

KETCHIKAN GATEWAY BOROUGH SCHOOL DISTRICT
AGENDA STATEMENT

No. 9 a

MEETING OF November 13, 2019

Reviewed By

Item Title:

NEW BUSINESS

Motion to approve renewal of the contract with
Siemens Advantage Services for system monitoring services

Superintendent
 Finance
 Maintenance

SUBMITTED BY Richard McAlpin, Facilities & Maintenance Director

Contact Person/Telephone

APPROVED FOR SUBMITTAL

Katie Jo Parrott 247-2116
Name Phone

Elizabeth Longee

SUMMARY STATEMENT:

Administration is seeking approval of a contract renewal of Siemens Advantage Services for facilities system maintenance.

ISSUE:

The district maintains school and district facilities and the accompanying systems for safety, security, and environmental controls. All district facilities are outfitted with products that manage the fire safety, security, and HVAC systems, which must be actively monitored, maintained, and upgraded when necessary for optimal operations. These systems support critical operations of each facility and are highly technical and require expert knowledge and skill to properly maintain, monitor, troubleshoot, and repair in order to ensure proper operations of school facilities.

BACKGROUND:

District facilities are outfitted with equipment and systems components that are Siemens products or consistent with Siemens Advantage Services components. Siemens has provided remote monitoring, troubleshooting, and technical assistance for facility systems functioning of district facilities for several years. They have provided quality training, technical response, and ensure environmental safety and energy efficiency.

RECOMMENDATION:

Approval of the contract renewal with Siemens.

FISCAL NOTE*

[] N/A EXPENDITURE	AMOUNT
REQUIRED \$ <u>138,701</u> **	AVAILABLE \$ <u>155,000</u>

*Multi-year renewal with a 3% increase year to year.

**FY20 cost is less than 1% increase over FY19 if we switch to making annual payments.

EXHIBITS ATTACHED

- Maintenance Director's Request & Justification
- Siemens FY20-24 Contract Agreement

RECOMMENDED ACTION:

"I move that the Board of Education approve the contract agreement renewal for FY20-24 with Siemens Advantage Services for facilities and maintenance system monitoring and technical support."



