



Council Agenda Report

From: Dick McKinley, Public Works Director

Subject: Agreement with Siemens for HVAC and Lighting Improvements Funded from Energy Savings over 15 Years

Date: April 4, 2017

Facts

1. Siemens conducted a financial and engineering analysis of upgrading the HVAC and Lighting systems at four City facilities - City Hall/Library, Public Safety Center, Centennial Park/Gym, and Senior Center. Based on that analysis, Siemens proposed an agreement whereby Siemens would complete the upgrades, provide financing, use available PG&E financial programs, and provide a mechanism for the City to pay Siemens from the energy savings over a 15-year period.
2. The City will save significant amounts through reduced energy costs after paying Siemens, and will save significant maintenance and repair costs for a number of years because of replacing outdated equipment and fixtures with new equipment and fixtures. In addition, the improvements are to be completed with no out-of-pocket expenses for the City.
3. By doing these projects through Siemens the City will be able to reduce the four HVAC/Lighting project budgets for 2016-17 by \$400,000 and 2017-18 by \$90,000, leaving only \$60,000 in the Centennial HVAC/Lighting project budget to make repairs to the ductwork that needs to happen at the same time as the Siemens project.

Options

1. Do nothing. Do not enter into the agreement with Siemens, although this likely means repaying Siemens, per the Letter of Intent, for the estimated \$60,000 cost of conducting the financial and engineering analysis.
2. Enter into the agreement with Siemens to complete the HVAC and lighting improvements to four City facilities, with the costs repaid over fifteen years from the energy savings of the improvements through the financing agreement with Siemens. At the same time, reduce the budgets for the four HVAC/Lighting projects (Centennial, City Hall, Public Safety Building, and Senior Center) by \$400,000 in 2016-17 and \$90,000 in 2017-18.
3. Repay the cost for conducting the financial and engineering analysis, and budget and contract for the HVAC and lighting improvements in some other manner.

Analysis and Conclusions

Option 1 provides no benefit to the City, and likely leaves the City paying Siemens for the cost of the financial and engineering analysis per the Letter of Intent.

Option 2 follows through on the project, improves outdated and inefficient HVAC and lighting systems with no out-of-pocket expenses, and provides significant operating efficiencies for Facilities staff. This agreement includes guaranteed energy savings sufficient to offset all payments to Siemens over the 15-year period, and additional savings for years after that. It allows the City to have upgraded equipment without negatively impacting General Fund expenses. This option allows the City to reduce budgeted General Fund expenses by \$400,000 in 2016-17 and \$90,000 in 2017-18.

Option 3 would provide some of the same operating and efficiency benefits of Option 2, but without the benefit of the Siemens engineering analysis or the Siemens financing.

Fiscal Impact

If the City enters into the agreement with Siemens, there are no out-of-pocket expenses for the City, with all capital and implementation costs incurred by Siemens. The City's costs to repay Siemens over the 15-year period will come from energy savings, guaranteed by Siemens. The City will save the cash flow that would have been needed if the City completed these deferred maintenance projects out of the budget. In addition, the City will be able to benefit from the energy cost savings after Siemens has been repaid.

We are working through the Siemens program because they: are proven experts in this field; finance the projects through the generated energy savings; and guarantee those energy savings to be more than enough to pay all project costs –in this case in excess of \$400,000 over the lifetime project costs (even after Siemens is repaid for its costs and profit). In addition to avoiding the capital costs for this deferred maintenance, and saving an additional \$400,000 in energy savings, the City will be able to reduce budgeted General Fund expenses by \$400,000 in 2016-17 and \$90,000 in 2017-18.

Recommendation

1. Approve Resolution 17-XXX authorizing the City Manager to execute an agreement with Siemens to implement the HVAC / Lighting improvements identified in the plan, and to repay those costs to Siemens over a 15-year period using cost savings from the improvements, thereby reducing budgeted General Fund expenses by \$400,000 in 2016-17 and \$90,000 in 2017-18.
2. Authorize the City Manager and City Attorney to amend the agreement, if needed, in full conformance with overall Council direction.

Attachments

1. Resolution 17-XXX with attachments
2. Siemens Agreement (Exhibit A to Resolution with attachments)
3. Siemens Financing Proposal

RESOLUTION NO. 17-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SIEMENS TO COMPLETE HVAC AND LIGHTING IMPROVEMENTS AT FOUR CITY FACILITIES, AND TO REPAY THOSE COSTS OVER FIFTEEN YEARS FROM ENERGY SAVINGS AND KEEPING ALL FURTHER SAVINGS AFTER THE CONTRACT PERIOD

WHEREAS, It is the policy of the State of California and the intent of the State Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources; and

WHEREAS, By resolution on September 6, 2016, the City selected Siemens as the City's energy services company pursuant to Government Code section 4217.12; and

WHEREAS, Siemens conducted a financial and engineering analysis of upgrading the HVAC and Lighting systems at four City facilities - City Hall/Library, Public Safety Center, Centennial Park/Gym, and Senior Center. Based on that analysis, Siemens proposed an agreement whereby Siemens would complete the upgrades, provide financing, use available PG&E financial programs, and provide a mechanism for the City to pay Siemens from the energy savings over a 15-year period; and

WHEREAS, The City will save significant amounts through reduced energy costs after paying Siemens, and will save significant maintenance and repair costs for a number of years because of replacing outdated equipment and fixtures with new equipment and fixtures. In addition, the improvements are completed with no out-of-pocket expenses for the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. The City Council hereby approves the Agreement with Siemens (attached as Exhibit A to this Resolution) to construct HVAC and lighting improvements at four City facilities, and authorizes the City Manager to execute the Agreement, subject to any minor, technical, or non-substantive changes as approved by the City Manager and the City Attorney.

Section 3. The City Council hereby reduces the General Fund budgets for the Centennial HVAC/Lighting, City Hall HVAC/Lighting, PSC HVAC/Lighting, and Senior Center HVAC/Lighting projects by \$400,000 in FY 2016-17 and \$90,000 in FY 2017-18.

Section 4. This Resolution shall take effect on the date it is approved by the City Council.

APPROVED this 4th day of April, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

PERFORMANCE CONTRACTING AGREEMENT

between

City of Paso Robles

and

**Siemens Industry, Inc.,
Building Technologies Division**

TABLE OF ARTICLES

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11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

PERFORMANCE CONTRACTING AGREEMENT

Number: SAP JOB NUMBER

Article 1 AGREEMENT

THIS PERFORMANCE CONTRACTING AGREEMENT ("Agreement") is made this _____ day of _____, (the "Effective Contract Date", defined below), by and between Siemens Industry, Inc., Building Technologies Division ("SIEMENS") and the party identified below as the CLIENT.

The CLIENT: City of Paso Robles

DESIGNATED REPRESENTATIVE: Tom Frutchey
PHONE: 805-237-3888 FAX:

Siemens Industry, Inc., Building Technologies Division
1000 Deerfield Parkway
Buffalo Grove, Illinois 60089

With offices at: 6141 Katella Blvd. Cypress CA 90630

DESIGNATED REPRESENTATIVE: John DeMaio
PHONE: 510-303-8736 FAX:

For Work and Services in connection with the following project (the "Project"):

City of Paso Robles

The CLIENT considered performing the following FIMs but at this time, has determined to exclude them from the Scope of Work and Services, Exhibit A:

[List FIMS not part of this project that were considered and may be performed via amendment at a later date]: N/A

PERFORMANCE CONTRACTING AGREEMENT

Articles and Attachments

This Agreement consists of this document, which includes the following articles and exhibits which are acknowledged by the CLIENT and SIEMENS and incorporated into the Agreement by this reference:

Articles

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work BY SIEMENS
6. The CLIENT's Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

Exhibits

Exhibit A	Scope of Work and Services
Exhibit B	Payment Schedule(s)
Exhibit C	Performance Assurance
Exhibit D1	Form of Certificate of Substantial Completion
Exhibit D2	Form of Certificate of Final Completion
Exhibit E	Addendum No. 1

This Agreement, when executed by an authorized representative of the CLIENT and authorized representatives of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties relative to the project scope stated in Exhibit A. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same, and may be modified only by a written instrument signed by both Parties.

COMPENSATION/TERMS OF PAYMENT:

As full consideration for the performance of the Work and Services set forth in Exhibit A, and for the Performance Assurance set forth in Exhibit C, the CLIENT shall pay SIEMENS in such manner and amounts as agreed to in Exhibit B.

Agreed for **[City of Paso Robles]**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

Agreed for **Siemens Industry, Inc.**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

PERFORMANCE CONTRACTING AGREEMENT

Article 2

Glossary

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement:

Acceptance means the CLIENT has signed, or is deemed to have signed, a Certificate of Final Completion.

Acceptance Date means the date on which the CLIENT signs or is deemed to have signed a Certificate of Final Completion.

Annual Performance Assurance Report means the document prepared by SIEMENS and submitted to the CLIENT as part of the Performance Assurance Service Program, which identifies the Savings achieved for the applicable Annual Period.

Annual Period means a twelve (12) month period beginning on the Guarantee Date or on any anniversary date thereof.

Annual Realized Savings means the actual Savings achieved by the CLIENT during an Annual Period, calculated as the sum of the Measured & Verified Savings plus the Stipulated Savings.

Applicable Law means laws, ordinances, codes, rules and regulations applicable to the Work and in effect on the Effective Contract Date.

Baseline means the measurements of Facility energy usage taken prior to the Effective Contract Date, and the Facility operating practices in effect prior to the Effective Contract Date, as set forth in the Performance Assurance, Exhibit C.

Baseline Period means the period of time from which data is provided to SIEMENS to derive the Baseline measurements. The Baseline Period is set forth in the Performance Assurance, Exhibit C.

BTU means a British Thermal Unit and is a unit of thermal energy.

Capital Off-Set Savings means a sub-category of Operational Savings where Savings will result in a cost effective upgrade to the Facility to address one or more of the following issues: potential future increased costs, comfort, code non-compliance, usage requirements, user needs and/or expectations.

Certificate of Final Completion means a document, in the form attached as Exhibit D2 hereto, indicating that the Work identified in Article 1 of the Scope of Work and Services-Exhibit A has been completed in accordance with the Agreement, including all items in the Outstanding Items List(s).

Certificate of Substantial Completion means a document, in the form attached as Exhibit D1 hereto, indicating that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement. A Certificate of Substantial Completion may be accompanied by an Outstanding Items List.

CLIENT Representative means the person identified to SIEMENS by the CLIENT as the person authorized to make decisions on behalf of the CLIENT as set forth in Section 6.1(a) hereof.

Construction Period means the period between the Effective Contract Date and the first day of the month following the Acceptance Date.

Construction Period Savings means the actual accumulated Measured & Verified Savings plus the Stipulated Savings achieved from the Effective Contract Date until the Guarantee Date.

Contracted Baseline means the post-FIM-implementation Facility operating profile based on parameters described in Exhibit C, which the CLIENT shall maintain throughout the Performance Guarantee Period and are relied upon by SIEMENS for the calculation of Guaranteed Savings as provided in the Performance Assurance, Exhibit C. The Contracted Baseline must also include stipulated hours of operation and plug-loads for all Facilities, and must include stipulated blended, or non-blended, utility rates.

Deferred Maintenance means a sub-category of Operational Savings where Savings result from a reduction of current or potential future repair and maintenance costs due to certain work being performed hereunder where such work had been previously postponed.

Deliverables shall mean collectively, (a) any Equipment and any Software Product deliverable to CLIENT from SIEMENS under or in connection with the Work, and (b) any Work Product Deliverables.

Effective Contract Date is the date appearing at the top of this Agreement, unless specifically indicated otherwise.

Energy Conservation Measure or **ECM** means the SIEMENS Products and/or other third party equipment, devices, materials and/or software as installed by SIEMENS at the Facilities, or as repaired or replaced by SIEMENS or the CLIENT hereunder, for the purpose of improving the efficiency of utility consumption.

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Equipment means the installed physical equipment to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

Escalation Rate means an annual percentage increase to be applied to the previous Annual Period's energy savings, operational savings and service pricing, beginning and occurring on dates outlined in the Performance Assurance, Exhibit C. A different Escalation Rate may be applied to differing Savings calculations and/or payment schedules depending on the percentage agreed upon by the Parties.

Facility or Facilities means the building(s) or structure(s) where Work will be installed or implemented.

Facility Improvement Measures or FIMs means the (i) Instruments, know-how and Intellectual Property, including but not limited to methods and techniques for energy conservation, owned or licensed by SIEMENS and employed by SIEMENS to perform the Work and Services under this Agreement; and, (ii) the installation of Equipment and Software Products with the intent of generating net savings or efficiencies at or in connection with the operation of the Facilities. A FIM may include one or multiple ECMs as well as any non-conservation-related activities, means or methods.

FEMP means the Federal Energy Management Program managed by the United States Department of Energy.

FEMP Guidelines means the FEMP M&V Guidelines v. 3.0 published by FEMP as M&V Guidelines; Measurement and Verification for Federal Energy Management Projects.

Guarantee Date means the first day of the month following the date on which the CLIENT executes, or is deemed to have executed, the Certificate of Final Completion.

Guaranteed Annual Savings are the Guaranteed Measured & Verified Savings plus the Stipulated Savings that SIEMENS guarantees will be achieved in an Annual Period of the Performance Guarantee Period.

Guaranteed Measured & Verified Savings means the Measured & Verified Savings that SIEMENS guarantees will be achieved, as described in the Performance Assurance, Exhibit C.

Guaranteed Savings means the amount of Savings that SIEMENS guarantees will be achieved at the Facility during the Performance Guarantee Period. as identified in the Performance Assurance, Exhibit C as subject to the limitation identified in Section 4.8.

Hazardous Materials refers to the definition found in Section 11.1.

Instruments means all know-how, tools and related documentation owned or licensed by SIEMENS and used by SIEMENS to install or commission Equipment and Software Products for operation at the Facility, including but not limited to tools for installing any Software Products in Equipment, performing diagnostics on Equipment as installed in the Facility 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 an ECM or a FIM. Instruments excludes Work Product Deliverables.

Intellectual Property Rights or Intellectual Property means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

IPMVP means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

kW and kWh means kilowatt and kilowatt hour, respectively.

Maintenance Services Program or MSP means the Services performed by SIEMENS to maintain the Equipment in good working order. The MSP may also contain Services unrelated to the maintenance of the Equipment. If applicable, the MSP is more fully described in the Scope of Work and Services, Exhibit A.

Material Change means a measurable deviation in the Contracted Baseline caused by or due to the actions or inactions of CLIENT such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall.

Measured & Verified Savings means those Savings that can be calculated and ascertained by the methodology set forth in the Performance Assurance, Exhibit C.

Oil refers to the definition found in Section 11.1.

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Operational Savings means Savings derived from reduced operational expenses, including but not limited to, Deferred Maintenance, or Capital Off-Set Savings. Operational Savings can only be expressed in monetary value and are Stipulated Savings.

