon Drives at Sturgeon Point Water Treatment Plant (7), Windom Pump Station (4), Van de Water Raw Water Pump Station (2), Ball Pump Station (2) for Two Years starting upon Contract Ratification.

Purchase Order or Master Purchase Order Number: _____

Prior Purchase Order or Master Purchase Order Number (if item has been approved previously): 8179-20, 8179-18

1. Please describe the item and its function: Drives are essential for treatment of water at both Van de Water and Sturgeon Point Treatment Plants and the distribution of water throughout the ECWA system through Windom and Ball Pump Stations.

2. This is a sole source* because:

- Sole provider of a licensed or patented good or service;
 - Sole provider of items that are compatible with existing equipment, inventory, systems, programs or services;
 - Sole provider of goods and services for which the Authority has established a standard**;
 - Sole provider of factory-authorized warranty service;
 - Vendor/distributor is a holder of a used item that would represent good value and is advantageous to the Authority (please attach information on market price survey, availability, etc.);
 - Sole provider of goods or services that will meet the specialized needs of the Authority or perform the intended function (please detail below or in an attachment).
- _____
- _____

3. What necessary features does this vendor provide which are not available from other vendors? Be specific.
Sole Provider of Factory Authorized Service

4. What steps were taken to verify that these features are not available elsewhere?

- Verification from manufacturer of sole source attached (current year).
 - Other brands/manufacturers were examined (please list phone numbers and names and explain why these were not suitable).
 - Other vendors were contacted (please list phone numbers and names and explain why these were not suitable).
- _____
- _____

SUBMIT TO DIRECTOR OF ADMINISTRATION FOR APPROVAL

Buyer's Signature: _____

Buyer's Name: _____

SCOTT A. AIRLE
(Please Print)

Date: _____

12/30/2019

Approved: _____

Sanouya Fester
Director of Administration

Date: _____

12/30/2019

* Sole Source: Only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation.
** Procurement of items for which the Authority has established a standard by designating a brand or manufacturer or by pre-approving via a testing, shall be competitively bid if there is more than one vendor of the item.



December 17, 2019

Mr. Scott Aiple
Erie County Water Authority
3030 Union Road
Buffalo, NY 14227

Email: saiple@ecwa.org

Subject: Single Source Letter for SINAMICS PERFECT HARMONY (Air Cooled) Drives Pertaining to Quote# CS-ID-WU-Q1961152

Dear Mr. Scott Aiple,

Siemens Industry Inc, Large Drive, Customer Services (LDA, CS) is the sole source provider of warranted service for the SINAMICS PERFECT HARMONY product line. Siemens Industry Inc is the sole source for equipment services that ensure conformity for the application equipment. Commercial and proprietary designed components and software for your equipment are supplied exclusively by Siemens Industry Inc LDA with a warranty for operation and suitability.

Each Siemens component is tested and certified as having met our standard for quality along with compatibility with equipment even as improvements and replacements designs are released by our suppliers. Other suppliers may claim component compatibility; however, only Siemens warrants our SINAMICS PERFECT HARMONY Drive parts for equipment compatibility.

In addition to replacement equipment compatibility, Siemens offers 24 hour / 7 day a week service and support for component requirements.

If you have any questions, feel free to contact me at your convenience.

Best Regards,

Wendy Urick

Wendy Urick
Service Sales Support

Siemens Industry Inc.
Large Drives, Customer Services
500 Hunt Valley Road
New Kensington, PA 15068
Tel.: +1 (724) 212-1018
Fax: +1 (724) 339-9507
Email: wendy.urick@siemens.com

Siemens Industry Inc LDA

500 Hunt Valley Drive
Pittsburgh, PA 15068

Tel: (724) 339-9500
Fax: (724) 339-9562

Project No.: 202000007
Contract No.: ROB-008
Siemens Quotation #: CS-ID-WU-Q1961152-R2

**PREVENTATIVE MAINTENANCE SERVICE AGREEMENT
FOR SIEMENS VARIABLE FREQUENCY DRIVES**

This Agreement, effective July 16, 2020 (“Effective Date”), is by and between

ERIE COUNTY WATER AUTHORITY

295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

SIEMENS INDUSTRY, INC.

Industry Services
500 Hunt Valley Road
New Kensington, Pennsylvania 15068

hereinafter referred to as “Siemens.”

The Authority seeks to enter into a contract with Siemens to provide preventative maintenance services for fifteen (15) Siemens Variable Frequency Drives upon the terms and conditions stated in this Agreement.

In consideration of the mutual promises set forth in this Agreement, the Authority and Siemens agrees as follows:

ARTICLE 1 – THE PROCUREMENT

1.01 Siemens has agreed to service and provide prevention maintenance on the following fifteen (15) Variable Frequency Drives (collectively, “VFDs”) as set forth below:

- A. Two (2) 1000hp SINAMICS PERFECT HARMONY GH180 Air-Cooled VFDs located at the Authority’s Ball Pump Station.
- B. Three (3) 1000hp SINAMICS PERFECT HARMONY GH180 Air-Cooled VFDs located at the Authority’s Sturgeon Point Treatment Plant.
- C. Four (4) 200hp 454GT VFDs located at the Authority’s Sturgeon Point Treatment Plant.
- D. Two (2) 400hp 454GT VFDs located at the Authority’s Van DeWater Treatment Plant.

E. Four (4) 450hp 454GT VFDs located at the Authority's Windom Pumping Station.

1.02 Siemens has submitted to the Authority a "Proposal for Service" setting forth proposed terms and conditions for a fixed-price, preventative maintenance service agreement for a two-year period. A copy of the "Proposal for Service" (hereinafter referenced as "Service Proposal") is attached and incorporated into this Agreement as Appendix A.

1.03 As part of its Service Proposal, Siemen has submitted to the Authority its "Standard Terms and Conditions of Sale for Siemens Joint Product and Service Offerings" (hereinafter referenced as "Standard Terms and Conditions"), a copy of which is attached and incorporated into this Agreement as Appendix B.

ARTICLE 2 – SERVICE PROPOSAL

2.01 The Authority accepts and agrees to the terms and conditions set forth by Siemens in its Service Proposal, subject to the following modifications and amendments to that Service Proposal:

A. The Authority and Siemens agree to modify Paragraph 2.1 (Fixed Price PM Service) to read as follow:

- Siemens will provide the Authority with Preventive Maintenance (PM) services for a two-year period.
- Siemens will send a Field Service Representative (FSR) to service 15 Siemens VFDs, twice a year, for a total of four (4) field visits during the two-year service period.
- Siemens FSR will complete the work for each field visit within a two-week period.
- A field visit will consist of up to nine (9) service days. Each service day will be between nine (9) and ten (10) hours in duration.
- Siemens and its FSR will be given access to the Authority's facilities between the hours of 7:00 am and 7:00 pm on each service day.
- The Siemens FSR will determine the days, within the two-week window, to be used as service days. If requested, the FSR may be given access to the Authority's facilities on the weekend.
- Siemens agrees the fixed price of \$36,710.00, for each field visit, will include labor charges and expenses including, but not limited to, meals, travel and lodging for its FSR.

B. The Authority and Siemens agree to modify Paragraph 6.2 (Offer Validity) of the Service Proposal, extending the offer until July 30, 2020.