KETCHIKAN GATEWAY BOROUGH SCHOOL DISTRICT

MAINTENANCE & OPERATIONS

October 22, 2019

To Whom It May Concern,

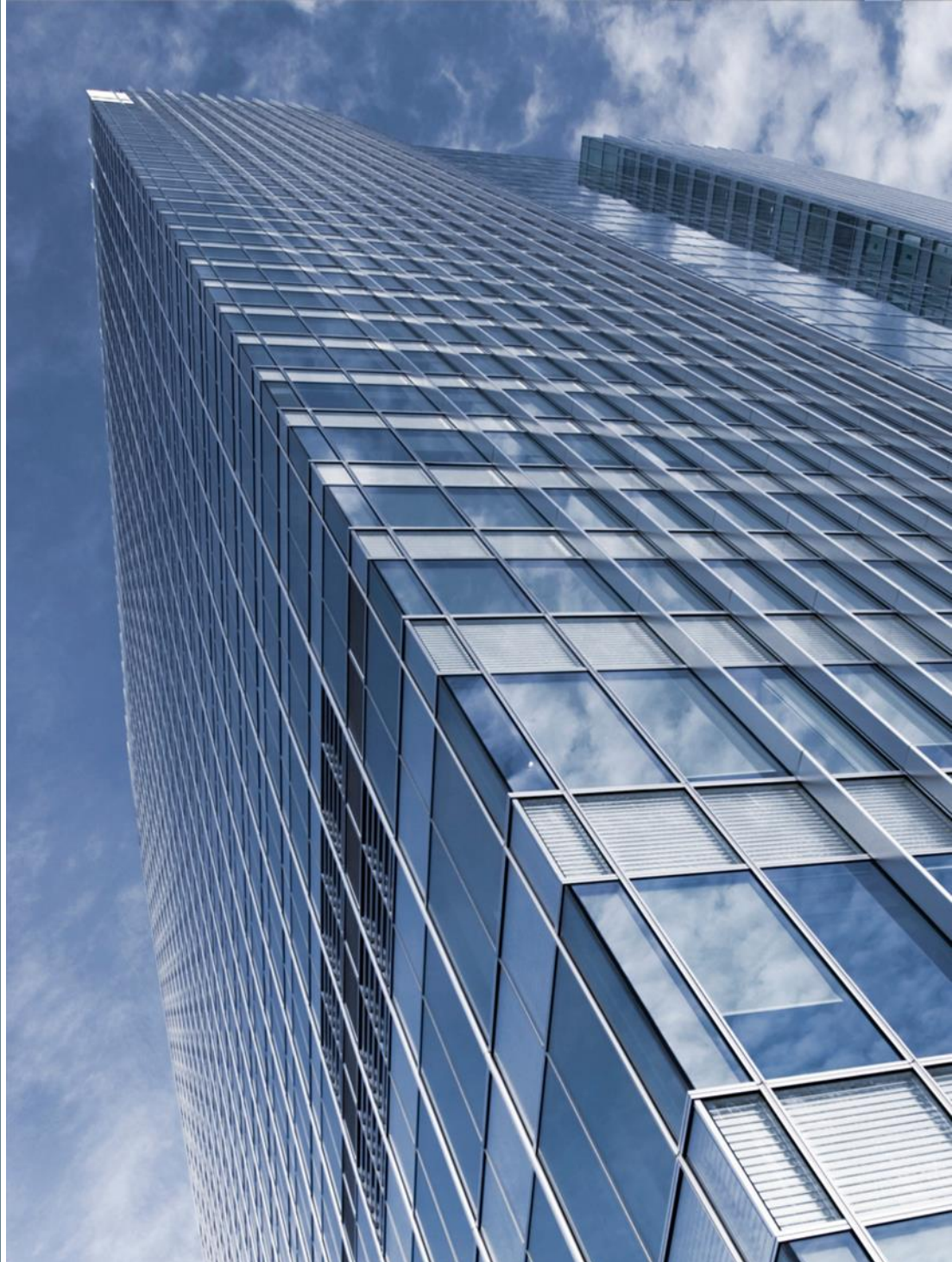
I would like to make a formal request for Siemens Advantage Services as a sole provider for our Ketchikan Gateway Borough School District building monitoring company. Siemens has been providing excellent service to the district the past several years through the existing TSP contract. The district's building security, fire monitoring, and HVAC system for all district facilities operate on Siemens products that integrate directly into the monitoring services to enable expert management and oversight for remote monitoring and troubleshooting of facilities issues. These products and services are in place for safety, security, and energy efficiency, and would not be available through another company unless all the system products in place at each facility were replaced at a cost of hundreds of thousands of dollars.

The Siemens contract has allowed us to update crucial components with our security system, fire monitoring system, and air handling systems. Continuing this contract gives the School District a substantial discount when it comes to ordering parts and paying for labor work done by Siemens technicians. Another positive aspect of this contract is the discount we get on training our District technicians to routinely monitor system functioning and manage newly installed or implemented components since our entire District is ran by Siemens products.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard McAlpin". The signature is fluid and cursive, written over a white background.

Richard McAlpin
Director of Maintenance

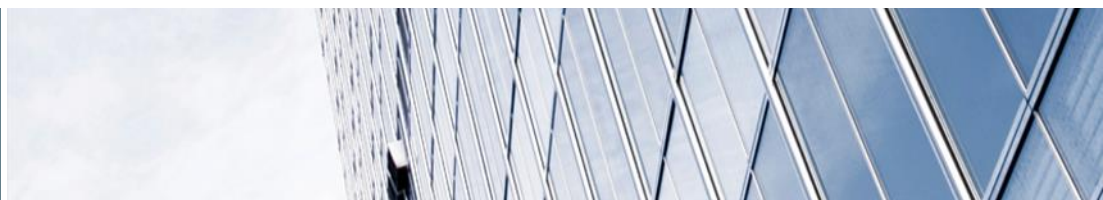


Advantage Services[®]

Agreement for Ketchikan Gateway Borough School District

July 15, 2019

SIEMENS



Advantage Services

Agreement for Ketchikan Gateway Borough School District

July 15, 2019

Table of Contents

	Advantage Services	1
1	Overview	3
	1.1 Executive Summary	3
	1.2 Current Situation	3
	1.3 Siemens Capabilities & Commitment to Our Customers	3
2	Service Solution	4
	2.1 HVAC CONTROL SERVICES – Automation	4
	2.1.1 Technical Support Services	4
	2.1.2 System Performance Updates & Upgrades	5
	2.2 SECURITY SERVICES	5
	2.2.1 Technical Support Services	5
	2.2.2 System Performance Updates & Upgrades	5
3	Service Implementation Plan	6
	3.1 Maintained Equipment Table	6
	Service Team	8
4	Siemens Industry, Inc.	9
	4.1 Signature Page and Investment By and Between:	9
	4.2 Terms And Conditions	10
Appendix A.	Discounted Labor & Material Pricing	13

1 Overview

1.1 Executive Summary

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

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

1.2 Current Situation

The intent of this proposal is to enter into a partnership with the Ketchikan Gateway Borough School District in order to provide responsible and cost-effective solution for the on-going technical support of the Siemens APOGEE Direct Digital Control (DDC) automation system and the SiPass Security system.

