

Board of Education Regular Meeting  
Monday, February 12, 2018 8:00 PM Central

Board Room  
1301 Centennial Avenue  
Utica, NE 68456-0187

Mark Avery: Present  
Doug Cast: Present  
Wayne Heine: Present  
Larry Paxson: Present  
Jason Richters: Present  
Doug Tonniges: Present  
Present: 6.

## 1. MEETING CALL TO ORDER

### 1. Reading of Public Meeting Notice

#### 1. Open Meetings Act

### 2. Roll Call

### 3. Consent Agenda

#### 1. Additions/Deletions and Agenda Approval

#### 2. Consider Minutes of Previous Meeting(s) and Their Approval

#### 3. Consider Current Bills and Their Approval

#### 4. Consider Activity Accounts and Treasurer's Report

### 4. Introduction of Guests; Invite Comments

## 2. OLD BUSINESS

### 1. SET RENTAL FEES

Motion to approve the rental fees for school facilities. This motion, made by Doug Tonniges and seconded by Doug Cast, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea

Yea: 6, Nay: 0

## 3. NEW BUSINESS

### 1. CONSIDER NEGOTIATIONS PROPOSAL AND SALARY/FRINGE BENEFIT PACKAGE FOR CERTIFIED STAFF FOR 2018-19

Motion to approve the 2018-19 negotiations proposal and salary/fringe benefit

package for certified staff. This motion, made by Wayne Heine and seconded by Doug Tonniges, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

## 2. COMMITTEE ASSIGNMENTS

### 3. DISCUSS, CONSIDER, AND TAKE ALL ACTION NECESSARY REGARDING BIDS TO REPLACE THE ROOFS OVER THE WRESTLING ROOM, WEIGHT ROOM, AND LOCKER ROOMS

Motion to approve the bid from Weathercraft Roofing for \$248,962 to replace the elementary roof. This motion, made by Wayne Heine and seconded by Jason Richters, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

## 4. REVIEW CURRICULUM & GRADUATION REQUIREMENTS

## 5. REVIEW ENROLLMENTS

## 6. DISCUSS PERTINENT LEGISLATION

### 7. CONSIDER PROPOSAL FOR NEW WEBSITE AND APP HOSTING AND DESIGN

Motion to approve a five year agreement with Apttegy for website and app design for a total of \$23,800. This motion, made by Jason Richters and seconded by Larry Paxson, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

## 8. DISCUSSION ON APPROVAL OF ACTIVITY FUND EXPENDITURES

### 9. CONSIDER ADOPTING A RESOLUTION SUPPORTING NEBRASKANS UNITED FOR PROPERTY TAX REFORM

Motion to approve a resolution in support of Nebraskans United for Property Tax Reform. This motion, made by Doug Cast and seconded by Doug Tonniges, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

### 10. CONSIDER APPOINTMENT OF THE FEDERAL AND STATE PROGRAMS REPRESENTATIVE

Motion to appoint Supt. DeWaard as Centennial's federal and state programs'

representative. This motion, made by Jason Richters and seconded by Wayne Heine, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

11. CONSIDER PROPOSAL TO REPLACE THE ELEMENTARY (1992 ADDITION) BOILER AND UPGRADE THE HVAC CONTROLS

Motion to approve Boiler Replacement, Siemens Control Upgrade-Phase 2018, and Siemens Software Support Agreement as presented to the board by Dan Tesar. This motion, made by Wayne Heine and seconded by Larry Paxson, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

12. CONSIDER SETTING RATE FOR OUT OF DISTRICT TRANSPORTATION

Motion to approve the 2018-2019 out of district transportation rate at \$490. This motion, made by Wayne Heine and seconded by Jason Richters, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

13. CONSIDER APPROVAL OF SUMMER SCHOOL PLANS

Motion to approve offering summer services to selected at-risk students as well as continue to offer driver's education. This motion, made by Doug Tonniges and seconded by Doug Cast, Passed.

Mark Avery: Yea, Doug Cast: Yea, Wayne Heine: Yea, Larry Paxson: Yea, Jason Richters: Yea, Doug Tonniges: Yea  
Yea: 6, Nay: 0

14. STUDENT AND STAFF RECOGNITION

15. BOARD MEMBER REPORTS

16. ADMINISTRATOR'S REPORTS

4. ADJOURN

# CENTENNIAL PUBLIC SCHOOL

1301 Centennial Avenue  
P.O. Box 187  
Utica, NE 68456-0187  
402-534-2321  
FAX 402-534-2291

Tim DeWaard  
Superintendent  
402-534-2291

Colin Bargaen  
Secondary Principal

Dean Davis  
Activities Director

Marni Parrack  
Elementary Principal

Bob Fish  
Counselor

## CENTENNIAL BOARD OF EDUCATION REGULAR MEETING January 10, 2018

Notice of meeting was published in York News Times on December 22, 2017.

Meeting was called to order at 8:00 p.m. with all board members present. Administrator present was Mr. Bargaen.

Paxson was nominated for President. Motion made by Heine, seconded by Avery, to cease nomination and to cast a unanimous ballot. Members polled: Avery, for; Cast, for; Heine, for; Paxson, abstain; Richters, for; Tonniges, for. Motion carried 5-0-1.

Paxson was elected President.

Avery and Richters were nominated for Vice President.

Avery was elected Vice President by a 4-2 vote.

Richters was nominated for Secretary. Motion made by Tonniges, seconded by Paxson, to cease nomination and to cast a unanimous ballot. Members polled: Avery, for; Cast, for; Heine, for; Paxson, for; Richters, abstain; Tonniges, for. Motion carried 5-0-1.

Cast was nominated for Treasurer. Motion made by Richters, seconded by Paxson to cease nomination and to cast a unanimous ballot. Members polled: Avery, for; Cast, abstain; Heine, for; Paxson, for; Richters, for; Tonniges, for. Motion carried 6-0.

In lieu of dissent, the consent agenda was accepted as presented.

Motion made by Richters, seconded by Cast, to adopt the 2018 Tentative Board of Education Annual Calendar of Meeting Topics with the addition of Assessment results in November or December. Members polled: Avery, for; Cast, for; Heine, for; Paxson, for; Richters, for; Tonniges, for. Motion carried 6-0.

Motion made by Richters, seconded by Tonniges, to appoint Virgil Heine to serve as AHERA Representative for the district. Members polled: Avery, for; Cast, for; Heine, for; Paxson, for; Richters, for; Tonniges, for. Motion carried 6-0.

Motion made by Tonniges, seconded by Avery, to set the Driver's Education fee at \$175. Members polled: Avery, for; Cast, for; Heine, for; Paxson, for; Richters, for; Tonniges, for. Motion carried 6-0.

Motion made by Cast, seconded by Heine, to table the approval of rental fees for the school facilities until next month. Members polled: Avery, for; Cast, for; Heine, for; Paxson, for; Richters, for; Tonniges, for. Motion carried 6-0.

Discussion was held on pending legislation

Heard Board Member reports

Heard Administrator reports.

Meeting adjourned at 9:15 p.m.

Douglas Tonniges, Secretary  
Centennial Board of Education

DT:mr

## Board Report for Newspaper

FEBRUARY 2018

<u>Vendor Name</u>	<u>Vendor Description</u>	<u>Amount</u>
ALLIED 100	SUPPLIES	91.80
ALPHA REHABILITATION	THERAPY SERVICES	17.57
AMAZON.COM	TEXTBOOKS	350.75
ASCD	SUPPLIES	1,076.00
ASSET GENIE, INC	REPAIR/HARDWARE	41.45
AUTO VALUE PARTS STORES	PARTS/SUPPLIES	239.91
AUTO-JET MUFFLER CORP	PARTS	208.42
BARGEN, COLIN	REIMBURSEMENT	714.98
BARTH, BARBARA	TeamMates	420.00
BAXTER	PARTS	681.25
BEAVER HARDWARE	PARTS	99.58
BLACK HILLS ENERGY	FUEL	17,155.60
BREITKREUTZ, JESSICA	REIMBURSEMENT	388.85
BRONCO SPUR	SUPPLIES	38.25
CALDER, KATHLEEN	REIMBURSEMENT	22.68
CAPITOL ONE COMMERCIAL	SUPPLIES	27.99
CENTENNIAL ACTIVITY FUND	DISTRICT REIMBURSEMENT	8,724.61
CENTRAL NEBRASKA REHABILITATION SERVICES	PHYSICAL THERAPY	8,793.85
CENTRAL VALLEY AG	FUEL	5,925.91
CGSMUSIC	GENERAL REPAIR	180.00
CHRISMAN, DANA	REIMBURSEMENT	9.50
CORNHUSKER CLEANING SYSTEMS, INC	TIRES/PARTS	210.47
CORNHUSKER INT. TRUCKS INC	EQUIP/MAIN	7,429.28
CROSS AND SONS, INC	SUPPLIES	45.00
CULLIGAN OF CRETE	SUPPLIES	128.00
DAIKIN APPLIED	MAINTENANCE	377.24
DAS STATE ACCOUNTING	TELEPHONE	234.93
DAVID CITY PUBLIC SCHOOLS	PSYCH SERVICES	4,757.23
DICKEY, SUSAN	REIMBURSEMENT	21.26
DIETZE MUSIC HOUSE	SHEET MUSIC/EQUIP	1.60
EASY TIME CLOCK, INC	FEES	37.00
EDUCATIONAL SERVICE UNIT 9	STAFF DEV	150.00
EGAN SUPPLY CO	SUPPLIES	6,619.28
ELECTRICAL ENGINEERING & EQUIPMENT	SUPPLIES	498.03
ERKS, RODNEY	REIMBURSEMENT	7.50
ESU #6	CONTRACTED SERVICES/SUPPLIES	845.00
FALLER LANDSCAPE, INC	SUPPLIES	211.60
FASTENAL COMPANY	SUPPLIES	86.60
FEHLHAFFER'S INC	PARTS/MAINTENANCE	330.00
FILTER CARE OF NEBRASKA	SUPPLIES	31.10
FUN AND FUNCTION	SUPPLIES	131.07
GIVENS, JAMES	REIMBURSEMENT	65.00
H & S PLUMBING AND HEATING	MAINTENANCE	511.10
HAFER, SHERYL	REIMBURSEMENT	7.50
HENRY, SHANNON	CONTRACTED SERVICES	7,122.87

## Board Report for Newspaper

FEBRUARY 2018

<u>Vendor Name</u>	<u>Vendor Description</u>	<u>Amount</u>
HIRERIGHT LLC	PHYSICAL/TESTING	58.80
J.W. PEPPER & SON, INC	SHEET MUSIC	389.99
JENSEN LUMBER CO	SUPPLIES	67.80
JOHN KOHL AUTO CENTER	MAINTENANCE	103.58
KONICA MINOLTA BUSINESS SOLUTIONS	EQUIP MAIN	1,788.70
KSB SCHOOL LAW	LEGAL SERVICE	2,142.00
LEARNING MOMENTUM, LLC	STAFF DEV	52.00
MATHESON TRI-GAS INC	SUPPLIES	781.42
MCCORMICK'S HEATING & AIR CONDITIONING	MAINTENCE	3,973.80
MEMORIAL HEALTH CARE SYSTEMS	PHYSICALS	983.00
MOORE MEDICAL LLC	SUPPLIES	57.38
MOSAIC @ BETHPHAGE VILLAGE	TUITION	343.68
NABER'S LOCKSMITH SERV	REPAIRS/SUPPLIES	37.20
NAEIR	FREIGHT	19.42
NANTKES, JENNIFER	CONTRACTED SERVICES	1,288.34
NASB	FEES	115.00
NEBRASKA CENTRAL EQUIPMENT, INC	SUPPLIES	1,562.13
NECO	EQUIP MAIN	146.70
NORRIS PUBLIC POWER DISTRICT	ELECTRICTY	9,277.61
ORTMEIER, MARK	REIMBURSETMENT	39.48
PAC N SAVE	FOOD/SUPPLIES	38.79
PAC N SAVE	SUPPLIES	110.97
PAINTIN PLACE CERAMICS	SUPPLIES	193.50
PAYFLEX	FEES	108.90
POSTMASTER	STAMPS	39.00
PRESTO-X CO	EXT FEE	107.00
READ TO THEM	REF BOOKS	1,066.70
RECYCLING ENTERPRISES OF NE, INC	RECYCLING	55.00
RENAISSANCE LEARNING, INC	SUPPLIES	120.00
RHODES, MARGARET	REIMBURSEMENT	50.69
ROCKET MATH, LLC	SUBSCRIPTION	300.00
SCHOOL SPECIALTY, INC	SUPPLIES	116.97
SEWARD ELECTRONICS	RADIO PARTS	119.78
SIOUX CITY TRUCK SALES, INC.	PARTS/REPAIR	195.51
SLACK AUTO SUPPLY	PARTS	158.38
SUDRLA, PATTY	CONTRACTED SERVICES	1,110.47
TOTAL RESPIRATORY AND REHAB	SUPPLIES	250.00
TRUCK CENTER COMPANIES	PARTS	2,852.65
UNITE PRIVATE NETWORKS, LLC	LEASE	748.59
UTICA PARTS & SERVICE	REPAIRS	317.08
VERIZON WIRELESS	CELL PHONE	239.60
VILLAGE OF UTICA	WATER/SEWER	1,305.02
WALMART COMMUNITY/SYNC	SUPPLIES	84.93
WINDSTREAM	TELEPHONE	611.81
YORK GENERAL HOSPITAL	SERVICES	369.01
YORK NEWS TIMES	ADV/PRINTING	145.87
YORK PUBLIC SCHOOLS	TUITION	13,969.63

