COUNTY AGENDA REQUEST

Department:	Buildings and Grounds	Presenter(s):	Greg Ownby
Meeting Date:	Thursday, April 11, 2013	Type of Request:	New Business

Wording for the Agenda:

Consideration of staff's request to combine the current four (4) technology service agreements with Siemens Buildings Automation Systems into one agreement, and authorization for the Chairman to sign said agreement.

Background/History/Details:

On June 28, 2012, the Fayette County Board of Commissioners approved a three-year agreement with Siemens that is set to expire on June 30, 2015.

Currently, Fayette County has four agreements Siemens for four separate facilities: the Justice Center, the Jail, the Annex, and the Library. The agreements provide for the technology controls for HVAC and environmental controls for each of the four facilities.

Currently, the combined annual obligation for the County is $179,185.00. By combining these agreement and converting the Server License to client lowers this overall obligation to $168,962.00m saving $10,223.00 over the life of the agreement.

What action are you seeking from the Board of Commissioners?

Approval of staff's request to combine the current four (4) technology service agreements with Siemens Buildings Automation Systems into one agreement, and authorization for the Chairman to sign said agreement.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance		Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

Fayette County Government Buildings - Siemens Service Agreement & Control Panel Upgrades					4/2/2013
Contract cycle end date (note these are annual costs for comparison purposes)	6/30/2013	12/30/2013	6/30/2014	12/30/2014	6/30/2015
Library	$8,948	$8,948	$9,520	$9,520	$10,120
Justice	$23,748	$24,732	$24,732	$25,721	$25,721
Jail	$19,464	$20,639	$20,639	$21,464	$21,464
Annex	$15,588	$16,233	$16,233	$16,882	$16,882
Current price as separate contracts	$67,748	$70,552	$71,124	$73,587	$74,187
New Proposed Price for combing 4 contracts	$66,064	$68,180	$68,180	$71,039	$71,039
New Deduct with Library server license converted to client license	-$1,300.00	-$1,300.00	-$1,300.00	-$1,339.00	-$1,339.00
New Price combining contracts with Library server conversion	$64,764	$66,880	$66,880	$69,700	$69,700

Advantage Services®

Agreement for Fayette Co Government Buildings
Courthouse, Jail, Jail Annex and Library

March 28, 2013

SIEMENS

Advantage Services

Agreement for Fayette Co Government Buildings

March 28, 2013

Table of Contents

Advantage Services 1

1 Overview 3

1.1 Executive Summary 3

1.2 Current Situation & Recommended Next Steps 3

1.3 Siemens Capabilities & Commitment to Our Customers 3

2 Service Solution 4

2.1 HVAC CONTROL SERVICES – Automation 4

2.1.1 Customer Support Services 4

2.1.2 Technical Support Services 4

2.1.3 System Performance Updates & Upgrades 5

3 Service Implementation Plan 6

3.1 Maintained Equipment Table 6

3.2 Service Team 7

4 Siemens Industry, Inc. 8

4.1 Signature Page and Investment By and Between: 8

4.2 Terms And Conditions 9

Appendix A. Discounted Labor & Material Pricing 12

Appendix B. Amendment to Terms and Conditions 13

1 Overview

1.1 Executive Summary

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

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

1.2 Current Situation & Recommended Next Steps

In an effort to lower contract costs Fayette County facilities department wishes to combine the (4) separate service agreements currently under contract including the Justice Center, Jail, Jail Annex and Library. These contracts include comprehensive coverage of Siemens controllers and end devices as indicated herein.

Collectively the (4) facilities include (15) Siemens controllers ((3) MBC and (12) MEC series). Due to advancing technology these controllers and their respective replacement parts are no longer manufactured. We have committed to providing comprehensive coverage of these controllers until the end of this contract which is June 30, 2015.

