



Amendment No. 1
to
Contract No. NS140000021
for
Apogee Building Automation System Maintenance and Repair Services
between
Siemens Industry, Inc.
and the
City of Austin

1.0 The City hereby exercises an administrative increase for the above-referenced contract in the amount of \$58,000.00.

2.0 The total Contract authorization is recapped below:

Term	Contract Amount for the Term	Total Contract Amount
Basic Term: 6/1/2013 – 5/31/2018	\$150,797.00	\$150,797.00
Amendment No. 2: Administrative Increase – February 2017	\$58,000.00	\$208,797.00

3.0 MBE/WBE goals do not apply to this contract.

4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: Dehart Michael

Digitally signed by Dehart Michael
DN: cn=Michael Dehart, o=City of Austin, ou=City of Austin, email=Michael.Dehart@cityofaustin.org, c=US

Siemens Industry, Inc.
Authorized Representative:
1835-B Kramer Lane, Suite 318
Austin, TX 78758

Date

Signature:

3-2-17

Erin D'Vincent, Senior Buyer Specialist
City of Austin
Purchasing Office

Date



Financial and Administrative Service Department
Purchasing Office
P.O. Box 1088, Austin, Texas, 78767

March 25, 2014

Siemens Industry, Inc.
Cayce McNeill
1835-B Kramer Lane, Suite 318
Austin, TX 78758

Dear Ms. McNeill:

The City of Austin has approved the award and execution of a contract with your company.

Responsible Department:	Austin Police Department
Department Contact Person:	Irene Sanchez
Department Contact Email:	Irene.Sanchez@austintexas.gov
Department Contact Telephone:	512-974-5078
Project Name:	Siemens Apogee
Contractor Name:	Siemens Industry, Inc.
Contract Number:	NS140000021
Contract Period:	6/1/2013 – 5/31/2018
Contract Period Amount	\$150,797
Extension Options:	None
Requisition Number:	8700 13112100085
Solicitation Number:	N/A – Sole Source
Agenda Item Number:	27
Council Approval Date:	2/27/14

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person above.

Sincerely,

Erin D'Vincent
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Siemens Industry, Inc.
For
Apogee Building Automation System Maintenance and Repair Services**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Siemens Industry, Inc. ("Contractor"), having offices at 1835-B Kramer Lane, Suite 318, Austin, Texas 78758.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Cayce McNeill, Phone: (512)339-6991. The City's Contract Manager for the engagement shall be Irene Sanchez, (512)974-5078. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK.

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer attached hereto as Exhibit A in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION:

3.1 **Contract Amount.** The Contractor will be paid as indicated in Exhibit B upon the successful completion of the Scope of Work, as described therein an amount not-to-exceed \$150,797 for all fees and expenses. Payment shall be made upon successful completion of services or delivery of goods as outlines in each Delivery Order.

3.2 **Invoices**

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on

the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Irene Sanchez
Address:	715 E. 8 th Street
City, State, Zip Code	Austin, Texas 78701

3.2.3 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.4 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.5 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective June 1, 2013 and shall remain in effect for a term of sixty (60) months or until the City terminates the Contract.

4.1.1 Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in this paragraph. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

4.2 **Right To Assurance:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any,

specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirement applies.

5.1.1 **General Requirements**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements herein, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage.

5.1.2.4 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 **Contractor To Package Deliverables:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5.3 **Shipment Under Reservation Prohibited:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5.4 **Title & Risk of Loss:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

5.5 **Right Of Inspection And Rejection:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

5.6 **No Replacement Of Defective Tender:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

5.7 **Special Tools & Test Equipment:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

5.8 **Equal Opportunity**

5.8.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.8.2 **Americans With Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.9 **Acceptance of Incomplete or Non-Conforming Deliverables:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.10 **Delays:**

5.10.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.10.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SECTION 6. WARRANTIES

6.1 **Warranty - Price**

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services**: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.

7.2.2.1.1 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event:** The Contractor shall immediately notify the Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this contract;

7.4.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation filed by a member against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Right To Audit**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity:**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.8 **Claims:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

To the Contractor:

Siemens Industry, Inc.