Board Report for Newspaper

FEBRUARY 2018

Vendor Name

Vendor Description

Amount

Fund Total:

123,081.49

Checking Account Total:

123,081.49

DEPRECIATION FUND

Sysco Lincoln

\$7,708.00

**CENTENNIAL ELEMENTARY ACTIVITY ACCOUNT**

1/31/2018

ACCOUNT	December 2017	1/31/2018		January 2018
	BALANCE	RECEIPTS	DISBURSEMENTS	BALANCE
BOOKS	\$194.60	\$76.00	\$76.00	\$194.60
BOXTOPS	\$3,036.13	\$437.00		\$3,473.13
PICTURES	\$1,461.67			\$1,461.67
GENERAL	\$3,155.69	\$154.00		\$3,309.69
BACKPACK	\$12,855.65	\$42.34	\$70.27	\$12,827.72
READING CLASSIC				0
PE GRANT	\$4,200.00			\$4,200.00
<b>TOTAL</b>	<b>\$24,903.74</b>	<b>\$709.34</b>	<b>\$146.27</b>	<b>\$25,466.81</b>
			<b>Elementary Activity Bank Balance:</b>	<b>\$25,524.81</b>
			<b>Outstanding Checks:</b>	<b>\$58.00</b>
			<b>Balance:</b>	<b>\$25,466.81</b>

Elementary Activity Savings Account	\$2,969.11
Interest on Activity Savings Account	\$1.50
Other	
<b>Total in Savings:</b>	<b>\$2,970.61</b>

January 31, 2018

	Jan. 1 Balance	Received	Expenditures	Febr. 1 Balance
ART	\$4.09			\$4.09
ATHLETICS	\$13,104.91	\$17,537.00	\$9,349.24	\$21,292.67
BAND TRIP	\$10,618.85	\$3,952.35	\$1,823.50	\$12,747.70
BOOSTER CLUB	\$0.00			\$0.00
BOYS BASKETBALL	\$4,320.38	\$118.47	\$3,038.07	\$1,400.78
BRONCO STORE	\$1,059.88	\$649.64		\$1,709.52
C CLUB	\$419.02			\$419.02
CLASS '14	\$0.00			\$0.00
CLASS '17	\$0.00			\$0.00
CLASS '18	\$1,790.60			\$1,790.60
CLASS '19	\$2,857.14			\$2,857.14
CLASS '20	\$648.01	211.94		\$859.95
CLASS '21	\$345.15			\$345.15
CONC. MAN.	\$1,824.25	\$569.09		\$2,393.34
CONCESSIONS	\$42,048.85	\$6,676.13	\$6,812.37	\$43,912.61
CROSS COUNTRY	\$151.53			\$151.53
DANCE TEAM	\$1,662.10	\$60.00	\$588.80	\$1,133.30
DIST. EVENTS	\$8,866.31	\$1,070.10	\$971.99	\$8,964.42
DRAMA	\$7,607.47			\$7,607.47
FBLA	\$2,745.76			\$2,745.76
FCA	-\$39.95			-\$39.95
FCCLA	\$3,631.03	\$508.60	\$37.29	\$4,102.34
FFA	\$12,420.27	\$387.50	\$1,464.28	\$11,343.49
FOOTBALL	\$1,524.07		\$253.00	\$1,271.07
GENERAL	\$77,134.82	\$69,320.54	\$143,389.49	\$3,065.87
GIRLS BASKETBALL	-\$484.25	\$1,018.00	\$438.25	\$95.50
GOLF	\$10.22			\$10.22
INSTR.	-\$3,893.65	\$581.96	\$1,293.38	-\$4,605.07
JH GIRLS B-BALL	\$1,827.65			\$1,827.65
JH YEARBOOK	-\$52.77			-\$52.77
LIBRARY	\$828.88			\$828.88
MAT GIRL	\$899.06			\$899.06
NHS	\$40.10			\$40.10
ONE ACT	-\$25.54			-\$25.54
SCIENCE	\$390.81			\$390.81
SHOP/TECH	\$2,025.68			\$2,025.68
SHOW CHOIR	-\$3,530.06	\$1,550.08		-\$1,979.98
SOFTBALL	\$4,362.03			\$4,362.03
SPANISH CLUB	\$0.00			\$0.00
SPEECH	-\$427.50		\$295.92	-\$723.42
ST. COUN.	\$47.82	\$377.00	\$385.55	\$39.27
STUDENT FEES	\$0.00			\$0.00
TRACK	\$289.23			\$289.23
VOCAL	-\$2,627.35	\$150.00	\$716.00	-\$3,193.35
VOLLEYBALL	\$3,941.87			\$3,941.87
WRESTLING	\$2,915.49	\$156.49	\$50.00	\$3,021.98
WT. ROOM	\$6,292.66	\$400.00		\$6,692.66
YEARBOOK	-\$19,263.99	\$1,695.00	\$3,606.10	-\$21,175.09
	\$188,310.93	\$108,989.89	\$174,513.23	\$122,787.59
CENTENNIAL BANK BALANCE				\$133,394.91
OUTSTANDING CHECKS				\$10,807.32
OUTSTANDING DEPOSITS				
Total				\$122,787.59

Year To Date

	Sept 1, 2017 Balance	Received	Expenditures	YTD Balance
ART	\$4.09	\$0.00	\$0.00	\$4.09
ATHLETICS	-\$759.78	\$58,431.63	\$36,379.18	\$21,292.67
BAND TRIP	\$10,415.09	\$12,943.31	\$10,610.70	\$12,747.70
BOOSTER CLUB	\$0.00	\$6,625.00	\$6,625.00	\$0.00
BOYS BASKETBALL	\$1,688.08	\$4,091.30	\$4,378.60	\$1,400.78
BRONCO STORE	\$1,171.69	\$2,143.53	\$1,605.70	\$1,709.52
C CLUB	\$419.02	\$0.00	\$0.00	\$419.02
CLASS '14	\$0.00	\$0.00	\$0.00	\$0.00
CLASS '17	\$28.03	\$0.00	\$28.03	\$0.00
CLASS '18	\$1,853.46	\$28.03	\$90.89	\$1,790.60
CLASS '19	\$2,857.14	\$0.00	\$0.00	\$2,857.14
CLASS '20	\$454.60	\$405.35	\$0.00	\$859.95
CLASS '21	\$0.00	\$345.15	\$0.00	\$345.15
CONC. MAN.	\$0.00	\$2,393.34	\$0.00	\$2,393.34
CONCESSIONS	\$39,957.82	\$32,987.22	\$29,032.43	\$43,912.61
CROSS COUNTRY	\$880.53	\$0.00	\$729.00	\$151.53
DANCE TEAM	\$3,366.72	\$1,823.18	\$4,056.60	\$1,133.30
DIST. EVENTS	\$6,596.91	\$15,636.60	\$13,269.09	\$8,964.42
DRAMA	\$9,373.20	\$12.25	\$1,777.98	\$7,607.47
FBLA	\$1,768.73	\$1,485.99	\$508.96	\$2,745.76
FCA	-\$39.95	\$0.00	\$0.00	-\$39.95
FCCLA	\$1,568.60	\$3,687.03	\$1,153.29	\$4,102.34
FFA	\$5,654.84	\$28,341.96	\$22,653.31	\$11,343.49
FOOTBALL	\$4,910.23	\$1,038.00	\$4,677.16	\$1,271.07
GENERAL	\$5,296.43	\$364,502.41	\$366,732.97	\$3,065.87
GIRLS BASKETBALL	\$1,376.43	\$1,743.00	\$3,023.93	\$95.50
GOLF	\$10.22	\$0.00	\$0.00	\$10.22
INSTR.	-\$3,431.67	\$3,343.49	\$4,516.89	-\$4,605.07
JH GIRLS B-BALL	\$1,813.70	\$599.50	\$585.55	\$1,827.65
JH YEARBOOK	-\$52.77	\$0.00	\$0.00	-\$52.77
LIBRARY	\$830.43	\$15.44	\$16.99	\$828.88
MAT GIRL	\$374.72	\$524.34	\$0.00	\$899.06
NHS	\$40.10	\$0.00	\$0.00	\$40.10
ONE ACT	-\$25.54	\$0.00	\$0.00	-\$25.54
SCIENCE	\$390.81	\$0.00	\$0.00	\$390.81
SHOP/TECH	\$2,025.68	\$0.00	\$0.00	\$2,025.68
SHOW CHOIR	\$591.06	\$4,291.15	\$6,862.19	-\$1,979.98
SOFTBALL	\$1,710.18	\$3,244.06	\$592.21	\$4,362.03
SPANISH CLUB	\$0.00	\$0.00	\$0.00	\$0.00
SPEECH	-\$402.50	\$0.00	\$320.92	-\$723.42
ST. COUN.	-\$137.13	\$2,744.96	\$2,568.56	\$39.27
STUDENT FEES	\$0.00	\$0.00	\$0.00	\$0.00
TRACK	\$289.23	\$0.00	\$0.00	\$289.23
VOCAL	-\$2,820.17	\$893.42	\$1,266.60	-\$3,193.35
VOLLEYBALL	\$9,274.72	\$1,903.66	\$7,236.51	\$3,941.87
WRESTLING	\$1,082.29	\$1,989.69	\$50.00	\$3,021.98
WT. ROOM	\$6,392.66	\$1,000.00	\$700.00	\$6,692.66
YEARBOOK	-\$24,072.69	\$6,779.00	\$3,881.40	-\$21,175.09
	\$92,725.24	\$565,992.99	\$535,930.64	\$122,787.59
			Total	\$122,787.59

February 2018  
January 2018 Bank Statement

CENTENNIAL PUBLIC SCHOOL INVESTMENTS

FUND	BANK	TYPE OF INVESTMENT	INT. RATE AMOUNT	INT. REC
Lunch Fund	First Bank of Utica	Checking 180000	Total <u>\$18,687.73</u>	
Depreciation Fund	Farmers & Merchants	MMA 436 949	Total \$187,435.88	\$25.42
Unemployment Ins.	Cornerstone Bank Cornerstone Bank	Certificate 613277 MMA 81190	Total \$54,307.22 <u>\$10,825.32</u>	\$2.76
Building Fund	First Bank of Utica	Checking 18 064 6 Qualified Cap Bond 180554	Total \$222,804.79 \$103,018.03	\$82.35 \$15.30
General Fund	Farmers & Merchants Farmers & Merchants Farmers & Merchants First Bank of Utica Cornerstone Bank Cornerstone Bank Cornerstone Bank York State, Gresham York State, Gresham York State, Gresham First Bank of Utica	MMA 436 436 CD 71455 24mo CD 81169 CD16282 MMA 300079871 CD 613277 36mo 02/17/2020 CD 71241 16 mo 12/05/2017 MMA 1027291 CD 5204 CD 5215 PayFlex Acct	Total \$93,013.67 \$125,448.06 \$122,504.78 \$124,027.10 \$56,457.69 \$132,723.31 \$131,824.05 \$55,738.77 \$193,620.28 \$130,883.54 \$11,231.22	\$12.61 \$733.18 \$986.62 \$0.00 \$14.38 \$0.00 \$0.00 \$10.18 \$0.00 \$0.00
	First Bank of Utica	Checking 180505	Total \$1,177,472.47	\$1,756.97