We recommend upgrading these controllers with new state of the art PXCM series. A migration plan proposal for this work has been provided under a separate document. Should you choose not to upgrade these controllers comprehensive coverage will either be discontinued or the cost to provide coverage will increase appreciably. A budget estimate for extended coverage beyond June 2015 is included under separate document. A firm cost can be established in January 2015.

1.3 Siemens Capabilities & Commitment to Our Customers

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

2 Service Solution

2.1 HVAC CONTROL SERVICES – Automation

2.1.1 Customer Support Services

Scheduled Visits

Under this agreement we shall provide (2) 8-hour visits for (6) months of the year and (1) 8-hour visit the remaining (6) months of the year for a total of (18) 8-hour visits. During these visits we will complete the preventive maintenance tasks described herein. After completion of the PM task owner may direct the specialist to complete small tasks within the allotted monthly scheduled visit. This work shall be scheduled in advance with the service account engineer and/or service coordinator.

2.1.2 Technical Support Services

Emergency Onsite Response: Monday through Sunday, 24 Hours per Day

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 4 hours for critical emergencies, or within 24 hours for non-emergency conditions, Monday through Sunday, 24 hours per day, including Holidays, upon receiving notification of an emergency. 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.

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.

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.

Repair & Replacement Services

To reduce the unexpected costs of unbudgeted repairs, Siemens will provide labor and / or materials to repair or replace failed or worn components. Prior to beginning any repair or replacement, Siemens will troubleshoot the system to diagnose your system's problem. Components that are suspected of being faulty may be repaired or replaced in advance to minimize the occurrence of system interruptions. Equipment covered under this agreement is itemized on the List of Maintained Equipment, unless otherwise noted. Items not covered will be brought to the owner's attention.

2.1.3 System Performance Updates & Upgrades

Software Support and Updates

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

Workstation Upgrades

Workstation technology (personal computers, monitors, printers...) continued to evolve quickly, becoming obsolete every few years. Through Workstation Upgrades, you will extend the life of your HVAC Control System investment, without using capital investment dollars to keep your workstation technology current. As part of this service, we will provide the use of a workstation and will replace the technology every 3 years within the term of this contract. Replacement technology will conform to Siemens current standard configuration based on the facility's existing revision of Apogee or Pre-Apogee software and firmware. The workstation included under this service, along with specifications for that equipment, is itemized in the List of Maintained Equipment.

3 Service Implementation Plan

3.1 Maintained Equipment Table

Equipment Served	Total Quantity	Replace/ Repair Coverage	Upgrade / Year	PM / Year
Insight Server License	1	y	1	1
Insight Client License	2	y	1	1
System Backup	2	n/a	n/a	2
PC and Monitor	3	y	**	1
MBC Modbus Driver (switchgear)	1	y	n/a	1
MBC controler	2	y	n/a	1
MEC controller	11	y	n/a	1
MEC with Expansion	1	y	n/a	1
FLN controller	1	y	n/a	1
DPU	5	y	n/a	1
Digital Energy Monitor	6	y	n/a	1
TEC (VAV)	70	y	n/a	1
TEC (PIU)	110	y	n/a	1
TEC (RTU/MAU)	32	y	n/a	1
Room Temp Sensor	208	y	n/a	1
Room RH Sensor	2	y	n/a	1
Duct Temp Sensor (PIU)	112	y	n/a	1
Duct Temp Sensor (RTU/MAU)	194	y	n/a	1
Well Temp Sensor	4	y	n/a	1
Diff Pressure Sensor AHU's (air)	29	y	n/a	1
Diff Pressure Sensor HW Plant (water)	1	y	n/a	1
CO2 Sensor	26	y	n/a	1
OA Sensor	2	y	n/a	1
Damper Actuators (Terminal Units)	179	y	n/a	1
Low Temp Detector	11	y	n/a	1
CHW/HW Actuator	2	y	n/a	1
Trunk Interface	4	y	n/a	1

** PC's will be upgraded in the month of May 2015

3.2 Service Team

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

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

Your Assigned Team of Service Professionals will include:

Mark A. Sherry - Sales Account Representative manages the overall strategic service plan based upon your current and future service requirements.