With this Technical Support Program, Siemens will assist the Ketchikan Gateway Borough School District in achieving three primary goals:

- Insuring a safe, comfortable, and energy efficient environment for the facilities staff and students.
 - Maintaining the functionality of the Siemens APOGEE DDC automation system.
 - Assist the facility's staff with on-site technical support.
-

1.3 Siemens Capabilities & Commitment to Our Customers

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

2 Service Solution

2.1 HVAC CONTROL SERVICES – Automation

2.1.1 Technical Support Services

Customer Directed Support

With Customer Directed Support, Siemens will provide a trained and experienced automation specialist who will work under your direction. The intent of this service is to offer you labor assistance in completing a special project, or to meet a facility objective. This proposal includes **288** hours of Customer Directed Support. This will allow Siemens to supplement your existing work force with three days of customer directed support per month.

Onsite Staffing Support Specialist

To optimize the sophisticated technology of your HVAC Control System and its impact on your facility's business, it is critical to provide trained, onsite personnel to assist in managing your system. An onsite Siemens Building Performance Specialist who will work to assure that the building systems are operating at peak efficiency in support of your specific facility and organizational objectives will be scheduled to visit your site semi annually the first year and annually the remaining four years of this service agreement.

Network Maintenance

Using Siemens Network Performance Diagnostic Technologies, our proactive calibration and tuning of the data network analyzes variables impacting network performance, including node tables, token passes, turn speed, change of values over the network, unresolved points, and overall operation. This will increase data network up-time and allow for faster problem resolution. **This service will be performed at Houghtaling, Ketchikan High School, Schoenbar, Fawn Mountain, and Valley Park, Point Higgins.**

Data Protection & Data Recovery Services

Siemens will perform scheduled database back-ups of your workstation database & graphics and / or field panel databases and provide safe storage of this critical business information. Should a catastrophic event occur, we will respond onsite (or online if such service is included in this service agreement) to reload the databases and system files from our stored backup copy, to restore your operation as soon as possible. The equipment to be included as part of this service, is itemized in the List of Maintained Equipment in this service agreement.

2.1.2 System Performance Updates & Upgrades

Software Support and Updates

Siemens will provide you with software and documentation updates to your existing Siemens software as they become available (approximately annually). Included is onsite training to familiarize you with the new features and their associated benefits. These updates deliver the benefits of Siemens Industry, Inc. commitment to compatibility by design, a commitment unique in our industry. Workstations covered under this service are itemized in the List of Maintained Equipment. (Upgrades to PC's and related workstation hardware are excluded unless specified elsewhere.) Due to Insight reaching its end of life there are no more software updates currently being generated for Insight, these included software updates can be applied towards the costs of migrating to Desigo CC.

2.2 SECURITY SERVICES

2.2.1 Technical Support Services

Data Protection & Recovery Services

Siemens will perform scheduled database back-ups of your security system database for storage at your facility. Should a catastrophic event occur, we will respond onsite to reload the databases and system files from the stored backup copy, to restore your operation as soon as possible. The frequency of this service is itemized in the List of Maintained Equipment section in this service agreement.

Preventive Maintenance

In addition to providing a Test and Inspection service, Siemens will, on a regular, scheduled basis provide preventive maintenance on the components of your security system. This program of standard maintenance routines is determined by manufacturer's recommendation, our experience, equipment application, and location. Through preventive maintenance, we may extend equipment life, reduce the risk of costly and disruptive breakdowns, and reduce the possibility of security risks that may result due to equipment that does not function as required. A list of covered equipment and the frequency of the maintenance is included in the List of Maintained Equipment section of this service agreement.