Total Invested All Accounts Combined \$2,143,775.46

Total amount invested at Farmers & Merchants ..... \$528,402.39  
 Total amount invested at First Bank of Utica ..... \$848,992.89  
 Total amount invested at Cornerstone Bank, Waco ..... \$386,137.59  
 Total amount invested at York State, Gresham ..... \$380,242.59  
 Total Invested \$2,143,775.46

## Centennial Public School Rental Fees

	Non-Profit	Profit
Downtown Gym	\$50	\$100
Multipurpose Room (Small Gym)	\$30	\$50
Kitchen	\$50	\$100
<b>**A School Employed Kitchen Staff Member must be present and paid by the renter.</b>		
Cafeteria	\$25	\$50
East Gym	\$75	\$200
West Gym	\$100	\$250
Commons Area Outside Gyms	\$50	\$100
Classroom	\$15	\$25
Auditorium	\$100	\$250

**\*\*A school approved light and sound technician must be present and paid by the renter.**

**If it is determined that a custodian needs to be present, they will be paid by the renter.**

**Effective: June 1, 2017**

## Committee Assignments

2017

Americanism	Larry Paxson, Chr. Wayne Heine Jason Richters
Transportation	Doug Tonniges, Chr. Larry Paxson Jason Richters
Bldg. & Grounds	Mark Avery, Chr. Doug Cast Doug Tonniges
Finance	Doug Cast, Chr. Mark Avery Wayne Heine
Negotiations	Wayne Heine, Chr. Doug Cast Doug Tonniges
Computer/Technology	Jason Richters, Chr. Mark Avery Larry Paxson
NASB Voting Delegate/ LRN Representative	

To: Dan Tesar, Technology Coordinator, Centennial Public Schools

From: Chris Wall - The Garland Company

Date: January 26, 2018

Re: Recommendation for District Re-Roof Project

---

Mr. Tesar,

Upon reviewing the bid results for the 2018 District Re-roof project, I am recommending that the contract be awarded to lowest bidder for "Base Bid". The school district should accept the "Base Bid" provided by Weathercraft on Lincoln, in the amount of \$248,962. I have summarized the bid scenarios below:

The contracting firm that has been determined to be the "Low Bidder" on this project has been contacted, is satisfied with the results of the bid, and is prepared to complete the project per specification. Please refer to bid tabulation form.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Chris Wall

The Garland Company

**Centennial Public Schools 2018**

<b>Contractor</b>	<b>Lumps Sum Base Bid</b>	<b>Tectum Deck Repair</b>	<b>Insulation Replacement</b>	<b>Wood Nailer Replacement</b>	<b>Bond</b>
<b>ARR/Boone Brothers</b>	<b>\$ 295,000</b>	<b>\$ 12.00</b>	<b>\$ 4.00</b>	<b>\$ 2.00</b>	<b>x</b>
<b>Mckinnis Roofing</b>	<b>\$ 346,000</b>	<b>\$ 25.00</b>	<b>\$ 2.75</b>	<b>n/b</b>	<b>x</b>
<b>Independent Roofing</b>	<b>\$ 350,000</b>	<b>\$ 8.95</b>	<b>\$ 4.95</b>	<b>\$ 3.95</b>	<b>x</b>
<b>Weathercraft Roofing</b>	<b>\$ 248,962</b>	<b>\$ 12.00</b>	<b>\$ 2.50</b>	<b>\$ 1.75</b>	<b>x</b>

## GRADUATION REQUIREMENTS

The Centennial Board of Education believes the many benefits of a high school education cannot be fully realized in less than four years. Further, it views the entire senior year as an important period during which the student should be able to enjoy many experiences providing academic growth and enrichment, exploration of new areas, and social growth and maturity.

All students (grades 9-12) are required to register for and complete a minimum of 60 hours of credit each year. Exception: (Students enrolled in vocal music may register for 56 hours of credit.) All seniors are required to successfully complete a minimum of 45 hours of credit in their fourth year of high school.

<u>Required Credit Hours</u>	<u>Credits</u>
<b>ENGLISH - 40 CREDIT HOURS</b>	
Grade 9 English 9 I/II	10
Grade 10 English 10 I/II	10
Grade 11-12 English 11 I/II (and Adv. English if offered)	10
Grade 12 <u>Choices</u> : English 12 I/II, Adv. English, Applied English 12	10
<b>MATHEMATICS - 30 CREDIT HOURS</b>	
Grade 9 Algebra A, Algebra I, Algebra II	10
Grade 10 Algebra B, Algebra I, Algebra II, Geometry, Applied Math	10
Grade 11-12 <u>Choices</u> : Algebra II, Geometry, Applied Math, Consumer Math, 10 Trig/Pre-Calculus, College Prep Math, College Algebra, Calculus	
<b>SCIENCE - 30 CREDIT HOURS</b>	
Grade 9 Physical Science	10
Grade 10 General Biology (and Chemistry I if prerequisites are met)	10
Grade 11 Chemistry I/II, Standards Science	10
Grade 12 <u>Choices</u> : Physics, Anatomy, Chemistry II, Adv. Biology, College Chemistry	10
<b>SOCIAL STUDIES - 30 CREDIT HOURS</b>	
Grade 9 World History	10
Grade 10 American History	10
Grade 11- 12 Government	10
<b>BUSINESS - 10 CREDIT HOURS</b>	
Grade 11 - 12 Economics	10
<b>PHYSICAL EDUCATION - 10 CREDIT HOURS</b>	
Grade 9 P.E/Health	10

**COMPUTER TECHNOLOGY - 10 CREDIT HOURS**

Grade 9      Info Tech I      10

**SPEECH - 5 CREDIT HOURS**

Grade 10, 11, or 12      Speech      5

ALL OF THE ABOVE CLASSES MERIT FIVE (5) CREDIT HOURS PER SEMESTER

TOTAL REQUIRED CREDIT HOURS -	165
TOTAL ELECTIVE CREDIT HOURS -	<u>+75</u>
TOTAL CREDIT HOURS FOR GRADUATION -	240

**COMMUNITY SERVICE REQUIREMENT - 60 HOURS (15 hours/school year)**

Community Service Hours **MUST BE PRE-APPROVED** by the principal or guidance counselor.

**In an effort to help students keep pace over their 4 years of high school, students will not be able to participate in the Homecoming dance, Prom, or Class Competition Day Out of School if they have not met the following:**

- Freshman (must have 5 hours completed & turned in by Prom/Day Out of School)
- Sophomores (must have 15 hours completed & turned in by Homecoming and 20 hours completed & turned in by Prom/Day Out of School)
- Juniors (must have 30 hours completed & turned in by Homecoming and 35 hours completed & turned in by Prom/Day Out of School)
- Seniors (must have 45 hours completed & turned in by Homecoming and 50 hours completed & turned in by Prom/Day Out of School)

**DRIVER EDUCATION**

Students successfully completing driver education at Centennial will receive three (3) credit hours. Driver education grades do not count toward student grade point averages.

# Powering Your School's Identity

Apptegy was founded to help schools build stronger relationships with their communities. We believe that by making it really simple for schools to engage with parents, students, faculty, and community members; schools will see more community interaction and student success.

In our mobile and increasingly connected world, schools have been stuck updating a half dozen different tools to make sure parents hear their messages. At Apptegy, we've developed a platform which allows you and your team to manage all of your communication channels from a single tool. This means you'll see more stories being shared with your community and less work for your staff.

We build beautiful mobile apps for Android and iPhone that focus on what really matters: user experience. No pinching and zooming to read cafeteria menus or loading hard to read websites inside the app. Having a user experience that delights parents and community members means they will come back again and again to your app.

Get access to the most powerful communication tool on the education market, our Thrillshare publishing platform. With Thrillshare, you can write a message once and it automatically updates your website, iPhone app, Android App, Facebook, Twitter, send text messages, voice calls, and push notifications.

Apps, website, and social media accounts are only as good as the content that fills them. Thrillshare makes it easy to assign privileges to your team to update the sections that they care most about. Coaches can update sports scores, teachers can share what is happening in class, and principals can post upcoming events. By eliminating the technical barrier required to update communication, opportunities for content creation are shared with your whole team. With this level of customization and control, you can feel confident about what is going out to the community.

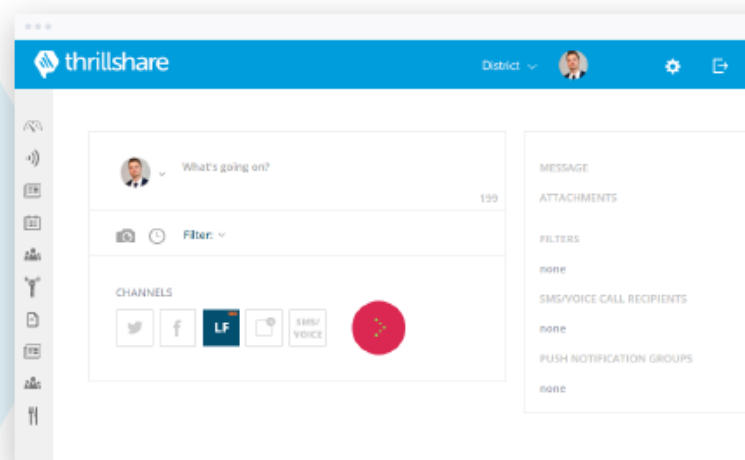
Become a storytelling superhero and see the power that comes from sharing all the amazing things that are happening in your school.

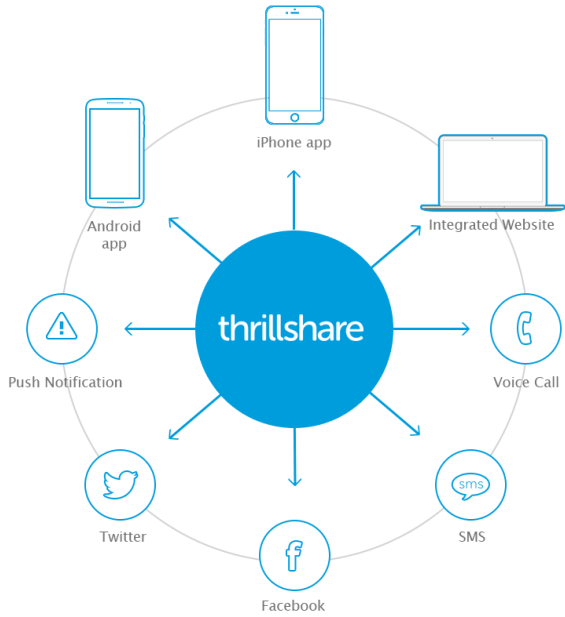


- 1 Enter your content into the Thrillshare platform
- 2 Click submit!

That's it! Thrillshare will then distribute your content & images to your selected outlets in the format needed for that service.

**It doesn't get any easier than that.**





## Alerts - text message, voice call & push notifications.

Imagine being able to send Push Notifications, Text Messages, and Voice Calls from the same system you use to update your website, mobile apps and social media.

## Mobile apps

How many times a day do you check your phone versus your computer? Your audience uses mobile devices at twice the rate to connect with the people and organizations they care about. A mobile app is the single best way to connect with your school community.





## Websites

Websites have changed very little since their inception and we feel it's time for a change. Our interactive websites provide a much better user experience for your audience.