ATTN: Contract Administrator
P O Box 1088
Austin, TX 78767

ATTN: Cayce McNeill, Account Representative
1835-B Kramer Lane, Suite 318
Austin, Texas 78758

7.10 **Confidentiality**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract

shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **SUBCONTRACTORS**

7.21.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-

9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.21.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.21.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.21.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.21.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.21.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.21.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.21.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.21.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten days after receipt of payment from the City.

7.22 **Jurisdiction And Venue:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.23 **Invalidity:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken

provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.24 **Holidays:** The following holidays are observed by the City.

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.25 **Survivability of Obligations:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.26 **Non-Suspension or Debarment Certification:** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

SIEMENS INDUSTRY, INC.

By Michael Bellard
Signature

Name Michael Bellard
Printed Name

Title Buyer Mgr.

Date 3/24/14

CITY OF AUSTIN

By Erin Vincent
Signature

Name Erin Vincent
Printed Name

Title Senior Buyer

Date 3/24/14

List of Exhibits

Exhibit A	Siemens Industry Inc. Offer-Advantage Services
Exhibit B	Milestone Payment Schedule
Exhibit B	City of Austin Non Discrimination Certification

EXHIBIT A
Siemens Industry, Inc.
Scope of Work

Overview

1.1 Executive Summary

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

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

1.2 Customer Objectives

The Austin Police Department built and maintains a state of the art Forensics Lab facility. This building has a Siemens Apogee building automation system that APD had contracted to Siemens to maintain for the last several years. APD desires that Siemens continue to provide maintenance and operator support services that are outlined within this proposal.

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.

1.4 Current Situation

In 2002, the Austin Police department purchased the Siemens Apogee building automation system via its contract with Spaw Glass Construction. Siemens Industry, Inc. Building Technologies Division provided the lab and HVAC airflow control system for this project, in accordance with the relevant plans and specifications, and approved submittals. Presently, the Siemens Apogee building automation system consists of 4 main controllers, one workstation with Apogee Insight Software, and numerous terminal equipment controllers. These devices control the chilled and hot water systems, the air handling equipment, the laboratory airflow controls and room pressurizations systems, as well as numerous fume hoods, fan coil units, and miscellaneous inputs and output control points.

This building is managed by an onsite operator, who utilizes the Siemens Apogee system for control of the building, as well as its numerous systems. There are several critical areas of this building, including DNA labs,

which must be assured of proper airflow controls, and monitoring of these spaces.

Siemens proposes to provide the Austin Police Department with the attached scope of work, which was developed with the assistance of the onsite operator. This agreement will provide the onsite operator with ongoing training and technical support, provide system updates to protect the City's investment, and provide ongoing certifications to document critical environment performance. Preventative maintenance will also be provided as outlined in the proposal, to isolate and identify control devices and components which may need further attention or repairs. Austin Police Department will contract separately for HVAC maintenance, and address repair above and beyond the scope of this proposal, on an as need basis. Austin Police Department will receive discounted time & material rates as a result of having this agreement in place, as outlined in this agreement.

Siemens will provide support from our local Central Texas Branch operation, and assign the team identified in this proposal to support the site.

2 Service Solution

2.1 HVAC CONTROL SERVICES – Automation

Approach

Bronze Level

The Bronze Advantage Services plan is an economical choice for customers who require planned and scheduled inspection services but do not require a guaranteed response time for emergencies. Service calls outside the scope of regularly scheduled inspections can be handled on a time and material basis and will be responded to as soon as staff is available.

Performance Package

Providing a high level of service, the Advantage Services Performance package helps ensure your automation controls, devices, and software systems operate at peak levels, maximizing energy efficiency and maintaining occupant comfort. With the Performance package you can reduce operating costs while extending the life of your equipment. Ideal for customers that want to minimize downtime while outsourcing much of the control system maintenance and service responsibilities, Performance services include rigorous evaluations of your control devices and software in order to address problems before they impact building performance.

Our Performance services package includes preventive maintenance to ensure equipment performance translates into energy savings and increased occupant comfort. Advantage Services specialists conduct systematic checks of control systems, inspecting individual devices and components, and recommending repairs or replacements, if necessary. Our service technicians identify minor problems or reductions in system efficiency, so that your facility operates to maintain energy efficiency and minimizes downtime or interruptions.

Software support and updates are another important aspect of keeping the system functioning optimally and are provided as they are issued, and as applicable to the system. Operator coaching by Siemens provides another layer of confidence by helping your staff identify, verify, and resolve problems and concerns in performing tasks to keep systems running smoothly. During coaching sessions, we address specific issues concerning the use of systems in your facility.