Outstanding Items List means a list of items in need of completion or correction that relates to the Work, or a designated portion thereof that is Substantially Complete. The absence of such items does not deprive the CLIENT of the ability to put such Work, or a designated portion thereof to beneficial use. An Outstanding Items List may be attached to a Certificate of Substantial Completion.

Parties means the CLIENT and SIEMENS.

Performance Assurance is the process of ascertaining whether the FIMs are performing at the level necessary to achieve the Guaranteed Savings.

Performance Assurance Services Program or PASP means the Services required to monitor the operation of the FIMs so that SIEMENS can provide the Annual Performance Assurance Report detailing the Annual Realized Savings and comparing the same to the Annual Guaranteed Savings based upon the calculations agreed to by the Parties in the Performance Assurance, Exhibit C. The Services provided under the PASP are described in the Scope of Work and Services, Exhibit A.

Performance Guarantee means the guarantee that SIEMENS makes to the CLIENT which is reconciled and confirmed through the Performance Assurance process set forth in the Performance Assurance, Exhibit C.

Performance Guarantee Period means the timeframe from the Guarantee Date to the last day of the final Annual Period as described in Table 1.1 of the Performance Assurance, Exhibit C, or the period from the Guarantee Date until the termination of this Agreement, whichever occurs earlier.

Permitted Users means the CLIENT, its employees and agents.

Savings means the Parties' intended result from implementing all FIMs. Savings can be derived from reductions in energy or utility consumption, reductions in operating expenses, a changed utility rate classification or a combination thereof. The Savings that are achieved from reduced energy or utility consumption are converted to a dollar figure based upon the calculation in Article 4.1.1 and as detailed in the Performance Assurance, Exhibit C. When converted to a dollar figure, these Savings become energy cost savings. Operational Savings are only expressed in a dollar figure.

Savings Shortfall means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

Services means those services to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

SIEMENS Pre-existing Intellectual Property means any Intellectual Property: (i) that has been conceived or developed by an employee or subcontractor of SIEMENS before SIEMENS performs any Work or Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of SIEMENS performing the Work under this Agreement; or, (iii) if developed while performing the Work under this Agreement, where the development of Intellectual Property for the benefit of the CLIENT is not expressly identified as a FIM or part of a FIM. SIEMENS Preexisting Property is included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS.

SIEMENS Product means a product, including Software Product and/or Equipment, offered for sale or license by SIEMENS or its affiliates or subsidiaries and developed prior to performing the Work or SIEMENS rendering services in connection with this Agreement. A SIEMENS Product also includes improvements or modifications to any Equipment and any Software Product developed by SIEMENS or developed as part of the Work, including any SIEMENS Product that is configured or modified for operation at a site specified by the CLIENT. Any information that is provided by the CLIENT and incorporated into a SIEMENS Product is not, by itself, a SIEMENS Product. A compilation of such information and the product of such compilation, however, is a SIEMENS Product.

Software Product means any 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 CLIENT or delivered as firmware embedded in the Equipment.

Stipulated Savings are a sub-category of Guaranteed Savings that do not require post-FIM implementation measurement and verification because they are agreed upon by the Parties based upon representations made to SIEMENS by the CLIENT and through the application of generally accepted analytical formulae. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. When used as a methodology for representing a FIM's energy savings, such methodology is not recognized as a measurement and verification methodology under IPMVP. Therefore, where the

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IPMVP measurement methodologies are required, a methodology other than Stipulated Savings must be used to calculate energy savings.

Substantial Completion or Substantially Complete means 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 and Services, Exhibit A, such that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work or the FIMs for their intended purposes.

Therm is a measure of energy equal to 100,000 BTUs.

Total Guaranteed Savings means the sum of the Savings that are guaranteed for all Annual Periods during the Performance Guarantee Period (inclusive of the Construction Period, if applicable). The Total Guaranteed Savings are reflected in Tables 1.1 and 1.2 in the Performance Assurance, Exhibit C.

Work means collective labor, Equipment and services comprising the FIMs to be performed by SIEMENS, as described in the Scope of Work and Services, Exhibit A.

Work Product Deliverable means the tangible form of a report or drawing specifically developed for, commissioned by and deliverable to the CLIENT in connection with the Work to be performed by SIEMENS under this Agreement.

Article 3

General

- 3.1 The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.
- 3.2 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and to provide the Work and Services set forth in Exhibit A in accordance with the terms and conditions of this Agreement.
- 3.3 SIEMENS shall perform the Work as an independent contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this Agreement. SIEMENS has no authority to act or make any agreements or representations on behalf of the CLIENT. This Agreement is not intended, and shall not be construed to create, between the CLIENT and SIEMENS, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of SIEMENS shall be, or shall be deemed to be, an employee or agent of the CLIENT.
- 3.4 SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of SIEMENS organizational documents, any Applicable Law, or any agreements with third parties;
 - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
 - (c) This Agreement is the legal, valid and binding obligation of SIEMENS, in accordance with its terms, and all requirements have been met and procedures have been followed by SIEMENS to ensure the enforceability of the Agreement;
 - (d) To SIEMENS best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting SIEMENS that affects the validity or enforceability of this Agreement;
 - (e) It is duly authorized to do business in all locations where the Work and Services are to be performed; and
 - (f) SIEMENS shall perform all Work under this Agreement in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

3.5 The CLIENT represents, warrants and covenants to SIEMENS that:

- (a) It has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of the CLIENT's organizational documents, any Applicable Law, or any agreements with third parties;
- (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
- (c) This Agreement is the legal, valid and binding obligation of the CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by the CLIENT to ensure the enforceability of the Agreement;
- (d) To the CLIENT's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting the CLIENT that affects the validity or enforceability of this Agreement; and,
- (e) The CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on SIEMENS in this regard.

Article 4

Performance Guarantee

4.1 The Annual Realized Savings generated during each Annual Period will be no less than the Guaranteed Annual Savings as shown in Tables 1.1 and 1.2 of the Performance Assurance, Exhibit C, subject to the limits in Section 4.8. The measurement and verification calculation methodology for determining the Savings is set forth in the Performance Assurance, Exhibit C.

4.1.1 General. Except as otherwise provided, energy savings will be calculated for each month of each Annual Period as the product of (a) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (b) "cost of energy."

- (a) Units of energy saved are calculated by 1) assuming the Contracted Baseline has been maintained per Section 4.3 below, and 2) subtracting the then current period measured units of energy consumed from the Baseline units of energy defined in Article 5 of Exhibit C.
- (b) Costs of energy are defined in Article 6 of Exhibit C-Utility Rate Structures and Escalation Rates.

4.2 Any future Escalation Rates to be applied to utility, energy or other costs are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data set forth in Exhibit C is a full and accurate reflection of the existing Facility, equipment, operation, business use and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.

4.3 SIEMENS and the CLIENT agree that the Contracted Baseline fully described in Exhibit C will represent the new operating and/or equipment profile of the Facility resulting from the FIM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT operates and maintains its Facilities within the Contracted Baseline parameters, as may be adjusted in accordance with the terms herein, during the entire term of the Performance Guarantee Period.

4.4 The CLIENT agrees to notify SIEMENS prior to or within thirty (30) days of CLIENT's actual knowledge of any Material Change.

4.5 Within thirty (30) days of notice of a Material Change, SIEMENS' discovery of a Material Change and with prompt, prior written notice to CLIENT, SIEMENS will either:

- (a) Require an adjustment to the Performance Assurance and the Performance Guarantee as a result of the Material Change; or,
- (b) Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate both the Performance Assurance and the Performance Guarantee.

4.6 A Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each Annual Period as follows:

- (a) Within ninety (90) days of the Guarantee Date, the Construction Period Savings shall be reconciled and applied to the calculation of the first Annual Period's Annual Realized Savings.

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- (b) At the conclusion of each Annual Period, SIEMENS will calculate the Annual Realized Savings and compare the calculated amount to the applicable Guaranteed Annual Savings amount.
 - (c) Where the Annual Realized Savings are less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded for the applicable Annual Period.
 - (d) A Savings Shortfall shall be paid by SIEMENS within sixty (60) days following the CLIENT's acceptance of the reconciliation and once paid SIEMENS shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period.

4.6.1 As the mutual goal of the Parties is to maximize Savings, if SIEMENS can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the CLIENT and without future operational expenses, and the CLIENT declines to allow such operational improvement, then any future Savings Shortfall that the improvement would have corrected will be negated by deeming the value of the Savings Shortfall as Savings achieved and adding the amount of same to the Annual Realized Savings calculations for each Annual Period thereafter, until and unless CLIENT incorporates such operational improvement.

4.7 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period. If the CLIENT fails to maintain, breaches, cancels or otherwise causes the termination of the PASP for any reason unrelated to SIEMENS' breach or anticipated breach of this Agreement or negligence or willful misconduct then: (a) The Performance Guarantee shall terminate immediately and be void and of no force or effect; or, (b) Where termination of the Performance Guarantee acts to render the Agreement in violation of Applicable Law, all Guaranteed Savings thereafter shall be determined to have been achieved and SIEMENS shall have been deemed to have met its Performance Guarantee obligations under this Agreement for each and every Annual Period thereafter without the obligation to provide the CLIENT, or any third-party as the case may be, with any further Annual Performance Assurance Reports.

4.8 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the CLIENT under this Performance Guarantee. ANY PAYMENTS MADE OR TO BE MADE TO THE CLIENT UNDER THE TERMS OF THIS PERFORMANCE GUARANTEE SHALL NOT EXCEED THE PAYMENTS ACTUALLY MADE BY CLIENT TO EITHER SIEMENS AND/OR A THIRD-PARTY (IN THE EVENT THAT THE CLIENT HAS FINANCED THE TRANSACTION) FOR THE AGGREGATE OF: THE PRICE, AS DEFINED IN EXHIBIT B, ARTICLE 1.1; THE PASP PAYMENTS; THE MSP PAYMENTS, IF ANY; AND, IF APPLICABLE, THE CLIENT'S COST OF FINANCING THE WORK. The CLIENT's cost of financing the Work is the cost of financing calculated either: (a) On the date that the escrow account is funded in accordance with Exhibit B, Article 1.2; or, (b) On the Effective Contract Date if the escrow requirement is expressly waived by SIEMENS.

4.9 The CLIENT represents that, to its knowledge, all existing equipment that is not installed by SIEMENS under this Agreement but is deemed necessary to achieve the Performance Guarantee, is in satisfactory working condition. Prior to the beginning of the Performance Guarantee Period, SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT. To the extent that the deficiencies are not remedied by the CLIENT prior to the Guarantee Date, the adverse effect on the ability of the Project to attain the necessary Guaranteed Savings shall be factored into the Annual Performance Assurance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.

4.10 If the Equipment or the existing equipment is altered or moved by any person (including the CLIENT) other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense in order to determine if a Material Change has occurred.

4.11 SIEMENS will have no liability or obligation to continue providing PASP Services or any Guaranteed Savings under the Performance Guarantee in the event that the CLIENT fails to:

- (a) Authorize a re-acceptance test or re-commissioning that SIEMENS reasonably deems necessary in order to determine if a Material Change has occurred;
- (b) Provide access on reasonable terms and conditions to any Facility where Work is to be performed;

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- (c) Service and maintain all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
 - (d) Provide SIEMENS with accurate Facility operating information as soon as such information becomes reasonably available to the CLIENT, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period.

4.12 Unless expressly contrary to Applicable Law, should the CLIENT decide to discontinue the PASP before the end of the Performance Guarantee Period, the CLIENT will give SIEMENS thirty (30) days prior written notice and in such notice indicate that the CLIENT has selected one of the following:

- (a) The CLIENT will re-invest the avoided cost of cancellation of the PASP into Facility improvements and services that improve the overall Facility's performance and which improvements and services are implemented by SIEMENS; or,
- (b) The CLIENT will pay to SIEMENS 25% of the remaining value left in the PASP Annual Period, as a liquidated damage and not as a penalty, to compensate SIEMENS for SIEMENS' up-front costs and expenses in preparing to perform the PASP as contracted for the Annual Period.

4.13 Unless expressly contrary to Applicable Law, any disputes concerning the calculation of the Annual Realized Savings or changes to the Contracted Baseline that are not resolved by negotiation between the Parties within thirty (30) days of the notice of the dispute, will be resolved by a third-party professional engineering firm which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of such firm will be final and binding upon CLIENT and SIEMENS. SIEMENS and the CLIENT will each be responsible for half of the fees of such firm.

Article 5

Work by SIEMENS

- 5.1 SIEMENS will perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both Parties. The Work performed by SIEMENS shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.
- 5.2 SIEMENS shall perform the Work during its normal hours, Monday through Friday inclusive, excluding CLIENT holidays or office closures, unless otherwise agreed herein. The CLIENT shall provide SIEMENS with 7-days advance written notice of any scheduled office closures. The CLIENT shall make the Facility available so Work may proceed in an efficient manner.
- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment unless expressly made a part of the Work identified in the Scope of Work and Services, Exhibit A. Any CLIENT request to change the scope or the nature of the Work or Services must be in the form of a mutually agreed change order, effective only when executed by the Parties.
- 5.4 All Work Product Deliverables shall become the CLIENT's property upon receipt by CLIENT. SIEMENS may retain file copies of such Work Product Deliverables. If any Instruments are provided to the CLIENT under this Agreement, any such Instruments shall remain SIEMENS' property, including the Intellectual Property conceived or developed by SIEMENS in the Instruments. All SIEMENS' Pre-existing Intellectual Property that may be included in the Deliverables provided to the CLIENT under this Agreement shall also remain SIEMENS property including the SIEMENS Preexisting Intellectual Property included in the Work Product Deliverables. All Work Product Deliverables and any Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. SIEMENS hereby grants the CLIENT a royalty-free (once 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 Deliverables and SIEMENS' Intellectual Property as incorporated into any Instruments provided to the CLIENT under this Agreement. Under such license, and following agreement to be bound to such separate confidentiality provisions that may exist between the Parties, Permitted Users shall have a right to:

- (a) Use, in object code form only, the Software Products included in the Deliverables ("Software Deliverables");
- (b) Make and retain archival and emergency copies of such Software Deliverables (subject to any confidentiality

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provisions) except if the Software Deliverable is embedded in the Equipment; and,

- (c) Use all such Deliverables and such Instruments, provided however, the Deliverables and Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Deliverables are provided. All Deliverables provided to the CLIENT are for Permitted Users' use only for the purposes disclosed to SIEMENS, and the CLIENT shall not transfer them to others or use them or permit them to be used for any extension of the Work or any other project or purpose, without SIEMENS' express written consent.

5.4.1 Any reuse of such Deliverables or such Instruments for other projects or locations without the written consent of SIEMENS, or use by any party other than Permitted Users will be at Permitted Users' risk and without liability to SIEMENS; and, the CLIENT shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.