## PRICING

Name	One Year	Three Year (30% off app development)	Five Year (60% off app development)
App Development (one-time) One-time iOS & Android app design & development -- discounting \$1,500 if signed by February 28, 2018.	\$4,500	\$3,150	\$1,800
Thrillshare Thrillshare Publishing platform (desktop and mobile) for 450 students and staff	\$4,400	\$13,200	\$22,000
Website Design and Hosting	\$0	\$0	\$0
Text, Voice, and Email alerts Unlimited text alerts, unlimited voice alerts, and unlimited email alerts	\$0	\$0	\$0
Trainings Unlimited webinar-based trainings	\$0	\$0	\$0
<b>Total</b>	<b>\$8,900</b>	<b>\$16,300</b>	<b>\$23,800</b>

**A Resolution of the \_\_\_\_\_ Supporting the Principles of *Nebraskans United for Property Tax Reform and Education* and Urging the Nebraska Legislature and the Governor to Reduce Nebraska's Reliance on Property Taxes for Funding K-12 Education**

**Duly approved on \_\_\_\_\_**

---

WHEREAS, education reduces poverty, boosts economic growth, increases income, and is one of the most important investments a state can make in its citizens and future and;

WHEREAS, Nebraska ranks 49<sup>th</sup> among all states in the percentage of K-12 funding that comes from state resources (Nebraska K-12 schools receive only 33 percent of their funding from state sources while the national average is 47 percent) and;

WHEREAS, more than 60 percent of all property taxes collected in the state of Nebraska are utilized for the funding of K-12 education and;

WHEREAS, Nebraska's reliance on property taxes for funding K-12 schools is considerably higher than that of the national average (49 percent of Nebraska K-12 funding comes from local property taxes while the national average is 29 percent) and;

WHEREAS, Nebraskans pay the seventh highest property tax rate in the nation and;

WHEREAS, Nebraska has become far too reliant on property taxes to fund government services, including K-12 education and;

WHEREAS, Nebraska's three-legged tax stool is woefully out of balance, with property taxes accounting for 48 percent of the total combined collections of property, state sales, and state income taxes, used for the funding of education and government services and;

WHEREAS, Nebraskans deserve a tax system that is fair and balanced and one which reduces the overall property tax burden on its citizens, be it therefore

RESOLVED, that the \_\_\_\_\_ supports the principles of *Nebraskans United for Property Tax Reform and Education* stating that

1. Adequate and sustainable funding of high quality education is imperative for the future of Nebraska.
2. Tax reform which reduces the over-reliance on local property taxes is necessary to ensure our tax system is fair to all Nebraska taxpayers.

RESOLVED FURTHER, the Nebraska Legislature and the Governor take action during the 2017 legislative session to reduce property taxes and better balance Nebraska's tax system.

It is hereby certified by the undersigned that the foregoing resolution was adopted by the \_\_\_\_\_

Signature

Printed Name

Date

---

---

---

---

---

---

---

---

**Date:** December 22, 2017  
**Limiting Date:** January 22, 2018

**To:** Centennial Public Schools  
Elementary School  
1301 Centennial Avenue  
Utica, NE 68456

Attn: Dan Tesar

**Project:** Elementary Boiler Budget

**Bid Package:** Site Inspection

**Name of Bidder:** Scott Weinandt  
Siemens Industry, Inc.  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE  
(402) 827-4118

**Base Bid Documents:** NA

### **Scope of Work: Siemens Industry Inc. proposes the following**

#### **Business Problem:**

In the elementary wing mechanical room the existing boiler system has reached the life cycle expectancy. The boilers, pumping system, VAV box heating coils and air distribution systems have been in operation for a number of years and lost the operating efficiencies because of system degradation realized over time. In most buildings statistics recorded by ASHRAE say that building systems are operating between 15-25% inefficient. ASHRAE recommends a building re-commissioning process to be completed every 5 years.

#### **Business Solution:**

Siemens has developed a process to address the equipment life cycle and operating inefficiencies of the building and proposes a cost budget to implement the solution.

#### **Boiler Replacement:**

Typical life span of a fire tube boiler is between 20-25 years. Boilers with gas burners that are not maintained, cleaned and tuned regularly typically run at lower efficiencies.

#### **Air Separator:**

These devices degrade over time, the small orifices found within the separator contaminate and loose ability to remove air from the system. Air that is not removed from the system properly will cause oxidation of the piping system which will break loose and plug coils and strainers.

#### **Main Pump:**

In this case one of the main pumps seems to be inoperable and failed. Pumps over time wear and loose pumping output.

### Recirculation Pumps:

In this case it seems the existing pumps are operable but have had failures. These pumps are critical to ensuring the proper water flow is being delivered to prevent short cycling of the boilers.

### New Automation:

Siemens will remove the JCI / Honeywell controls and will take over direct control of the boilers and burners. Siemens will implement control sequences to optimize the heating water setpoint based on demand not just a fixed value.

### Duct Coil Cleaning:

Student health is important. Air ducts typically are not cleaned. Dirt and debris enter the system, bypass the filtering systems and pass into coils causing plugging and efficiency loss. Typically systems have enough diversity to handle some loss in efficiency but over a period of time the heating / cooling functions are in operable.

### Re-Commissioning:

After all previous parts of the solution have been completed, measurement and verification should take place to ensure air and water flow values are being delivered to the original design intent. Test and balance technicians will calibrate air flow stations at VAV boxes and ensure the proper air flows are being delivered from the air handler. Water pumping systems will be verified to be pumping the design intent output from each pumps and being delivered to each VAV box coil.

Siemens will install trending and reporting to verify operation of the equipment monthly and yearly.

### Scope Summary Boiler Replacement:

Siemens will provide a turn-key solution for the boiler replacement which will include the removal and installation of (2) LES AVW-60 boilers. The existing hot water system will be shut-down, drained and the boilers will be demolished. Installation of the new boilers, connection to the existing flue system, commissioning of the combustion air system, water makeup system, pumping flow systems and start-up of the hot water system will be completed.

### Included:

- Coordination with the Owner.
- Shut down and system preparation for removal of the boilers.
- Electrical disconnect and reconnect.
- Demolish boilers and removal from the site.
- Provide and install (2) new equal to existing boilers.
- Reconnect the existing natural gas and water piping to boilers.
- Install new air separator.
- Verify existing check valves are operable.
- Reuse the existing combustion air and exhaust stack.
- Factory start-up.
- Burner adjustment
- 6 month service tune up (Included in project)
- Licensing required by the State of NE
- 1 year warranty on parts and labor.
- Boiler emergency stop switch will be installed for code compliance.

### Not Included:

- Existing system deficiencies.
- Chemical treatment by Owner.

- Boiler removal from the site. (Owner will provide a dumpster.)

### **Scope Summary Pumps(4):**

Siemens will replace (2) main pumps and (2) recirculation pumps.

#### **Included:**

- Coordination with the Owner.
- Electrical
- New Pumps.
- Piping accessories and corroded flex connections.
- Insulation replacement.

#### **Not Included:**

- Existing system deficiencies.
- This work should be done during the boiler replacement.

### **Scope Summary New Automation:**

Siemens will remove the existing Honeywell / JCI controls. New Siemens temperature sensors (4) and controls will be installed. Siemens will implement current ASHRAE standard sequences to optimize the control of the boilers and VAV box systems.

#### **Included:**

- Coordination with the Owner.
- New sensors and hardware.
  - Hot water supply temperature
  - Hot water return temperature
  - Boiler 1 command
  - Boiler 2 command
  - Burner Boiler 1 status
  - Burner Boiler 2 status
  - Pump 1,2,3 and 4 start / stop and status
- Domestic hot water supply temperature
- Domestic recirculation pump
- Electrical wiring.
- Programming and graphics modifications.

#### **Not Included:**

- Existing system deficiencies.

### **Scope Summary Duct Cleaning:**

Siemens will provide duct cleaning for the supply and return ducts of AHU 1. Duct cleaning from AHU 1 to each VAV box and the coil of each VAV box will be cleaned.

#### **Included:**

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

- Coordination with the Owner.
- Duct access points installed.
- Before and after pictures.
- Measurement and verification trending / reporting established.

**Not Included:**

- Existing system deficiencies.
- The Owner must supply the existing project mechanical schedule and plans.

**Scope Summary Re-Commissioning:**

Siemens will provide a full test and balance verification on AHU 1 and (9) VAV boxes. Water and air testing will be completed to measure current flow and balancing will be completed to set the system to the original design intent. Calibration of the air flow stations at each VAV box will be completed. Trending will be established on the AHU, boilers and VAV boxes to ensure that each component of the system does not drift out of spec over time.

**Included:**

- Coordination with the Owner.
- Test / Balance tasking on the water and air side. (AHU 1, (9) VAV boxes, (4) pumps, (2) two boilers.
- Air flow station calibration.
- Test and balance report.
- Trending and profiling.

**Not Included:**

- Existing system deficiencies.
- The Owner must supply the existing project mechanical schedule and plans.

**Project Exclusions or Not Included:**

- Tax
- Boiler equipment will be the Owners responsibility for either salvage or disposal. Siemens will remove it from the building and place it in a location for removal by the Owner.
- Existing conditions or equipment failure.
- Chemical treatment or components.



**Building Management Control System Proposal**

***PROPOSAL 031517-SIEMENSBOILERREV3***

---

---

**Budget Price \$ 82,973.00 Eighty Two Thousand Nine Hundred Seventy Three Dollars.**

---

*The Terms and Conditions of Sale shown on the attached are a part hereof*

**Proposal Accepted:**

Siemens Industry Inc. is authorized to proceed with the work as proposed.

**Proposal Submitted:**

**Purchaser:** \_\_\_\_\_

**Seller:** Siemens Industry, Inc.

**By:** \_\_\_\_\_

**By:** Scott Weinandt

**Title:** \_\_\_\_\_

**Title:** Account Executive

**Date:** \_\_\_\_\_

**Date:** January 29, 2018

SIEMENS PROJECTS BUSINESS STANDARD TERMS AND CONDITIONSPREAMBLE

THESE STANDARD TERMS AND CONDITIONS, entered into by and between the entity identified in the 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 general terms and conditions incorporate the Scope of Work set forth in the Proposal ("Scope of Work") and the supplemental terms and conditions set forth in Attachment "A," as though the Scope of Work and Attachment "A" was fully set forth herein.

ARTICLE 1  
DEFINITIONS1.1 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 Scope of Work.

"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/provincial], 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.

**"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 than 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 (viii) 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.

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

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

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

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.

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

## Building Management Control System Proposal

**PROPOSAL 031517-SIEMENSBOILERREV3**

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," "Indemnitees," "Export / Import Compliance," and "Nuclear" survive termination, expiration or cancellation of this Agreement.

**Date:** January 29, 2018  
**Limiting Date:** February 29, 2018

**To:** Centennial Public Schools  
Elementary School  
1301 Centennial Avenue  
Utica, NE 68456

Attn: Dan Tesar

**Project:** System Upgrades 2018

**Bid Package:** JCI Drawing Package / Site Inspection

**Name of Bidder:** Scott Weinandt  
Siemens Industry, Inc.  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE  
(402) 827-4118

**Base Bid Documents:** NA

### **Scope of Work: Siemens Industry Inc. proposes the following**

#### **Business Problem:**

Existing legacy JCI and Siemens hardware / software at the school have either exceeded or will exceed the support life of the equipment.

#### **Business Solution:**

Last year a budget was delivered to the school to prepare for the needed hardware upgrades. In previous years migration of JCI controls to Siemens had been completed. This solution will address those remaining JCI controls, upgrade existing Siemens legacy panels and convert AHU 1 to Siemens.

#### **Scope Summary Nodes 7 and 9 (RTU 7, 9):**

Siemens will remove the existing hardware and install a new PXC controller rated for rooftop applications. Programming and commissioning will be completed by Siemens.

#### **Included:**

- Coordination with the Owner.
- Shut down and remove existing controller and wiring.
- Install and program the new PXC.
- Commission and verify all input and outputs.
- Update the graphics or user interface at the Siemens workstation if needed.

#### **Not Included:**

- Replacements for discovered failed parts on the existing systems.

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

- Any wiring needed.
- Ethernet drops by Owner.

### **Scope Summary Node 10 (RTU 10):**

Siemens will remove the existing hardware and install a new PXC36 controller. Programming and commissioning will be completed by Siemens.

#### **Included:**

- Coordination with the Owner.
- Shut down and remove existing controller and wiring.
- Install and program the new PXC.
- Commission and verify all input and outputs.
- Update the graphics or user interface at the Siemens workstation if needed.