Performance services for energy management systems also include preventive maintenance on related software.

With Advantage Services your control systems will operate reliably, accurately and efficiently. In addition, Siemens

will provide data protection and data recovery for your automation control systems, including routine on-site backups and quick recovery if data is lost or corrupted due to problems such as computer viruses, power outages, hard drive failures or physical damage.

The equipment included as part of this service is listed in the List of Maintained Equipment section of this service agreement.

2.1.1 Account Management

Quality Assurance

Through implementation of our Quality Assurance process, Siemens will ensure that our delivered services are of the highest quality. We will meet with you to discuss our performance and your satisfaction with the quality of service that is being provided under your Advantage Services Agreement. We will discuss the performance of your systems, your facility, and make recommendations for improvements. We can discuss recommendations for changes in the service program to better meet your changing needs. We also augment this program with periodic customer satisfaction telephone surveys of your key staff members.

2.1.2 Customer Support Services

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 provided. The specific responsibilities, goals, work hours, and other associated deliverables of the Onsite Specialist are listed in the Appendix section of this service agreement.

Under this agreement we shall provide (8) hours of annual onsite staffing support, which will be conducted on normal business days and hours, during scheduled visits.

Operator Coaching

Through our individual Operator Coaching, we will review and reinforce learned skills, leading to greater operator knowledge and productivity. This service will insure your operator's gain full utilization of the system implemented in your facility. Siemens will assist your staff in identifying, verifying and resolving problems found in executing daily tasks. During the coaching sessions, we can address log book and system issues, assist your operators in becoming more self-sufficient, and improve the skills of your operators to better meet the needs of your facility and their specific job responsibilities.

Under this agreement we shall provide (8) hours of annual coaching, which will be conducted on normal business days and hours, during scheduled visits. Class size will be limited to only to the number of workstations available at the APD Forensic Lab facilities.

Educational Services – Delivered at Customer Facility

Through Educational Services, your staff will learn how to take advantage of the latest technologies available for your HVAC control system. This training will provide your staff with the knowledge they need to perform their jobs and maintain the highest operating performance for your facility. This knowledge will enable your staff to improve their skills in the use of your systems' features and capabilities. Training will be provided on-site at your facility, on the system and specific control applications implemented at your facility, providing immediate feedback and meeting immediate needs for the engineers in your facility.

Under this agreement we shall provide (8) hours of annual training.

2.1.3 Technical Support Services

Emergency Online/Phone Response: Monday through Sunday, 24 Hours per Day

System and software troubleshooting and diagnostics will be provided remotely to enable faster response to emergency service requests and to reduce the costs and disruptions of downtime. Siemens will respond within 2 hours, Monday through Sunday, 24 hours per day, including Holidays, upon receiving notification of an emergency, as determined by your staff and Siemens. Where applicable, Siemens will furnish and install the necessary online service technology to enable us to remotely dial into your system, through a dedicated telephone line that will be provided by the facility. Where remote access is not available to the system, Siemens will provide phone support to your staff to assist in their onsite troubleshooting and diagnosis. If remote diagnostics

determine a site visit is required to resolve the problem, a technician can be dispatched. On-site dispatch will be contractually covered by online/phone response 24/7, Monday-Sunday and emergency onsite response will be provided Monday-Friday, 8 a.m.-5 p.m. .

Emergency Onsite Response: Monday through Friday, Next Business Day: 8:00AM - 5:00PM

Emergency Onsite Response will be provided to reduce the costs and disruptions of downtime when an unexpected problem does occur. Siemens will provide this service between scheduled service calls and respond onsite at your facility within the next business day, Monday through Friday, during the hours of 8:00 AM – 5:00

PM for critical emergencies or for non-emergency conditions, upon receiving notification of an emergency. Response on Holidays is excluded from this coverage. Critical emergencies, as determined by your staff and Siemens, are failures at a system or panel level that would result in the loss of the operation of an entire section of a building or place the facility at high risk. Non-emergency conditions, as determined by your staff and Siemens, are failures at an individual component level resulting in minimal impact to the overall operation of the facility. Non-emergency conditions, as determined by your staff and Siemens, may be incorporated into the next scheduled service call.

