

**Contract # MA-060-12010125 For
Energy Management System for Heating and Cooling Maintenance**

This Agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between, Siemens Industry, Inc. with a place of business at 10775 Business Center Drive, Cypress, CA 90630; hereinafter referred to as "Contractor," and the County of Orange, a political subdivision of the State of California, Sheriff Department with a place of business at 320 N. Flower Street, 2nd Floor, Santa Ana, CA 92703, hereinafter referred to as "County," which may be referred individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract for the **Energy Management System for Heating and Cooling Maintenance**.

NOW, THEREFORE, the Parties mutually agree as follows:

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, including Attachments A, B, C, Exhibit 1 (Blank Child Support Enforcement Certification Requirements Form), Exhibit 2 (Blank EDD Reporting Requirement Compliance Form) and Exhibit 3 (Blank Job Tool Inventory List), which have been incorporated, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of equipment, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent".
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance by the County and in accordance to Attachment C, Compensation and Pricing.

- G. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any Software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion, and coordination of all documentation and other goods/services

furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

- P. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees"), harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

INSURANCE PROVISIONS

Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence
	\$2,000,000 aggregate

Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "P" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek

advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.

- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provisions of this Contract, or where any provisions hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- FF. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Additional Terms and Conditions

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure and receive goods/services from the Contractor as set forth in the Scope of Work, which is attached hereto as Attachment A and incorporated by this reference.
2. **Term of Contract:** This Contract shall commence on the date signed by the County of Orange below or on September 12, 2011 if approved by County's Board of Supervisors in a minute order, and shall be effective

for one (1) year from that date, unless otherwise terminated by County. Contract may be renewed for up to three (3) additional one-year consecutive terms, upon mutual agreement of both Parties. Each renewal of this Contract may require approval by the County Board of Supervisors. The County does not have to give reason if it elects not to renew.

3. **Precedence:** The Contract documents will consist of this Contract including its Attachments, and Exhibits. In the event of a conflict between the Contract documents, the order of precedence shall be this Contract, then the Attachments and Exhibits.
4. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being made by the County of Orange Board of Supervisors for each year during the term of this Contract. If such appropriations are not forthcoming, the Contract will be terminated without penalty. Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
5. **Conflict of Interest (Contractor):** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that result in a conflict with the best interest of the County. This obligation shall apply to the Contractor, the Contractor's employees, agents, relatives, sub tier Contractors and third parties associated with accomplishing the work hereunder.

Contractor's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the best interest of County.

6. **Contractor Work Hours and Safety Standards:** Contractor shall ensure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and County safety and health regulations and laws.
7. **County and Contractor Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

Contractor shall appoint a project manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. Contractor's project manager shall be subject to approval by the County and shall not be changed without the written consent of the County's project manager. The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager from providing services to the County under this Contract. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's project manager. The County is not required to provide any reason, rationale or factual information in the event it elects to request the removal of Contractor's project manager from providing services to the County under this Contract.

8. **Contractor Personnel:** In addition to the rights set forth in paragraph 7, the County's project manager shall have the right to require the removal and replacement of any of Contractor's personnel from providing services to the County under this Contract. The County's project manager shall notify the Contractor's project manager in writing of such action. The Contractor shall accomplish the removal of the specified personnel within one (1) calendar day after written notice by the County's project manager. The County is not required to provide any reason, rationale or factual information in the event it elects to request the removal of any of Contractor's personnel from providing services to the County under this Contract.
9. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
10. **Reprocurement Costs:** In the case of default by Contractor, the County may procure the service from other

sources and, if the cost is higher, Contractor will be held responsible to pay the County the difference between the Contract cost and the price paid. The County may make reasonable efforts to obtain the prevailing market price at the time such goods and services are rendered. This is in addition to any other remedies available under law.

11. **County of Orange Child Support Enforcement (Exhibit 1 – Blank County of Orange Child Support Enforcement Certification Requirements Form):** In order to comply with the child support enforcement requirements of the County, within ten days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish the required Contractor data and certifications to the agency/department deputy purchasing agent.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
12. **EDD Independent Contractor Reporting Requirements (Blank Exhibit 2):** California law requires businesses and government entities to report specified information regarding independent Contractors to the Employment Development Department (EDD). This information will be used by the EDD to assist in locating parents who are delinquent in their child support payments. An independent Contractor is defined as a sole proprietor who is not an employee of the business or government entity for which that individual is performing a service and who received compensation and/or executes a Contract for services performed or that business or government entity either in or outside of California.
13. **Authorization Warranty:** The Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.
14. **Notices:** Any and all notices permitted or required to be given hereunder shall be deemed duly given (1) upon actual delivery, if delivery is by hand; or (2) upon delivery by the United States mail if delivery is by postage paid registered or certified return receipt requested mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time.

For Contractor:

Siemens Industry, Inc.
10775 Business Center Drive
Cypress, CA 90630
Attn: Clifford Tracy Gannaway
Phone: 714-816-1422

For County:

County of Orange
Sheriff Department/Purchasing Services Bureau
320 N. Flower Street, 2nd Floor
Santa Ana, CA 92703
Attn: Yvette Torres, Buyer
Ph: 714-568-5791
Fx: 714-834-6411

15. **Data – Title to:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County.