ARTICLE 3 – STANDARD TERMS AND CONDITIONS

3.01 The Authority accepts and agrees to the Standard Terms and Conditions proposed by Siemens as part of its Service Proposal, subject to the following modifications:

- A. The Authority and Siemens agree to amend subparagraph (a) of paragraph 2 as follows: “All payments are due net sixty (60) days from the invoice date in United States Dollars. All invoices shall be emailed to accountspayable@ecwa.org.”
- B. Siemens agrees to waive any claims against the Authority for late payments, as proposed in subparagraph (d) of paragraph 2 of the Standard Terms and Conditions.

ARTICLE 4 – OTHER SUPPLEMENTAL PROVISIONS

4.01 **Subcontract and Assignments:** Siemens may not subcontract or delegate any of the obligations of Siemens without the express written consent of the Authority. The Authority and Siemens bind themselves and their successors, administrators and assigns to the terms of this Agreement. Siemens shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

4.02 **Amendments:** No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties.

4.03 **Insurance:**

- A. Siemens shall secure and maintain such insurance as will protect itself from claims under the Workers’ Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix C.
- B. Siemens shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of this Agreement.
- C. Siemens shall provide Certificates of Insurance certifying the coverage required by this provision.
- D. Siemens shall provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority will require the name of the employee, the employee’s phone number and email address.

4.04 **Access to Authorities Property:** Before the Siemens FSR may be given access to any Authority property, the FSR must notify the Authority’s Security Officer and provide the following

information prior to a field visit: (a) government-issued photo identification for all site visitors; (b) a statement indicating the purpose for the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer. No person may visit any Authority property without the authorization of the Authority and/or its Security Officer.

4.05 Entire Agreement: This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No subsequent agreement made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound by such agreement.

4.06 Independent Status: Nothing contained in the Agreement shall be construed to render either the Authority or Siemens, an owner, member, officer, partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that Siemens shall remain an independent contractor responsible for its own actions. Siemens is retained by the Authority only for the purpose and to the extent set forth in this Agreement.

4.07 Doing Business Status: Siemens represents it is qualified to do business in the State of New York and has registered with the New York Secretary of State.

4.08 Gratuities, Illegal or Improper Schemes:

- A. Siemens shall prohibit its agents, employees and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties.
- B. Siemens or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.
- C. The Authority may terminate this Agreement or any purchase order, if it is determined that gratuities in the form of entertainment, gifts or otherwise were offered or given by a Siemens, its agent or representative to any Authority official or employee with a view towards securing favorable treatment with respect to the awarding of this Agreement or the performance of the Agreement or purchase order.
- D. The Authority may also terminate this Agreement or purchase order if it is determined that Siemens engaged in any other illegal or improper scheme promotive of favoritism or unfairness incidental to the contract award process or the performance of the Agreement or purchase order. If it is determined that said improper or illegal acts occurred, the Authority shall be entitled to terminate the Agreement or purchase order and/or exercise any other remedy available to it under existing law.

4.09 Notice: Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses hereinbefore stated. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

ARTICLE 6 – SEVERABILITY

6.01 Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, which agrees that the Agreement shall be reformed to replace such stricken provisions or part thereof with a valid enforceable provision that comes as close as possible to expressing the intent of the stricken provision. The validity and enforceability of all other provisions of this Agreement shall not otherwise be affected.

ARTICLE 8 – DURATION

8.01 This Agreement shall remain in effect for a two-year period as measured by the Effective Date of this Agreement and may be extended by the mutual consent of both parties.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

SIEMENS INDUSTRY, INC.

By _____

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 2020, before me personally came Jerome D. Schad, to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chair of the Board of Commissioners for the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners.

Notary Public

STATE OF PENNSYLVANIA)
COUNTY OF _____) ss:

On the _____ day of _____, in the year 2020, before me personally came, to me known, who, being by me duly sworn, did depose and say that he/she resides in _____, Pennsylvania, that he/she is the _____ of the Corporation described in the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

APPENDIX A

PROPOSAL FOR SERVICE (“SERVICE PROPOSAL”)

Proposal for Services

Per your request Siemens Industry, Inc. is pleased to provide a proposal for the following solution.

1.0 PRICING

Pos.	Service Configuration	Qty	Detailed Scope	Price per PM Service USD
1	Fixed Price PM Service	4	2.1	36,710.00

Total Price USD	Over 2 Years	146,840.00
• Total Price Due Upfront USD	per fixed-rate fee	0.00
• Total Price per Billing Cycle USD	Due upon job completion	36,710.00

2.0 DETAILED SCOPE

2.1 Fixed Price PM Service

- Two Year Preventive Maintenance Service
- One Siemens FSR / Two Visits per Year
- Up to 9 x 10-hour days per Visit
- Service days: Tuesday – Wednesday
- Travel days: Monday & Thursday
- Weekend Service included

Scope of Work: One Siemens FSR to perform Preventive Maintenance Service semi-annually for two years. See Annual Recommended Maintenance for SINAMICS PERFECT HARMONY GH180 Air-Cooled Drives, attached.

Note: Does not include Door Filters or Services designated as optional. These can be quoted upon request.

3.0 OVERALL COMMENTS AND CLARIFICATIONS

3.1 Customer Requirements: Erie County Water Authority is responsible for:

- Removal and proper disposal of all job-related waste and unwanted materials upon job completion.
- Provide free and clear access to the drive for duration of the onsite work.
- Provide one employee to assist the Siemens FSR.
- Provide cell lifter.

3.2 Should training be required for the Siemens Field Service Representative (FSR) to gain access to the customer site, the associated charges will be applied to the customer's invoice upon completion of the service.

3.3 In the event that any defective parts are discovered during the course of the services, the Siemens FSR will bring the matter to your attention and will replace the defective component upon your written approval. If the component is not available in your on-site spares inventory, a Change Notice to the Original Purchase Order or a new Purchase Order will be required for additional billable charges before the commencement of the order/replacement. Siemens FSR labor hours will be charged as required for any excessive time for removal/installation of the component at the applicable rates as listed in the Siemens Service Rate Schedule.

4.0 SERVICE SITES, EQUIPMENT LISTS AND CONTACTS

Service-Site A				
Location	Ball Pump Station			
Company	Erie County Water Authority	PO-Box		
Department		Region	NY	
Street	1193 Sweethome Road	Postal Code	14228	
City	Amhurst	Country	USA	
Remarks				

Primary Customer Contact:

Name	Function	Phone	Mobile	E-mail
Scott Aiple		+1 (716) 685-8225		saiple@ecwa.org

Customer Contacts:

Name	Function	Phone	Mobile	E-mail
Scott Aiple		+1 (716) 685-8225		saiple@ecwa.org

Siemens Contacts:

Name	Function	Phone	Mobile	E-mail
Allison Leech	LDA AM RC-US CS SD D		+1 (412) 915-7826	allison.leech@siemens.com
Daniel Vucelich	LDA AM RC-US CS		+1 (724) 261-2956	daniel.vucelich@siemens.com
Robert Harroun	LDA AM RC-US DS N	+1 (315) 409-9424		bob.harroun@siemens.com
Vincent Figured	Weiss Instrument	+1 (585) 582-5605		vfigured@weissindustrial.com

Service-Objects:

Tag	Equipment	Location	Component	Order No.	Serial No.	Note	Qty
	A1A31001009.00			HR9217455	11634	1000hp Gen4 VFD	1
	A1A31001009.01			HR9217455	11635	1000hp Gen4 VFD	1

