

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2017, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **Siemens Industry, Inc.**, herein after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove COUNCIL AUTHORIZATION, DATED _____.
2. CITY desires to utilize the services of CONTRACTOR to Provide all parts, equipment, material and labor to upgrade the Siemens controls to Siemens Apogee Insight Controls at the following locations:
 - a. Garden Grove Senior Center located at 11300 Stanford Street, Garden Grove, CA
 - b. Garden Grove Park Gymnasium located at 13641 Deodara Drive, Garden Grove, CA
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination** The term of the agreement shall be for period of one 180 days full execution of the agreement. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with proposal which is attached as Attachment A and is hereby incorporated by reference. Contractor is required to present evidence to support performed work.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Proposal. The Proposal is attached as Attachment A, and is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
 - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) amount of One Hundred One Thousand Eight Hundred Dollars and (\$101,800.00), payable in arrears and in accordance with proposal in Attachment "A".

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on the Discounted Labor & Material Pricing Sheet on Page 22 of the Proposal (Appendix A).
- 3.3 Records of Expenses. CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY and CONTRACTOR shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance requirements.

- 4.1 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:
- (a) Commercial general liability in an amount of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (b) Automobile liability in an amount of \$1,000,000.00 combined single limit (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, it's officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, it's officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements

promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.

9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

- a. (Contractor)
Siemens Industry, Inc.,
Attention: Dan Holmes, Area Sales Manager
6141 Katella Avenue
Cypress, CA 90630

- b. (Address of CITY) (with a copy to):
City of Garden Grove Garden Grove City Attorney
11222 Acacia Parkway 11222 Acacia Parkway
Garden Grove, CA 92840 Garden Grove, CA 92840

10. **CONTRACTOR'S PROPOSAL.** This Agreement shall include CONTRACTOR'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.

12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.

13. **Time of Essence.** Time is of the essence in the performance of this Agreement.

14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior

written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.

15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
16. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

\\ \\ \\

(Agreement Signature Block on Next Page)

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

"CONTRACTOR"
Siemens Industry, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Tax ID No. _____

Contractor's License: _____

Expiration Date: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Garden Grove City Attorney

Date

ATTACHMENT "A"

SIEMENS

Siemens Industry, Inc., Building Technologies
6141 Katella Avenue, Cypress, California 90630

Phil Carter
Facilities Manager
Department of Public Works
13802 Newhope Street
Garden Grove, CA 92843

Name Akshay Grover
Department Building Automation Service

Telephone (714) 816-5109
Fax (855) 431-7276
Mobile (714) 519-8243
E-Mail akshay.grover@siemens.com

Date July 27, 2017

Proposal

Upgrade Controls to Siemens Apogee Insight
Garden Grove Community Meeting Center / Senior Center
11300 Stanford Ave
Garden Grove, CA 92840
Proposal No. # AG 185 FY 16 Rev 2

Date of Site Walk December 21, 2015

Pricing (Detailed Scope on following pages)

Includes New Construction Use Tax: Yes
Includes Sales Tax: N/A
Base Bid: \$80,950.⁰⁰

Initial to Accept:

Remarks

Payment Terms are Net 30 with progressive billing. The Terms and Conditions of Sale shown on the attached are a part hereof. Per project aggregate general liability insurance is excluded. Prices quoted are firm for 30 days.

Proposed

Accepted

I have read the attached Terms & Conditions of Sale, understand them fully, and agree to abide by them. I understand that payment is due upon receipt of invoice.

Company Name: Siemens Industry, Inc.
By (Signed): _____
Name: Akshay Grover
Title: Sr. Sales Executive
Date: July 27, 2017

Company Name: City of Garden Grove
By (Signed): _____
Name: Phil Carter
Title: Facilities Manager
Date: _____

Scope of Work –

(2) Multizone Units –

1. Demo existing (1) Staefa Controller at each of the (2) 'Season Four' Multizone Units
2. Demo existing (9) damper actuators for the (9) areas served by the two Multizone units
3. Demo existing (9) room thermostats associated with the (9) zones
4. Furnish & Install (1) Siemens BACnet PXC Compact controllers at each of the (2) Multizone units
5. Furnish & Install (9) Supply Air Duct Temperature Sensors for the (9) zones
6. Furnish & Install (9) Siemens ATECs for the (9) zones controlled by the two Multizone units
7. Furnish & Install (9) Room Thermostat with Temperature Set Point & Digital Display for the (9) zones
8. Wiring & Termination of new TECs
9. Check operations of new TECs
10. Integrate the new TECs over the Field Level Network (FLN) and the new PXC controller into the existing Siemens BAS