Preventive Maintenance

We will provide preventive maintenance in accordance with a program of routines as determined by our experience, equipment application and location. The list of field panels and/or devices, included under this service, is identified in the List of Maintained Equipment in this service agreement. Automation controls can

drift out of calibration with changes in HVAC component performance characteristics, building use, and climatic conditions. This service will extend equipment life, reduce energy consumption, and reduce the risk of costly and disruptive breakdowns.

Unitary and Terminal equipment can, by their nature, under-perform due to a number of reasons; mechanical, electrical, control settings, building use and climatic conditions. Through this service, we can pinpoint which systems have possible air flow or temperature control problems. Reports are generated on those terminal equipment controllers, which can then be investigated and resolved. The equipment to be included as part of this service, is listed in the List of Maintained Equipment in this service agreement.

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.

Software Maintenance

Siemens will address any programming errors, failed points, and points in alarm, unresolved points or points in operator priority, both at the front end workstation and at the field panel. We will perform this service using onsite visits and / or remote services (if applicable).

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.

2.1.4 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, or on an at least approximate annual basis. Included is onsite training, to be conducted annually once the software update has been completed, 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.)

Firmware Updates

We will provide you with firmware and documentation updates to your existing APOGEE field panels upon development. Onsite training, to be performed annually once the Firmware updates have been performed,

will 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. Field panels included under this service are itemized in the List of Maintained Equipment. (Upgrades to Field Panel hardware, processors, memory boards, and related hardware are excluded unless specified elsewhere.)

2.2 LIFE SCIENCES

2.2.1 Compliance Services

Bio-Safety Cabinet Certification

In support of your commitment to provide a safe environment for laboratory personnel, comply with the OSHA laboratory and other regulatory standards, we will conduct annual testing and certification of biological safety cabinets. We will certify the performance of the biological safety cabinets in accordance with NSF-49 standards. This service includes HEPA filter leak tests, down flow velocity profile, inflow velocity, visual smoke test, ultraviolet lamp intensity, task lighting intensity, sound levels, and cabinet electrical safety. (NOTE: If HEPA filters are found to be damaged during certification, or other maintenance is required, the bio-safety cabinet (BSC) must be decontaminated on a time and material basis.) A written report will be provided with a summary of BSC performance and an explanation of any trends encountered. Service personnel are NSF accredited. Siemens is not responsible for the safety of the lab occupants beyond the completion of test results and the documentation of recommendations. The safety of the facilities occupants is the sole responsibility of the health and safety officers of the organization and not Siemens. The frequency of this service is itemized in the List of Maintained Equipment in this service agreement.

2.2.2 Technical Support Services

Chemical Fume Hood Face Velocity Test

In support of your commitment to provide a safe environment for laboratory personnel, comply with the OSHA laboratory and other regulatory standards, we will conduct annual testing and certification of your chemical fume hoods. The purpose of the testing is to verify the hood's ability to contain hazardous chemical vapors. This test will be performed in accordance with the SEFA-1 procedure and will include average face velocity measurement. A written report will be provided with a summary of hood performance and an explanation of any trends encountered. Service personnel are trained annually in the operation and use of test and safety equipment. Siemens is not responsible for the safety of the lab occupants beyond the completion of test results and the documentation of recommendations. The safety of the facilities occupants is the sole responsibility of the health and safety officers of the organization and not Siemens. The frequency of this service is itemized in the List of Maintained Equipment in this service agreement.

3 Service Implementation Plan

3.1 HVAC Control Services – Automation On-site Response Time and Call Windows

	Bronze
Attribute	
Emergency Online/Phone Response	Monday-Sunday, 24/7 availability
Response time - onsite for critical components	Next Business Day, Monday-Friday, 8 a.m.-5 p.m. billable
Response time - onsite for non-emergency	Next Business Day, Monday-Friday, 8 a.m.-5 p.m. billable
Hours of Service	Monday-Sunday, 24/7
Window for Call Handling	24 x 7 – Availability to take your call

*Labor and material costs for troubleshooting problems and repairing or replacing components are handled separately. These costs can be billable or included within your Repair and Replacement Coverage. See [List of Maintained Equipment](#) to view your current Repair and Replacement Coverage.