Service-Site B				
Location	Sturgeon Point Treatment Plant			
Company	Erie County Water Authority	PO-Box		
Department		Region	NY	
Street	722 Sturgeon Point Road	Postal Code	14047	
City	Derby	Country	USA	
Remarks				

Primary Customer Contact:

Name	Function	Phone	Mobile	E-mail
Scott Aiple		+1 (716) 685-8225		saiple@ecwa.org

Customer Contacts:

Name	Function	Phone	Mobile	E-mail
Scott Aiple		+1 (716) 685-8225		saiple@ecwa.org

Siemens Contacts:

Name	Function	Phone	Mobile	E-mail
Allison Leech	LDA AM RC-US CS SD D		+1 (412) 915-7826	allison.leech@siemens.com
Daniel Vucelich	LDA AM RC-US CS		+1 (724) 261-2956	daniel.vucelich@siemens.com
Robert Harroun	LDA AM RC-US DS N	+1 (315) 409-9424		bob.harroun@siemens.com
Vincent Figured	Weiss Instrument	+1 (585) 582-5605		vfigured@weissindustrial.com

Service-Objects:

Tag	Equipment	Location	Component	Order No.	Serial No.	Note	Qty
	A1A459323.01			9161239		2000hp HM VFD	1
	A1A459323.02			9161239		2000hp HM VFD	1
	A1A459323.03			9161239		2000hp HM VFD	1
	A1A457896.00			9161437		200hp 454GT VFD	1
	A1A457896.01			9161437		200hp 454GT VFD	1
	A1A457896.02			9161437		200hp 454GT VFD	1
	A1A457896.03			9161437		200hp 454GT VFD	1

Service-Site C				
Location	Van De Water Raw Water Pumping Station			
Company	Erie County Water Authority	PO-Box		
Department		Region	NY	
Street	3303 River Road	Postal Code	14150	
City	Tonawanda	Country	USA	
Remarks				

Primary Customer Contact:

Name	Function	Phone	Mobile	E-mail
Scott Aiple		+1 (716) 685-8225		saiple@ecwa.org

Customer Contacts:

Name	Function	Phone	Mobile	E-mail
Scott Aiple		+1 (716) 685-8225		saiple@ecwa.org

Siemens Contacts:

Name	Function	Phone	Mobile	E-mail
Allison Leech	LDA AM RC-US CS SD D		+1 (412) 915-7826	allison.leech@siemens.com
Daniel Vucelich	LDA AM RC-US CS		+1 (724) 261-2956	daniel.vucelich@siemens.com
Robert Harroun	LDA AM RC-US DS N	+1 (315) 409-9424		bob.harroun@siemens.com
Vincent Figured	Weiss Instrument	+1 (585) 582-5605		vfigured@weissindustrial.com

Service-Objects:

Tag	Equipment	Location	Component	Order No.	Serial No.	Note	Qty
	A1A30001341.00			HR9217455	11683	400hp 454GT VFD	1
	A1A30001341.01			HR9217455	11684	400hp 454GT VFD	1

Service-Site D				
Location	Windom Pumping Station			
Company	Erie County Water Authority	PO-Box		
Department		Region	NY	
Street	6007 Lake Avenue	Postal Code	14127	
City	Orchard Park	Country	USA	
Remarks				

Primary Customer Contact:

Name	Function	Phone	Mobile	E-mail
Scott Aiple		+1 (716) 685-8225		saiple@ecwa.org

Customer Contacts:

Name	Function	Phone	Mobile	E-mail
Scott Aiple		+1 (716) 685-8225		saiple@ecwa.org

Siemens Contacts:

Name	Function	Phone	Mobile	E-mail
Allison Leech	LDA AM RC-US CS SD D		+1 (412) 915-7826	allison.leech@siemens.com
Daniel Vucelich	LDA AM RC-US CS		+1 (724) 261-2956	daniel.vucelich@siemens.com
Robert Harroun	LDA AM RC-US DS N	+1 (315) 409-9424		bob.harroun@siemens.com
Vincent Figured	Weiss Instrument	+1 (585) 582-5605		vfigured@weissindustrial.com

Service-Objects:

Tag	Equipment	Location	Component	Order No.	Serial No.	Note	Qty
	A1A457860.00			9160302		450hp 454GT VFD	1
	A1A457860.01			9160302		450hp 454GT VFD	1
	A1A457860.02			9160302		450hp 454GT VFD	1
	A1A457860.03			9160302		450hp 454GT VFD	1

5.0 PURCHASE ORDER AND PAYMENT DETAILS

Purchase Order should be addressed to:

Siemens Industry, Inc., 500 Hunt Valley Road New Kensington, PA 15068

Please submit Purchase Order via Email to:

Wendy Urick at wendy.urick@siemens.com

***To facilitate prompt order processing, Purchase Orders should include all of the following:**

- Purchase Order number or reference number
- Customer's legal entity name and bill to address
- Ship to address of services and / or parts
- Reference this Quote or proposal number: "Per your Quote / Proposal Number"
- \$ value, noting agreement of payment
- Payment Terms - (as stated in this quote)
- Authorized contact name and phone number
- Siemens requests that the PO line items match the quoted line items

6.0 GENERAL TERMS AND CONDITIONS

This proposal is subject to the Standard Terms and Conditions of Sale for Siemens Joint Product and Services Offering and if software is provided, Siemens Software License/Warranty Addendum, both of which can be found at <https://new.siemens.com/us/en/company/about/standard-terms-and-conditions.html> and are hereby incorporated by reference into this document and any resulting contract.

Impacts of Coronavirus: As a result of the Coronavirus (COVID-19), temporary delays in delivery from or nonperformance by Siemens and/or its suppliers may occur. Therefore, the parties acknowledge and agree that any delays or nonperformance caused by or related to COVID-19 will be deemed a force majeure event subject to the terms of the Agreement.

Air travel and car rental has been severely restricted due to the Coronavirus. As a result, instead of airline or car rental expenses related to Travel to/from the customer site, personal mileage greater than 100 miles is chargeable at cost + 15%. This is in addition to any per diem daily rates.

Any change to the scope of work will be reflected in a change to the quoted price.

Shipment: FOB Factory, Freight: Prepaid and Add, Payment Terms: Net 30

6.1 SAFETY TRAINING OF SIEMENS FIELD PERSONNEL

All Siemens field personnel completed internal annual safety training. Furthermore, all Siemens field personnel received training to comply with the new OSHA CFR1910.269 Electrical Safety Standard that sets minimum safety rules and practices for the design, operation, and maintenance of high-voltage systems (over 600 volts). A morning safety meeting for Siemens employees and subcontractors is to be conducted by Siemens each day while on site.

All Siemens personnel and their subcontractors shall adhere to the Siemens Division Safety Guidelines, CS101. Copies can be made available upon request for client review. Siemens will hold daily safety meetings at the prior to all work on site, at shift changes and if the project changes in any manner.

6.2 OFFER VALIDITY

This offer is valid for 60 days unless otherwise extended, modified or withdrawn, in writing, by Siemens. The return of a purchase order to Siemens during such validity period, along with credit approval, will be sufficient to form an agreement on the terms and conditions of this offer.

6.3 PROPRIETARY INFORMATION

This document contains information proprietary to Siemens. Your acceptance of it is an acknowledgment of a confidential relationship between you and Siemens with respect to this proposal document. We require it to be returned or destroyed when no longer required. We also require that neither this document nor any information contained herein is to be reproduced, transmitted, disclosed or used otherwise in whole or in part without the written authorization of Siemens.