(15) Package Units –

1. Demo existing (15) Staefa Controllers at the (15) Package Units – (6) at CMC and (9) at Senior Center building
2. Furnish & Install (15) TECs for the Package Units
3. Furnish & Install (15) Supply Air Duct Temperature Sensors for the (15) Package Units
4. Furnish & Install (1) PXC Controller to tie in the (15) TECs over Siemens FLN
5. Furnish & Install (15) Room Thermostat with Temperature Set Point & Digital Display for each of the (15) zones
6. Wiring & Termination of new TECs
7. Check operations of new TECs
8. Integrate the new TECs over the Field Level Network (FLN) and the new PXC controller into the existing Siemens BAS

Integration into existing Siemens Apogee Insight BAS –

1. Develop a standard application graphic for the (9) zone TECs on the existing graphics.
2. Develop a standard application graphic for the (15) package unit TECs on the existing graphics.
3. Integrate the new controls into existing Siemens Apogee System
4. Test for proper operation
5. Review completed work with site personnel
6. Provide as-built drawings for customer records
7. Project Management, Engineering, Programming, Commissioning, Start Up & Check Out

Clarifications –

1. City of Garden Grove to provide Network IP Assignment (IP Address, Subnet Mask, Default Gateway) at the (3) new Siemens PXC Controller locations. This is a pre-requisite for Siemens to connect the new controller to the existing Siemens BAS.
2. The Siemens TEC will be installed inside the existing package units at the same location as the existing controllers
3. Siemens will utilize the existing conduit to install new Siemens room thermostats
4. Support from Package Unit/Multi zone Unit supplier will be coordinated and paid for by the city, if required.
5. Siemens will utilize all existing conduits. No EMT Conduit included except for the communication cable run between the buildings.
6. Siemens assumes that the existing Staefa Controls control only the above specified zones. Any Smoke Control or any other control such as Exhaust Fans etc that the Staefa controller might control is excluded from Siemens scope of work. If found, the same will be additional to the city.
7. City of Garden Grove is responsible for all existing equipments. Any repairs to existing equipment, changes in proposed scope and delays in schedule due to existing equipment, access to facility, employee clearance or other undetermined schedules will be considered extra to the proposal.
8. Labor during regular business hours (Monday to Friday: 7AM – 5PM). Overtime or double time, if required, will be charged extra.
9. City of Garden Grove to provide access to building and all rooms, provide any parking or necessary permits.
10. Any safety requirements beyond what Siemens adhere to will be additional.
11. Any change in the scope of work shall lead to commercial implications, if any.
12. Warranty – (1) year on all new parts & labor
13. Taxes & Freight FOB Job Site
14. Validity – August 31' 2017

Exclusions –

1. New Conduits, EMT Conduit (Except Communication Cable run between the two buildings)
2. Seasons – 4 Multizone Unit Repair/Factory Startup
3. Freezer Temperature Sensors/Controls
4. All 120V power wiring (Siemens to tap off existing)
5. Package Unit/Multizone Unit Repair.
6. Control or wiring of equipments not mentioned above
7. Conduit stub ups for VAV zone room thermostats
8. Valves, Air Flow sensors, Pressure Sensors
9. Air / Water Balance (If reqd, can be done by Siemens at additional price)
10. Repair of any mechanical and/or controls equipment
11. Mechanical installation including valves, actuators, sensors, pressure taps, pipe wells
12. Connection to FLS (Fire, Life Safety)
13. Integration to third party systems
14. Engineering Submittals
15. Performance Bonds (Additional, if required)
16. Work on weekends and holidays
17. Delays to due to lack of building access
18. Correction of existing code violation
19. Patching and Painting of any surfaces
20. Smoke control or dampers of any kind
21. Prevailing Wage Rates
22. All permits and inspection fee
23. Additional equipments, devices, labor not mentioned in the proposal

SIEMENS

Siemens Industry, Inc., Building Technologies
6141 Katella Avenue, Cypress, California 90630

Phil Carter
Facilities Manager
Department of Public Works
13802 Newhope Street
Garden Grove, CA 92843

Name Akshay Grover
Department Building Automation Service
Telephone (714) 818-5109
Fax (855) 431-7276
Mobile (714) 518-8243
E-Mail akshay.grover@siemens.com
Date July 27, 2017

Proposal

Upgrade Controls to Siemens Apogee Insight
Garden Grove Gymnasium
13641 Deodara Drive
Garden Grove, CA 92844
Proposal No. # AG 191 FY 16 Rev 2

Date of Site Walk December 21, 2015

Pricing (Detailed Scope on following pages)

Initial to Accept:

Includes New Construction Use Tax: Yes
Includes Sales Tax: N/A
Base Bid: \$20,850.⁰⁰

Remarks

Payment Terms are Net 30 with progressive billing. The Terms and Conditions of Sale shown on the attached are a part hereof. Per project aggregate general liability insurance is excluded. Prices quoted are firm for 30 days.