SIEMENS

Equipment Category	Equipment SubCategory	Equipment	Qty	Serial Number	Location	Mfg/Model
Control Systems - Summary Level	Data Protection & Data Recovery	Insight 3.X B/U on-site	1	N/A	Insight Workstation	Apogee Insight V3.12
Services (Times per year): Data Protection & Recovery Services (2)						

Control Systems - Summary Level	Network Maintenance	NPDT - P2 - ALN	1	N/A	Throughout Building	N/A
Services (Times per year): Network Maintenance (1)						

System 600 FLN	System 600 FLN	TEC - Electronic Outputs using CAP	132	N/A	Insight Workstation	Apogee Insight V3 12
Services (Times per year): Controller Analysis Program (1)						

3.3 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:

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

Jeff Ansell - 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.

Ted Reynolds - Primary Service Specialist is responsible for performing the ongoing service of your system.

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

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

Joanne Nazaroff - Service Coordinator is responsible for scheduling your planned maintenance visits, handling your emergency situations by taking the appropriate action, and is responsible for all service invoicing including both service agreement and service projects.

Appendix A. Discounted Labor & Material Pricing

Effective from	April 23, 2013	through	December 31, 2013
Standard Labor Rates:	*Straight Time (M-F 8 AM to 5 PM) excl. Holidays	**Regular Overtime (M-F 5 PM to 8 AM, & Sat)	***Sunday & Holiday
Automation Specialist	\$170.00 Plus \$60.00 vehicle charge	\$255.00 Plus \$60.00 vehicle charge	\$340.00 Plus \$60.00 vehicle charge
Fire Alarm Specialist	\$155.00 Plus \$60.00 vehicle charge	\$232.50 Plus \$60.00 vehicle charge	\$310.00 Plus \$60.00 vehicle charge
Electrical Specialist	\$155.00 Plus \$60.00 vehicle charge	\$232.50 Plus \$60.00 vehicle charge	\$310.00 Plus \$60.00 vehicle charge
Security Specialist	\$155.00 Plus \$60.00 vehicle charge	\$232.50 Plus \$60.00 vehicle charge	\$310.00 Plus \$60.00 vehicle charge
Engineer	\$185.00 Plus \$60.00 vehicle charge	\$277.50 Plus \$60.00 vehicle charge	\$370.00 Plus \$60.00 vehicle charge
Mechanic	\$105.00 Plus \$60.00 vehicle charge	\$157.50 Plus \$60.00 vehicle charge	\$210.00 Plus \$60.00 vehicle charge

As a Service Agreement customer with an active Advantage Services Contract, you will receive the benefit of a discount from our standard labor rates and material prices.

Service Agreement Rates:	*Straight Time (M-F 8 AM to 5 PM) excl. Holidays	**Regular Overtime (M-F 5 PM to 8 AM, & Sat)	***Sunday & Holiday
Automation Specialist	\$125.00 Plus \$60.00 vehicle charge	\$187.50 Plus \$60.00 vehicle charge	\$250.00 Plus \$60.00 vehicle charge
Fire Alarm Specialist	\$115.00 Plus \$60.00 vehicle charge	\$172.50 Plus \$60.00 vehicle charge	\$230.00 Plus \$60.00 vehicle charge
Electrical Specialist	\$135.00 Plus \$60.00 vehicle charge	\$202.50 Plus \$60.00 vehicle charge	\$270.00 Plus \$60.00 vehicle charge
Security Specialist	\$115.00 Plus \$60.00 vehicle charge	\$172.50 Plus \$60.00 vehicle charge	\$230.00 Plus \$60.00 vehicle charge
Engineer	\$135.00 Plus \$60.00 vehicle charge	\$202.50 Plus \$60.00 vehicle charge	\$270.00 Plus \$60.00 vehicle charge
Mechanic	\$95.00 Plus \$60.00 vehicle charge	\$142.50 Plus \$60.00 vehicle charge	\$190.00 Plus \$60.00 vehicle charge

Note 1. A \$60.00 truck charge will be applied to all service calls that require a site visit.

Note 2. On-line service will be billed at a two-hour minimum for all Non service contract customers.

Note 3. Service involving travel to the customer site will incur a **four-hour minimum** labor charge for non-contract customers. Contract customers will incur a **two-hour minimum** for work that falls outside of contract requirements.

Note 4. Mileage is billable at \$0.50/mile after 60 miles one way.