6.4 RESERVATION CLAUSE

Purchaser acknowledges that Siemens is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Work, Equipment, and/or, Services provided under the Contract, including any export license requirements. Purchaser agrees that such Work, Equipment, and/or, Services shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Siemens of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. **PURCHASER AGREES TO INDEMNIFY AND HOLD SIEMENS HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.**

Annex A: Field Service Rates

January 01, 2019

Prices effective January 01, 2019 and subject to the following terms: (a) change without notice; (b) the terms and conditions set forth herein.

Page 1 of 2

Service Rates for Technicians

Siemens Industry, Inc. maintains a highly-skilled staff of competent, trained technicians, engineers, specialists and consultants for the purpose of furnishing (1) Commissioning Services, (2) Maintenance Services and (3) Consulting Services related to Drives, Automation, Motion Control Systems and Process Control Systems at customer facilities or at Siemens Industry, Inc. offices.

Commissioning Services typically include services related to the supervision of the installation of equipment and/or components such as drives, PLCs, HMIs, Process Automation Systems and may include the initial testing, tuning and commissioning of the equipment.

Maintenance Services typically provide continuing engineering services and repair to maintain equipment or system integrity.

Consulting Services typically include engineering studies, tests and evaluations including system or equipment modification and special customer training programs. The exact scope of services will vary from project to project and will be exclusively described in the agreement for such services.

Classifications of Technician Services

Siemens Industry, Inc. offers the following classifications of technician services;

1. Technician – Level 1
2. Technician – Level 2
3. Technician – Level 3
4. Technician – Level 4

Rates for the above categories of services are listed on page 2 of this Price List.

Description of Classifications of Services:

The following general guidelines are used to determine the rate applied to work performed.

The following hierarchy of documents shall control in the determination of applicable rates;

- Siemens Service Proposal
- Siemens Quick Quote
- Field Service Authorization Form
- This document

This guideline, and application thereof, may be subject to change by Siemens without notice.

1. **Technician – Level 1** services include, but are not limited to; installation checkout, initial startup, inspection, maintenance, or equipment repair on standard, standalone products.
2. **Technician – Level 2** services include, but are not limited to; installation checkout, startup, inspection, maintenance, and repair of standardized, coordinated systems utilizing a single technological discipline (e.g. Drives).
3. **Technician – Level 3** services include, but are not limited to; installation checkout, startup, inspection, maintenance, standard configuration or repair of standardized, coordinated systems utilizing multiple technological disciplines (e.g. Drives and Automation).

4. **Technician – Level 4** services typically include, but are not limited to; the provision of uniquely skilled or specialized personnel with expertise in the application, commissioning, troubleshooting and analysis of configured equipment or hardware systems utilizing single or multiple technologies.

Foreign Technician Service

Services commensurate with those listed above are also available to customers serving foreign markets. Your local Siemens Industry, Inc. representative can provide you with additional pricing information upon request.

Trade and Other classifications

On selected jobs where it is practical to utilize fitters, mechanics, winders, welders, machinists, etc. to perform a portion of the work, their services will be provided at current local rates.

Invoicing

Unless otherwise specified in its proposal, Siemens Industry, Inc. shall have the right to invoice the customer for all material delivered and work performed under this order at such times that it considers appropriate.

Terms and Conditions of Service

The Standard Terms and Conditions of Sales for Siemens Joint Product and Services Offering found at http://www.industry.usa.siemens.com/to pics/us/en/standard_tandc/Documents/Siemens-Standard-Terms-for-Joint-Product-and-Services-Offering.pdf are incorporated by this reference and made a part of this document.

January 01, 2019

Prices effective January 01, 2019 and subject to the following terms: (a) change without notice; (b) the terms and conditions set forth herein.

Service Rates for Technicians

Page 2 of 2

Classification / Rate Schedule

Technician Service Level	Hourly Rate ①	Overtime	Premium	Min. Billing
		Weekday & Saturdays ②	Sundays & Holidays ③	≤ 4 Hours
Technician – Level 1	\$ 171	\$ 256	\$ 341	\$ 683
Technician – Level 2	\$ 187	\$ 281	\$ 374	\$ 748
Technician – Level 3	\$ 216	\$ 324	\$ 432	\$ 864
Technician – Level 4	\$ 247	\$ 370	\$ 493	\$ 987
Nuclear & Offshore	Applicable Service Level Hourly Rate x 1.20			
Per Diem (Local) ¹	\$110/day			
Per Diem (Overnight) ²	\$260/day			

¹Includes meals, ground transportation (i.e. vehicle mileage, tolls, parking, etc.) and incidental expenses (excludes airfare and hotel expenses)

²Includes hotel, meals, ground transportation and incidental expenses (excludes airfare expenses)

① **Straight time** rates apply to all time worked or traveled during a normal eight-hour workday. The normal eight-hour workday is defined as any consecutive eight-hour day shift period (Monday through Friday, excluding holidays) between the hours of 7am and 7pm, with an allowance for lunchtime.

② **Overtime rate** applies to all hours worked or traveled outside of the normal eight-hour workday or in excess of eight hours on weekdays and all time worked or traveled on Saturdays.

③ **Premium rate** applies to all hours worked or traveled on Sundays and Holidays.

Hourly and Daily Rates do not include travel or living costs. Should the customer require additional documentation such as copies of employee expense reports and/or expense receipts, a written request must be submitted to Siemens Industry, Inc.

Per Diem Rates

The Per Diem rates include Field Service Representative meals, ground transportation (vehicle mileage, tolls, parking, etc.) incidental expenses and hotel expenses (if applicable). If required, airline travel mobilization and

demobilization expenses will be invoiced at actual cost plus 15% in addition to Per Diem. Travel time from the Field Service Representative's home office to and from the job site will be billed separately. Consult your local Siemens Industry, Inc. representative for additional information.

Standby Time

When service personnel are on the job site but unable to perform services requested due to circumstances beyond Siemens Industry, Inc. control, the customer will be charged up to eight hours per day standby time at applicable rates.

Special Training

All time to complete site-specific training will be billed at the applicable Service Level Hourly Rate indicated in the Classification / Rate Schedule table provided above.

Nuclear & Offshore

The hourly rate for nuclear and offshore applications will be billed at the applicable Service Level Hourly Rate x 1.20 due to the special badging, qualifications, and certifications required by these applications.

Other Charges

The following charges will be applied in addition to the service rates outlined above;

A. Expendable Small Tools, Special Tools and Equipment

When a particular job requires the furnishing of small expendable tools or specialized tools, equipment, or instruments not included in standard Field Service Representative "Truck Stock", a charge will be made equal to either the cost of acquisition plus 15% or a rental charge, as appropriate. "Truck Stock" is defined to include small standard hand tools, digital multimeter, small scope, 500V insulator tester and 10A contact resistance tester. Refer to Siemens Price List 49020B for Test Equipment Rental Charges.

B. Material Furnished by Siemens Industry, Inc.

All Siemens Industry, Inc. material used on the job will be billed at current prices.

C. Material Purchased from Subcontractors or Other Vendors

Materials or services from Subcontractors or Vendors will be billed at cost plus a handling fee.