2.2.2 System Performance Updates & Upgrades

Software Support and Updates

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

3 Service Implementation Plan

3.1 Maintained Equipment Table

Equipment Category	Equipment SubCategory	Equipment	Qty	Serial Number	Location	Mfg/Model
Building Automation System	Software Support and Updates		1			
Services (Times per year): Software Update (1)						

Building Automation System	Head End	APOGEE Server	1			
Services (Times per year): Preventative Maintenance (1), Business Protection & Recovery (2.0)						

Building Automation System	Network Analysis & Optimization	NPDT – P2 - BLN	5			
Services (Times per year): Network A & O (1)						

Electronic Access Control	Software Support and Updates	SiPass Server	1			
Services (Times per year): Software Update (1)						

Electronic Access Control	Head End	SiPass Server	1			
Services (Times per year): Preventative Maintenance (1), Business Protection & Recovery (2.0)						

Electronic Access Control	Field Panels	Control Panel	3			
Services (Times per year): Preventative Maintenance (1)						
Electronic Access Control	Field Panels	Input Control Panel	3			
Services (Times per year): Preventative Maintenance (1)						
Electronic Access Control	Field Panels	Reader Panel	3			
Services (Times per year): Preventative Maintenance (1)						
Electronic Access Control	Readers	Prox reader	4			
Services (Times per year): Preventative Maintenance (1)						
Electronic Access Control	Detection Devices	Motion Sensor	36			
Services (Times per year): Preventative Maintenance (1)						
Electronic Access Control	Detection Devices	Door Contacts	15			
Services (Times per year): Preventative Maintenance (1)						
Electronic Access Control	Dialer	Dialer	3			
Services (Times per year): Preventative Maintenance (1)						
Electronic Access Control	Power Supplies	12 VDC Power Supplies	6			
Services (Times per year): Preventative Maintenance (1)						
Various	Customer Directed Support	Various	288			
Services (Times per year): Customer Directed Support Hours (288)						

Service Team

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

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

Your Assigned Team of Service Professionals will include:

Andrew Sandefur - Sales Account Representative manages the overall strategic service plan based upon your current and future service requirements.

Brede Emtman - Service Account Engineer is responsible for ensuring that our contractual obligations are delivered, your expectations are being met and you are satisfied with the delivery of our services.

Mark Anderson - Primary Service Specialist is responsible for performing the ongoing service of your system.

Emmit Davis - Secondary Service Specialist who will be familiarized with your building systems to provide in-depth backup coverage.

Dan Hart - Service Operations Manager is responsible for managing the delivery of your entire support program and service requirements.

Bonnie Saffell - Service Coordinator is responsible for scheduling your planned maintenance visits and handling your emergency situations by taking the appropriate action.

4 Siemens Industry, Inc.

4.1 Signature Page and Investment By and Between:

Siemens Industry, Inc.
 5333 Fairbanks St. Suite B
 Anchorage, AK 99518
 Andrew Sandefur
 907-563-2242

Ketchikan Gateway Borough School District
 333 Schoenbar Road
 Ketchikan, AK 99901
 Mike Williams
 907-225-2416

Services shall be provided at Various Sites, Ketchikan, AK 99901.

Siemens Industry, Inc. shall provide the services as outlined in the attached proposal dated 7/15/2019 and the attached terms and conditions.

Duration: This agreement shall remain in effect for an Initial Term of 5 Years beginning 7/1/2019 and from year to year thereafter.

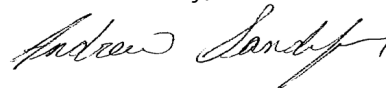
Investments:

Year 1	07/01/19 to 6/30/20	\$138,701 annually in advance	Or \$35,541 quarterly in advance, \$142,164 annually
Year 2	07/01/20 to 6/30/21	\$142,990 annually in advance	Or \$36,640 quarterly in advance, \$146,560 annually
Year 3	07/01/21 to 6/30/22	\$147,412 annually in advance	Or \$37,773 quarterly in advance, \$151,092 annually
Year 4	07/01/22 to 6/30/23	\$151,971 annually in advance	Or \$38,941 quarterly in advance, \$155,764 annually
Year 5	07/01/23 to 6/30/24	\$156,671 annually in advance	Or \$40,145 quarterly in advance, \$160,580 annually

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

Proposal accepted by:
 Mike Williams
 Director of Maintenance
 Ketchikan Gateway Borough School District

Proposal submitted by:
 Andrew Sandefur
 Automation Account Executive
 Siemens Industry, Inc.