Proposed

Company Name: Siemens Industry, Inc.
By (Signed): _____
Name: Akshay Grover
Title: Sr. Sales Executive
Date: July 27, 2017

Accepted

I have read the attached Terms & Conditions of Sale, understand them fully, and agree to abide by them. I understand that payment is due upon receipt of invoice.

Company Name: City of Garden Grove
By (Signed): _____
Name: Phil Carter
Title: Facilities Manager
Date: _____

Scope of Work --

(4) Package Units --

1. Demo existing (1) Staefa Controller at each of the (4) Package Units
2. Furnish & Install (4) TECs for the Package Units
3. Furnish & Install (4) Supply Air Duct Temperature Sensors for the (4) Package Units
4. Furnish & Install (1) PXC BACnet Controller to tie in the (4) TECs over Siemens FLN
5. Furnish & Install (4) Room Thermostat with Temperature Set Point & Digital Display for the (4) package units
6. Wiring & Termination of new TECs
7. Check operations of new TECs
8. Integrate the new TECs over the Field Level Network (FLN) and the new PXC controller into the existing Siemens BAS

Integration into existing Siemens Apogee Insight BAS --

1. Develop a standard application graphic for the (4) Package Unit TECs on the existing graphics.
2. Integrate the new controls into existing Siemens Apogee System
3. Test for proper operation
4. Review completed work with site personnel
5. Provide as-built drawings for customer records
6. Project Management, Engineering, Programming, Commissioning, Start Up & Check Out

Clarifications --

1. City of Garden Grove to provide Network IP Assignment (IP Address, Subnet Mask, Default Gateway) at the (1) new Siemens PXC Controller location. This is a pre-requisite for Siemens to connect the new controller to the existing Siemens BAS.
2. The Siemens TEC will be installed inside the existing package units at the same location as the existing controllers
3. Siemens will utilize the existing conduit to install new Siemens room thermostats
4. Support from Package Unit supplier will be coordinated and paid for by the city, if required.
5. Siemens will utilize all existing conduits. No EMT Conduit included except for the communication cable run between the buildings.
6. Siemens assumes that the existing Staefa Controls only the above specified zones. Any Smoke Control or any other control such as Exhaust Fans etc that the Staefa controller might control is excluded from Siemens scope of work. If found, the same will be additional to the city.
7. City of Garden Grove is responsible for all existing equipments. Any repairs to existing equipment, changes in proposed scope and delays in schedule due to existing equipment, access to facility, employee clearance or other undetermined schedules will be considered extra to the proposal.
8. Labor during regular business hours (Monday to Friday: 7AM - 5PM). Overtime or double time, if required, will be charged extra.
9. City of Garden Grove to provide access to building and all rooms, provide any parking or necessary permits.
10. Any safety requirements beyond what Siemens adhere to will be additional.
11. Any change in the scope of work shall lead to commercial implications, if any.
12. Warranty - (1) year on all new parts & labor
13. Taxes & Freight FOB Job Site
14. Validity - August 31' 2017

Exclusions –

1. **New Conduits, EMT Conduit (Except Communication Cable run between the two buildings)**
2. **All 120V power wiring (Siemens to tap off existing)**
3. **Package Unit Repair.**
4. **Control or wiring of equipments not mentioned above**
5. **Conduit stub ups for VAV zone room thermostats**
6. **Valves, Air Flow sensors, Pressure Sensors**
7. **Air / Water Balance (if reqd, can be done by Siemens at additional price)**
8. **Repair of any mechanical and/or controls equipment**
9. **Mechanical installation including valves, actuators, sensors, pressure taps, pipe wells**
10. **Connection to FLS (Fire, Life Safety)**
11. **Integration to third party systems**
12. **Engineering Submittals**
13. **Performance Bonds (Additional, if required)**
14. **Work on weekends and holidays**
15. **Delays to due to lack of building access**
16. **Correction of existing code violation**
17. **Patching and Painting of any surfaces**
18. **Smoke control or dampers of any kind**
19. **Prevailing Wage Rates**
20. **All permits and inspection fee**
21. **Additional equipments, devices, labor not mentioned in the proposal**