5.4.2 In consideration of such license, CLIENT agrees not to reverse engineer any Equipment or Software Product to reconstruct or discover any source code, object code, firmware, underlying ideas, or algorithms of such Equipment or Software Product even to the extent such restriction is allowable under Applicable Law.

5.4.3 Nothing contained in this Agreement shall be interpreted or construed to convey to the CLIENT the pre-existing Intellectual Property rights of any third party incorporated into the Deliverables. CLIENT agrees to take delivery of any Software Deliverables subject to any applicable SIEMENS or third party end-user license agreement accompanying such Software Deliverable.

5.5 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of the CLIENT 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 the Facility shall not relieve others of their responsibility to the CLIENT or to others.

5.6 SIEMENS warrants that:

- (a) Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date the Equipment is installed, all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service.
- (b) Labor for all Work, excluding PASP or MSP Services, is warranted to be free from defects in workmanship for one year after the Work is performed. PASP Services and MSP Services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.

5.7 Warranty Limitation:

- (a) The limited warranties set forth in Section 5.6 will be void as to, and shall not apply to, any Equipment (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) which the CLIENT or a third party subjects to unreasonable or improper use or storage, uses beyond rated conditions, operates other than per SIEMENS or the manufacturer's instructions, or otherwise subjects to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have had, knowledge of any defect in the Equipment; or (iv) not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS nameplate. However, SIEMENS assigns to the CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment.
- (b) Any claim under the limited warranty 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 the CLIENT and not to any subsequent owner of the Equipment. The CLIENT's sole and exclusive remedy for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS' option: (i) repair or replacement of defective components of covered Equipment; (ii) re-performance of the defective portion of the Services; or (iii) to the extent previously paid and itemized, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
- (c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment or the portion of the Work and Services actually found to be defective. SIEMENS' warranty liability shall not exceed

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- (d) the purchase price of such item. Repaired or replaced Equipment or Services will be warranted hereunder only for the remaining portion of the original warranty period.

5.8 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

5.9 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 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 covered by the warranty provisions herein or otherwise specifically stated herein; or
- (b) The CLIENT's or a third-party's negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond SIEMENS' control. Unless expressly agreed in writing, SIEMENS is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and tamper switches with respect to pipes and ductwork, including vent or drain system. SIEMENS ASSUMES NO RESPONSIBILITY FOR ANY SERVICE PERFORMED ON ANY EQUIPMENT OTHER THAN THAT PERFORMED BY SIEMENS OR ITS AGENTS.

Article 6

CLIENT Responsibilities

6.1 The CLIENT, without cost to SIEMENS, shall:

- (a) Designate a contact person with authority to make decisions for the CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency;
- (b) Coordinate the work of contractors under CLIENT's sole control so as not to disrupt the Work and Services proceeding in an efficient manner;
- (c) Provide or arrange for 24 hour, 7 day per week access and make all reasonable provisions for SIEMENS to enter any Facility where Work is to be performed so that Work may proceed in an efficient manner;
- (d) Permit SIEMENS to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
- (e) Furnish SIEMENS with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Facility where the Work is to be performed as may be reasonably requested by SIEMENS. Such plans and blueprints, along with an executed copy of this Agreement, with its Exhibits, shall be kept and maintained in CLIENT's files for a period of fifteen (15) years from the Effective Contract Date;
- (f) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work, except for those SIEMENS has expressly agreed in writing to obtain;
- (g) In accordance with Article 11 hereof, promptly notify SIEMENS of all known or suspected Hazardous Materials at the Facility, of any contamination of the Facility by Oil or Hazardous Material, and of any other conditions requiring special care or which may reasonably be expected to affect the Work, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such materials, contamination or conditions;
- (h) Comply with Applicable Law and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;

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- (i) Provide SIEMENS with legally required materials and information (including but not limited to Material Safety Data Sheets) related to all Hazardous Materials located at any Facility where the Work is to be performed;
 - (j) Furnish SIEMENS with any contingency plans, safety programs and other policies, plans or programs related to any Facility where the Work is to be performed;
 - (k) Operate, service and maintain all Equipment according to the manufacturer's recommendations including those set forth in the manufacturer's operating manuals or instructions, as well as all requirements of Applicable Law or of authorities having jurisdiction. The CLIENT shall furnish all needed servicing and parts for said FIMs, which parts shall become part of the FIMs. Such Equipment shall be operated only in the specified operating environment, which shall be supplied by the CLIENT, including without limitation: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment;
 - (l) Promptly notify SIEMENS of any unusual operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or any Services; and,
 - (m) If applicable, provide and pay for a dedicated voice grade dial-up phone line, or a mutually agreed communication method, and install a terminal block, or an equivalent communication mechanism, in a mutually agreed upon location. All on-line service Equipment (excluding the phone line) will remain the property of SIEMENS unless otherwise stated herein.

6.2 Unless contrary to Applicable Law, the CLIENT acknowledges that the technical information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent. If CLIENT receives a request under Applicable Law to inspect such information, it shall notify SIEMENS and provide SIEMENS with an opportunity to obtain a court order limiting the disclosure of such information. SIEMENS shall defend, indemnify and hold CLIENT harmless from any third party challenge to such disclosure or non-disclosure.

6.3 The CLIENT acknowledges that it is now and shall at all times remain in control of the Facility. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to the CLIENT's activities or operations, the CLIENT's other contractor(s), the work of any other person or entity, or Facility conditions. SIEMENS shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of the CLIENT or others at the Facility. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Facility, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, the CLIENT shall not hold, or attempt to hold, SIEMENS liable or responsible on account thereof.

Article 7

Changes and Delays

7.1 Reserved.

7.2 Either party may request additions, deletions, modifications or changes to the Work. Any such requests shall only become effective upon execution of a written agreement by authorized representatives of both Parties.

7.3 SIEMENS may, in its reasonable discretion with notice to CLIENT, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality.

7.4 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 restricted to acts or omissions by the CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts and difference with workmen affecting third party employees, riots, explosions not caused by SIEMENS, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period. In the event that delay, injury, damage or failure of performance were caused by acts or omissions of the CLIENT, then SIEMENS' compensation shall be equitably adjusted to compensate for additional costs SIEMENS incurs due to such delay. If any such delay exceeds sixty (60) days, SIEMENS may terminate this Agreement upon three (3) days' notice to the CLIENT and the CLIENT shall promptly pay SIEMENS for the allocable portion of the Work completed. .

Article 8

Compensation

- 8.1 The aggregate amount paid by CLIENT provides for and is solely in consideration of the Scope of Work and Services described in Exhibit A, and is detailed in Exhibit B.
- 8.2 SIEMENS will invoice the CLIENT in accordance with the schedules set forth in Exhibit B. Unless otherwise agreed in writing, invoices are due and payable upon receipt by the CLIENT. If the CLIENT disagrees with any portion 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, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due. In such event, SIEMENS shall be entitled to compensation for the Work or Services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 8.4 On amounts not paid within thirty (30) days of invoice date, the CLIENT shall pay interest from invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. The CLIENT shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorney and witness fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed herein, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services. The CLIENT shall pay such amounts or reimburse SIEMENS for any such amounts SIEMENS pays to the extent such charges are lawfully due and payable by CLIENT and have been paid or incurred by SIEMENS in furtherance thereof. If the CLIENT claims that the Work or Services is subject to a tax exemption or direct payment permit, it shall provide SIEMENS with a valid exemption certificate or permit and, unless specifically prohibited by law, shall indemnify, defend and hold SIEMENS harmless from any taxes, costs and penalties arising out of the use or acceptance of same.
- 8.6 All other work or services requested by the CLIENT, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis:
 - (a) Emergency services, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
 - (b) Work and/or services performed at times other than during SIEMENS' normal working hours, unless otherwise agreed to in Exhibit A; or
 - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.

Article 9

Acceptance

- 9.1 When SIEMENS believes that all or an independent definable phase or portion of the Work is Substantially Complete, SIEMENS will submit a Certificate of Substantial Completion to the CLIENT which shall be subject to the following:
 - (a) If the CLIENT concurs that the described portion of the Work as performed is Substantially Complete, the CLIENT will sign the Certificate of Substantial Completion and return it to SIEMENS;
 - (b) A Certificate of Substantial Completion may include, as an attachment to it, an Outstanding Items List prepared by SIEMENS;
 - (c) If the CLIENT does not concur that the Work is Substantially Complete, then, within fifteen (15) business days of receiving the Certificate of Substantial Completion, the CLIENT shall notify SIEMENS in writing of the reasons it believes the Work is not Substantially Complete;
 - (d) If SIEMENS disagrees with the CLIENT as to whether the Work is Substantially Complete, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with Section 9.3 herein;
 - (e) If, within fifteen (15) business days of receiving the Certificate of Substantial Completion the CLIENT fails to sign the Certificate, and within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice of the reasons the CLIENT believes that the Work is not Substantially Complete, then in the mutual interests of the Project proceeding in a timely manner, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial Completion.

9.2 After the CLIENT signs and returns, or is deemed to have signed and returned to SIEMENS all of the Certificates of Substantial Completion relating to the Work, and after SIEMENS corrects and completes all of the items on all of the Outstanding Items Lists, if any, SIEMENS will submit to the CLIENT a Certificate of Final Completion which shall be subject to the following:

- (a) If the CLIENT concurs that all of the items on all of the Outstanding Items Lists have been completed or corrected, the CLIENT will indicate its final acceptance of the Work by signing the Certificate of Final Completion and returning it to SIEMENS;
- (b) If the CLIENT does not concur that all of the items on all of the Outstanding Items Lists have been completed or corrected, then the CLIENT shall, within fifteen(15) business days of receiving the Certificate of Final Completion, identify the items that, it believes, were not completed or corrected;
- (c) If SIEMENS disagrees that the items identified by the CLIENT have not been completed or corrected, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with section 9.3 herein;
- (d) If, within fifteen (15) business days of receiving a Certificate of Final Completion, the CLIENT fails to sign that Certificate, and, within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice identifying the items on the Outstanding Items List(s) that, the CLIENT believes, were not completed or corrected, then the CLIENT will be deemed to have agreed to and signed and returned the Certificate of Final Completion.

9.3 Any disputes concerning the Substantial Completion or the Final Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm and which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of this firm with respect to Final Completion or Substantial Completion will be final and binding upon the Parties. SIEMENS and the CLIENT shall share equally the costs or fees for such firm in connection with such dispute resolution process.

Article 10

Insurance and Allocation of Risk

10.1 SIEMENS shall maintain, at SIEMENS' expense, the following insurances while performing the Work and shall add the CLIENT as an "Additional Insured" to each policy that is referenced in subsections (c) through and including (e) hereof:

- (a) Workers' Compensation at the statutory amounts and limits as prescribed by Applicable Law.
- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
 - \$1,000,000 per occurrence
 - \$1,000,000 Disease Policy
 - \$1,000,000 Each Employee
- (c) SIEMENS shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering SIEMENS' operations and providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for:
 - Products and Completed Operations
 - Contractual Liability insuring the obligations assumed by SIEMENS in this Agreement
 - Broad Form Property Damage (including Completed Operations)
 - Explosion, Collapse and Underground Hazards
 - Personal Injury Liability:
 - Limits of liability shall be \$1,000,000 per occurrence/aggregate
- (d) SIEMENS shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of SIEMENS providing insurance for bodily injury liability and property damage liability for the limits of:
 - \$1,000,000 per occurrence/aggregate

(e) SIEMENS shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of:

- \$5,000,000 per occurrence/aggregate

10.2 The CLIENT will either maintain at its own expense, or self-insure for the equivalent risks, property insurance written on a builder's "all-risk" or equivalent policy form in an amount no less than the Price identified in Exhibit B, Article 1.1, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by SIEMENS, until final payment has been made to SIEMENS or no person or entity other than the CLIENT has an insurable interest in the property, whichever is later. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for SIEMENS' services and expenses required as result of such insured loss. If the insurance requires deductibles or retentions, the CLIENT shall pay costs not covered because of such deductibles or retentions. This insurance shall cover portions of the Work off the Facility, and also portions of the Work in transit. Partial occupancy or use shall not commence unless the insurance company providing this insurance has consented to such partial occupancy or use by endorsement for otherwise. The CLIENT shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until Acceptance by the CLIENT. The insurance required by this section shall include the interests of the CLIENT, SIEMENS, subcontractor and sub-subcontractor in the Work. SIEMENS shall be included as an additional insured on each such insurance coverage. The CLIENT and SIEMENS waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by the insurance required by this section and for any other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the CLIENT as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Insurance certificates shall be furnished upon request.

10.3 Title and risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Facility, and the CLIENT shall be responsible for protecting them against theft and damage.

10.4 SIEMENS will indemnify the CLIENT from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property (collectively "Damages"). Such indemnification shall be solely to the extent the Damages are caused by or arise directly from SIEMENS or its employees', consultants' or agents' negligent acts or omissions or willful misconduct in connection with SIEMENS' performance of the Work or Services. SIEMENS' obligations under this indemnity shall not extend to Damages arising out of or in any way attributable to the negligence of the CLIENT or its agents, contractors or employees. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder.

10.5 UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT OR SIEMENS BE LIABLE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS OR THE CLIENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT, UNLESS CONTRARY TO APPLICABLE LAW, SIEMENS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, AGENCY, WARRANTY, TRESPASS, OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THE CLIENT UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO SIEMENS' INDEMNITY OBLIGATIONS UNDER SECTION 10.4. IN ADDITION, HE PRECEDING LIMIT SHALL NOT APPLY TO THE CLIENT'S REMEDY UNDER THE PERFORMANCE GUARANTEE AS SUCH IS LIMITED BY

SECTION 4.8.

10.6 As to Patents and Copyrights:

Agreement

- (a) SIEMENS will, at its own expense, defend or at its option settle any suit or proceeding brought against the CLIENT in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if SIEMENS is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. SIEMENS will pay the damages and costs awarded in any suit or proceeding so defended. SIEMENS will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by the CLIENT is enjoined, SIEMENS will, at its option and its own expense, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.
- (b) SIEMENS will have no duty or obligation to the CLIENT under Section 10.6(a) to the extent that the Work is: (i) supplied according to the CLIENT's design or instructions, wherein compliance therewith has caused SIEMENS to deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors after delivery; or, (iii) combined by the CLIENT or its contractors with items not furnished hereunder, and by reason of said design, instruction, modification, or combination, a suit is brought against the CLIENT. If by reason of such design, instruction, modification or combination, a suit or proceeding is brought against SIEMENS, unless expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner and to the same extent that SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.6(a) above.
- (c) THIS SECTION 10.6 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 10.6 as provided herein shall constitute fulfillment of all liabilities of the Parties under the Agreement with respect to the intellectual property indemnification.