7/15/2019

 Signature Date

 Signature Date

P.O.# _____

Leverette Hoover
 General Manager

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

Or

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

 Signature Date

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc.: (i) the Proposal and the Contract Terms and Conditions, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter (collectively, hereinafter referred to as the "Agreement") and (ii) in the event of any conflict between the terms and conditions of the Proposal and the terms and conditions of The Contract Terms and Conditions, the Contract Terms and Conditions shall control. BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS INDUSTRY, INC. OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

4.2 Terms And Conditions

SERVICE TERMS AND CONDITIONS (REV. 10/09)

Article 1: General

1.1 (a) This Agreement constitutes the entire, complete and exclusive agreement between the parties relating to the services ("Services") to be provided by SIEMENS and supersedes and cancels all prior proposals, agreements and understandings, written or oral, relating to the subject matter of this Agreement. Neither party may assign the Agreement or any rights or obligations hereunder without the prior written consent of the other except that either party may assign this Agreement to its affiliates and SIEMENS may grant a security interest in the proceeds to be paid to SIEMENS under this Agreement; assign proceeds of the Agreement; and/or use subcontractors in performance of the Services. The terms and conditions of this Agreement shall not be modified or rescinded except in writing, with the prior approval of the Legal Departments of SIEMENS and Customer and signed by duly authorized officers or managers of SIEMENS and Customer.

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

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

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

1.3 After the expiration of the Initial Term, this Agreement shall automatically renew for successive one year periods beginning on the anniversary date of the Initial Term unless stated otherwise in the Agreement.

1.4 Either party may terminate or amend this Agreement at the end of the Initial Term or at the end of a renewal term by giving the other party at least sixty (60) days prior written notice of such amendments or intent not to renew.

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

Article 2: Covered Equipment

2.1 "Covered equipment" shall mean that equipment expressly identified as System Components in this Agreement. The Customer represents that at the commencement of this Agreement all Covered Equipment is in satisfactory working condition and complies with all applicable codes.

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

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

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

Article 3: Services by SIEMENS

3.1 SIEMENS shall only perform the Services identified in this Agreement.

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

3.3 Any repairs and replacements of Covered Equipment as may be expressly

included in the Services are limited to restoring the proper working condition of such Covered Equipment. SIEMENS will not be obligated to provide replacement Covered Equipment that represents significant capital improvement compared to the original. Exchanged or removed components become the property of SIEMENS, except Hazardous Materials, which under all circumstances remain the property and responsibility of Customer.

3.4 Unless agreed otherwise, Services do not include and SIEMENS is not responsible for (a); (a) service or provision of consumable supplies, including but not limited to batteries and halon cylinder charging; (b) reinstallation or relocation of Covered Equipment; (c) painting or refinishing of Covered Equipment or surrounding surfaces; (d) changes to Services; (e) parts, accessories, attachments or other devices added to Covered Equipment but not furnished by SIEMENS; (f) failure to continually provide suitable operating environment including, but not limited to, adequate space, ventilation, electrical power and protection from the elements; or (g) the removal or reinstallation of replacement valves, dampers, waterflow switches, venting or draining systems. SIEMENS is not responsible for services performed on any Covered Equipment other than by SIEMENS or its agents.

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

3.6 SIEMENS shall perform the Services during its local, normal working hours, unless otherwise stated in this Agreement.

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

3.8 All reports and drawings specifically prepared for and deliverable to Customer pursuant to this Agreement ("*Deliverables*") shall become Customer's property upon full payment to SIEMENS. SIEMENS may retain file copies of such Deliverables. All other reports, notes, calculations, data, drawings, estimates, specifications, manuals, other documents and all computer programs, codes and computerized materials prepared by or for SIEMENS are instruments of SIEMENS' work ("*Instruments*") and shall remain SIEMENS property. Siemens conveys no license to software unless otherwise expressly provided in this Agreement. All Deliverables and Instruments provided to Customer are for Permitted Users' use only for the purposes disclosed to SIEMENS, and Customer shall not transfer them to others or use them or permit them to be used for any extension of the Services or any other purpose, without SIEMENS' express written consent. Any reuse of Deliverables or 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' sole risk and without liability to SIEMENS; and, in addition to any other rights SIEMENS may have, Customer shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.