#### **Not Included:**

- Replacements for discovered failed parts on the existing systems.
- The existing panel mounted heater system will be reused.
- Ethernet drops by Owner.

### **Scope Summary Node 11:**

Siemens will remove the existing hardware and install a new PX36 BACnet controller. Programming and commissioning will be completed by Siemens.

#### **Included:**

- Coordination with the Owner.
- Shut down and remove existing controller and wiring.
- Install and program the new PXC36.
- Commission and verify all input and outputs.
- Update the graphics or user interface at the Siemens workstation if needed.
- Verify the BACnet communications.

#### **Not Included:**

- Replacements for discovered failed parts on the existing systems.
- The existing panel mounted heater system will be reused.
- Ethernet drops by Owner.

### **Scope Summary AHU 1 VFD:**

Siemens will remove the existing combination motor starter and install a new Siemens BT300 VFD rated for 480vac and 7.5 HP. All electrical power and control wiring will be completed by Siemens. The VFD will be added to the FLN network in the mechanical room and programmed to the BMS.

#### **Included:**

- Coordination with the Owner.

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

- Shut down and remove existing starter and wiring.
- Install and program the new VFD.
- Complete a factory warranty start-up and submit the completed form to Siemens corporate.
- Update the graphics or user interface at the Siemens workstation if needed.
- Commission the drive to maintain the duct static pressure setpoint and minimum air flow setpoints.
- Mechanically lock the bypass damper closed..
- Provide, install and wire a new Inverter rated motor.
- New belts and sheaves if applicable.
- The existing combination motor starter will be used as an electrical disconnect to the VFD.

### **Not Included:**

- Replacements for discovered failed parts on the existing systems.
- AHU 1 conversion must be completed at the same time as this scope item.
- 1 year parts and labor warranty.

### **Scope Summary AHU 1 MBC Node 1 Merge:**

Siemens has an existing controller in this mechanical room that currently connects the JCI equipment to the Siemens BMS. AHU 1 and approximately (4) vav boxes are still on the JCI System. Siemens proposes to remove the existing JCI controller for AHU 1 and install a new Siemens enclosure at the existing JCI controller location. Existing control wiring, 24vac power sources, 120vac power sources and control devices will be used as applicable.

The existing Siemens controller was installed with future provisions for this conversion and will be placed in the new control panel and configured for the addition of the existing input and output requirements of the AHU and MBC 1. New temperature sensors will be installed to replace the JCI sensors for mixed air, discharge air and return air. Outside air temperature will be received globally from the system.

MBC 1 has three FLN trunks that connect approximately 75 Tec controllers throughout the building. These trunks will be connected to the AHU 1 controller.

Future provisions for future additions from the hot water boiler system (hot water supply, return and system hot water return temperatures) have been provided as spare input and outputs.

The existing MBC panel controller will be decommissioned and removed. (The panel will not be removed.)

### **Included:**

- Coordination with the Owner.
- Demolish existing JCI / Siemens legacy equipment.
- Install and wire new control panels and controls.
- Install new Siemens sensors.
- Update the graphics or user interface at the Siemens workstation if needed.
- Recommission the AHU.
- Match the existing AHU points list.
- Reuse existing JCI pressure switches and transducers.

### **Not Included:**

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

- Replacements for discovered failed parts on the existing systems.
- Ethernet drops by Owner.

### Scope Summary VAV Box Conversion:

In the past Siemens has converted existing VAV boxes with JCI controls to Siemens. Siemens will convert (4) VAV boxes to Siemens.

### Included:

- Coordination with the Owner.
- Demolish existing JCI legacy equipment.
- Install and wire new controls at each VAV.
- Install new Siemens sensors.
- Update the graphics or user interface at the Siemens workstation if needed.
- Recommission each VAV.
- Use the existing FLN trunk.

### Not Included:

- Replacements for discovered failed parts on the existing systems.

### Project Exclusions or Not Included:

- Replacements for discovered failed parts on the existing systems.
- Existing conditions or equipment failures that cause project delays.
- Server. (Siemens can provide a server but we have found most Customers prefer to provide the server.)
- Ethernet drops.
- Overtime
- Tax

**Base Price \$ 39,778.00 Thirty Nine Thousand Seven Hundred Seventy Eight Dollars.**

---

*The Terms and Conditions of Sale shown on the attached are a part hereof*

### Proposal Accepted:

Siemens Industry Inc. is authorized to proceed with the work as proposed.

### Proposal Submitted:

**Purchaser:** \_\_\_\_\_

**Seller:** Siemens Industry, Inc.

**By:** \_\_\_\_\_

**By:** Scott Weinandt

**Title:** \_\_\_\_\_

**Title:** Account Executive

**Date:** \_\_\_\_\_

**Date:** January 29, 2018

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

### SIEMENS PROJECTS BUSINESS STANDARD TERMS AND CONDITIONS

#### PREAMBLE

THESE STANDARD TERMS AND CONDITIONS, entered into by and between the entity identified in the 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 general terms and conditions incorporate the Scope of Work set forth in the Proposal ("Scope of Work") and the supplemental terms and conditions set forth in Attachment "A," as though the Scope of Work and 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 Scope of Work.

"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/provincial], 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.

"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

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

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.

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

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 than 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 (viii) 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.

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

### 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.

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

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.

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

- 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**

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

(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.

## Building Management Control System Proposal

**PROPOSAL 030917-SIEMENSUPGRADESREV3**

---

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,

**Siemens Industry, Inc.**  
5708 So. 118<sup>th</sup> Circle  
Omaha, NE 68137

(402) 619-0374  
Fax (402) 891-8175

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," "Indemnitees," "Export / Import Compliance," and "Nuclear" survive termination, expiration or cancellation of this Agreement.



# Advantage Services<sup>®</sup>

Agreement for Centennial Public School

February 2, 2018

**SIEMENS**



# *Advantage Services*

## **Agreement for Centennial Public School**

February 2, 2018

## Table of Contents

	Advantage Services	1
1	Overview	3
	1.1 Executive Summary	3
	1.2 Customer Objectives	3
	1.3 Current Situation	3
	1.4 Siemens Capabilities & Commitment to Our Customers	3
2	Service Solution	4
	2.1 HVAC CONTROL SERVICES – Automation	4
	2.1.1 System Performance Updates & Upgrades	4
3	Service Implementation Plan	5
	3.1 Maintained Equipment Table	5
	3.2 Service Team	6
4	Siemens Industry, Inc.	7
	4.1 Signature Page and Investment By and Between:	7
	4.2 Terms And Conditions	8
	Appendix A. Discounted Labor & Material Pricing	13
	Appendix B.	14

## 1 Overview

### 1.1 Executive Summary

You have made a significant investment in your facility and its complex technical systems which are critical to the profitability and productivity of your overall business. This proposed service solution, our Service Agreement, will proactively serve to protect that substantial investment through a program of planned service tasks by our trained technical staff.

This Service Agreement has been specifically developed to support your unique facility, and the services provided herein will help you in achieving your facility goals.

---

### 1.2 Customer Objectives

A single year contract to keep Centennial schools with an active software service contract.

Maintain the current Siemens Apogee software at the most current revision levels with a budgeted cost plan accomplished through an annual service contract.

---

### 1.3 Current Situation

The existing Insight software is a revision 3.15. If another Insight software upgrade is released Siemens will upgrade the software at Centennial. If another software upgrade is not released the contract can be converted to labor or Siemens material.

---

### 1.4 Siemens Capabilities & Commitment to Our Customers

Siemens Industry, Inc. is the leading single-source provider of cost-effective facility performance solutions for the comfort, life safety, security, energy efficiency and operation of some of the most technically advanced buildings in the world. Siemens is pleased to offer this proposal for technical support services to your facility. For more than 150 years, Siemens has built a culture of long-term commitment to customers through innovation and technology. We are confident that we have the capabilities to meet your critical facility needs today and in the future, and we look forward to the opportunity to serve you.

## 2 Service Solution

### 2.1 HVAC CONTROL SERVICES – Automation

#### 2.1.1 System Performance Updates & Upgrades

##### **Software Support and Updates**

Siemens will provide you with software and documentation updates to your existing Siemens software as they become available (approximately annually). Included is onsite training to familiarize you with the new features and their associated benefits. These updates deliver the benefits of Siemens Industry, Inc. commitment to compatibility by design, a commitment unique in our industry. Workstations covered under this service are itemized in the List of Maintained Equipment. (Upgrades to PC's and related workstation hardware are excluded unless specified elsewhere.)

---

### 3 Service Implementation Plan

#### 3.1 Maintained Equipment Table

# SIEMENS

Siemens Building Technologies  
Service Agreement

Equipment Category	Equipment SubCategory	Equipment	Qty	Serial Number	Location	Mfg/Model
System Performance Updates	Software Support and Updates	Insight 3.X Adv first/single server Update	1			
Services (Times per year): Software Update (1)						

## 3.2 Service Team

An important benefit of your Service Agreement derives from having the trained service personnel of Siemens Industry, Inc. familiar with your building systems. Our implementation team of local experts provides thorough, reliable service and scheduling for the support of your system.

The following list outlines the service team that will be assigned to the service agreement for your facility.

**Your Assigned Team of Service Professionals will include:**

**Scott Weinandt - Sales Account Representative** manages the overall strategic service plan based upon your current and future service requirements.

**Scott Messing - Service Account Engineer or Team Leader** is responsible for ensuring that our contractual obligations are delivered, your expectations are being met and you are satisfied with the delivery of our services.

**Bill Sheridan - Primary Service Specialist or Service Mechanic** is responsible for performing the ongoing service of your system.

**Anthony Chiang - Secondary Service Specialist or Service Mechanic** who will be familiarized with your building systems to provide in-depth backup coverage.

**John Christiansen - Service Operations Manager** is responsible for managing the delivery of your entire support program and service requirements.

**Cindy Randall - Service Coordinator** is responsible for scheduling your planned maintenance visits, and handling your emergency situations by taking the appropriate action.

**John Christiansen - Service Administrator** is responsible for all service invoicing including both service agreement and service projects.

## 4 Siemens Industry, Inc.

### 4.1 Signature Page and Investment By and Between:

Siemens Industry, Inc.  
 5708 S. 118th Circle  
 P.O. Box 187  
 Omaha, NE 68137  
 Scott Weinandt  
 402-827-4118

Centennial Public School  
 1301 Centennial Avenue  
 Utica, NE 68456  
 Dan Tesar  
 (402) 534-2321

Services shall be provided at 1301 Centennial Avenue  
 P.O. Box 187, Utica, NE 68456.

Siemens Industry, Inc. shall provide the services as outlined in the attached proposal dated 02/2/2018 and the attached terms and conditions.

Duration: This agreement shall remain in effect for an Initial Term of 1 Years beginning 5/1/2018 and from year to year thereafter.

Investments:

Year 1	05/01/2018 to 4/30/2019	\$3,845 annually	paid \$3845 annually
--------	-------------------------	------------------	----------------------

Applicable sales taxes are not included in the price of this proposal. Prices quoted in this proposal are firm for 30 days.

Proposal accepted by:  
 Dan Tesar  
 Customer Contact Title  
 Centennial Public School

Proposal submitted by:  
 Scott Weinandt  
 Account Representative  
 Siemens Industry, Inc.

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Signature Date

P.O.# \_\_\_\_\_

Scott Weinandt

- Customer purchase order included as an attachment to this agreement and will be referenced on invoices.

Account Executive

Or

- Customer purchase order not required. Invoices will be approved and processed with signature of authorized customer representative.

\_\_\_\_\_  
 Signature Date

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 INDUSTRY, INC. 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.

## 4.2 Terms And Conditions

### GENERAL TERMS AND CONDITIONS (SERVICE)

#### Article 1: General

**1.1** These General Terms and Conditions, including any supplemental terms (each a "Rider"), are attached to and made part of the Proposal, Advantage Services Agreement, or other document as the case may be including any change order, in which these General Terms and Conditions are incorporated (the "Document"), that when approved in writing by the Customer and accepted by an authorized representative of Siemens shall (a) constitute the entire, complete and exclusive contract between the parties (this "Agreement") (i) to implement the services identified in the Document (the "Services") to be provided by Siemens and (ii) for the physical equipment ("Equipment"), software owned or licensable by Siemens ("Software"), any related documentation ("Related Documentation"), deliverable Instruments (as defined in Section 9.2), and Work Product Deliverables (as defined in Section 9.1) identified in the Document to be provided by Siemens under the Agreement in accordance with the performance of the Services (collectively, the "Deliverables") and (b) supersedes and cancels all prior proposals, agreements and understandings, written or oral, relating to the subject matter of this Agreement.