10.7 The Parties acknowledge that the price for which SIEMENS has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each Party has expressly relied on and would not have entered into this Agreement but for such allocations of risk.

Article 11

Hazardous Materials Provisions

11.1 The Work does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Facility at which Work is performed and any soil or groundwater at the Facility by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any other Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that, to the best of its knowledge following due inquiry, there are no Hazardous Materials or Oil present where the Work is to be performed. SIEMENS will notify the CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on the CLIENT's representations as set forth in this Article. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Facility where SIEMENS is to perform Work, or of contamination of the Facility by Oil or Hazardous Materials not previously disclosed pursuant to Section 11.2, shall entitle SIEMENS to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work and to be paid for Work previously performed.

11.2 The CLIENT warrants that, prior to the execution of the Agreement, it notified SIEMENS in writing of any and all Oil or Hazardous Materials, to the best of its knowledge following due inquiry, known to be present, potentially present or likely to become present at the Facility and provided a copy of any Facility safety policies and information, including but not limited to lock-out and tag procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by Applicable Law.

11.3 Regardless of whether Oil or Hazardous Material was disclosed pursuant to Section 11.2, the CLIENT shall be solely responsible for properly testing, abating, encapsulating, removing, disposing, remedying or neutralizing such Oil or Hazardous Materials, and for the costs thereof. Even if an appropriate change order has been entered into pursuant to

Section 11.1, SIEMENS shall have the right to stop the Work until the Facility is free from Oil or Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete the Work, and compensation for delays caused by Oil or Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. The CLIENT shall sign any required waste manifests in conformance with all government regulations, listing the CLIENT as the generator of the waste. If someone other than the CLIENT is the generator of the waste, the CLIENT shall arrange for such other person to sign such manifests.

- 11.4 Except where expressly prohibited by Applicable Law, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CLIENT 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 the CLIENT's breach of, or failure to perform its obligations under this Article.
- 11.5 For purposes of this Article 11, in the context of the phrase "to the best of its knowledge following due inquiry"; "knowledge" means actual awareness of the facts by the CLIENT's directors, officers, employees or agents, or the presence of relevant information contained in the CLIENT's books or records; and, "due inquiry" means inquiry of those persons under the CLIENT's control who should have knowledge of the subject matter of such inquiry.

Article 12

Miscellaneous Provisions

- 12.1 Notices between the Parties shall be in writing and shall be hand-delivered or sent by certified mail, express courier, or acknowledged telefax properly addressed to the appropriate party. Any such notice shall be deemed to have been received when delivered in-person or when sent by telefax, or five (5) business days subsequent to deposit in the U.S. mails, or one (1) day after deposit with express courier.
- 12.2 Neither the CLIENT nor SIEMENS shall assign or transfer any rights or obligations under this Agreement, except that either party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work or Services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express written consent of both Parties.
- 12.3 This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth within which the Facilities are located. Venue shall be in the San Luis Obispo Superior Court or federal Central District of California.
- 12.4 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work, the Services, and the termination of this Agreement.
- 12.5 SIEMENS' performance of the Work and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Work or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement.
- 12.6 Any provision of this Agreement found to be invalid, unlawful or unenforceable by a court of law shall be ineffective to the extent of such invalidity, and deemed severed herefrom, without invalidating the remainder of this Agreement. All other provisions hereof shall remain in full force and effect.
- 12.7 The waiver by a party of any breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof. No waiver shall operate or be effective unless made in writing and executed by the party to be bound thereby.
- 12.8 In the event that Applicable Law or the CLIENT requires that SIEMENS procure a performance bond and/or a payment bond, SIEMENS shall provide a performance and payment bond in the amount of \$2,342,118 . The performance and payment bond will solely apply to the Work performed during the Construction Period and to the required statutory lien filing period thereafter. The performance and payment bond will not apply to any of the obligations included in the Performance Assurance, Exhibit C. Furthermore, the CLIENT's funding source may be named as "Co-Obligee" on the performance bond if so requested by the CLIENT.

Article 13

Maintenance Services Program

13.1 If applicable, the scope of Services provided by SIEMENS for the Maintenance Services Program is stated in Exhibit A.

- 13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSP commencement or no later than the first scheduled inspection. Testing and inspection will not be deemed to be complete until all such equipment has been so tested and inspected.
- 13.3 If the equipment is altered or moved by any person, including the CLIENT, other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense. In equipment is altered or moved as a result of an emergency caused by SIEMENS, SIEMENS shall be responsible for the cost of any reacceptance test on, or if necessary a re-commissioning of, the system.
- 13.4 If SIEMENS reasonably determines as a result of such inspection and/or testing that any equipment requires repair or replacement, the CLIENT will be so notified and shall take corrective action within thirty (30) days, or such equipment shall be removed from coverage hereunder without further action by the Parties. SIEMENS is not liable or responsible for the continued testing, maintenance, repair, replacement or operating capabilities of any portion of the equipment until it has been inspected and/or tested and has been, if necessary, restored to an acceptable initial condition at the CLIENT's sole expense. Any services provided by SIEMENS in the course of such restoration will be separately charged on a time and materials basis, and not included in fees paid hereunder.
- 13.5 If the MSP scope of Services provides for equipment maintenance, repairs and/or replacements of equipment by SIEMENS, those Services are limited to restoring the proper working condition of such equipment. SIEMENS will not be obligated to provide replacement equipment that represents significant capital improvement compared to the original. Exchanged components become the property of SIEMENS, except Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.

Article 1: Scope of Work

1.1 *Description:* Except as otherwise expressly provided herein, SIEMENS shall provide each and every item of cost and expense necessary for: implementation of the FIMS described in Section 1.2, below. Work will be based on California Prevailing wage requirements as approved by the client. Client to provide adequate site access and appropriate area on site for contractor staging and storage.

1.2 *Specific Elements:* The Work shall include the following:

1.2.1 Lighting Upgrade: Replace with LED Equivalents

SIEMENS will:

1. Coordinate with PG&E prior to installation for rebate pre-inspection if required.
2. Provide lighting upgrades as shown in Appendix 1.
 - a) Remove and dispose of existing Compact Fluorescent, Incandescent, High Pressure Sodium (HPS) and Metal Halide lamps (MH).
 - b) Furnish and install new LED equivalent lamps and ballasts as shown in Appendix 1.
 - c) Fixture replacements limited to those specifically shown in Appendix 1.
3. Lighting upgrades will occur at the following locations.

Facility	Address
City Hall / Library	1000 Spring St, Paso Robles, CA 93446
Public Safety Building (Police and Fire)	900 Park St, Paso Robles, CA 93446
Centennial Gym/Admin Building	600 Nickerson Dr, Paso Robles, CA 93446
Senior Center	270 Scott St, Paso Robles, CA 93446

4. Work to be installed in accordance with applicable Title 24 requirements.
5. Work to be performed during normal business hours Monday thru Friday.

1.2.1.1 Areas with Low Light Levels

SIEMENS' work is based on the lighting retrofits as shown in Appendix 1. Some areas may currently have existing low light levels, and which after the Appendix 1 retrofits may still not meet necessary lighting standards. Regarding areas where lighting may not meet necessary lighting standards:

1. SIEMENS will walk with the CLIENT representative to take lighting readings in spaces prior to construction
2. Following the walk-through, spaces which are determined to have low light levels will be flagged in the SIEMENS audit document (Appendix 1)

3. For these and other such areas identified during construction, SIEMENS will communicate to the CLIENT, and provide recommendations for addressing light level issues
4. SIEMENS will provide pricing for the recommended additional work on a time and material basis
5. Following construction, post lighting levels will also be documented in conjunction with the CLIENT representative
6. CLIENT has elected to self-implement maintenance. Therefore SIEMENS shall not perform any on-going maintenance services, although the Parties may negotiate a separate agreement for such services at a later date.

Exclusions:

- 1 Since the incentives are paid for by a third party (PG&E), SIEMENS cannot guarantee the incentives, but will provide work necessary in a timely manner to help to secure the funds. The CLIENT acknowledges that: (i) any incentive that may be available to the CLIENT to pay the costs of the work will be granted by a third party outside the control of Siemens; (ii) lack of availability of such incentives shall not relieve the CLIENT of its payment obligations under this Agreement.
- 2 Entire scope was priced as universal voltage (120/277V), 480V fixtures/drivers are not included in the scope.
- 3 Emergency circuits/drivers are not included.
- 4 Additional LED emergency drivers, if needed, will be charged and installed on unit pricing basis.
- 5 Scope assumes 1 for 1 replacement only, any change in layout or unforeseen electrical issues are not included in the scope.
- 6 Siemens scope is limited to replacing the fixtures identified in Appendix 1 or working inside the fixtures identified therein. Correction of any pre-existing defects or non-conformities with the applicable Codes in the electrical wiring to the fixture is not included.
- 7 Standard manufacturer's warranty applies to all specified product.
- 8 Design services i.e. CAD drawings/reflective ceilings plans are not included in the quoted price above.
- 9 Installation of new sensors and calibration of existing sensors is not included.
- 10 Replacement of lenses is not included.
- 11 Any extra or spare parts are not included.
- 12 Overtime work is not included.

1.2.2 Package Unit Replacement – Centennial Gym/Administration Building

SIEMENS will:

1. Demo, remove and dispose of the below existing packaged rooftop HVAC units (including compressor oil and refrigerant per EPA guidelines) serving the Centennial Gym/Administration Building

Exhibit A - Scope of Work and Services

Mark	Capacity Tons	Type	Existing Make/Model
AC-1	3	Gas Heating/Mech cooling	PAYNE/ 585JJ036100
AC-2	3	Gas Heating/Mech cooling	PAYNE/ 585JP036125
AC-3	3	Gas Heating/Mech cooling	PAYNE/ 585JP036125
AC-4	3	Gas Heating/Mech cooling	PAYNE/ 585HP036100
AC-5	3.5	Gas Heating/Mech cooling	PAYNE/ 585JP042125
AC-6	3	Gas Heating/Mech cooling	PAYNE/ 585JP036125
AC-7	3.5	Gas Heating/Mech cooling	PAYNE/ 585JP042060
AC-8	4	Gas Heating/Mech cooling	PAYNE/ 585HP048080
AC-9	7.5	Gas Heating/Mech cooling	PAYNE/ 585EP090146
AC-10	12.5	Gas Heating/Mech cooling	PAYNE/ 579DP150231
AC-11	15	Gas Heating/Mech cooling	PAYNE/ 579DP180270
AC-12	15	Gas Heating/Mech cooling	PAYNE/ 579DP180270
AC-13	15	Gas Heating/Mech cooling	PAYNE/ 579DP180270
AC-14	15	Gas Heating/Mech cooling	PAYNE/ 579DP180270
AC-15	5	Gas Heating/Mech cooling	PAYNE/ 585HP060100
AC-16	3	Gas Heating/Mech cooling	PAYNE/ 585HE036060
AC-17	3	Gas Heating/Mech cooling	PAYNE/ 585HE036060
AC-18	3	Gas Heating/Mech cooling	PAYNE/ 585HE036060

Furnish and install the new Carrier packaged rooftop HVAC replacement units (“New Units”) or equivalent, with the same size as existing units. New units to be of equal or lesser weight than existing.

2. The New Units shall consist of:
 - a. Three (3) units - Nominal 3 Ton Gas Heat/Elec Cooling Pkg RTU, 460/3, 60HZ, 1200 CFM
 - b. Five (5) units - Nominal 3 Ton Gas Heat/Elec Cooling Pkg RTU, Med Heat, 460/3, 60HZ, 1200 CFM
 - c. Three (3) units - Nominal 4 Ton Gas Heat/Elec Cooling Pkg RTU, 460/3, 60HZ, 1600 CFM

- d. One (1) unit - Nominal 5 Ton Gas Heat/Elec Cooling Pkg RTU, 460/3, 60HZ , 2000 CFM
 - e. One (1) unit - Nominal 7.5 Ton Gas Heat/Elec Cooling Pkg RTU, 460/3, 60HZ , 3000 CFM
 - f. One (1) unit - Nominal 12.5 Ton Gas Heat/Elec Cooling Pkg RTU, 460/3, 60HZ , 5000 CFM
 - g. One (4) unit - Nominal 15 Ton Gas Heat/Elec Cooling Pkg RTU, 460/3, 60HZ , 6000 CFM
3. Duct Sealing:
- a. Siemens proposes to complete the duct sealing of exterior sheet metal exposed on the roof in a manner recommended by the manufacturer and the practices and standards of the industry at the following locations
 - Gymnasium – Over Gymnastic Area (3 Units)
 - Administration Offices and Common Area (1 unit)
 - Administration and Banquet Rooms (10 Units)
4. Reconnect existing electrical power, gas piping, supply/return ductwork, condensate piping to New Units.
 5. Furnish and install p-traps for condensate piping. Route condensate piping to nearest roof drain.
 6. Furnish and install supply and return duct transitions above roof line for New Units as needed.
 7. Furnish and install new NEMA-3R fused disconnect switches for the New Units.
 8. Provide commissioning/start-up for the New Units.
 9. Receive, unload and properly store New Units and required material at job site prior to installation.
 10. Provide air flow measurements at unit discharge only and verify that it meets existing airflows. Provide operational training on Equipment.

Exclusions:

1. ADA upgrades not specifically listed in this scope of work
2. Removal or installation of fire life safety equipment. SIEMENS will coordinate with clients consultant for any work related to SIEMENS work.
3. Major structural work such as reinforcing of structural members below the roof line was not anticipated during the development of this project and is excluded from the cost of the project.
4. SIEMENS is not responsible for clearance requirements.
5. There are no hazardous materials (asbestos, lead paint, mold etc.) included within this contract. All abatement work by the CLIENT. All hazardous areas are assumed to have been tagged.

6. Painting and patching
7. Repair of any faulty or non-code wiring
8. No test and air balance beyond measurement at the unit discharge is included.
9. No premium time hours included
10. No repair or replacement of existing duct work
11. Siemens is not responsible for remedying any preexisting comfort conditions due to undersizing of existing equipment. Siemens scope assumes that the units are adequately sized for current loads to maintain comfort conditions, and no additional load calculations were performed.
12. Siemens is not responsible for remedying any existing duct leaking issues in the building.
13. Repair of any damaged structural membranes caused by water or any other unknown damage to existing members is not included.
14. All work related to the insulation inside the duct work is not included.

1.2.3 Boiler Replacement – City Hall/Library

SIEMENS will:

1. Coordinate with Sempra prior to installation for rebate pre-inspection if required.
2. Dismantle and remove (1) existing boiler from site, haul away and dispose.