Everette Winkles - 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.

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

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

4 Siemens Industry, Inc.

4.1 Signature Page and Investment By and Between:

Siemens Industry, Inc.
1745 Corporate Drive #240
Norcross, GA 30093
Mark A. Sherry
678-646-7476

Fayette Co Justice Center - Courthouse
One Center Drive
Fayetteville, GA 30214

Services shall be provided at Courthouse, Jail and Jail Annex located at One Center Drive and the county Library at 1821 Heritage Parkway, Fayetteville, GA 30214. Siemens Industry, Inc. shall provide the services as outlined in the attached proposal and the attached terms and conditions.

Billing Summary

Date of Agreement	Annual Cost	(4) Quarterly Payments of
4/1/2013 to 6/30/2013	$64,764.00	$16,191.00
7/1/2013 to 6/30/2014	$66,880.00	$16,720.00
7/1/2014 to 6/30/2015	$69,700.00	$17,425.00

Applicable sales taxes are included in the price of this proposal. Prices quoted in this proposal are firm for 90 days.

Proposal accepted by:

_____
Print Name and Title

_____
Signature Date

P.O.#_____

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

Or

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

Proposal submitted by:
Mark A. Sherry
Sr. Account Executive
Siemens Industry, Inc.

_____
Signature Date

Mark Reams

Area Service Sales Manager

_____
Signature Date

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

4.2 Terms And Conditions

SERVICE TERMS AND CONDITIONS (REV. 10/09)

Article 1: General

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

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

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

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

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

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

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

Article 2: Covered Equipment

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

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

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

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

Article 3: Services by SIEMENS

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

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

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

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

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

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

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

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

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

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

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

Article 4: Responsibilities of Customer

4.1 Customer, without cost to SIEMENS, shall:

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

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

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

(d) Furnish SIEMENS with all available information pertinent to the Services;

(e) Obtain and furnish to SIEMENS all approvals, permits and consents from government authorities and others as may be required for performance of the Services except for those SIEMENS has expressly agreed in writing to obtain;

(f) Maintain the Services site in a safe condition; notify SIEMENS promptly of any site conditions requiring special care, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such conditions

(g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Services, except such notices SIEMENS has expressly agreed in this Agreement to give;

(h) Provide SIEMENS with Material Safety Data Sheets (MSDS) conforming to OSHA requirements related to all Hazardous Materials at the site which may impact the Services;

(i) Furnish to SIEMENS any contingency plans related to the site;

(j) Furnish the specified operating environment, including without limitation suitable clean, stable, properly conditioned electrical power and other utilities;

(k) Maintain all Covered Equipment in good working order in compliance with all applicable laws and service, repair and replace all Covered Equipment as necessary and

(l) Perform inspections and tests as indicated in the Life Safety System Logbook and record same in the Life Safety System logbook

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

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

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

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

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

Article 5: Compensation

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

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

5.3 SIEMENS shall invoice Customer as provided in this Agreement, or if not expressly provided, then on an annual basis prior to the Start Date and annually thereafter on the anniversary of such Start Date. Invoices are due and payable net cash upon receipt unless Customer has applied and been approved for credit with SIEMENS, in which case the invoice is payable within 30 calendar days of receipt by Customer or as otherwise set forth in this Agreement. If any payment is not received when due, SIEMENS may deem Customer to be in breach hereof and may enforce any remedies available to it hereunder or at law, including without limitation, acceleration of payments and suspension or termination of Services at any time and without notice, and shall be entitled to compensation for Services previously performed and costs reasonably incurred in connection with the suspension or termination. In the event that any payment due hereunder is not paid when due, Customer agrees to pay, upon demand, as a late charge, one and one-half percent (1.5%) of the amount of the payment per month, limited by the maximum rate permitted by law, of each overdue amount under this Agreement. Customer shall reimburse SIEMENS' costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement. If Customer disputes any portion or all of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice. The undisputed portion shall be paid when due, and interest on any unpaid portion shall accrue as aforesaid from the date due until paid, to the extent that such amounts are finally determined to be payable to SIEMENS.