**1.2** Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other except that either party may assign this Agreement to its affiliates and Siemens may grant a security interest in the proceeds to be paid to Siemens under this Agreement; assign proceeds of this Agreement; and/or use subcontractors in performance of the Services.

**1.3** The terms and conditions of this Agreement shall not be modified or rescinded except in writing, with the prior approval of the Legal Departments of Siemens and Customer and signed by duly authorized officers or managers of Siemens and Customer.

**1.4** In the event of conflict between the Document and these General Terms and Conditions, these General Terms and Conditions shall control. In the event of conflict between a Rider and Document or these General Terms and Conditions, the Rider shall control. 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.

**1.5** Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the Customer and Siemens without the express written consent of both parties. All provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of the Services and termination of this Agreement.

**1.6** Certain terms and conditions contained herein may not apply to the Services to be provided hereunder. It is the intent of the parties, however, that the interpretation to be given to the terms and conditions is to apply all terms and conditions unless clearly inapplicable given the type of Services included.

**1.7** This Agreement shall be governed by and enforced in accordance with the laws of the State of Illinois. Any litigation arising under this Agreement shall be brought in the State or Commonwealth in which the Services are provided to Customer. TO THE EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL ON MATTERS ARISING OUT OF THIS AGREEMENT.

**1.8** AFTER THE EXPIRATION OF THE INITIAL TERM, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE YEAR PERIODS BEGINNING ON THE ANNIVERSARY DATE OF THE INITIAL TERM UNLESS STATED OTHERWISE IN THE DOCUMENT.

**1.9** This Agreement is non-cancellable during the Initial Term. Either party, however, may terminate this Agreement at the end of the Initial Term or at the end of a renewal term by giving the other party at least sixty (60) days prior written notice of its intent not to renew.

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

#### Article 2: Covered Equipment

**2.1** "Covered Equipment" shall mean the equipment expressly

identified in the Document upon which Services will be performed. Customer represents at the commencement of this Agreement that, with the exception of Covered Equipment that is an Equipment Deliverable under this Agreement, if any, all Covered Equipment is in satisfactory working condition and complies with all applicable codes.

**2.2** If a fire or life safety system is included as part of the Covered Equipment and does not comply with all applicable codes or if removal of any item of Covered Equipment from coverage would compromise or impair the integrity or the compliance with law of any system or Services, and Customer fails to take all necessary corrective action, then Siemens may terminate this Agreement without further obligation and retain all monies received pursuant to this Agreement.

**2.3** All testing and inspection of any Covered Equipment provided for in this Agreement will be performed at the time and place and in the manner deemed appropriate by Siemens, in accordance with applicable law and the requirements of then current National Fire Protection Association ("NFPA") guidelines if applicable, and other relevant standards. Customer is solely responsible for, and hereby indemnifies and holds Siemens harmless from and against, any liability arising from Customer's specification of a testing schedule other than then current NFPA or other applicable standards or laws.

**2.4** If the Covered Equipment is altered or moved by any person, including Customer, other than Siemens or a person authorized by Siemens, Customer shall immediately notify Siemens in writing, and Siemens reserves the right to perform a reacceptance test on, or, if necessary, a recommissioning of the system at Customer's expense. Reacceptance tests will be performed in accordance with then current NFPA or other applicable requirements, and charged on a time and materials basis.

#### Article 3: Services by Siemens

**3.1** Siemens shall only perform the Services identified in this Agreement. Siemens is not required to conduct safety or other tests, install or maintain any devices or equipment or make modifications or upgrades to any equipment beyond the scope of this Agreement. Any request to change the scope or the nature of the Services must be in the form of a mutually agreed change order, effective only when executed by all parties hereto.

**3.2** Siemens shall perform the Services during its local, normal working hours, unless otherwise stated in this Agreement.

**3.3** Siemens shall have no liability or obligation to continue providing Services in the event Customer fails to (a) authorize a reacceptance test or re-commissioning that Siemens reasonably deems necessary; (b) notify Siemens of any modifications or changes to the Covered Equipment or unusual or materially changed operating conditions, hours of usage, system malfunctions or building alterations that may affect the Services; (c) provide the access to any site where Services are to be performed; or (d) operate, service or maintain the Covered Equipment in accordance with manufacturer's or supplier's instructions or this Agreement. After any of the aforesaid events, Siemens may terminate or suspend services under this Agreement immediately, upon giving notice to Customer.

**3.4** Any repairs and replacements of Covered Equipment as may be expressly included in the Services are limited to restoring the proper working condition of such Covered Equipment. Siemens will not be obligated to provide replacement Covered Equipment that represents significant capital improvement compared to the original. Exchanged or removed components become the property of Siemens, except Hazardous Materials (as defined in Section 10.1), which under all circumstances remain the property and responsibility of Customer.

**3.5** The Services shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by persons performing the same or similar Services in the same locale under similar circumstances and conditions.

**3.6** Where Services include energy consulting, any estimates of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by Siemens, the documents prepared for the Customer represent Siemens' best judgment based on Siemens' experience and the information reasonably available to Siemens at the time that the Services are

**GENERAL TERMS AND CONDITIONS  
(SERVICE)**

performed. Customer acknowledges that Siemens does not control: (a) the costs of labor, materials, equipment or services furnished by others; (b) overall market conditions; or, (c) other contractors' methods of determining prices. Accordingly, Customer acknowledges that proposals, bids or actual costs may differ from opinions, evaluations or studies submitted by Siemens as part of the Services provided hereunder.

**3.7** In the event Energy Management & Controlling ("EMC") is expressly included, Siemens will have a disaster recovery plan and a disaster contingency plan.

**3.8** In the event Online Data Backup & Protection Services are expressly included in the Document, Siemens will take reasonable steps to protect the security of all Facilities Data stored offsite. Siemens does not represent or warrant that Facilities Data will not be disseminated, compromised or corrupted by reason of unauthorized actions of third parties. For the purposes of these General Terms and Conditions, "Facilities Data" means electronic data that is collected or generated by Siemens through scheduled back-ups of the databases and/or graphics residing in the workstation(s) and/or field panel(s) that constitute part of Customer's automation control, fire and life safety, and/or security systems.

**Article 4: Responsibilities of Customer**

**4.1** Customer, without cost to Siemens, shall:

- (a) Designate a contact person with authority to make decisions for Customer regarding the Services and provide Siemens with information sufficient to contact such person in an emergency. If such representative cannot be reached, any request for Services received from a person located at Customer's site will be deemed authorized by Customer, and Siemens will, in its reasonable discretion, act accordingly;
- (b) Provide or arrange without cost all reasonable provisions, means and access for Siemens to the Covered Equipment;
- (c) Permit Siemens to control and/or operate all controls, systems, apparatus, equipment and machinery necessary to perform the Services;
- (d) Furnish Siemens with all available information pertinent to the Services;
- (e) Obtain and furnish to Siemens all approvals, permits and consents from government authorities and others as may be required for performance of the Services except for those Siemens has expressly agreed in writing to obtain;
- (f) Maintain the Services 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;
- (g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Services, except such notices Siemens has expressly agreed in this Agreement to give;
- (h) Provide Siemens with Material Safety Data Sheets (MSDS) conforming to OSHA requirements related to all Hazardous Materials at the site which may impact the Services;
- (i) Furnish to Siemens any contingency plans related to the site;
- (j) Furnish the specified operating environment, including without limitation, suitable, clean, stable, properly conditioned electrical power and other utilities;
- (k) Maintain all Covered Equipment in good working order in compliance with all applicable laws and service, repair and replace all Covered Equipment as necessary; and,
- (l) Perform inspections and tests as indicated in the Life Safety System Logbook and record same in the Life Safety System logbook.

**4.2** Unless contrary to applicable law or regulation, Customer acknowledges that the technical and pricing information contained herein is proprietary to Siemens and Customer shall not disclose or otherwise make it available to others.

**4.3** Customer acknowledges that it is now and shall be at all times in control of the Services site. Siemens shall not have any responsibility, duty or authority to direct, supervise or oversee any employees or contractors of Customer 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 others of their responsibility to Customer or to others. Except as expressly provided herein, Siemens is not responsible for the adequacy of the health, safety or security programs or precautions related to Customer's or its other contractors' activities or operations; the work of any other person or entity; or Customer's site conditions. Siemens is not responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Customer or others at Customer's site. So as not to discourage Siemens from voluntarily addressing such issues, in the event Siemens does make observations, reports, suggestions or otherwise regarding such issues, Siemens shall not be liable or responsible for same.

**4.4** Except as expressly stated in this Agreement, Customer is solely responsible for any removal, replacement or refinishing of the building structure or finishes that may be required to perform or gain access to the Services.

**4.5** Customer alone shall act to protect life and property from the time a partial or full system failure occurs until Siemens notifies Customer that such system is operational or the emergency has been cleared. Customer's actions shall include all appropriate interim safety precautions (such as a manual "fire watch"). Siemens shall have no obligation to provide guards, fire watch personnel, or other services following a system failure, except Services as are specifically provided for in this Agreement.

**4.6** Customer shall not attach to the Covered Equipment any device that interferes with the Services or the proper operation of the Covered Equipment.

**4.7** Customer represents and warrants that it will not use workstations or field panels that constitute parts of its automation control, fire and life safety, and/or security systems for electronic storage of any Personally Identifiable Information. For the purposes of these Terms and Conditions, "Personally Identifiable Information" means any personal information that relates to, describes, or is capable of being associated with, a particular individual. By way of example and not of limitation, Personally Identifiable Information includes an individual's first name or first initial and last name, plus one or more of the following: social security number, health insurance identification number, medical information, insurance policy number, passport number, taxpayer identification number, account number, credit card number or any other financial information.

**4.8** SIEMENS HEREBY DISCLAIMS ANY AND ALL LIABILITY FOR DAMAGES, INJURY OR LOSS ARISING OUT OF DISCLOSURE OR DISSEMINATION OF PERSONALLY IDENTIFIABLE INFORMATION THAT WAS STORED IN VIOLATION OF PARAGRAPH 4.7 OF THIS ARTICLE.

**4.9** Customer shall indemnify, defend and hold Siemens harmless from any claims, losses or damages arising out of disclosure or dissemination of Personally Identifiable Information that was stored in violation of paragraph 4.7 of this Article.

**Article 5: Compensation**

**5.1** THE ANNUAL FEE IS NON- REFUNDABLE EXCEPT AS MAY BE PROVIDED HEREIN.

**5.2** Payments to be made under this Agreement will provide for, and be in consideration of, only Services specifically included under the scope section of the Document. All other Services, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis: (a) emergency Services performed at Customer's request, if inspection does not reveal any deficiency covered by this Agreement; (b) Services performed other than during Siemens' normal working hours; and (c) Service performed on equipment not covered by this Agreement.

**5.3** Siemens shall invoice Customer as provided in this Agreement, or if not expressly provided, then on an annual basis prior to the agreed start date and annually thereafter on the anniversary of such start date. Invoices are due and payable net cash upon receipt unless Customer has applied and been approved for credit with Siemens, in which case the invoice is payable within 30 calendar days of receipt by Customer or as otherwise set forth in this Agreement. If any payment is not

**GENERAL TERMS AND CONDITIONS  
(SERVICE)**

received when due, Siemens may deem Customer to be in breach hereof and may enforce any remedies available to it hereunder or at law, including without limitation, acceleration of payments and suspension or termination of Services at any time and without notice, and shall be entitled to compensation for Services previously performed and costs reasonably incurred in connection with the suspension or termination. In the event that any payment due hereunder is not paid when due, Customer shall pay, upon demand, as a late charge, one and one-half percent (1.5%) of the amount of the payment per month, limited by the maximum rate permitted by law of each overdue amount under this Agreement. Customer shall reimburse Siemens' costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement. If Customer disputes any portion or all of an invoice, it shall notify Siemens in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice. The undisputed portion shall be paid when due, and interest on any unpaid portion shall accrue as aforesaid, from the date due until paid, to the extent that such amounts are finally determined to be payable to Siemens.