APPENDIX B

STANDARD TERMS AND CONDITIONS OF SALE FOR SIEMENS JOINT PRODUCT AND SERVICE OFFERING ("STANDARD TERMS AND CONDITIONS")

STANDARD TERMS AND CONDITIONS OF SALE FOR SIEMENS JOINT PRODUCT AND SERVICES OFFERING

1. APPLICABLE TERMS. This Agreement governs the sale and performance of equipment, components, parts and materials (“Products”) and services provided by Siemens (“Services”). Collectively this Agreement may refer to the joint offering as “Siemens Products and Services”). The Standard Terms Addenda, these terms, any other applicable addenda, Siemens’ proposal, price quote, purchase order or acknowledgement issued by Siemens form the parties’ final agreement (“Agreement”). In the event of any ambiguity or conflict between these documents, precedence shall apply in accordance with the order written in the previous sentence. Siemens’ proposal, offer or acceptance is conditioned on Buyer’s acceptance of this Agreement. Any additional or conflicting terms in Buyer’s request for proposal, specifications, purchase order or any other written or oral communication are not binding on Siemens unless separately signed by Siemens. Siemens’ failure to object to Buyer’s additional or conflicting terms does not operate as a waiver of the terms contained in this Agreement.

2. PRICING & PAYMENT. Prices and payment terms are: (i) as stated in Siemens’ proposal, or if none are stated; (ii) Siemens’ standard rates in effect when Siemens receives Buyer’s purchase order. If neither (i) nor (ii) apply, then Siemens’ standard rates for Services shall be those in effect at the time Siemens renders the services and Siemens’ rates for Products shall be those in effect at the time of shipment.

(a) Payment – Unless stated in Siemens’ proposal, all payments are due net thirty (30) days from the invoice date in United States Dollars.

(b) Credit Approval – All orders are subject to credit approval by Siemens. Siemens may modify, suspend or withdraw the credit amount or payment terms at any time. If there is doubt as to Buyer’s financial condition, Siemens may withhold manufacturing and/or shipment of Product and performance of Services, require cash payments or advance payments, or require other satisfactory financial security before manufacturing and/or shipment of Product and performance of Services.

(c) Taxes – Unless stated in writing by Siemens, Siemens’ rates exclude charges for taxes, tariffs charged on the importation of goods into the United States, excises, fees, duties or other government charges related to the Siemens Products and Services. Buyer will pay these amounts or reimburse Siemens. If Buyer claims a tax or other exemption or direct payment permit, Buyer will provide a valid exemption certificate or permit and indemnify, defend and hold Siemens harmless from any taxes, tariffs charged on the importation of goods into the United States, costs and penalties arising from same. Increases, changes (including in application), adjustments or surcharges which may be incurred are for Buyer’s account.

(d) Late Payments – Late payments shall bear interest at an annual percentage rate of twelve percent (12%) or the highest rate allowed by law, whichever is lower.

(e) Disputed Invoice – If Buyer disputes all or any portion of an invoice, it must first deliver written notice to Siemens of the disputed amount and the basis for the dispute within twenty-one (21) days of receiving the invoice. Failure of Buyer to timely notify Siemens of any dispute constitutes a waiver of Buyer’s claim. If Buyer only disputes a portion of the invoice Buyer must pay the undisputed portion in accordance with Article 2(a). Upon resolution of the dispute in favor of Siemens, Buyer must pay the invoice or the remainder of the invoice, plus any accrued interest on the late payment.

(f) Suspension/Termination Right – Siemens may suspend Services and manufacturing and/or shipment of Product if an undisputed invoice is more than fifteen (15) days past due. Siemens may terminate this Agreement if an undisputed invoice is more than thirty (30) days past due. Unless otherwise prohibited by law, Siemens may also terminate this Agreement immediately in the event of a material adverse change in the Buyer’s financial condition, including, but not limited to bankruptcy, insolvency, or liquidation.

(g) Installment Shipment of Product – Where Products are delivered in shipments or only part of a shipment fails to comply with this Agreement, the Buyer may only reject the non-compliant portion. Buyer will separately pay for each shipment. If Siemens holds or stores Products for Buyer, it shall do so at Buyer’s sole risk and expense.

(h) Shipping, Packing and Handling of Product – Unless stated in writing by Siemens, Siemens’ prices exclude charges for freight, unloading, storage, insurance, taxes, excises, fees, duties or other government charges related to the Products. Buyer will pay these amounts or reimburse Siemens. Siemens’ prices include the costs of its standard domestic packing only. Any packing deviation, including U.S. Government sealed packing, will be charged to Buyer. Increases, changes (including in application), adjustments or surcharges which may be incurred are for Buyer’s account.

3. RISK OF LOSS AND SCHEDULE OF SERVICES. Services shall be performed at the location identified in the Agreement ("Site"). Risk of loss of or damage to Buyer's equipment, including "Equipment" (equipment, materials, components and items of any kind for which Siemens is to provide Services under the Agreement), shall remain with Buyer at all times during the performance of the Services hereunder. If Buyer procures or has procured property damage insurance applicable to occurrences at the Site, Buyer shall obtain a waiver by the insurers of all subrogation rights against Siemens.

Any performance or completion dates are estimated dates only. Siemens is not liable for any loss or expense incurred by Buyer or Buyer's customers if Siemens fails to meet any such dates.

4. DELIVERY; TITLE; RISK OF LOSS OF PRODUCTS. Products will be delivered F.O.B. Siemens point of shipment with title and risk of loss or damage passing to Buyer at that point. Buyer is responsible for all transportation, insurance and related expenses. The related expenses shall include any taxes, duties or documentation fees. Siemens may make partial shipments. Any shipping, delivery and installation dates are estimated dates only. Siemens is not liable for any loss or expense incurred by Buyer or Buyer's customers if Siemens fails to meet its delivery schedule.

5. TRANSPORTATION AND STORAGE OF PRODUCTS. (a) When Products are ready for shipment, Siemens will: (i) inform Buyer, and Buyer will then promptly give shipping instructions to Siemens; (ii) determine the method of transportation and shipment routing; and (iii) ship the Products with freight prepaid by normal transportation. If Buyer fails to provide timely shipping instructions, Siemens will ship the Products by normal transportation means to Buyer or to a storage location selected by Siemens. Buyer will pay or reimburse any excess transportation charges for special or expedited transportation.

(b) If Products are placed into storage, delivery occurs and risk of loss transfers to Buyer when the Products are placed on the carrier for shipment to the storage location. If the Products are to be stored in the facility where manufactured, delivery occurs and risk of loss transfers to Buyer when placed in the storage location.

Buyer will pay all Siemens' storage expenses, including but not limited to, preparation for and placement into storage, handling, freight, storage, inspection, preservation, maintenance, taxes and insurance, upon receipt of an invoice(s) from Siemens. When conditions permit and upon payment to Siemens of all amounts due, Buyer must arrange, at its expense, to remove the Products from storage. Buyer bears the risk of loss, damage or destruction to Products in storage.

6. CANCELLATION. Buyer may cancel this Agreement at any time on thirty (30) days written notice. Buyer shall have no right to defer shipment of Product. Except for Siemens right to terminate in accordance with Article 2, either party may terminate this Agreement for material breach of the other party, provided that the breaching party has not remedied the breach or commenced to cure the breach within a reasonable period, having due regard to the nature of the breach. In the event of a termination or cancellation, unless the Agreement includes a defined termination or cancellation schedule, Buyer is liable for cancellation charges, including without limitation: (i) the full price for any completed Siemens Products and Services; (ii) the allocable portion of the price as determined by Siemens for any partially completed Siemens Product and Services, including reasonable overhead and profit, (iii) reasonable demobilization costs, and (iv) payments due to subcontractors which cannot be: (1) cancelled without any payment obligation; or (2) refunded.