Mark	Type	BTU/HR Output	BTU/HR Input	Existing Make/Model/Serial Number	Proposed Make/Model/Serial Number
B-1	Gas Fired Water Heater Boiler	680,000	850,000	AJAX/ WG-850/ 85761	Lochinvar CHN 0752 or equivalent

3. Provide and install new boiler to match existing capacity meeting applicable codes.
4. Modify existing concrete pad as/if needed per requirements of new boiler.
5. Provide and install new disconnect and connect to existing electrical service.
6. Connect to existing outgoing and incoming piping, pumps, gas lines and condensate lines.
7. Provide for start-up and commissioning of new equipment.
8. Work to be installed in accordance with applicable Title 24 requirements.
9. Work to be performed during normal business hours.

Exclusions:

- 1 Provisions for temporary heating are not included.
- 2 Provisions for temporary power are not included.
- 3 Since the incentives are paid for by a third party (Sempra), SIEMENS cannot guarantee the incentives, but will provide work necessary in a timely manner to help to secure the funds. The CLIENT acknowledges that (i) any incentive that may be available to the CLIENT to pay the costs of the work will be granted by a third party outside the control of SIEMENS; and (ii) lack of availability of such incentives shall not relieve the CLIENT of its payment obligations under this Agreement.
- 4 There are no hazardous materials (asbestos, lead paint, mold etc.) included within this contract. All abatement work by CLIENT. All hazardous areas are assumed to have been tagged.
- 5 Repair of any faulty or non-code wiring or remedying any existing defective piping.
- 6 No premium time hours included
- 7 Connections to existing fire/smoke alarm system or removal and installation of fire life safety equipment are not included. SIEMENS will coordinate with clients consultant for any work related to SIEMENS work.
- 8 Siemens is not responsible for remedying any preexisting comfort conditions due to undersizing of existing equipment. Siemens scope assumes that the units are adequately sized for current loads to maintain comfort conditions, and no additional load calculations were performed.

1.2.4 Hot Water Pump Replacement – Public Safety Building

SIEMENS will:

1. Dismantle and remove (1) existing non-operating hot water pump from site, haul away and dispose.

Mark	HP
P-3 (non operating pump)	3

2. Provide and install new hot water pump matching existing motor size and flow rate.
3. Mechanically install pumps meeting applicable codes.
4. Connect to existing electrical service and provide new disconnects
5. Provide start-up and commissioning of new pump.
6. Work to be done during regular hours.

Exclusions:

1. Provisions for temporary heating are not included.
2. Provisions for temporary power are not included.
3. There are no hazardous materials (asbestos, lead paint, mold etc.) included within this contract. All abatement work by the CLIENT. All hazardous areas are assumed to have been tagged.

4. Repair of any faulty or non-code wiring or remedying any existing defective piping.
5. No premium time hours included
6. Connections to existing fire/smoke alarm system or removal and installation of fire life safety equipment are not included. SIEMENS will coordinate with clients consultant for any work related to SIEMENS work.
7. SIEMENS is not responsible for remedying any preexisting comfort conditions due to undersizing of existing equipment. Siemens scope assumes that the pumps are adequately sized for current loads to maintain comfort conditions, and no additional sizing calculations were performed.

1.2.5 Chiller Replacement – Public Safety Building

SIEMENS will:

1. Dismantle and remove (1) existing chiller from site, haul away and dispose.

Mark	Type	Capacity Ton	Existing Make/Model	Proposed Make/Model
CH-1	Reciprocating Air Cooled Chiller	100	McQuay/ AGR100AS27- ER10	Daikin AGZ100E or equivalent

2. Provide and install new chiller to match existing capacity meeting applicable codes.
3. Modify existing concrete pad as/if needed per requirements of new chiller.
4. Connect to existing supply and return piping.
5. Provide and install new disconnect and connect to existing electrical service .
6. Start up and commissioning of new chiller.
7. Work to be installed in accordance with applicable Title 24 requirements.
8. Work to be performed during normal business hours.

Exclusions:

- 1 Provisions for temporary cooling are not included.
- 2 Provisions for temporary power are not included.
- 3 Since the incentives are paid for by a third party (PG&E), SIEMENS cannot guarantee the incentives, but will provide work necessary in a timely manner to help to secure the funds. The CLIENT acknowledges that: (i)any incentive that may be available to the CLIENT to pay the costs of the work will be granted by a third party outside the control of SIEMENS; and (ii) lack of availability of such incentives shall not relieve the CLIENT of its payment obligations under this Agreement. There are no hazardous materials (asbestos, lead paint, mold etc.) included within this contract. All abatement work by the CLIENT. All hazardous areas are assumed to have been tagged.
- 4 Repair of any faulty or non-code wiring not included.
- 5 No premium time hours included.
- 6 Connections to existing fire/smoke alarm system are not included.

- 7 SIEMENS is not responsible for remedying any preexisting comfort conditions due to undersizing of existing equipment. Siemens scope assumes that the chillers are adequately sized for current loads to maintain comfort conditions, and no additional sizing calculations were performed.
- 8 Connections to existing fire/smoke alarm system or removal and installation of fire life safety equipment are not included. SIEMENS will coordinate with clients consultant for any work related to SIEMENS work.

1.2.6 Evaporcool on the Chillers at City Hall and Public Safety Building

Siemens will furnish Evaporcool frames and controller equipment on the chillers at the City Hall and Public Safety Building.

- 1 Coordinate with PG&E prior to installation for rebate pre-inspection if required.
- 2 Furnish magnetic mounting of Engineered Pre-Cooler Media Frames on the inlet face of condenser coils on the existing chiller at City Hall and on new proposed chiller at Public Safety Building.
- 3 Furnish magnetic mounting of a designated Wireless Communicating Controller with associated Sensors on the existing chiller at City Hall and on new proposed chiller at Public Safety Building
- 4 Furnish wiring of the Controller Power Supply Transformer and Fuse Block kit on both the chillers
- 5 Furnish Magnetic mounting and wiring of Water Solenoid Valves on each designated chillers
- 6 Provide controller commissioning and startup
- 7 Provide and install system Water Boost Pump and electrical service to the pump.
- 8 Provide and install Water Treatment System required for Evaporcool
- 9 Provide and install Nylon Water Tubing and Fittings to Evaporcool Media Frame Solenoid Valves and Media Frames
- 10 Provide operational training on Equipment.

Exclusions:

- 1 Provisions for temporary cooling are not included.
- 2 Provisions for temporary power are not included.
- 3 Since the incentives are paid for by a third party (PG&E), SIEMENS cannot guarantee the incentives, but will provide work necessary in a timely manner to help to secure the funds. The CLIENT acknowledges that: (i)any incentive that may be available to the CLIENT to pay the costs of the work will be granted by a third party outside the control of SIEMENS; and (ii) lack of availability of such incentives shall not relieve the CLIENT of its payment obligations under this Agreement. No premium time hours included.
- 4 Connections to existing fire/smoke alarm system are not included.

- 5 Ongoing operation and maintenance of Evaporcool components not included.

1.2.7 Plug Load Management

SIEMENS will:

1. Coordinate with PG&E prior to installation for rebate pre-inspection if required.
2. Provide Bert smart plugs for the equipment as shown in Appendix 2.
 - a) Bert Control automatically turns off loads during nights, weekends and holidays when buildings are unoccupied based on the schedule provided by the City.
 - b) Bert Smart plugs limited to the equipment specifically shown in Appendix 2.
3. Plug load management will occur at the following locations.

Facility	Address
City Hall / Library	1000 Spring St, Paso Robles, CA 93446
Public Safety Building (Police and Fire)	900 Park St, Paso Robles, CA 93446
Centennial Gym/Admin Building	600 Nickerson Dr, Paso Robles, CA 93446
Senior Center	270 Scott St, Paso Robles, CA 93446

4. Tie communications to the Siemens controls system for monitoring and alerts
5. Work to be installed in accordance with applicable Title 24 requirements.
6. Work to be performed during normal business hours.

Exclusions:

- 1 Since the incentives are paid for by a third party (PG&E), SIEMENS cannot guarantee the incentives, but will provide work necessary in a timely manner to help to secure the funds. The CLIENT acknowledges that: (i)any incentive that may be available to the CLIENT to pay the costs of the work will be granted by a third party outside the control of S; and (ii) lack of availability of such incentives shall not relieve the CLIENT of its payment obligations under this Agreement.
- 2 No premium time hours included.

1.2.8 Install New Siemens DESIGO Control System

SIEMENS will:

1. Siemens DESIGO server will be installed on existing workstation at City Hall/Library. The city will have unlimited client licenses to install at Public Safety Building, Centennial Gym and Senior Center.
2. Network IP address to be furnished by city IT for each location at City Hall/Library, Public Safety Building, Centennial Gym and Senior Center.
3. Integrate the following points in to the Siemens controls system
 - DDC Controls and monitoring for the following at the City Hall/Library:
 - (2) Air Handling Units
 - Damper Actuators
 - Valve Actuators
 - Temperature Sensors
 - Smoke Alarm
 - Differential Pressure Sensor
 - (3) Air Conditioning Units
 - Thermostat
 - Duct Temperature Sensor
 - (38) Variable Air Volume Boxes
 - Controller
 - Belimo Valve
 - Room Temperature Sensor
 - Damper Actuator
 - (1) Boiler
 - BACnet Interface
 - Outdoor Temperature Sensor
 - (1) Hot Water Pump
 - Start/Stop/Status
 - (1) Booster Pump
 - Start/Stop/Status
 - (1) Chiller
 - BACnet Interface
 - Temperature Sensors
 - (2) Chilled Water Pump
 - Start/Stop Status
 - (1) Evaporative Cooler
 - BACnet Interface
 - DDC Controls and monitoring for the following at the Public Safety Building:
 - (34) Fan Coil Units
 - Controller
 - Belimo Valve Actuator
 - Room Temperature Sensor
 - (8) Fan Coil Units
 - Controller
 - Belimo Valve Actuator
 - Room Temperature Sensor

- (1) Boiler
 - DX Cooling
 - BACnet Interface
 - Outdoor Temperature Sensor
 - (2) Hot Water Pumps
 - Start/Stop/Status
 - (1) Chiller
 - BACnet Interface
 - Temperature Sensors
 - (2) Chilled Water Pumps
 - Start/Stop/Status
 - (1) Evaporative Cooler
 - BACnet Interface
- DDC controls and monitoring for the following at Centennial Gym/Administration Building:
- (18) Rooftop A/C Units
 - Thermostat
- DDC controls and monitoring for the following at Senior Center:
- (7) Furnaces with condensing unit
 - Thermostat
4. Siemens to provide Submittals, as-built/O&M drawings for controls, system start-up and commissioning.
 5. All work will be performed during normal working hours.
 6. Siemens to provide commissioning of added new DDC control points only.
 7. Low voltage wiring to be in plenum
 8. Server and Client License will be issued.
 9. Provide demo of existing pneumatic controllers, piping and devices
 10. Provide engineering, programming, project management, testing, start-up and check-out
 11. Siemens to provide damper actuators for control dampers only
 12. Provide design software and graphics on the systems listed above.

Exclusions

- 1 Contacts to be monitored are assumed to be located at the equipment controlled and readily accessible for connection to our system.
- 2 Dampers of any kind including fire/smoke & smoke dampers are excluded in this scope of work.
- 3 End switches for fire/smoke & smoke dampers are not included.
- 4 No test and air balance is included as part of the Controls scope
- 5 Duct smoke detectors, their installation or wiring, includes fan shut down
- 6 Connections to existing fire/smoke alarm system or removal and installation of fire life safety equipment are not included. SIEMENS will coordinate with client's fire life safety consultant for any work related to SIEMENS work.
- 7 Any wiring not part of BMS such as but not limited to local thermostats, Interlocks, & controls, water filter, water treatment, fuel oil, generator,

- domestic water, or plumbing systems, light switch controls for exhaust fans
- 8 Hubs, routers to Ethernet connection
- 9 Non BMS equipment such as gauges, valves, PRV's, & thermometers, etc.
- 10 Cutting, patching, roof penetrations, & restoration of surfaces

1.3 *Technical Specifications, Drawings, and Exhibits:* The Work shall be performed in accordance with the following specifications, drawings and other attachments hereto, which are specifically incorporated herein and made part hereof:

- 1.3.1 Appendix 1 : Building by Building Lighting Audit
- 1.3.2 Appendix 2 : Building by Building Plug Load Audit

- 1.4 CLIENT'S Responsibilities (in addition to those in Article 6 of the Agreement):
- The Client will provide a representative for all facilities to coordinate work.
 - Client will provide access to any area that contains equipment to be measured and/or verified.
 - Client to provide unlimited site access during construction.

1.5

Article 2: Work Implementation Period

2.1 Commencement of Work (select **one**):

2.1.1 SIEMENS shall commence the Work on _____, 20__, and shall perform the Work diligently and shall complete the Work per the construction schedule to be provided post contract execution.
or,

2.1.1 SIEMENS shall commence the Work 45 calendar days from the Effective Contract Date, and shall perform the Work diligently and shall complete the Work no later than 300 calendar days from the day of commencement.

Article 3: Scope of Services-Performance Assurance Services Program

3.1 SIEMENS will manage the Performance Guarantee consistent with the Agreement and Exhibit C. SIEMENS will provide an Annual Performance Assurance Report ninety (90) days after the end of each Annual Period.

Article 4: Scope of Services-Maintenance Services Program

(Please check one box only)

- CLIENT has elected to self-implement maintenance. Therefore SIEMENS shall not perform any on-going maintenance services, although the Parties may negotiate a separate agreement for such services at a later date. CLIENT agrees that it will maintain the equipment per manufacturer specifications and that it will operate the Equipment in accordance with the Contracted Baseline described in Article 7 of Exhibit C. If CLIENT fails to properly maintain or operate the Equipment, SIEMENS shall have the right to modify the Performance Guarantee pursuant to Article 4 of the Agreement.
- The follow consists of the Services to be performed by SIEMENS:

Exhibit A - Scope of Work and Services

By signing below, this Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **City of Paso Robles**
Signature: _____
Printed Name: Thomas Frutchey
Title: City Manager
Date: _____

SIEMENS: **Siemens Industry, Inc.**
Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Exhibit B – Payment Schedules

Date: _____

Article 2: Payment for Performance Assurance Services Program (PASP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the CLIENT shall pay to SIEMENS the amounts identified in Table B.2 plus taxes, if applicable, on the dates identified therein.
- 2.2 **Performance Assurance Services Program Term:** The term of the PASP shall commence on the Guarantee Date and shall extend for either: (a) the term of the Performance Guarantee Period where multi-year obligations are allowed; or (b) for twelve (12) month periods corresponding to the term of each Annual Period.
- 2.3 **Automatic Renewal:** Where the PASP term is limited to an Annual Period, the PASP shall automatically renew for successive Annual Periods beginning on the anniversary date of Guarantee Date. Either party may request to amend the PASP at the end of an Annual Period by giving the other party at least sixty (60) days prior written notice of such amendments and such amendment shall be mutually negotiated by the Parties and effective upon a written amendment signed by both Parties prior to commencement of the next Annual Period. Each automatic renewal shall be and remain subject to the terms and conditions of this Agreement. SIEMENS obligations under the Performance Guarantee are dependent upon and subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period.
- 2.4 **Termination:** See Section 4.7 of the Agreement.