* Rate covers portal to portal Monday through Friday, 8:00 am to 5:00 pm

**Rate covers portal to portal Monday through Friday, 5:00 pm to 8:00 am + Saturday, 12:00 am to 11:59 pm

***Rate covers portal to portal Sundays, New Year's Eve, New year's Day, Memorial Day, Independence Day, Labor Day, and Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day, and the Day After Christmas.

❖ Austin

❖ San Antonio

❖ Toll-Free

Appendix B:

APD will issue a separate PO's for additional time and materials on an as needed basis, to be provided to this facility. These amounts are not included in the contract rates. They include \$10,000.00 for parts and \$5,000.00 for labor. These added services and parts will be invoiced as the discounted rates shown in the table above.

EXHIBIT B

Milestone Payment Schedule:

Services shall be provided at 812 Springdale, Austin, TX 78702.

Siemens Industry, Inc. shall provide the services as outlined in the attached Scope of Work dated 02/13/2014 and the attached terms and conditions.

Duration: This agreement shall remain in effect for an Initial Term of 5 Years beginning 06/01/2013 and from year to year thereafter.

Investments:

Year 1	06/01/2013 to 05/31/2014	\$25,323 annually	paid \$6,330.75 quarterly in advance
Year 2	06/01/2014 to 05/31/2015	\$26,210 annually	paid \$6,552.50 quarterly in advance
Year 3	06/01/2015 to 05/31/2016	\$27,127 annually	paid \$6,781.75 quarterly in advance
Year 4	06/01/2016 to 05/31/2017	\$28,077 annually	paid \$7,019.25 quarterly in advance
Year 5	06/01/2017 to 05/31/2018	\$29,060 annually	paid \$7,265.00 quarterly in advance

**City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas
Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin
Minimum Standard Non-Discrimination in Employment Policy:**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 24th day of March, 2014

CONTRACTOR

Authorized Signature

Title

Siemens Industry
Michael Dettl
3/24/14



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 11/08/2013

DEPT: Police

TO: Purchasing Officer or Designee

FROM: Irene Sanchez

BUYER: Terry Nicholson

PHONE: (512) 974-5078

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☐ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of-way
 - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

This request is for an annual agreement for the existing APGOEE Insight software and firmware. In 2002 APD purchased the Siemens Apogee system for use in the APD Springdale facility via its construction contract with Spaw Glass Construction. Siemens Bldg Tech provided the lab and HVAC airflow control systems. The Apogee system consists of multiple devices which control the controllers, fume hoods and fan coil units, and monitoring of these spaces. This agreement shall provide ongoing training, tech support, system updates, ongoing certifications to document critical environment performance, repair parts and service for these controls. Only Siemens can provide maintenance or repair on their APOGEE system.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

- \$150,797.00
6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Siemens Building Technology which will cost approximately \$140,323.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

[Signature] 11/12/13
Originator Date

Approved
Certification

[Signature] 11/25/13
Department Director or designee Date

[Signature] 11/27/13
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(If applicable)

[Signature] 12-18-13 SA
Buyer Date Manager Initials

Exemption Authorized
(If applicable)

Purchasing Officer or designee Date

02/26/2013



November 6, 2013

City of Austin – APD Forensics Lab
812 Springdale Rd.
Austin, Texas 78702

Attn: Irene Sanchez
Contract Compliance Specialist Senior
APD Procurement & Contract Services

Subject: City of Austin – APD Forensics Lab
Siemens Industry, Inc.
HVAC – Building Automation Control System

Dear Ms. Sanchez,

Siemens Industry, Inc. is the sole source provider for the Siemens Apogee building automation system installed at APD Forensics Lab – located at 812 Springdale Rd. We do not license distributors, or authorize any other companies to provide the services we are to provide to APD Forensics Lab per the Siemens Apogee building automation system.

Please contact me if you need additional information or details on this or any other matter.

Best Regards,

Cayce McNeill
Service Account Executive
Siemens Industry, Inc.

Siemens Industry, Inc.
1835 Kramer Lane
Bldg B, Suite 180
Austin, TX. 78758

Phone (512) 339-6991
fax (512) 339-3617

Advantage Services

Appendix B:

APD will issue a separate PO's for additional time and materials on an as needed basis, to be provided to this facility. These amounts are not included in the contract rates. They include \$10,000.00 for parts and \$5,000.00 for labor. These added services and parts will be invoiced as the discounted rates shown in the table above.