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

3.10 Where Services include energy consulting, any estimates of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by SIEMENS, the documents prepared for the Customer will represent SIEMENS' best judgment based on SIEMENS' experience and the information reasonably available to SIEMENS at the time that the Services are performed. Customer acknowledges that SIEMENS does not control: (a) the costs of labor, materials, equipment or services furnished by others; (b) overall market conditions; or, (c) contractors' methods of determining prices. Accordingly, Customer acknowledges that proposals, bids or actual costs may differ from opinions, evaluations or studies submitted by SIEMENS as part of the Services provided hereunder.

3.11 Where Services include EMC, SIEMENS will have a disaster recovery plan and a disaster contingency plan.

Article 4: Responsibilities of Customer

4.1 Customer, without cost to SIEMENS, shall:

(a) Designate a contact person with authority to make decisions for Customer regarding the Services and provide SIEMENS with information sufficient to contact such person in an emergency. If such representative cannot be reached, any request for Services received from a person located at Customer's site will be deemed authorized by Customer, and SIEMENS will, in its reasonable discretion, act accordingly;

(b) Provide or arrange without cost all reasonable provisions, means and access for SIEMENS to any site and the equipment where Services are to be performed;

(c) Permit SIEMENS to control and/or operate all controls, systems, apparatus, equipment and machinery necessary to perform the Services;

- (d) Furnish SIEMENS with all available information pertinent to the Services;
- (e) Obtain and furnish to SIEMENS all approvals, permits and consents from government authorities and others as may be required for performance of the Services except for those SIEMENS has expressly agreed in writing to obtain;
- (f) Maintain the Services site in a safe condition; notify SIEMENS promptly of any site conditions requiring special care; and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such conditions;
- (g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Services, except such notices SIEMENS has expressly agreed in this Agreement to give;
- (h) Provide SIEMENS with Material Safety Data Sheets (MSDS) conforming to OSHA requirements related to all Hazardous Materials at the site which may impact the Services;
- (i) Furnish to SIEMENS any contingency plans related to the site;
- (j) Furnish the specified operating environment, including without limitation, suitable, clean, stable, properly conditioned electrical power and other utilities;
- (k) Maintain all Covered Equipment in good working order in compliance with all applicable laws and service, repair and replace all Covered Equipment as necessary; and,
- (l) Perform inspections and tests as indicated in the Life Safety System Logbook and record same in the Life Safety System logbook.

4.2 Customer acknowledges that the technical and pricing information herein is proprietary to SIEMENS and agrees not to disclose or otherwise make it available to others.

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

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

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

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

Article 5: Compensation

5.1 Annual Fee(s) shall be adjusted for each year after the final year of the Initial Term pursuant to the agreed Price Adjustment hereto and incorporated herein. Unless otherwise agreed in writing, this Agreement is not cancelable and the annual fee is not refundable except as provided herein.

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

5.3 SIEMENS shall invoice Customer as provided in this Agreement, or if not expressly provided, then on an annual basis prior to the Start Date and annually thereafter on the anniversary of such Start Date. Invoices are due and payable net cash upon receipt unless Customer has applied and been approved for credit with SIEMENS, in which case the invoice is payable within 30 calendar days of receipt by Customer or as otherwise set forth in this Agreement. If any payment is not received when due, SIEMENS may deem Customer to be in breach hereof and may enforce any remedies available to it hereunder or at law, including without limitation, acceleration of payments and suspension or termination of Services at any time and without notice, and shall be entitled to compensation for Services previously performed and costs reasonably incurred in connection with the suspension or termination. In the event that any payment due hereunder is not paid when due, Customer agrees to pay, upon demand, as a late charge, one and one-half percent (1.5%) of the amount of the payment per month, limited by the maximum rate permitted by law of each overdue

amount under this Agreement. Customer shall reimburse SIEMENS' costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement. If Customer disputes any portion or all of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice. The undisputed portion shall be paid when due, and interest on any unpaid portion shall accrue as aforesaid, from the date due until paid, to the extent that such amounts are finally determined to be payable to SIEMENS.

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

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

Article 6: Changes; Delays; Excused Performance

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

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

Article 7: Warranties; Disclaimers; Limitation of Liability

7.1 Labor in performing the Services is warranted to be free from defects in workmanship for 90 days after the Services are performed. All labor provided by SIEMENS hereunder found to be defective and otherwise qualifying under this warranty shall be re-performed by SIEMENS. Such re-performance hereunder shall not interrupt or prolong the terms of this warranty. In the event that any such re-performance fails to cure such defects, then Customer's exclusive remedy against SIEMENS for damages from any cause whatsoever, whether in contract or tort, shall not exceed an amount equal to the limitation set forth in Section 7.5 herein.