Table B.2 – Performance Assurance Program Payment Schedule

Date	Annual Payments (\$)	Notes
Annual Period 1	\$15,000	M&V for the project
Annual Period 2	\$15,300	M&V for the project
Annual Period 3	\$15,606	M&V for the project
Annual Period 4	\$15,918	M&V for the project
Annual Period 5	\$16,236	M&V for the project
Annual Period 6	\$16,561	M&V for the project
Annual Period 7	\$16,892	M&V for the project
Annual Period 8	\$17,230	M&V for the project
Annual Period 9	\$17,575	M&V for the project
Annual Period 10	\$17,926	M&V for the project
Annual Period 11	\$18,285	M&V for the project
Annual Period 12	\$18,651	M&V for the project
Annual Period 13	\$19,024	M&V for the project
Annual Period 14	\$19,404	M&V for the project
Annual Period 15	\$19,792	M&V for the project

Article 2 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **City of Paso Robles**
 Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

SIEMENS: **Siemens Industry, Inc.**
 Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Signature: _____
 Printed Name: _____
 Title: _____

Exhibit B – Payment Schedules

Date: _____

**Exhibit C – Performance Assurance
City of Paso Robles**

The following Articles and Tables are hereby included and made part of this Exhibit C:

Article 1: Summary of Articles and Total Guaranteed Savings

Article 1	Summary of Articles and Total Guaranteed Savings
Article 2	Measurement and Verification Options
Article 3	Performance Guarantee Period Responsibilities of CLIENT
Article 4	Measurement and Verification Plan
Article 5	Baseline Utility Data
Article 6	Utility and Escalation Rates
Article 7	Contracted Baseline Data

Table 1.1 – Total Guaranteed Savings (Units)

Performance Period	Electric Energy Saved (kWh)	Electric Power Saved (kW)	Natural Gas Saved (Therms)
Construction	297,974	N/A	N/A
Annual Period 1	689,605	214	7,289

1.1 Only Annual Period 1 is shown as the energy/utility unit Savings will remain constant for each Annual Period of the Performance Guarantee Period as the CLIENT will operate the Facility in accordance with the Contracted Baseline identified in Article 7.

Table 1.2 – Total Guaranteed Savings (Cost)

Performance Period	Energy/Utility Savings	Operational Savings & Avoided Capital Costs	Total Savings
Construction	\$50,000	N/A	\$50,000
Annual Period 1	\$123,838	\$54,690	\$178,528
Annual Period 2	\$130,045	\$54,831	\$184,876
Annual Period 3	\$136,564	\$54,976	\$191,540
Annual Period 4	\$143,408	\$55,125	\$198,533
Annual Period 5	\$150,594	\$55,279	\$205,873
Annual Period 6	\$158,140	\$55,437	\$213,577
Annual Period 7	\$166,062	\$55,600	\$221,662
Annual Period 8	\$174,381	\$55,768	\$230,149
Annual Period 9	\$183,116	\$55,941	\$239,057
Annual Period 10	\$192,288	\$56,119	\$248,407
Annual Period 11	\$201,919	\$56,303	\$258,222
Annual Period 12	\$212,030	\$56,492	\$268,522
Annual Period 13	\$222,648	\$56,687	\$279,335
Annual Period 14	\$233,796	\$56,887	\$290,683
Annual Period 15	\$245,502	\$57,094	\$302,596
TOTALS	\$2,724,331	\$837,229	\$3,561,560

1.2 Table 1.2 shows the CLIENT'S guaranteed cost Savings for each Annual Period that are extrapolated from the guaranteed energy/utility unit Savings shown in Table 1.1 by multiplying the energy/utility Savings by the Baseline energy/utility rates including the stipulated Escalation Rates found in Article 6.

**Exhibit C – Performance Assurance
City of Paso Robles**

- 1.3 SIEMENS cannot and does not predict fluctuations in utility rates or the cost of energy. Therefore, the CLIENT and SIEMENS agree that the energy/utility cost Savings for each Annual Period will be calculated by multiplying the verified units of energy/utility Savings by the Annual Period’s stipulated energy/utility rate and Escalation Rates and not the Annual Period’s actual utility rate.
- 1.4 The determination of energy/utility Savings will follow current best practice, as defined in the IPMVP, or the FEMP Guidelines where required, unless otherwise agreed to by the Parties.
- 1.5 The Performance Guarantee does not operate to guarantee the Savings per-FIM. Rather, the calculation of Savings is based on aggregate performance of all of the FIMs contained in the Project. The projected value of such aggregate performance is contained in Table 1.2 above representing the Total Guaranteed Savings as monetized.

This Exhibit C, comprising nineteen (19) pages, is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of Paso Robles
Signature: _____
Printed Name: _____
Title: _____
Date: _____

SIEMENS: Siemens Industry, Inc.
Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 2: Measurement and Verification Options

2.1 Measurement and Verification Options: There are five measurement and verification options to measure and verify energy/utility Savings: Option A - Retrofit Isolation: Key Parameter Measurement; Option B - Retrofit Isolation: All Parameter Measurement; Option C - Whole Facility; and, Option D – Calibrated Simulation. Options A through and including D are part of the IPMVP. Option E- Stipulated is based on industry accepted engineering standards and is the Option used for purposes of calculating Operational Savings.

Option A - Retrofit Isolation: Key Parameter Measurement. Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the FIM's affected system(s) and/or the success of the Project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option B – Retrofit Isolation: All Parameter Measurement. Savings are determined by field measurement of energy use of the FIM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option C - Whole Facility: Savings are determined by measuring energy use at the whole Facility or sub-Facility level. Continuous measurements of the entire Facility's energy use are taken throughout the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option D - Calibrated Simulation: Savings are determined through simulation of the energy use of the whole Facility, or of a sub-Facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the Facility. This Option usually requires considerable skill in calibrated simulation. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option E – Stipulated: This Option is the method of measurement and verification applicable to FIMS consisting either of Operational Savings or where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer's measurements, industry standard efficiencies or operating hours are known in advance, and used in a calculation or analysis method that will stipulate the outcome. Both CLIENT and SIEMENS agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology the Savings stipulated will be achieved upon completion of the FIM and no further

**Exhibit C – Performance Assurance
City of Paso Robles**

measurements or calculations will be performed during the Performance Guarantee Period. If applicable, the methodology and calculations to establish Savings value will be defined in Section 4.6 of this Exhibit C.

2.2 Table 2.1 below summarizes the first Annual Period’s Guaranteed Savings (See Article 1, Tables 1.1 and 1.2) utilizing the applicable Measurement and Verification Options as applied to the referenced FIMs valued pursuant to the agreed upon rates identified in Article 6 hereof.

Table 2.1 – Savings for First Annual Period by Option

FIM	Energy/Utility Savings \$						Operational Savings \$	Total Savings \$
	Measurement and Verification Options						E Stipulated	
	A Retrofit Isolation: Key Parameter Measurement	B Retrofit Isolation: All Parameter Measurement	C Whole Facility	D Calibrated Simulation	E Stipulated	Total Energy/Utility Savings		
Lighting Upgrade	\$73,394					\$73,394		\$73,394
Package Unit Replacements					\$25,119	\$25,119	4,690	\$29,809
Boiler Replacement					\$645	\$645		\$645
Hot Water Pump Replacement								
Chiller Replacement					\$4,366	\$4,366		\$4,366
“Evaporcool” on Chillers					\$5,663	\$5,663		\$5,663
Plug Load Management					\$1,205	\$1,205		\$1,205
New Siemens “DESIGO” Controls System					\$13,446	\$13,446		\$13,446
TOTALS	\$73,394				\$50,444	\$123,838	\$4,690	\$128,528

2.3 Table 2.2 identifies the source of Operational Savings and Avoided Capital Costs defined and quantified by the Parties. The Parties affirm that such amounts are Stipulated Savings for purposes of calculating Annual Realized Savings and acknowledge that the Guaranteed Savings identified herein have been based on CLIENT’S affirmation. **OPERATIONAL SAVINGS SHALL NOT BE MEASURED OR MONITORED DURING THE PERFORMANCE GUARANTEE PERIOD.**

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Table 2.2 - Source of Operational Savings & Avoided Capital Costs

Account/Vendor	Description	Annual Cost \$	# of Annual Periods Savings Are Applied	Annual Period Savings Begin	Escalation Rate
City of Paso Robles	Interior and Exterior Lighting material replacements (Lamp, Ballasts and recycling maintenance cost reductions)	\$4,690.00	15	1	3%
City of Paso Robles	Avoided budgeted capital expenditures for lighting/HVAC equipment replacement over the next 15 years	\$50,000.00	15	1	0%

2.4 SIEMENS has explained to the CLIENT and the CLIENT has satisfied itself as to how Operational Savings and Avoided Capital Costs are incorporated into the Annual Realized Savings.

2.4 2.5 The Escalation Rate as shown in Table 2.2 is applicable to the Operational Savings

BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE REVIEWED THE INCLUDED MEASUREMENT AND VERIFICATION OPTIONS AND THEIR APPLICATION TO BE USED IN CALCULATING SAVINGS UNDER THE AGREEMENT.

CLIENT: City of Paso Robles
 Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

SIEMENS: Siemens Industry, Inc.
 Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Article 3: Performance Guarantee Period Responsibilities of the CLIENT

In addition to the CLIENT'S responsibilities under Article 6 of the Agreement, this Article details the responsibilities of the CLIENT in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative at each Facility to coordinate work and provide required data described below.
- 3.2 The CLIENT will provide SIEMENS with accurate Facility operating information as defined below and in the Contracted Baseline article of this Exhibit C during each Annual Period, within thirty (30) days of any Material Change that may increase or decrease energy usage.
- 3.3 If applicable, the CLIENT will provide SIEMENS with copies of utility bills within thirty (30) days of receipt by the CLIENT or provide access to utility vendor information to allow SIEMENS to include a utility bill analysis in the Annual Performance Assurance Report. The utility bill analysis does not take the place of the Measurement and Verification Plan identified in Article 4 of this Exhibit C and is not used to measure the Project's performance.
- 3.4 If required for the Work, CLIENT will provide telephone/data remote access, through SIEMENS Insight® software package or otherwise, as SIEMENS reasonably requests. All charges related to telephone/data line installation, activation and communication services are the responsibility of the CLIENT.
- 3.5 If required for the Work, CLIENT will provide and coordinate utility meter upgrade for interface with SIEMENS metering and data collection. All charges related for these upgrades are the responsibility of the CLIENT.

Article 4: Measurement and Verification Plan

The following information is applicable to this Agreement:

- Article 4.1 General Overview
- Article 4.2 Option A - Retrofit Isolation: Key Parameter Measurement
- Article 4.3 Option B - Retrofit Isolation: All Parameter Measurement
- Article 4.4 Option C - Whole Facility
- Article 4.5 Option D - Calibrated Simulation
- Article 4.6 Option E – Stipulated-Energy/Utility Savings

4.1 General Overview

The purpose of the Measurement and Verification (M&V) Plan is to identify the methods, measurements, procedures and tools that will be used to verify savings for each FIM which has energy/utility savings. Savings are determined by comparing prior usage, consumption or efficiencies (defined as the “Baseline”) against the post-FIM implementation usage, consumption or efficiencies respectively. The Baseline utility consumptions are described in this Exhibit C, Article 5. The post-FIM implementation usage, consumption or efficiencies is defined as the Contracted Baseline and are described in this Exhibit C, Article 7.

4.2 Option A - Retrofit Isolation: Key Parameter Measurement

4.2.1 FIM: Lighting Upgrade

Description

Savings generated by this measure shall be based upon one-time pre and post measurements. Energy savings will be calculated by taking wattage measurements of a 5% sample size of fixtures of each major type before and after retrofit. A wattage-per-fixture type will be assigned based on these measurements. Each fixture’s assigned wattage will be used in the lighting survey to calculate actual energy savings. Fixtures with quantities of 50 or higher throughout the facilities are considered to be major fixture types. For the rest of the fixture types, Pacific Gas & Electric (PG&E) wattages will be used. Lighting Burn Hours used in the savings calculations are agreed-upon hours, as shown in the attached calculations.

Calculations

The following formulas are used to determine annual savings:

Existing Lighting Power: [kW_{EX}]

$$((\# \text{ Fixtures})_{EX} \times (\text{Watts} / \text{Fixture})_{EX}) / (1,000 \text{ W/kW}) = \text{kW}_{EX}$$

Proposed Lighting Power: [kW_{PR}]

$$((\# \text{ Fixtures})_{PR} \times (\text{Watts} / \text{Fixture})_{PR}) / (1,000 \text{ W/kW}) = \text{kW}_{PR}$$

Existing Lighting Power Consumption: [kWh_{EX}]

$$(\text{kW}_{EX}) \times (\text{Annual Burn Hours}) = \text{kWh}_{EX}$$

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Proposed Lighting Power Consumption: [kWh_{PR}]

$$(kW_{PR}) \times (\text{Annual Burn Hours}) = kWh_{PR}$$

The following calculations will be performed on a Facility-by-Facility basis:

Annual Lighting Power Savings: [kW_{LGHT}]

$$\Sigma (kW_{EX}) - \Sigma (kW_{PR}) = kW_{LGHT}$$

Annual Lighting Power Consumption Savings: [kWh_{LGHT}]

$$\Sigma (kWh_{EX}) - \Sigma (kWh_{PR}) = kWh_{LGHT}$$

Annual Lighting Power Savings: [kW_{LGHT}]

$$\$ \text{ Savings} = kWh_{LGHT} * \text{Electrical Energy Rate } (\$/kWh)$$

Calculations Variables Index

- Burn Hours: Designated, see attached lighting audit sheets
- kW_{EX}: TBD, one-time pre-measurement
- (# of Fixtures)_{EX}: Designated, see attached lighting audit sheets
- \$/kWh: See Table 6.1, scheduled rate with escalation
- kW_{PR}: TBD, one-time post-measurement
- (# of Fixtures)_{PR}: Designated, see attached lighting audit sheets in Appendix 1

SIEMENS will:

- Identify specific fixtures to be measured and verified, in compliance with this M&V plan
- Provide tools for measurement and verification
- Provide results of measurement and verification to CLIENT.

CLIENT Responsibility

Future lamp and ballast replacements per specifications

Measurement Tools

FLUKE multi meter

4.3 Option B - Retrofit Isolation: All Parameter Measurement (Not Applicable)

4.4 Option C - Whole Facility (Not Applicable)

4.5 Option D – Calibrated Simulation (Not Applicable)

4.6 Option E - Stipulated

4.6.1 FIM: Package Unit Replacements

Overview

Savings were calculated using the following steps:

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- Each piece of equipment being replaced was audited for the unit location.
- Unit scheduling information and operating parameters were gathered through a combination of the facility personnel input and survey of the existing programmable thermostats.
- Mechanical, architectural and electrical blueprint data was gathered.
- Baseline Unit efficiency information was estimated based on age of equipment.
- Savings are calculated using bin analysis based on the occupancy information provided by the city personnel and thermostat set points. Manufacturer's published efficiency ratings EER/SEERs are used in the analysis.