**5.4** Except to the extent expressly identified in this Agreement, Siemens' fees do not include any taxes, excises, fees, duties, permits or other government charges related to the Services. Customer shall pay such amounts or reimburse Siemens for any amounts it pays. If Customer claims a tax exemption or direct payment permit, it shall provide Siemens with a valid exemption certificate or permit and indemnify, defend and hold Siemens harmless from any taxes, costs and penalties arising out of same.

**5.5** Unless agreed otherwise, the pricing for each year after the Initial Term of this Agreement and each year of each renewal of the Agreement shall be determined as the immediate prior year price plus a price escalator based upon the U.S. Department of Labor, Bureau of Labor Statistics Urban Consumer Price Index-All Urban Consumers U.S. All items, 1982-1984=100 ("CPI-U"). In addition, each renewal term pricing shall be adjusted for any additions or deletions to Services selected for the renewal term. The price escalator shall be the latest semi-annual CPI-U identified above published prior to each annual anniversary. This escalator shall be applicable to each annual term, whether a renewal term or an annual term after the first year of the Initial Term.

**Article 6: Changes; Delays; Excused Performance**

**6.1** As the Services are performed, conditions may change or circumstances outside Siemens' reasonable control (such as changes of law) may develop which require Siemens to expend additional costs, effort or time to complete the Services, in which case Siemens shall notify Customer and an equitable adjustment made to the compensation and time for performance. In the event conditions or circumstances require Services to be suspended or terminated, Siemens shall be compensated for Services performed and for costs reasonable incurred in connection with the suspension or termination.

**6.2** Siemens shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not limited to acts or omissions by Customer or its employees, agents or contractors, Acts of God, war, terrorism, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, computer viruses, program or system hackers, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of any such circumstances, Siemens shall be excused from performance of the Services and the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation equitably adjusted to compensate for additional costs Siemens incurs due to such circumstances.

**Article 7: Warranties; Disclaimers; Limitation of Liability**

**7.1** Labor in performing the Services is warranted to be free from defects in workmanship for 90 days after the Services are performed. All labor provided by Siemens hereunder found to be defective and

otherwise qualifying under this warranty shall be re-performed by Siemens. Such re-performance hereunder shall not interrupt or prolong the terms of this warranty. In the event that any such re-performance fails to cure such defects, then Customer's exclusive remedy against Siemens for damages from any cause whatsoever, whether in contract or tort, shall not exceed an amount equal to the limitation set forth in Section 7.9 herein.

**7.2** To the extent that Equipment is a Deliverable as part of the Services under this Agreement, Equipment manufactured by Siemens or bearing its nameplate shall be warranted for the earlier of one (1) year from the date of first beneficial use or from the date of installation to be free from defects. To the extent that Software is a Deliverable as part of the Services for use in the Equipment or in a computer owned by the Customer, Customer agrees to take delivery of any such Software subject to (i) any applicable Siemens or third party end-user license agreement (EULA) accompanying such Software, or (ii), if no EULA accompanies such Software, the EULA posted at [www.usa.siemens.com/btcpseula](http://www.usa.siemens.com/btcpseula) (Siemens' EULA web site) for such Software used in or with the Equipment identified by product model or part number on the Siemens EULA web site. Such Software shall be warranted in accordance with its applicable EULA unless an exception is explicitly identified in the Document under this Agreement. For all other Equipment, Siemens hereby assigns to Customer, without recourse, any and all assignable warranties available from any manufacturer or supplier of such Equipment and such Software and will assist Customer in enforcement of such assigned warranties.

**7.3** The limited warranties set forth in Sections 7.1. and 7.2 respectively, will be void as to, and shall not apply to, any Services, Equipment or Software (i) repaired, altered or improperly installed by any person other than Siemens or its authorized representative; (ii) Equipment subjected to unreasonable or improper use or storage, used beyond rated conditions, operated other than per Siemens' or manufacturer's instructions, or otherwise subjected to improper maintenance, negligence or accident, by Customer or others; (iii) damaged because of any use of the Equipment after Customer has, or should have knowledge of any defect in the Equipment.

**7.4** Any claim under the limited warranties granted above must be made in writing to Siemens within thirty (30) days after discovery of the claimed defect unless discovered directly by Siemens. Such limited warranty only extends to Customer and not to any subsequent owner of the Equipment. As to the Equipment, Customer's sole and an exclusive remedy for any Equipment found to be defective during the warranty period is repair or replacement of the parts or components found to be defective.

**7.5** THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, QUALITY, CAPACITY, OR WORKMANSHIP, ALL EXPRESS OR IMPLIED WARRANTIES AGAINST THIRD PARTY INTELLECTUAL PROPERTY ("IP") INFRINGEMENTS (INCLUDING PATENT, COPYRIGHT AND OTHER REGISTERED OR UNREGISTERED THIRD PARTY IP RIGHTS) OR DEFECTS, WHETHER HIDDEN OR APPARENT, AND EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO COMPLIANCE OF THE COVERED EQUIPMENT AND DELIVERABLES WITH THE REQUIREMENTS OF ANY LAW, REGULATION, SPECIFICATION OR CONTRACT RELATIVE THERETO, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

**7.6** Customer hereby, for it and any parties claiming under it, releases and discharges Siemens from any liability arising out of all hazards covered by Customer's insurance. All claims against Siemens arising out of such hazards, including any right of subrogation by Customer's insurance carrier, are hereby waived by Customer.

**7.7** ANY IDEAS, SUGGESTIONS, RECOMMENDATIONS, FINANCIAL EVALUATIONS, FEASIBILITY STUDIES OR

**GENERAL TERMS AND CONDITIONS  
(SERVICE)**

ECONOMIC ANALYSIS PREPARED BY SIEMENS UNDER THIS AGREEMENT WILL REPRESENT ITS BEST JUDGMENT BASED ON ITS EXPERIENCE AND THE AVAILABLE INFORMATION. CUSTOMER ACKNOWLEDGES THAT THE ENERGY MARKET IS VOLATILE AND SUBJECT TO FREQUENT PRICE AND REGULATORY CHANGES. THEREFORE, CUSTOMER FURTHER ACKNOWLEDGES THAT SIEMENS DOES NOT CONTROL FUTURE MARKET CONDITIONS OR THE ENERGY MARKET'S REGULATORY CLIMATE. NOTHING HEREIN SHALL BE CONSTRUED BY CUSTOMER AS A PREDICTION OF FUTURE ENERGY MARKET CONDITIONS OR ENERGY PRICES. ACCORDINGLY, SIEMENS DOES NOT PROVIDE CUSTOMER A GUARANTY OR WARRANTY OF THE RESULTS OF SIEMENS' RECOMMENDATIONS. CUSTOMER MAKES ANY AND ALL ENERGY PROCUREMENT AND RELATED DECISIONS. CUSTOMER ACKNOWLEDGES THAT ALL ENERGY PROCUREMENT AND RELATED DECISIONS ARE MADE AT CUSTOMER'S SOLE RISK.

**7.8** WITH RESPECT TO ANY LIABILITY (WARRANTY OR OTHERWISE) THAT SIEMENS MAY HAVE UNDER THIS AGREEMENT, IN NO EVENT SHALL SIEMENS BE LIABLE (INCLUDING WITHOUT LIMITATION, UNDER ANY THEORY IN TORTS) FOR ANY LOSS OF USE, REVENUE, ANTICIPATED PROFITS OR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS AND/OR LOST BUSINESS OPPORTUNITIES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES WHETHER ARISING IN WARRANTY, TORT, CONTRACT, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, WHETHER, FOR WARRANTY, LATE OR NON-DELIVERY OF ANY SERVICES, AND WHETHER SIEMENS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**7.9** It is understood and agreed by and between the parties that Siemens is not an insurer and this Agreement is not intended to be an insurance policy or a substitute for an insurance policy. Insurance, if any, shall be obtained by Customer. Fees are based solely upon the value of the Services provided hereunder, and are unrelated to the value of Customer's property or the property of others on Customer's premises. Accordingly, Siemens' aggregate liability for any and all claims, losses or expenses (including attorney's fees) arising out of this Agreement, or out of any Services or goods furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, indemnity or any other theory of liability, shall be limited, as liquidated damages, to the greater of \$1,000 or 10% of the total compensation received by Siemens from Customer under this Agreement.

**7.10** Siemens reserves the right to control the defense and settlement of any claim for which Siemens has an obligation under the warranty hereunder.

**7.11** The parties acknowledge that the price which Siemens has agreed to perform its Services and obligations under this Agreement is calculated based upon the foregoing limitations of liability, and that Siemens has expressly relied on, and would not have entered into this Agreement but for such limitations of liability.

**Article 8: Limitations of Maintenance or Service Obligations**

**8.1** Unless agreed otherwise, Services do not include and Siemens is not responsible for: (a) service or provision of consumable supplies, including but not limited to batteries and halon cylinder charging; (b) reinstallation or relocation of Covered Equipment; (c) painting or refinishing of Covered Equipment or surrounding surfaces; (d) changes to Services; (e) parts, accessories, attachments or other devices added to Covered Equipment but not furnished by Siemens; (f) failure to continually provide suitable operating environment including, but not limited to, adequate space, ventilation, electrical power and protection from the elements; (g) the removal or reinstallation of replacement valves, dampers, waterflow and tamper switches, airflow stations, venting or draining systems, and any other permanently mounted integral pipe or air duct component; or (h) latent

defects in the Covered Equipment that cannot be discovered through the standard provision of the Services. Siemens is not responsible for services performed on any Covered Equipment other than by Siemens or its agents.

**8.2** Siemens will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of: (a) non-maintainable, non-replaceable or obsolete parts of the Covered Equipment, including but not limited to ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc. unless otherwise specifically stated in the Document; or (b) negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, failure to comply with manufacturer's operating and environmental requirements.

**8.3** Siemens is not responsible for repairs, replacements or services to Covered Equipment due to corrosion, erosion, improper or inadequate water treatment by others, electrolytic or chemical action, or reasons beyond its reasonable control.

**8.4** WHERE SERVICES INCLUDE EFFORTS BY SIEMENS TO HELP CUSTOMER TO ATTAIN REBATES AND/OR INCENTIVES FROM AVAILABLE SOURCES OR ENERGY/FUEL COST REDUCTION, CUSTOMER ACKNOWLEDGES THAT ANY REBATE/INCENTIVE OR ENERGY/ FUEL COST REDUCTION THAT MAY BE AVAILABLE TO CUSTOMER IS GRANTED BY A THIRD PARTY OUTSIDE THE CONTROL OF SIEMENS. CUSTOMER FURTHER ACKNOWLEDGES THAT WHILE SIEMENS WILL EITHER ASSIST CUSTOMER OR ENDEAVOR ITSELF TO OBTAIN ANY AND ALL REBATES/INCENTIVES OR ENERGY/FUEL COST REDUCTION AVAILABLE, SIEMENS DOES NOT GUARANTEE THAT IT WILL OBTAIN OR APPLY FOR ALL REBATES/INCENTIVES OR ENERGY/ FUEL COST REDUCTIONS THAT MAY BE AVAILABLE TO CUSTOMER. FURTHER, CUSTOMER HEREBY RELEASES SIEMENS FROM ANY AND ALL LIABILITY TO CUSTOMER OR ANY THIRD PARTY ARISING FROM SIEMENS' FAILURE TO OBTAIN OR APPLY FOR ANY REBATE/INCENTIVE OR ENERGY/FUEL COST REDUCTION THAT COULD IN ANY WAY BE OBTAINED BY CUSTOMER.

**Article 9: License and Intellectual Property**

**9.1** Any tangible form of a report or drawing specifically developed for, commissioned by and deliverable to the Customer in connection with Services performed by Siemens under this Agreement ("*Work Product Deliverables*") shall become the Customer's property upon receipt by the Customer and payment of any fees due Siemens under this Agreement. Siemens may retain file copies of such Work Product Deliverables.