7.2 THE EXPRESS LIMITED WARRANTY PROVIDED ABOVE IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, QUALITY, CAPACITY, OR WORKMANSHIP, ALL EXPRESS OR IMPLIED WARRANTIES AGAINST PATENT INFRINGEMENTS OR DEFECTS, WHETHER HIDDEN OR APPARENT, AND EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO COMPLIANCE OF THE COVERED EQUIPMENT WITH THE REQUIREMENTS OF ANY LAW, REGULATION, SPECIFICATION OR CONTRACT RELATIVE THERETO, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

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

7.4 ANY IDEAS, SUGGESTIONS, RECOMMENDATIONS, FINANCIAL EVALUATIONS, FEASIBILITY STUDIES OR ECONOMIC ANALYSIS PREPARED BY SIEMENS UNDER THIS AGREEMENT WILL REPRESENT ITS BEST JUDGMENT BASED ON ITS EXPERIENCE AND THE AVAILABLE INFORMATION. CUSTOMER ACKNOWLEDGES THAT THE ENERGY MARKET IS VOLATILE AND SUBJECT TO FREQUENT PRICE

AND REGULATORY CHANGES. THEREFORE, CUSTOMER FURTHER ACKNOWLEDGES THAT SIEMENS DOES NOT CONTROL FUTURE MARKET CONDITIONS OR THE ENERGY MARKET'S REGULATORY CLIMATE. NOTHING HEREIN SHALL BE CONSTRUED BY THE CUSTOMER AS A PREDICTION OF FUTURE ENERGY MARKET CONDITIONS OR ENERGY PRICES. ACCORDINGLY, SIEMENS DOES NOT PROVIDE CUSTOMER A GUARANTY OR WARRANTY OF THE RESULTS OF SIEMENS' RECOMMENDATIONS. CUSTOMER MAKES ANY AND ALL ENERGY PROCUREMENT AND RELATED DECISIONS. CUSTOMER ACKNOWLEDGES THAT ALL ENERGY PROCUREMENT AND RELATED DECISIONS ARE MADE AT THE CUSTOMER'S SOLE RISK.

7.5 WITH RESPECT TO ANY LIABILITY (WARRANTY OR OTHERWISE) THAT SIEMENS MAY HAVE UNDER THE AGREEMENT, IN NO EVENT SHALL SIEMENS BE LIABLE (INCLUDING WITHOUT LIMITATION, UNDER ANY THEORY IN TORTS) FOR ANY LOSS OF USE, REVENUE, ANTICIPATED PROFITS OR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS AND/OR LOST BUSINESS OPPORTUNITIES) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SERVICES WHETHER ARISING IN WARRANTY, TORT, CONTRACT, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, WHETHER, FOR WARRANTY, LATE OR NON-DELIVERY OF ANY SERVICES, AND WHETHER SIEMENS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; and, in any event, SIEMENS' aggregate liability for any and all claims, losses or expenses (including attorneys fees) arising out of this Agreement, or out of any Services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, indemnity or any other theory of liability, shall be limited, as liquidated damages, to the greater of \$1,000 or 10% of the total compensation received by SIEMENS from Customer under this Agreement. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation under the warranty hereunder. The parties acknowledge that the price which SIEMENS has agreed to perform its Services and obligations under this Agreement is calculated based upon the foregoing limitations of liability, and that SIEMENS has expressly relied on, and would not have entered into this Agreement but for such limitations of liability.

7.6 It is understood and agreed by and between the parties that SIEMENS is not an insurer and this Agreement is not intended to be an insurance policy or a substitute for an insurance policy. Insurance, if any, shall be obtained by Customer. Fees are based solely upon the value of the Services, and are unrelated to the value of Customer's property or the property of others on Customer's premises.

Article 8: Limitations of Maintenance or Service Obligations

8.1 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 otherwise specifically stated herein; or (b) negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond its control. SIEMENS assumes no responsibility for any service performed on any Covered Equipment other than by SIEMENS or its agents.

8.2 SIEMENS shall not be responsible for loss, delay, injury or damage that may be caused by circumstances beyond its control, including but not restricted to acts or omissions by Customer or its employees or agents, Acts of God, war, civil commotion, acts of government, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, computer viruses, program or system hackers, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials.