M & V Procedure

Both CLIENT and SIEMENS agree to the inputs and assumptions and the analysis methodology. Savings for this measure have been stipulated and are considered satisfied upon completion of construction. No further measurements or calculations will need to be performed. A Measurement and Verification report will be issued to the Client detailing the results of the installation after the first guarantee year.

Cost Savings Calculations

See Appendix 3 for designated HVAC replacement Energy Savings Calculations. Savings are the based on installation of new efficient package units.

Calculations Variables

Run Hours: Designated, as provided by the City

EER-Pre Retrofit: Designated, see Article 7 for details

EER-Post Retrofit: Designated, see Article 7 for details

4.6.2 FIM: Boiler Replacement

Overview

Savings were calculated using the following steps:

- Boiler being replaced was audited for the unit location.
- Unit scheduling information and operating parameters were gathered through a combination of the facility personnel input and existing Johnson Controls system.
- Mechanical, architectural and electrical blueprint data was gathered.
- Baseline Unit efficiency information was estimated based on age of equipment.
- Savings calculations were performed using Trane Trace building simulation software. Savings are based on an annual simulation of the buildings based on input construction, occupancy, thermostat and lighting/equipment use parameters (which were gathered using the steps described above).

M & V Procedure

Both CLIENT and SIEMENS agree to the inputs and assumptions and the analysis methodology. Savings for this measure have been stipulated and are

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considered satisfied upon completion of construction. No further measurements or calculations will need to be performed. A Measurement and Verification report will be issued to the Client detailing the results of the installation after the first guarantee year.

Cost Savings Calculations

See Appendix 4 for Trane Trace input and output models.

Calculations Variables

Run Hours: Designated, as provided by the City

Pre Retrofit Efficiency: Designated, see Article 7 for details

Post Retrofit Efficiency: Designated, see Article 7 for details

Load Profile, designated, as simulated in the Trane Trace simulation program, based on the input variables shown in Appendix 4

4.6.3 FIM: Hot Water Pump Replacement

There are no savings for this measure as we are replacing a non-operating pump. This pump is a back-up pump to the primary hot water pump.

4.6.4 FIM: Chiller Replacement

Overview

Savings were calculated using the following steps:

- Chiller being replaced was audited for the unit location.
- Unit scheduling information and operating parameters were gathered through a combination of the facility personnel input and existing Johnson Controls system.
- Mechanical, architectural and electrical blueprint data was gathered.
- Baseline Unit efficiency information was estimated based on age of equipment.
- Savings calculations were performed using Trane Trace building simulation software. Savings are based on an annual simulation of the buildings based on input construction, occupancy, thermostat and lighting/equipment use parameters (which were gathered using the steps described above).

M & V Procedure

Both CLIENT and SIEMENS agree to the inputs and assumptions and the analysis methodology. Savings for this measure have been stipulated and are considered satisfied upon completion of construction. No further measurements or calculations will need to be performed. A Measurement and Verification report will be issued to the Client detailing the results of the installation after the first guarantee year.

Cost Savings Calculations

See Appendix 4 for Trane Trace input and output models.

Calculation Variables:

Run Hours: Designated, as provided by the City
Pre Retrofit Efficiency: Designated, see Article 7 for details
Post Retrofit Efficiency: Designated, see Article 7 for details
Load Profile, designated, as simulated in the Trane Trace simulation program,
based on the input variables as shown in Appendix 4.

4.6.5 FIM: “Evaporcool” on Chillers

Overview

Savings were calculated using the following steps:

- Each piece of equipment being replaced was audited for the unit location.
- Unit scheduling information and operating parameters were gathered through a combination of the facility personnel input and existing Johnson Controls system.
- Mechanical, architectural and electrical blueprint data was gathered.
- Chiller load calculations were performed using TMY3 data for Paso Robles and calculating the delta T across the Evaporcool frame. Savings are obtained by reducing the energy consumption of the chiller by lowering entering air temperature.

M & V Procedure

Both CLIENT and SIEMENS agree to the inputs and assumptions and the analysis methodology. Savings for this measure have been stipulated and are considered satisfied upon completion of construction. No further measurements or calculations will need to be performed. A Measurement and Verification report will be issued to the Client detailing the results of the installation after the first guarantee year.

Cost Savings Calculations

See Appendix 5 for designated Evaporcool Savings Calculations. Savings are based on installing the Evaporcool frame and reducing the entering air temperature to the chillers.

Calculation Variables

Run Hours: Designated, as provided by the City
Pre Retrofit Efficiency: Designated, see Appendix 5
Post Retrofit Efficiency: Designated, see Appendix 5
Load Profile, designated, as simulated in the Evaporcool calculations, based on the input variables as shown in Appendix 5.
Interaction between the Evaporcool and Chiller retrofit measure was modeled using the post-retrofit chiller efficiency for Evaporcool calculations.

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4.6.6 FIM: Plug Load Management

Savings for this measure are due to automatic reduction of operating hours for various “plug load” equipment such as printers, copiers, televisions, coffee makers, vending machines, etc.

Overview

Savings were calculated using the following steps:

- Each piece of equipment being controlled was entered into the Plug Load Audit list (Appendix 2) after being physically audited for location.
- Pre and Post unit scheduling information and operating parameters were gathered through facility personnel input
- Plug load calculations were performed using spreadsheet calculations. Assumed plug load kW consumption was based on standard manufacturer kW.

Measurement & Verification Procedure

Both CLIENT and SIEMENS agree to the inputs and assumptions and the savings calculation methodology. Savings for this measure have been stipulated and are considered satisfied upon completion of construction. No further measurements or calculations will need to be performed. A Measurement and Verification report will be issued to the Client detailing the results of the installation after the first guarantee year.

Cost Savings Calculations

See Appendix 2 for designated plug load calculations.

Calculation Variables:

Pre Retrofit Run Hours: designated, as provided by the Client, see Appendix 2 for details

Post Retrofit Run Hours: designated, as provided by the Client, see Appendix 2

For details

of Plug Load equipment: designated, as provided in Appendix 2

kW: based on the standard equipment wattages

4.6.7 FIM: New Siemens “DESIGO” Controls System

Overview

Savings were calculated using the following steps:

- Each piece of equipment being controlled was audited for the unit location.
- Unit scheduling information and operating parameters were gathered through a combination of the facility personnel input and existing Johnson Controls system.
- Mechanical, architectural and electrical blueprint data was gathered.
- Savings calculations were performed using the Trane Trace building simulation software. Savings are based on an annual simulation of the buildings based on input construction, occupancy, thermostat and

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City of Paso Robles

lighting/equipment use parameters (which were gathered using the steps described above).

M & V Procedure

Both CLIENT and SIEMENS agree to the inputs and assumptions and the analysis methodology. Savings for this measure have been stipulated and are considered satisfied upon completion of construction. No further measurements or calculations will need to be performed. A Measurement and Verification report will be issued to the Client detailing the results of the installation after the first guarantee year.

Cost Savings Calculations

See Appendix 4 for Trane Trace input and output models. Savings for this measure are due to optimized operation of HVAC systems and equipment as a result of new controls.

Calculation Variables

See Appendix 4 for inputs used in the Trane Trace simulation and Article 7 for contracted baseline parameters.

Article 5: Baseline Utility Data

5.1 The twelve-month baseline periods used as reference for evaluation of the FIMs are from October, 2015 to September, 2016 for electricity and from January, 2015 to December, 2015 for natural gas. Tables 5.1 and 5.2 below show utility consumptions of all facilities in this project scope during baseline periods.

Table 5.1: Baseline Electricity Consumption

Month	City Hall / Library		Public Safety Building (Police and Fire)		Centennial Gym /Admin Building				Senior Center	
	kWh	kW	kWh	kW	Actual		Adjusted		kWh	kW
					kWh	kW	kWh	kW		
Oct-15	49,481	137	54,980	123	17,689	62	20,729	136	3,447	22
Nov-15	49,548	138	53,848	122	17,467	60	21,341	134	3,020	12
Dec-15	40,751	129	53,884	145	14,258	56	23,568	166	3,099	12
Jan-16	46,407	121	53,164	121	13,811	51	32,537	191	3,216	12
Feb-16	50,152	120	54,412	125	15,415	56	39,347	197	3,333	13
Mar-16	49,284	137	56,025	118	29,994	107	57,424	248	3,256	14
Apr-16	53,056	135	52,935	108	29,404	102	59,714	243	3,237	13
May-16	50,393	132	52,866	110	28,572	92	60,125	233	4,648	26
Jun-16	61,757	166	59,002	124	20,140	89	46,465	230	5,444	27
Jul-16	58,983	169	59,195	121	20,457	91	40,921	222	5,238	28
Aug-16	59,696	155	57,644	109	19,861	67	31,285	177	4,646	26
Sep-16	56,068	160	63,955	129	17,420	79	24,939	166	4,535	25
Total	625,576	169	671,910	145	244,488	107	458,395	248	47,119	28

Table 5.2: Baseline Natural Gas Consumption

Month	City Hall / Library		Public Safety Building	Centennial Gym /Admin Building		Senior Center
	Boiler Plant	Rest of Facility	(Police and Fire)	Actual	Adjusted	
	Therms	Therms	Therms	Therms	Therms	Therms
Jan-15	952	412	1,598	2,510	2,630	246
Feb-15	918	280	1,424	2,045	2,166	142
Mar-15	788	189	1,593	1,803	1,817	72
Apr-15	1,056	102	1,224	1,050	1,072	69
May-15	1,009	77	1,268	265	267	51
Jun-15	893	81	1,031	294	294	35
Jul-15	812	8	1,020	491	491	35
Aug-15	752	8	1,053	465	465	33
Sep-15	745	12	1,170	512	517	35
Oct-15	706	83	1,039	537	558	34
Nov-15	1,078	250	1,257	570	631	69
Dec-15	959	1,116	2,630	3,438	3,589	200
Total	10,668	2,618	16,307	13,980	14,499	1,021

Baseline for the Centennial Gym was adjusted and the new baseline will be used as the basis for the energy savings calculation and Measurement and Verification purposes. The details of the baseline adjustment are shown in the table below.

**Exhibit C – Performance Assurance
City of Paso Robles**

Mark	Capacity Tons	Type	Current Baseline Condition	Adjusted Baseline Condition
AC-1	3	Gas Heating/Mech cooling	Non-Operating. No economizer. Operating Hrs: M-F: 6AM-5PM	Currently Operating with an EER of 7.7. No economizer. Operating Hrs: M-F: 6AM-5PM
AC-2	3	Gas Heating/Mech cooling	Non-Operating. No economizer. Operating Hrs: M-F: 6AM-5PM	Currently operating with an EER of 7.7. No economizer. Operating Hrs: M-F: 6AM-5PM
AC-3	3	Gas Heating/Mech cooling	Non-Operating. No economizer. Operating Hrs: M-F: 6AM-5PM	Currently operating with an EER of 7.7. No economizer. Operating Hrs: M-F: 6AM-5PM
AC-4	3	Gas Heating/Mech cooling	Non – Operating. No economizer. Operating Hrs: M-F: 6AM-5PM	Currently Operating with an EER of 7.7. No economizer. Operating Hrs: M-F: 6AM-5PM
AC-5	3.5	Gas Heating/Mech cooling	Non – Operating. No economizer. Operating Hrs: M-F: 6AM-5PM	Currently operating with an EER of 7.7. No economizer. Operating Hrs: M-F: 6AM-5PM
AC-6	3	Gas Heating/Mech cooling	Non – Operating. No economizer. Operating Hrs: M-F: 6AM-5PM	Currently operating with an EER of 7.7. No economizer. Operating Hrs: M-F: 6AM-5PM
AC-7	3.5	Gas Heating/Mech cooling	Non – Operating. No economizer. Operating Hrs: M-F: 6AM-5PM	Currently operating with an EER of 7.7. No economizer. Operating Hrs: M-F: 6AM-5PM
AC-8	4	Gas Heating/Mech cooling	Non – Operating. No economizer. Operating Hrs: M-F: 6AM-5PM	Currently operating with an EER of 7.7. No economizer. Operating Hrs: M-F: 6AM-5PM
AC-9	7.5	Gas Heating/Mech cooling	Non – Operating. Economizer not working Operating Hrs: M-F: 6AM-5PM	Currently operating with an EER of 7.4. Economizer not working Operating Hrs: M-F: 6AM-5PM
AC-10	12.5	Gas Heating/Mech cooling	Non – Operating. Economizer not working.	Currently operating with an EER of 7.4. Economizer not

**Exhibit C – Performance Assurance
City of Paso Robles**

			Operating Hrs: M-F: 6AM-5PM	working.. Operating Hrs: M-F: 6AM-5PM
AC-11	15	Gas Heating/Mech cooling	Non – Operating. Economizer not working. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM	Currently operating with an EER of 7.4. Economizer not working. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM
AC-12	15	Gas Heating/Mech cooling	Non – Operating. Economizer not working. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM	Currently operating with an EER of 7.4. Economizer not working. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM
AC-13	15	Gas Heating/Mech cooling	Currently Operating with an EER of 7.4. Economizer not working. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM	Currently operating with an EER of 7.4. Economizer not working. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM
AC-14	15	Gas Heating/Mech cooling	Currently Operating with an EER of 7.4. Economizer not working	Currently operating with an EER of 7.4. Economizer not working
AC-15	5	Gas Heating/Mech cooling	Currently Operating with an EER of 7.7. Economizer not working. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM	Currently operating with an EER of 7.7. Economizer not working. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM
AC-16	3	Gas Heating/Mech cooling	Currently Operating with an EER of 7.7. No Economizer. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM	Currently operating with an EER of 7.7. No Economizer. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM
AC-17	3	Gas Heating/Mech cooling	Currently Operating with an EER of 7.7. No Economizer. Operating Hrs:	Currently operating with an EER of 7.7. No Economizer. Operating Hrs: M-F: 6AM-8PM

**Exhibit C – Performance Assurance
City of Paso Robles**

			M-F: 6AM-8PM Sat, Sun: 6AM-5PM	Sat, Sun: 6AM-5PM
AC-18	3	Gas Heating/Mech cooling	Non – Operating. No Economizer. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM	Currently operating with an EER of 7.4. No Economizer. Operating Hrs: M-F: 6AM-8PM Sat, Sun: 6AM-5PM

- 5.2 The operating practices during the baseline periods determine the utility consumptions shown in Tables 5.1 and 5.2. This data indicates the operating characteristics that were in effect during the baseline periods. Guaranteed savings are based on Work implemented under this Agreement.
- 5.3 Applicable codes - Federal, State, County or Municipal codes or regulations are applicable to the use and operation of the Facility. SIEMENS will maintain the current level of Facility compliance relative to applicable codes unless specifically outlined to the contrary below. Unless specifically set forth in the Scope of Work and Services, Exhibit A, nothing herein should be construed as to require SIEMENS to provide additional work or services in the event that the current applicable code or regulation is modified.
- 5.3.1 Current code compliance (identify the applicable code citation):
- a. California Title 24 (2013 Nonresidential Compliance Manual)

**Exhibit C – Performance Assurance
City of Paso Robles**

Article 6: Utility and Escalation Rates

6.1 Utility costs used for Savings calculations will be based on the utility rates and rate escalation percentages, as provided in the table below. Each escalation rate will be applied annually to the utility rate.