**9.2** If any know-how, tools and related documentation owned or licensed by Siemens and used by Siemens to install or commission Equipment and Software for operation at the Site, including but not limited to tools for installing any Software, performing diagnostics on Equipment as installed at the Site as well as any reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for Siemens and used by Siemens to provide the Services ("*Instruments*") are provided to the Customer under this Agreement, any such Instruments shall remain Siemens property, including the intellectual property conceived or developed by Siemens in the Instruments.

**9.3** In addition, all intellectual property: (i) that has been conceived or developed by an employee or subcontractor of Siemens before Siemens performs any Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of Siemens performing the Services under this Agreement; or, (iii) if developed while performing the Services under this Agreement, where the development of intellectual property for the benefit of the Customer is not expressly identified as an item of Services to be provided to the Customer or where such Services comprised or corresponded to an update, improvement, configuration, or modification of Equipment or Software made in the ordinary course of

**GENERAL TERMS AND CONDITIONS  
(SERVICE)**

business solely to allow such products to interface with any software and/or equipment and/or to operate at a site specified by Customer, (collectively, "Siemens Pre-existing Intellectual Property") that may be included in scope provided to the Customer under this Agreement shall also remain Siemens' property including the Siemens Pre-existing Intellectual Property included in the Work Product Deliverables. Siemens Pre-existing Intellectual Property is also included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for Siemens.

**9.4** All Work Product Deliverables and any Instruments provided to the Customer are for the Customer's use and only for the purposes disclosed to Siemens. Siemens hereby grants the Customer a royalty-free (once all payments due under this Agreement are paid to Siemens), non-transferable, perpetual, nonexclusive license to use any Siemens Pre-existing Intellectual Property solely as incorporated into the Services and Deliverables (including Work Product Deliverables and any Instruments provided to the Customer under this Agreement). Under such license, and following agreement to be bound to confidentiality provisions under this Agreement and/or in accordance with any separate confidentiality agreement that may exist between the parties, Customer shall have a right to: (a) Use, in object code form only, the Software that is owned or licensed by Siemens or its affiliates and that is either separately deliverable for use in the Equipment or for use in a computer system owned by the Customer or delivered as firmware embedded in the Equipment ("Software Deliverables"); (b) Make and retain archival and emergency copies of such Software Deliverables (subject to any confidentiality provisions) except if the Software Deliverable is embedded in the Equipment; and, (c) Use all such Equipment, Work Product Deliverables, and such Instruments, provided however, the Equipment, Work Product Deliverables, and Instruments shall not be used or relied upon by any third-party, and such use shall be limited to the particular project and location for which the Services are provided.

**9.5** The Customer shall not transfer the Equipment, Software, Work Product Deliverables, or Instruments to others or use them or permit them to be used for any extension of the Services or any other project or purpose, without Siemens' prior express written consent.

**9.6** Any reuse of Equipment, Software, Work Product Deliverable, or such Instruments for other projects or locations without the written consent of Siemens, or use by any third party will be at the users risk and without liability to Siemens; and, the Customer shall indemnify, defend and hold Siemens harmless from any claims, losses or damages arising therefrom.

**9.7** In consideration of such license, the Customer agrees not to reverse engineer any Equipment or Software to reconstruct or discover any source code, object code, firmware, underlying ideas, or algorithms of such Equipment or Software even to the extent such restriction is allowable by law.

**9.8** Customer acknowledges that Siemens, in the normal conduct of its business, may use concepts, skills and know-how developed while performing other contracts. Customer acknowledges the benefit which may accrue to it through this practice, and accordingly agrees that anything in this Agreement notwithstanding, Siemens may continue, without payment of a royalty, this practice of using concepts, skills and know-how developed while performing the Services under this Agreement.

**9.9** Customer acknowledges that all Facilities Data is owned by Siemens and may be used by Siemens in a commingled or other reasonable manner, provided that such use does not identify Customer or the location(s) of the facility or facilities to which Facilities Data pertains.

**Article 10: Hazardous Materials Provisions**

**10.1** The Services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of oil or Hazardous Materials. Except as disclosed pursuant to this Article, Customer represents that, to its best knowledge, there is no asbestos or any other hazardous or toxic materials, as defined in the Comprehensive Environmental

Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("Hazardous Materials"), present at Customer's Sites where the Services are performed. Siemens will notify Customer immediately if it discovers or suspects the presence of any Hazardous Material. All Services have been priced and agreed to by Siemens in reliance on Customer's representations as set forth in this Article. The presence of Hazardous Materials constitutes a change in this Agreement whose terms must be agreed upon by Siemens before its obligations hereunder shall continue.

**10.2** Customer is solely responsible for testing, abating, encapsulating, removing, remedying or neutralizing such Hazardous Materials, and for the costs thereof. Customer is responsible for the proper disposal of all Hazardous Materials and oil that at any time are present at the Services site in accordance with all applicable federal, state, and local laws, regulations, and ordinances. Even if change order has been entered into pursuant to this Article, Siemens shall have the right to stop the Services until the site is free from Hazardous Materials. In such event, Siemens shall receive an equitable extension of time to complete the Services, and compensation for delays caused by Hazardous Materials remediation. In no event shall Siemens be required or construed to take title, ownership or responsibility for such oil or Hazardous Materials. Customer shall sign any required waste manifests in conformance with all government regulations, listing Customer as the generator of the waste.

**10.3** Customer warrants that, prior to the execution of this Agreement, it shall notify Siemens in writing of any and all Hazardous Materials which to Customer's best knowledge are present, potentially present or likely to become present at the Services site and shall provide a copy of any site safety policies, including but not limited to lock-out and tag procedures, chemical hygiene plan, MSDSs or other items required to be disclosed or maintained by federal, state, or local laws, regulations or ordinances.

**10.4** Customer shall indemnify, defend and hold Siemens harmless from and against any damages, losses, costs, liabilities or expenses (including attorneys' fees) arising out of any oil or Hazardous Materials or from Customer's breach of, or failure to perform its obligations under this Article.

**Article 11: Import / Export Indemnity**

Customer 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 Covered Equipment or Services provided under the Contract, including any export license requirements. Customer shall not, at any time, either directly or indirectly, use, export, sell, transfer, assign or otherwise dispose of such Covered Equipment or Services 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. CUSTOMER SHALL INDEMNIFY AND HOLD SIEMENS HARMLESS FROM ANY COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO THE CUSTOMER'S NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

**Article 12: Small Business Concern**

Siemens shall adhere to FAR 52.219-8 regarding the "Utilization of Small Business Concerns", as part of its Commercial Small Business Subcontracting Agreement with the federal government. Siemens' policy is to offer small business concerns, including small disadvantaged businesses, women owned small-businesses, HUBZone small businesses, veteran owned small businesses and service disabled veteran owned small businesses, the "maximum practical opportunity" to participate in performing contracts let by any commercial entity, local government or federal agency, including subcontracts for subsystems, assemblies, components, and related services for major systems.

## Appendix A. Discounted Labor & Material Pricing

As a Service Agreement customer with an active contract, you will receive the benefit of a discount from our standard labor rates and material prices. Standard rates and preferred customer rates are documented below.

### Siemens Industry, Inc.

**Rates effective from April 1, 2017 through March 31, 2018**

Please note: Rates shown are for the period referenced above and are subject to change.

<b>Standard Labor Rates:</b>	<b>Straight Time (M-F 8 AM to 5 PM) excl. Holidays</b>	<b>Regular Overtime (M-F 5 PM to 8 AM, &amp; Sat) excl. Holidays</b>	<b>Sundays &amp; Holidays</b>
Automation Specialist	\$160.00	\$240.00	\$320.00
Fire Safety Specialist	\$160.00	\$240.00	\$320.00
Security Specialist	\$160.00	\$240.00	\$320.00
Account Engineer / Project Mgr.	\$193.75	\$290.50	\$387.50
Mechanic	\$147.50	\$221.25	\$295.00
Elec. Services Specialist	\$183.75	\$275.50	\$367.50
Energy Engineer	\$230.00	\$305.50	\$407.50

Customers with an active Service Agreement will be eligible for the preferred customer labor rates listed below:

<b>Preferred (Contract) Labor Rates:</b>	<b>Straight Time (M-F 8 AM to 5 PM) excl. Holidays</b>	<b>Regular Overtime (M-F 5 PM to 8 AM, &amp; Sat) excl. Holidays</b>	<b>Sundays &amp; Holidays</b>
Automation Specialist	\$128.00	\$192.00	\$256.00
Fire Safety Specialist	\$128.00	\$192.00	\$256.00
Security Specialist	\$128.00	\$192.00	\$256.00
Account Engineer / Project Mgr.	\$155.00	\$232.50	\$310.00
Mechanic	\$118.00	\$177.00	\$236.00
Elec. Services Specialist	\$147.00	\$220.50	\$294.00
Energy Engineer	\$184.00	\$244.50	\$326.00

**Minimum Charge:** Service involving travel to the customer site will incur a labor charge and a \$75.00 trip charge for all customers within the metropolitan area. All customers located outside of the metropolitan area will receive a \$75.00 trip charge plus \$1.00 per mile for all miles exceeding 60 miles round trip. Truck charge includes cost of truck, gas, insurance, mileage, tools, etc. For outstate travel the Per Diem is \$150.00.

**Labor Charge:** 2 hour minimum on T&M Billable calls for customers with a Service Agreement and 4 hour minimum on Non-Service Agreement Customers. A 1 hour minimum will be charged for on-line diagnostics and support.

**Overtime Rates (Time and a half):** Weekdays from 5:00 PM to 8:00 AM Monday through Friday and prior and all day Saturday.

**Double-time Rates:** Sundays and Holidays as per Siemens published holiday schedule.

**Material Rates:** Customers with an active Service Agreement will benefit from a discount percentage off the standard pricing for Siemens Industry, Inc. products. Customers without a Service Agreement will pay standard pricing for Siemens Industry, Inc. products.

**Fuel Surcharge:** Siemens reserves the right to add a fuel surcharge to service calls in the event of drastic fuel increases.

## Appendix B.

Begin Text Here

**Secondary Principal's Report  
February 12, 2018**

1. **Winter MAP Testing recently finished up...**
  
2. **P/T Conferences were last week...**  
Wed (2/7) & Thurs (2/8) --- 4:00-8:30PM in commons area
  
3. **Athletic Teams Gearing Up For Districts and State...**  
WR – Districts were @ Centennial last Fri & Sat  
GBB – Sub-Districts @ Aquinas 2/13  
BBB – Sub-Districts @ Aquinas 2/20
  
4. **Mr. Fish has been going in and talking to student about scheduling classes for next year...**
  
5. **We've been making preparations for the junior's ACT test & grades 7 & 8 NeSA testing in April...**

## SUPERINTENDENT'S REPORT

February 12, 2018

1. The Education Forum will be held in Kearney on February 21<sup>st</sup> and 22<sup>nd</sup>.
2. NRCSA will be hosting a Legislative Forum on Tuesday, February 20<sup>th</sup> at the Cornhusker in Lincoln. This workshop allows the opportunity to have lunch with our senator. The details are still being finalized for this conference.
3. The NRCSA Spring Conference will be held on March 22<sup>nd</sup> and 23<sup>rd</sup> in Kearney. This is generally one of the best conferences of the year. Please try to attend if possible.
4. After the meeting is over, I would like to meet with those going to the National School Board Conference.
5. Report on hosting SNC Basketball

Elementary Principal's Report  
Marni Parrack  
February 9, 2018

1. Elementary Activities from 1/10 - 2/13:
  - a. Parent-Teacher Conferences went well
  - b. Kick off to One School, One Book ***Pie***
  - c. Trout back in the classroom
  - d. Teacher attendance at National Conferences
  - e. Therapy Dog
  - f. Summer School potential changes
  
2. Enrollment as of 2/9/18
  - Preschool 3s: 27
  - Preschool 4s: 20
  - Kindergarten: 31
  - 1st Grade: 28
  - 2nd Grade: 28
  - 3rd Grade: 19
  - 4th Grade: 31
  - 5th Grade: 24
  - 6th Grade: 34

Total Enrollment: PreK-6 - 242

Total Enrollment: K-6 - 195