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

8.4 SIEMENS shall not be responsible for the removal or reinstallation of replacement valves, dampers, waterflow and tamper switches, airflow stations, and any other permanently mounted integral pipe or air duct component. Additionally, SIEMENS shall not be responsible for any venting or draining of systems.

8.5 WHERE SERVICES INCLUDE EFFORTS BY SIEMENS TO HELP CUSTOMER TO ATTAIN REBATES AND/OR INCENTIVES FROM AVAILABLE SOURCES OR ENERGY/FUEL COST REDUCTION, CUSTOMER ACKNOWLEDGES THAT ANY REBATE/INCENTIVE OR ENERGY/ FUEL COST REDUCTION THAT MAY BE AVAILABLE TO CUSTOMER IS GRANTED BY A THIRD PARTY OUTSIDE THE CONTROL OF SIEMENS. CUSTOMER FURTHER ACKNOWLEDGES THAT WHILE SIEMENS WILL EITHER ASSIST CUSTOMER OR ENDEAVOR ITSELF TO OBTAIN ANY AND ALL REBATES/INCENTIVES OR ENERGY/ FUEL COST REDUCTION AVAILABLE, SIEMENS DOES NOT GUARANTEE THAT IT WILL OBTAIN OR APPLY FOR ALL REBATES/INCENTIVES OR ENERGY/ FUEL COST

REDUCTIONS THAT MAY BE AVAILABLE TO CUSTOMER. FURTHER, CUSTOMER HEREBY RELEASES SIEMENS FROM ANY AND ALL LIABILITY TO CUSTOMER OR ANY THIRD PARTY ARISING FROM SIEMENS' FAILURE TO OBTAIN OR APPLY FOR ANY REBATE/ INCENTIVE OR ENERGY/ FUEL COST REDUCTION THAT COULD IN ANY WAY BE OBTAINED BY CUSTOMER.

Article 9: Hazardous Materials Provisions

9.1 The Services does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Oil or Hazardous Materials. Except as disclosed pursuant to this Article, Customer represents that, to its best knowledge, there is no asbestos or any other hazardous or toxic materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("Hazardous Materials"), present at Customer's Sites where the Services are performed. SIEMENS will notify Customer immediately if it discovers or suspects the presence of any Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on Customer's representations as set forth in this Article. The presence of Hazardous Materials constitutes a change in this Agreement whose terms must be agreed upon by SIEMENS before its obligations hereunder shall continue.

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

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

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

Article 10: Import / Export Indemnity

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

Article 11: Small Business Concern

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

Appendix A. Discounted Labor & Material Pricing

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

Please note: Rates are subject to change.

Effective January 1, 2018

Standard Labor Rates:	Straight Time (M-F 7:30 AM to 4:30 PM) excl. Holidays	Regular Overtime (M-F 4:30 PM to 7:30 AM, & Sat)	Sunday & Holiday
Automation Specialist	\$213.00	\$320.00	\$426.00
Fire / Security Specialist	\$181.00	\$272.00	\$362.00
Engineer / Project Manager	\$231.00	\$347.00	\$462.00
Mechanic	\$250.00	\$375.00	\$500.00
Electrician	\$228.00	\$342.00	\$456.00

Preferred Customer Labor Rates:	Straight Time (M-F 7:30 AM to 4:30 PM) excl. Holidays	Regular Overtime (M-F 4:30 PM to 7:30 AM, & Sat)	Sunday & Holiday
Automation Specialist	\$170.00	\$255.00	\$340.00
Fire / Security Specialist	\$145.00	\$218.00	\$290.00
Engineer / Project Manager	\$185.00	\$278.00	\$370.00
Mechanic	\$200.00	\$300.00	\$400.00
Electrician	\$182.00	\$273.00	\$364.00

Minimum Charge:

- Service involving travel to the customer site will incur a two-hour minimum labor charge and \$1.00 per mile (\$15.00 minimum) charge per visit.
- On-site services will include a \$60 truck charge per visit.
- On-line diagnostic and other remote services, as well as consulting services provided by phone, will be charged at the engineering rate with a one-hour minimum. On-site services will be charged with a two-hour minimum.

Material Rates:

- Customers with a current Service Agreement will receive a discount of 60% off list on standard catalog pricing for Siemens Building Technologies automation and security products except products listed in the catalog with the @ sign which are limited to a 40% discount.
- Customers with a current Service Agreement will receive Trade Net pricing on fire products.