7. FORCE MAJEURE / DELAYS. If either party is unable to perform or suffers delay in performance, due to any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, inclement or unusually severe weather conditions, 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, the time of performance will be extended by a period equal to the length of time it takes to overcome the effect of the event. In addition, Siemens shall be entitled to be compensated by Buyer for reasonable and direct additional costs of Service incurred during such event. Siemens will notify Buyer within a reasonable time after becoming aware of any such event. If there are force majeure delays exceeding 180 days in the aggregate, Siemens may terminate the Agreement pursuant to Article 4. Failure to pay shall not constitute a force majeure delay.

8. BUYER'S REQUIREMENTS. Siemens' performance is contingent upon Buyer timely complying with and fulfilling all of its obligations under this Agreement. These obligations include the Buyer supplying all necessary access to Equipment and Products, where applicable, and all required "Third Party Parts" (parts, components, equipment or materials provided by Buyer or that exist in the Equipment which were not manufactured or supplied by Siemens or which were originally supplied by Siemens and subsequently repaired, serviced or otherwise altered by any party not affiliated with Siemens),

documents, permits and approvals needed for Siemens to perform including, but not limited to, accurate technical information and data, drawing and document approvals, and all necessary commercial documentation. Buyer shall provide access to the Site as reasonably required by Siemens for the performance of the Services. Siemens may request a change order for an equitable adjustment in prices and times for performance, as well as to adjust for any additional costs or any delay resulting from the failure of Buyer, Buyer's contractors, successors or assigns to meet these obligations or any other obligations in this Agreement.

Buyer shall also maintain the Site in a safe condition, notify Siemens promptly of any site conditions requiring special care, and provide Siemens with any available documents describing the quantity, nature, location and extent of such conditions, including any Material Safety Data Sheets (MSDS) related to all hazardous materials at the Site which may impact the Siemens Products and Services.

9. INDEMNITY. Siemens and Buyer (each as an "Indemnitor") shall indemnify, hold harmless and defend 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 or its subcontractor'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 negligence. No part of Buyer's Site or other property of Buyer (or Site Owner) is considered third party property.

Indemnitee shall provide the Indemnitor with prompt written notice of any third party claims covered by this Article. 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. Indemnitee shall not make any admission(s) which might be prejudicial to Indemnitor and shall not enter into a settlement without the express permission of Indemnitor.

10. WARRANTIES.

(a) *Warranties.* Siemens warrants that: (i) it will perform the Services in a professional and workmanlike manner; (ii) each Product is free from defects in material and workmanship; (iii) each Product materially conforms to Siemens specifications that are attached to, or expressly incorporated into this Agreement; and (iv) at the time of delivery, Siemens has title to each Product free and clear of liens and encumbrances (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 applicable Software License/Warranty Addendum.

(b) *Remedies.* If the Services or Product fail to meet the warranty standards set forth in Article 10(a) within the applicable Warranty period defined in Article 10(c), and Buyer promptly reports such non-conformance to Siemens during the above mentioned Warranty period, Siemens shall at its own expense as Buyer's sole and exclusive remedies for breach of the Warranties: (i) for Services, re-perform the relevant Services or, in Siemens' sole discretion, refund Buyer the pro rata portion of the fees paid to Siemens under this Agreement allocable to the nonconforming Services; and (ii) for Product, at Siemens' discretion, repair or replace the Product, or its non-conforming parts, within a reasonable time period, or refund of all or part of the purchase price. The warranty on repaired or replaced Product, Services or 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 Product or Services; (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 Article 10(d) or from their deteriorated condition. All exchanged Products replaced under this Warranty will become the property of Siemens.

(c) *Warranty Period.* Buyer must provide written notice of any claims for breach of the Warranties by: (i) for Services, within three (3) months from completion of the Services; and (ii) for Product, the earlier of twelve (12) months from initial operation of the Product or eighteen (18) months from shipment. Additionally, absent written notice within the applicable Warranty period, any use or possession of the Product or Services after expiration of the applicable Warranty period is conclusive evidence that the applicable Warranties have been satisfied.

(d) *Conditions to the Warranties.* The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Product and Equipment other than by Siemens or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Product and Equipment in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement, (iii) or in the absence of such conditions, parameters or instructions or to the extent not applicable, in accordance with the generally accepted industry standards applicable in the locale where the Services are being performed and having regard to the nature of the Product and Services; (iv) Buyer discontinuing use of the Product and Equipment after it has, or should have had knowledge of any defect in the Product or Equipment; (v) Buyer providing Siemens with reasonable access to operating and maintenance data as requested by Siemens, (which may include secure broadband connection). Without expense to Siemens, Buyer shall provide to Siemens and Siemens' subcontractors and their respective employees and agents on a twenty four (24) hours a day, seven (7) days a week basis, access to the Site, and each unit, including rights of way and easements required for safe access of such persons and equipment, as well as, to the extent applicable, online access to the Site, including to an installed remote monitoring system and to all units, as necessary to permit Siemens to perform the Services; (vi) Buyer providing prompt written notice of any warranty claims within the Warranty Period; (vii) at Siemens' discretion, Buyer either removing and shipping Product or Equipment or non-conforming part thereof to Siemens, at Buyer's expense, or granting Siemens reasonable access to Products or Equipment to assess the warranty claims; (viii) Product and Equipment not having been subjected to accident (including force majeure), alteration, abuse or misuse; and (ix) Buyer not being in default of any payment obligation. Buyer shall provide, without cost to Siemens, access to the nonconformity by disassembling, removing, replacing and reinstalling any Equipment, materials or structures to the extent necessary to permit Siemens to perform its warranty obligations.

(e) *Exclusions from Warranty Coverage.* The Warranties do not apply to (i) any product not supplied by Siemens; (ii) any Third Party Parts or Equipment; or (iii) to services not performed by Siemens pursuant to this Agreement. Siemens will have no liability to Buyer under any legal theory for such products, Third Party Parts, Equipment, services or any related assignment of warranties. Any Product 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 Product (such as fuses, light bulbs and lamps). Siemens does not warrant or guarantee that any Product will be secure from cyber threats, hacking or similar malicious activity. Products that are 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.

(f) *Transferability.* The Warranties are only transferable during the warranty period and only to the Product's initial end-user.

(g) THE WARRANTIES IN THIS ARTICLE 10 ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AS TO SIEMENS PRODUCTS AND SERVICES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 11 BELOW. 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.

11. 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, LOSS OF PRODUCTION, 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 UNDER ANY THEORY OF RECOVERY, SHALL NOT EXCEED THE ACTUAL PURCHASE PRICE RECEIVED BY SIEMENS UNDER THIS AGREEMENT.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 11 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 11 EXTEND TO SIEMENS' AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUBCONTRACTORS, AGENTS AND SUCCESSORS AND ASSIGNS OF SIEMENS.

IN THE EVENT THAT PHYSICAL LOSS OR DAMAGE TO THE BUYER'S PROPERTY RESULTS FROM THE FAILURE OF A PORTION OF THE SIEMENS PRODUCTS AND SERVICES TO CONFORM TO ITS RESPECTIVE WARRANTY DURING THE APPLICABLE WARRANTY PERIOD SIEMENS' LIABILITY SHALL IN NO CASE EXCEED SIEMENS' OBLIGATION TO PERFORM THE REMEDIES SPECIFIED IN ARTICLE 10, AS APPLICABLE, WHICH SIEMENS WOULD HAVE HAD TO PERFORM IF SUCH REMEDY HAD BEEN CARRIED OUT IMMEDIATELY PRIOR TO THE OCCURRENCE OF THE PHYSICAL LOSS OR DAMAGE.