Facility	Natural Gas (\$/therm)	Electricity Schedule
City Hall / Library		HA10SX
Boiler Plant	\$0.6990	
Rest of Facility	\$0.8369	
Public Safety Building	\$0.6595	HE19SX
Centennial Gym / Admin Building	\$0.6883	HA10SX
Senior Center	\$1.0490	HA1X

The baseline rate schedules HA10SX, HE19SX and HA1X used in the calculations were those prevailing at the time of execution of this contract escalated by 5%. Energy Escalation Rate: 5.0% per Annual Period thereafter

Article 7: Contracted Baseline Data

7.1 In addition to the baseline utility data contained in Article 5, Facility operating parameters used in the savings calculations and agreed to by the CLIENT are required to be implemented on the Guarantee Date or on such time as agreed upon by the Parties. This specific configuration of Facility operating parameters is the Contracted Baseline and failure of the CLIENT to maintain the Contracted Baseline may result in a Material Change which may require a modification of the Performance Guarantee pursuant to Article 4 of the Agreement.

Contracted operating parameters, upon which guaranteed savings for the FIMs are based on, are shown below.

FIM: Lighting Upgrade

Lighting Operating Hours: Included in attached savings calculations in Appendix 1.

FIM: Package Unit Replacements

	Unit Size	Pre-Retrofit EER	Post-Retrofit EER
Centennial Gym/Administration Building	3 Ton Unit	7.7	13.5
	4 Ton Unit	7.7	14.0
	5 Ton Unit	7.7	13.7
	7.5 Ton Unit	7.4	12.0
	12.5 Ton Unit	7.4	12.2
	15Ton Unit	7.4	12.0

Thermostat Setpoints		
Building	Minimum Cooling Setpoints	Maximum Heating Setpoints
All Buildings	72	70

FIM: Boiler Replacement

City Hall/Library	Equipment	Pre-Retrofit Efficiency	Post-Retrofit Efficiency
	Boiler	75%	85%

FIM: Hot Water Pump Replacement

There are no savings associated with this measure.

FIM: Chiller Replacement

Public Safety Building	Equipment	Pre-Retrofit Efficiency	Post-Retrofit Efficiency
	Central Chiller	9.3 EER	10.2 EER

FIM: Plug Load Management

Operating Hours – Plug-Load Equipment: Included in attached savings calculations in Appendix 2.

**Exhibit C – Performance Assurance
City of Paso Robles**

FIM: New Siemens “DESIGO” Controls System

HVAC Parameters		
Building	Controls Pre-Retrofit	Controls Post-Retrofit
City Hall/Library	AHU-1 Supply Fan VFD on Hand	AHU-1 Supply Fan VFD modulation
	Fixed Static Pressure Set Point for Supply Fan	Reset Static Pressure Set Point
	30% of Belimo Valves Leaking	Replace the leaking Belimo Valves
	Economizer Dampers stuck at 20%	Economizer control based on enthalpy
	No Supply Air Reset. Fixed at 55F	Supply Air Reset with a 10 deg reset based on outside air temperature. Reset from 55F to 65F based on the outside air temperature
	No Hotwater Temp Reset. Fixed at 180F	Reset Hotwater temp based on outside air temperature from 120F to 160F
	No Boiler Lockout based on the outside air temperature	Boiler Lockout if the outside air temperature is 80F
	30% of the dampers (or actuators) at the Zone VAV boxes not working properly	Fixing the 30% zone dampers (or actuators)
	No Chiller Lockout based on outside air temperature	Chiller Lockout below 50F
Equipment not scheduled to turn off during holidays	Equipment will be scheduled to turn off during holidays	
Public Safety Buiding	No Supply Air Reset	Supply Air Reset with a 10 deg reset based on outside air temperature. Reset from 55F to 65F based on the outside air temperature
	No Hotwater Temp Reset. Fixed at 180F	Reset Hotwater temp based on outside air temperature from 120F to 160F
	No Chiller Lockout based on outside air temperature	Chiller Lockout below 50F
	No Boiler Lockout based on outside air temperature	Boiler Lockout if outside air temperature is 80F

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Financial Services

March 15, 2017

The City of Paso Robles
1000 Spring Street
Paso Robles, CA 04915

Re: **SIEMENS PUBLIC, INC.: TAX EXEMPT LEASE FINANCING**

Dear Sirs:

Siemens Public, Inc. ("**Lessor**") is pleased to provide this lease proposal to the City of Paso Robles (the "**Lessee**") for your review and consideration. Please note that this proposal is being issued by Siemens Financial Services, Inc. ("**Agent**") on behalf of the Lessor. Upon your approval, this proposal shall constitute Lessee's application to Lessor. This proposal is subject to, among other things, Lessee being qualified to issue tax exempt obligations under the Internal Revenue Code, as well as certain additional conditions set forth hereinafter.

Lessor: **SIEMENS PUBLIC, INC.**, its affiliates, assigns or nominees.

Note that all resolutions approving this financing should name Siemens Public, Inc., its affiliates, assigns or nominees as the "Lessor".

Lessee: The City of Paso Robles, a qualified political subdivision of the State of California.

Equipment Description: Energy efficiency equipment installed by Siemens Industry, Inc.

Total Equipment Cost: It is anticipated that the Total Equipment Cost will not exceed \$2,500,000.

Reimbursement: If Lessee intends to be reimbursed for any advances it has made against the Total Equipment Cost, Lessee must provide Lessor with proof of payment acceptable to Lessor, and such reimbursement must be in accordance with all laws and regulations, including without limitation Treasury Regulation Section 1.150.2.

Escrow Fund Option: At Lessee's request, Lessor will deposit the principal sum into an Escrow Fund on behalf of the Lessee. The Escrow Fund shall be established with an escrow agent mutually acceptable to Lessor and Lessee and shall be used to acquire the Equipment. Lessee shall be responsible for paying all fees and expenses associated with the Escrow Fund.

Vendor/Supplier: Siemens Industry, Inc., Building Technologies Division

Equipment Location: Property owned and operated by the City of Paso Robles

Lease Commencement Date:	As to each item of Equipment, the date specified in the applicable Lease as the Lease Commencement Date, but in no event later than 21 April 2017 .
Maximum Lease Term:	<u>One hundred ninety two (192)</u> months, inclusive of a 12 month construction period. The Maximum Lease Term for each item of Equipment will commence on and as of the Lease Commencement Date.
Lease Rate:	Tax-exempt lease 3.30%
Lease Payments:	Lessee will be required to make consecutive quarterly lease payments, each in arrears , commencing one year after the Lease Commencement Date.
Base Rate:	2.5620%
Reference Rate:	Yield of the 10 Year Swap Rate
Base Rate Determination Date:	10 March 2017
Reference Rate Source:	The Intercontinental Exchange
Adjustments to Lease Rate & Lease Payments:	The Lease Rate and Lease Payments proposed herein are based upon the Base Rate, which is the Reference Rate as reported in the Reference Rate Source for the Base Rate Determination Date. The rate that will actually be used in establishing the Lease Rate and Lease Payments will be increased by one (1) basis point for each one (1) basis point increase in the Reference Rate, as determined by Lessor and as reported in the Reference Rate Source for the date that is two (2) business days prior to the Lease Commencement Date (or if no Reference Rate has been published in the Reference Rate Source for the date that is two (2) business days prior to the Lease Commencement Date, then the immediately preceding date for which a Reference Rate has been reported).
Prepayment:	No prepayment will be allowed during the first year of the Lease. Thereafter, the purchase option price will be at 102% of the unpaid principal. Prepayment will only be allowed in full and on a payment due date.
Type of Lease:	This will be a non-cancellable (except as specifically provided with respect to non-appropriation) net lease transaction, whereby all fees and costs for documentation, insurance, maintenance, filing, registration, searches and taxes, relating to the purchase, lease, ownership, possession and use of the Equipment and to the transaction, including without limitation, issuance costs and all items of a similar nature, will be for Lessee's account.
Tax Treatment:	The interest portion of the Lease Payments must be excludable from the gross income of the Lessor for state and federal income tax purposes.

Non-Appropriation:	The Lease is subject to termination by the Lessee in the event funds for payment of the Lease are not appropriated for a given fiscal year.
Insurance:	Lessee must provide evidence of physical damage and liability insurance in an amount and from an insurance carrier satisfactory to Lessor. Lessor must be listed on the policies as loss payee and additional insured, as applicable, and a certificate of insurance is to be provided to the Lessor.
Transaction Costs:	All transaction costs (including but not limited to escrow agent fees, if applicable) shall be for the account of Lessee.
Statement of Intent:	It is the intent of Lessor and Lessee that for federal, state and local income tax purposes, the transaction contemplated hereby will be a conditional sale or financing arrangement consisting of a loan from the Lessor directly to the Lessee, and the Lessee acquiring and being deemed the owner of the Equipment. For income tax purposes, the parties shall take no action or file any return or other document inconsistent with such intentions unless otherwise required by U.S. federal, state or local tax law or directed by the Internal Revenue Service or similar state authority.
Title:	Unless prohibited by law, title to the Equipment will transfer to Lessee upon acceptance of the Equipment.
Grant of Security Interest:	Unless prohibited by law, Lessor shall be granted a first priority security interest in the Equipment, together with all accessions, attachments, replacements, substitutions, modifications and additions thereto, then existing or thereafter acquired, and all proceeds thereof (including insurance proceeds).
Legal Opinion:	An opinion of Lessee's legal counsel, reasonably acceptable to Lessor, as to, among other things, the legality, enforceability, authority, title and execution of the Lease will be required.
Opinion of Special Tax Counsel:	An opinion of Lessee's special tax counsel, reasonably acceptable to Lessor, as to the tax treatment of the interest portion of the Lease Payments, will be required.
Documentation:	<p>All lease and related documentation will be provided by Lessor and must be satisfactory to all parties concerned.</p> <p>The following standard documentation, among others, will be required for this transaction:</p> <ol style="list-style-type: none"> 1. Master Lease Purchase Agreement 2. Leasing Schedule(s), Rider(s) and Addenda, as applicable 3. Escrow Agreement 4. Amortization Schedule 5. Essential Use/Source of Funds Letter 6. Opinion(s) of Counsel as noted above 7. Resolutions 8. 8038-G (GC) 9. Insurance Coverage Requirements form

**Proposal
Acceptance/Expiration:**

This proposal shall expire on 27 March 2017, unless prior to that date Lessee acknowledges its approval of this lease proposal by signing and returning a copy of this letter together with the information set forth on Exhibit A to Lessor.


Miscellaneous:

Lessee will be responsible for obtaining all of the necessary approvals for this transaction.

The terms and conditions outlined herein are not all-inclusive and are based upon information provided to date. This proposal does not represent an offer or commitment by Lessor to enter into a lease transaction or to purchase the Equipment described in this proposal, and does not create any obligation for Lessor. A commitment to enter into the transaction described herein may only be extended by Lessor after this transaction has been approved by all necessary credit and other authorities and a "written commitment letter" has been issued. Closing of this proposed transaction will be subject to, among other things, there having occurred no material adverse change in the Lessee's financial condition or business operations or in the economic and/or regulatory conditions existing prior to the closing and, subject further, to the execution by Lessee and Lessor, and delivery to Lessor, of all documents required by Lessor, all in form and substance acceptable to Lessor. This proposal may be withdrawn or modified by Lessor at anytime prior to a definitive written commitment letter to enter into a lease transaction with Lessee being issued by Lessor and accepted by Lessee. Lessor shall have the sole right to assign this proposal, any commitment letter or any lease between Lessee and Lessor. All rates stated herein are based upon current money cost, tax rates and tax law assumptions. Should any changes occur, the rates will be adjusted accordingly.

Please feel free to contact us if you have any questions, or would like to discuss this proposal in greater detail. Upon Lessor's receipt of a properly countersigned copy of this proposal letter and the information set forth on Exhibit A hereto, the approval process shall promptly begin so that Lessor may be in a position to finalize this transaction with Lessee. Thank you for allowing us the opportunity to present this proposal.

Sincerely,
Siemens Financial Services, Inc., as agent for Siemens Public, Inc.

By: 
Name: Eric Herman
Title: Key Account Manager

By: _____
Name: _____
Title: _____

PROPOSAL ACCEPTED:

We hereby approve the leasing proposal as presented in the above letter. In reviewing this application, Lessor and its Agent are hereby authorized to obtain and utilize such credit information as may be deemed necessary and desirable by Lessor for the analysis and the processing of this proposed transaction. In addition, Lessee hereby authorizes Lessor to file, both before and/or after the Lease is executed by Lessee, any Uniform Commercial Code financing statements (including any amendments thereto) or similar filings with such authorities as Lessor may require.

Lessee acknowledges and agrees that neither Lessor nor its Agent is recommending any action to Lessee. Lessor is acting for its own interests. Neither Lessor nor its Agent is a registered municipal advisor and neither is subject to any of the fiduciary duties imposed on municipal advisors. Without limiting the generality of the foregoing, neither Lessor nor its Agent is an advisor to, or fiduciary of, Lessee with respect to the transaction contemplated hereby, any of the discussions, undertakings, and procedures leading thereto, or any information or material provided in connection therewith. To the extent it deems appropriate, Lessee has consulted, and will continue to consult before taking any action, its own legal, financial, and other advisors regarding the transaction contemplated hereby, all matters related thereto, and any information or material provided in connection therewith.

LESSEE: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Lessee to Provide the Following:

- _____ Copy of Charter and ByLaws or other organizational documents
- _____ Copy of last three year end audited financial statements, or two years of comparative audited statements, each including cash flow statements
- _____ Copy of most recent comparative interim statements, including cash flow statements
- _____ Copy of current operating budget
- _____ Copy of recent Official Statement, if available
- _____ Evidence of no blanket or other liens that could affect the Equipment

In addition, where reimbursement of prior expenditures is requested:

- _____ Copy of Official Letter of Intent for Reimbursement
- _____ Proof of Payment (e.g. check copies)

(Lessee acknowledges that Lessor, in its discretion, may request additional information and documents.)