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

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

Article 6: Changes, Delays, Excused Performance

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

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

Article 7: Warranties; Disclaimers; Limitation of Liability

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

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

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

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

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

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

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

Article 8: Limitations of Maintenance or Service Obligations

8.1 SIEMENS will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of: (a) normal wear and tear, non-replaceable or obsolete parts of the Equipment, including but not limited to ductwork, shell and tubes, heat exchangers, coils, thermostats, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc. unless otherwise specifically stated herein; or (b) negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or aid, failure to comply with manufacturer's operating and environmental requirements, Acts of God or other reasons beyond its control. SIEMENS assumes no responsibility for any service performed on any Covered Equipment other than by SIEMENS or its agents.

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

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

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

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

Article 9: Hazardous Materials Provisions

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

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

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

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

Article 10: Import / Export Indemnity

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

Article 11: Small Business Concern

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

Appendix A. Discounted Labor & Material Pricing

CONFIDENTIAL & PROPRIETARY

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

Siemens Industry, Inc., Building Technologies, Atlanta Branch

Contract Customers	Regular hrs Mon-Fri	Overtime	Sun. and/or Holidays
Automation/Security Spec	$115.00	$172.50	$230.00
Fitter/Mechanic	$98.50	$147.75	$197.00
Fire Specialist	$110.00	$165.00	$220.00
Electrical Service Technician	$160.00	$240.00	$320.00
Account Engineer/PM	$165.00	$247.50	$330.00

Non-contract Customers	Regular hrs Mon-Fri	Overtime	Sun. and/or Holidays
Automation Spec	$155.00	$232.50	$310.00
Security Spec	$145.00	$217.50	$290.00
Fitter/Mechanic	$120.50	$180.75	$241.00
Fire Specialist	$140.00	$210.00	$280.00
Electrical Service Technician	$200.00	$300.00	$400.00
Account Engineer/PM	$206.50	$309.75	$413.00

Please note: Rates effective April 1, 2013. (Rates are subject to change)

- **A $50 minimum daily vehicle trip charge will be added to all service calls requiring an onsite visit.**
- ~~**A minimum onsite service charge equal to 4 hours of labor at the appropriate rate will apply.**~~
  ~~**A minimum online service charge equal to 2 hours labor at the appropriate rate will apply.**~~
- **Regular time is from 8:00am to 5:00pm Monday through Friday.**
- **Mileage will be billable at the rate of $0.80 per mile. Service calls within a 50 mile radius of Atlanta's City Hall will be limited to a mileage charge of $37.50.**
- **Automation Material Rates: Standard Pricing Applies: APOGEE – List x 0.6, Field Devices – List x 0.5.**
- **Fire Life Safety Material Rates: Customers with an active Service Agreement will benefit from a discount off the standard pricing for Siemens Building Technologies products in the Life Safety Pricing Guide. Customers with a service agreement will receive "Trade Net" pricing. Customers without a Service Agreement will pay "User Net" pricing.**
- **Payment Terms: COD/Credit Cards/Net 30 days**
- **For Credit Card Payments, please contact our office @ 770-935-2000 and ask for a FBA Credit Collections Representative.**

Revised Note: We agree to a 2 hour minimum onsite charge and 1 hour minimum online service charge.

Appendix B. Amendment to Terms and Conditions

4.2A Amendment to Terms and Conditions

The following terms and conditions shall supersede conflicting provisions in Section 4.2 of this Agreement:

1.2 This Agreement shall be governed by and enforced in accordance with the laws of the State of Georgia. Any litigation arising under this Agreement shall be brought in the State of Georgia. TO THE EXTENT ALLOWED BY LAW, THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL ON MATTERS ARISING OUT OF THIS AGREEMENT.