12. PATENT AND COPYRIGHT INFRINGEMENT.

Siemens will, at its own option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any processes performed by Siemens in connection with the Siemens Products and Services constitutes an infringement of any Patent Cooperation Treaty ("PCT") country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Buyer's Site is located. Buyer will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Siemens shall have full and exclusive authority to defend and settle such claim and will pay the damages and costs awarded against Siemens 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. If and to the extent any process performed by Siemens in connection with the Siemens Products and Services 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 process; (ii) replace it with substantially equivalent non-infringing process; or (iii) modify the process so it's use is non-infringing.

Siemens will have no duty or obligation under this Article 12 if the process is: (i) performed 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 performance; 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 12.

THIS ARTICLE 12 IS AN EXCLUSIVE STATEMENT OF SIEMENS' DUTIES AND BUYER'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

13. CONFIDENTIALITY.

(a) Both during and after the term of this Agreement, the parties will treat as confidential all information obtained from the disclosing party and all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, the quotation, the Agreement, processes and procedures, know-how, methods and techniques employed by Siemens in connection with the Siemens Products and Services, technical data, drawings, flow charts, program listings, software code, and other software, plans and projections. Neither party may disclose or refer to the Siemens Products and Services to be performed under this Agreement in any manner that identifies the other party without advance written permission. Except for security surveillance, the observing or recording of the Siemens Products and Services or any part thereof, whether by photographic, video or audio devices or in any other manner is prohibited. In the event any such prohibited observation or recording occurs, Siemens may (in addition to any other legal or equitable rights and remedies) stop the Services until Siemens has satisfied itself that the prohibited conduct has ceased, and in such event (a) the date of delivery or time for performance will be extended by a period of time which Siemens determines necessary and (b) Buyer will reimburse Siemens for Siemens' and its Suppliers' additional costs and expenses resulting from such delay, including but not limited to any for demobilization or remobilization. Unless required by appropriate governmental authorities, neither party shall, without the prior written consent of the other party, issue any public statement, press release, publicity hand-out or other material relating to the Siemens Products and Services performed or installed on

Buyer's Site or Equipment. However, Siemens has the right to share confidential information with its affiliate 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; or (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.

(c) It is Siemens' policy not to unlawfully or improperly receive or use confidential information, including trade secrets, belonging to others. This policy precludes Siemens from obtaining, directly or indirectly from any employee, contractor, or other individual rendering services to Siemens confidential information of a prior employer, client or any other person which such employee, contractor, or individual is under an obligation not to disclose. Buyer agrees to abide by this policy.

(d) Siemens shall retain all intellectual property rights in the Siemens Products and Services, works, Siemens' documents, processes, Siemens' confidential information, and any design information and/or documents made by (or on behalf of) Siemens. Upon receipt of all fees, expenses and taxes due in respect of the relevant Siemens Products and Services, Siemens grants to the Buyer a non-transferable, non-exclusive, royalty-free license to copy, use and communicate Siemens' documents for the sole purpose of operation and maintenance of the facility upon which the Siemens Products and Services have been performed.

14. COMPLIANCE WITH LAWS. The parties agree to comply with all applicable laws and regulations.

15. CHANGES IN SIEMENS PRODUCTS AND SERVICES. No change will be made to the scope of Siemens Products and Services unless Buyer and Siemens agree in writing to the change and any resulting price, schedule or other contractual modifications. If any change to any law, rule, regulation, order, code, standard or requirement impacts Siemens' obligations or performance under this Agreement, Siemens shall be entitled to a change order for an equitable adjustment in the price and time of performance.

16. 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.

17. MODIFICATION OF TERMS. These terms may only be modified by a written instrument signed by authorized representatives of both parties.

18. 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. APPLICABLE LAW AND JURISDICTION. This Agreement is governed by and construed in accordance with the laws of the State of Delaware, 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.

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.

21. 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 Products and information provided in the performance of the Services, including any export/import license requirements. Buyer agrees that such goods or information shall 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.

22. NUCLEAR. In the event the Siemens Products and Services provided under the Agreement are to be used in or performed at or are connected with in any manner a nuclear installation, the following conditions shall apply:

(a) Buyer's Insurance:

(i) If Buyer procures property damage insurance applicable to occurrences at the Site and third party non-nuclear liability insurance, or either of such types of insurance, such insurance will name Siemens and its subcontractors as additional insureds.

(ii) Buyer shall have at its own cost, prior to the arrival of nuclear fuel at the Site, secured and shall thereafter maintain in force protection against liability arising out of or resulting from a Nuclear Incident (as defined in the Atomic Energy Act of 1954, as amended) as required by the Nuclear Regulatory Commission; provided, however, that if the nuclear liability protection system in effect on the date of the Agreement expires or is repealed, changed, or modified, Buyer will, without cost to Siemens, maintain liability protection through government indemnity, limitation of liability, and/or liability insurance which will not result in a material impairment of the protection afforded Siemens and its subcontractors by such nuclear liability protection system which is in effect as of the date of the Agreement, taking into account the availability of insurance, customary practice in the industry for plants of similar size and character, and other relevant factors in light of then existing conditions. In any event, the protection provided pursuant to this Article shall remain in effect until the decommissioning of the nuclear plant.

(b) Waivers by Buyer: neither Siemens, nor its subcontractors shall be liable for any loss of, damage to, or loss of use of property or equipment wherever located, arising out of or resulting from a "Nuclear Incident." Buyer waives and will require its insurers to waive all rights of recovery against Siemens and its subcontractors on account of any such loss, damage, or loss of use. All such waivers shall be full and unrestricted and in a form acceptable to Siemens.

In the event Buyer recovers damages from a third party based on losses at the Site resulting from the hazardous properties of source, special nuclear or byproduct material (as defined in the Atomic Energy Act of 1954, as amended), Buyer shall defend, indemnify and hold Siemens and its subcontractors harmless against claims by such third party which are based on Buyer's recovery of such damages. In addition, Buyer waives and will require its insurers to waive all rights of recovery against Siemens and its subcontractors, for any and all costs or expenses arising out of or in connection with the investigation and settlement of claims or the defense of suits for damage resulting from the nuclear energy hazard.

(c) Third Party Property Protection: Buyer will indemnify and hold Siemens and its subcontractors harmless for any liability arising out of loss of or damage to property at the Site which arises out of a Nuclear Incident. In addition, Buyer shall obtain for the benefit of Siemens and its subcontractors, protection against liability for, arising out of, or resulting from damage to any property or equipment located at the Site which is used or intended for use by Buyer in connection with the operation of the nuclear power plant (including but not limited to fuel) and which is owned by parties other than Buyer.

(d) Decontamination: Buyer shall, without cost to Siemens, perform any required decontamination and health physics necessary for, related to or resulting from Siemens performance of its contractual obligations. This includes but is not limited to decontamination of any Siemens equipment or tools used in the performance thereof. Buyer shall provide documentation demonstrating that components or parts being returned to Siemens after such decontamination meet the requirements designated for unrestricted release as set forth in the United States Code of Federal Regulations, Title 10 Part 20.

23. SURVIVAL. The Articles entitled “Intellectual Property,” “Limitation of Liability,” “Indemnity,” “Confidentiality,” “Risk of Loss and Schedule,” “Export/Import Compliance,” and “Nuclear” survive any termination, expiration or cancellation of this Agreement.

24. SITE SAFETY. Buyer shall comply with all federal, state, and local safety regulations and standards applicable to the Site and to the Equipment and/or Product on which Siemens will perform the Services. Siemens shall not be obligated to commence or perform Services unless Buyer’s Site complies with all applicable safety requirements. In the event Buyer’s Site safety is non-compliant, Siemens may suspend the Services until such time as Buyer corrects the non-compliance. To the extent Siemens incurs additional time and expense as the result of Buyer’s non-compliance, Siemens shall be entitled to an equitable adjustment in the schedule, price and other affected provisions of the Agreement.

25. ENVIRONMENTAL COMPLIANCE. To the extent that the performance of Services at the Site may involve the generation of hazardous waste as such term is defined in the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the laws of the state in which the Site is located and the rules or regulations issued thereunder as are now in effect or hereafter amended from time to time (such generated hazardous waste being herein referred to as “Hazardous Waste”) shall apply.

Buyer shall at its expense and in accordance with all applicable federal, state and local laws, rules, regulations and ordinances (i) furnish Siemens with containers for Hazardous Waste, (ii) designate a storage area at the Site proximate to the Services where such containers are to be placed; and (iii) handle, store and dispose of Hazardous Waste. Buyer shall reimburse Siemens for additional costs, if any, incurred in complying with any such laws, regulations, rules and/or ordinances.

Siemens shall have no responsibility or liability with regard to any Hazardous Waste which it does not know or have reason to know will be generated or released in the performance of the Services, and Buyer shall indemnify and hold Siemens harmless for all damages, losses, costs, liabilities, fines and penalties, (including reasonable attorneys’ fees) related to pollution and environmental impairment arising from the Buyer’s property, the Equipment or the Services.

26. ASBESTOS. The terms “Asbestos” and “Presumed Asbestos Containing Material” shall have the meanings set forth in United States Code of Federal Regulations Chapter 29 Section CFR 1926.1101 et seq., and “ACM” shall mean Asbestos and Asbestos containing materials.

(a) The Buyer warrants and represents that, in any areas which may be accessed by Siemens or its Suppliers, any ACM which is or is contained in thermal insulation or sprayed-on surfacing material is conspicuously and specifically marked as ACM, and any other ACM is in a lawful condition.

(b) Prior to Siemens’ commencement of Services at any Site:

(i) The Buyer shall, at Buyer’s expense remove all thermal insulation, sprayed-on surfacing material, and/or Presumed Asbestos Containing Material (any or all of the foregoing hereinafter “PACM”), and ACM which may be disturbed during or removal of which is required for the performance of the Services; and,

(ii) The Buyer shall ensure that any areas where any activities involving the abatement or removal of PACM or ACM shall be conspicuously identified, posted and isolated, all as required by applicable law.

BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, IN PERFORMING THE SERVICES AND DISPATCHING EMPLOYEES TO WORK AREAS, SIEMENS IS RELYING UPON THE AGREEMENTS, WARRANTIES, AND REPRESENTATIONS MADE BY BUYER IN THIS ARTICLE 26. Without limiting its other rights and remedies, Siemens: (i) shall not be obligated to commence, and may stop any affected Services, unless and until it is fully satisfied that the Buyer is in compliance with this Article 26, and (ii) shall be entitled to an equitable adjustment in the schedule, price and other provisions of the Agreement resulting from Buyer’s non-compliance.

(c) In no event shall Siemens be obligated to install, disturb, handle, or remove any PACM.

(d) Siemens makes no representation that it is licensed to abate ACM.

(e) Buyer shall defend, indemnify and hold Siemens harmless against any and all claims, demands, damages, losses, liabilities, fines, penalties, costs or expenses, including without limitation any clean up or remedial measures arising out of, connected with, or resulting from the Buyer's failure to comply with the provisions of this Article 26.

27. THIRD PARTY PARTS. Buyer warrants that any and all Third Party Parts which may be the subject of any Services shall (a) be fully compatible with the corresponding part, component, equipment or material of the Original Equipment Manufacturer ("OEM") in terms of form, fit, and function; (b) shall be timely provided to Siemens hereunder; and (c) shall be capable of installation in the same manner and within the same time as the corresponding OEM part, component, equipment, or material.

28. PRODUCT RETURNS. Prior to the return of any Product, Buyer must identify the Product or portion thereof and obtain written authorization and shipping instructions from Siemens. Siemens has the right, in its sole discretion, to permit or reject any such return. Siemens' authorization to return any Product to Siemens does not relieve Buyer of its obligation to pay for such Product. Upon receipt, inspection, and acceptance of the Product by Siemens, Siemens will issue a credit memo to Buyer, less applicable re-stocking fees. Siemens reserves the right to reject any hazardous material.

APPENDIX C

INSURANCE REQUIREMENTS FOR SIEMENS VARIABLE FREQUENCY DRIVES PREVENTATIVE MAINTENANCE SERVICE AGREEMENT

ECWA PROJECT No. 202000007; Contract No.: ROB-008

Insurance Specs:

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the Authority). If a service or project, in the opinion of the Authority, represents an unusual or exceptional risk, the Authority may establish additional insurance requirements for that service or project. All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the duration of the contract. These requirements include but are not limited to the minimum insurance requirements.

Insurance Requirements:

a. Workers Compensation:

Part 1: Workers Compensation: Statutory

Part 2: Employers Liability: \$1,000,000.

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2

b. New York Disability Benefits Liability: Statutory coverage if New York State domiciled employees are used.

c. Commercial General Liability:

- \$2,000,000. General Aggregate
- \$1,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- Erie County Water Authority to be scheduled as an Additional Insured for both on-going and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Insurance to be primary and non-contributory

d. Automobile Liability:

- \$1,000,000. Each Accident
- Erie County Water Authority to be scheduled as an Additional Insured.

e. Umbrella Liability:

- \$5,000,000. Each Occurrence
- \$5,000,000. Aggregate

Erie County Water Authority to be scheduled as an Additional Insured

Certificates of Insurance to be provided to the Authority prior to start of work as follows:

ACORD 25 including copy of Additional Insured Endorsement Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract. Renewals of Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be received by the Authority 30 days prior to the expiration of the insurance policy period.

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract. Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than "A-" with a Financial Strength Code (FSC) of at least VII. The professional service provider shall name the Authority, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies. Any liability coverage on a "claims made" basis should be designated as such on the Certificate of Insurance. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

To avoid confusion with similar insurance company names and to properly identify the insurance company, please make sure that the insurer's National Association of Insurance Commissioners (N.A.I.C.) identifying number or A. M. Best identifying number appears on the Certificate of Insurance. Also, at the top of the Certificate of Insurance, please list the project number.

Acceptance of a Certificate of Insurance and/or approval by the Authority shall not be construed to relieve the outside vendor of any obligations, responsibilities or liabilities.

Certificates of Insurance should be e-mailed to mmusarra@ecwa.org or mailed to Ms. Molly Jo Musarra, Claim Representative/Risk Manager Erie County Water Authority, 295 Main Street – Room 350, Buffalo, New York 14203-2494, or If you have any questions you can contact Ms. Musarra by e-mail or phone (716) 849-8465.