All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

16. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
17. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned buyer.
18. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

19. **Disputes-Contract:** A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:
 - a. The Contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating the that demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's

contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction.

20. **Substitutions:** The Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.

21. **Security Requirements:**

A. Background Checks:

1. All personnel to be employed in performance of the work under this contract shall be subject to background checks and clearance prior to their use at all Sheriff's Facilities.
2. Contractor shall prepare and submit a "Contractor Security Clearance" information form to the Contract Administrator for all persons who will be working on or who will need access to the facility.
3. "Contractor Security Clearance" information forms shall be submitted at least five (5) County working days prior to the start of work or prior to the use of any person subsequent to the start of work.
4. "Contractor Security Clearance" information forms will be provided by the Contract Administrator upon request, and will be screened by the Sheriff's Department.
5. "Contractor Security Clearance" information forms shall be thoroughly and accurately complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.
6. No person shall be employed on this work who has not received prior clearance from the Sheriff's Department.
7. The Sheriff's Department need not give a reason clearance is denied.

B. Performance Requirements:

Contractor shall ensure that:

1. All vehicles parked on site shall be locked and thoroughly secured at all times.
2. All tools and materials shall remain in its possession at all times and shall never be left unattended.

All lost or misplaced tools or materials shall be reported **immediately** to the escort or Control in Sheriff's facilities.

3. All materials, large and small, from removal operations or new construction (especially those materials that could be used to inflict injury such as nails, wire, wood, etc.) shall be continuously cleaned up as work progresses.
4. All work areas shall be secured prior to the end of each work day.
5. Workmen shall have no contact, either verbal or physical, with internees in the facility. Specifically:

- a. Do not give names or addresses to internees.
- b. Do not receive any names or addresses from internees.
- c. Do not disclose the identity of any internee to anyone outside the facility.
- d. Do not give any materials to internees.
- e. Do not receive any materials from internees (including materials to be passed to another individual or internee).

Failure to comply with these requirements is a criminal act and can result in prosecution.

- 6. Workmen do not smoke or use profanity or other inappropriate language while on site.
- 7. Workmen do not enter the facility while under the influence of alcohol, drugs or other intoxicants and do not have such materials in their possession.
- 8. Workmen plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all tools, equipment and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.

// //

// //

Signature Page

The Parties hereto have executed this Contract MA-060-12010125 for Energy Management System for Heating and Cooling Maintenance on the dates shown opposite their respective signatures below.

Contractor: Siemens Industry, Inc.

By: _____ Title: _____

Print Name: _____ Date: _____

Contractor*: Siemens Industry, Inc.

By: _____ Title: _____

Print Name: _____ Date: _____

*If a corporation, the document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurers. **In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.**

County Of Orange

A political subdivision of the State of California



Sheriff-Coroner Department

By: _____ Title: _____

Date: _____

Approved by the Board of Supervisors on: _____

Approved as to Form
Office of the County Counsel

by _____
Deputy

ATTACHMENT A

Scope of Work

1.01 SCOPE OF SERVICES:

Contractor shall provide preventive maintenance, repair and full parts coverage to the Energy Management System Hardware and Software located at the Theo Lacy facility, 501 The City Drive S, Orange, CA 92868. Services are as follows:

1. System Performance Services On-Line / On-Site

- a. On-Line systems troubleshooting and Diagnostics: Contractor shall provide system and software troubleshooting and diagnostics via modem. Contractor shall furnish, and install the necessary on-line service equipment to enable Contractor's local office to remotely log-on to the County's system Insight Server via regular voice grade dial up phone line.

2. Software Services

- a. Apogee Upgrades: Contractor shall upgrade the Apogee software one (1) time per year.
- b. Insite® Graphics Backup: Contractor shall backup the insight graphics database four (4) times per year. In the event of hardware failure, Contractor shall reload the graphics database and system file from the Contractor's current backup copy.
- c. Field Panel Database/System File Backup: Contractor shall backup each field panel database and system file four (4) times per year. In the event of memory loss, Contractor shall reload the database from Contractor's current backup copy.
- d. Field Panel Database/System File Backup: Contractor shall perform field panel diagnostics, analyze the results and make recommendations to optimize building control performance within the functional limits of the County's system.
- e. System Preventive Maintenance: Contractor shall perform preventive maintenance in accordance with a program of standard maintenance routines as determined by the Contractor's experience, equipment application and location, and the manufacturer's recommendations. Contractor shall provide Preventive Maintenance services, 12 (8) hours visits per year.
- f. Corrective Maintenance and Component Replacement: Contractor shall repair or replace failed or worn components to minimize obsolescence and to maintain the County's system in peak operating condition. Contractor will furnish and install Apogee software update to maintain or improve present performance within the functional capabilities of existing system. Components that are suspected of being faulty may be repaired or replaced in advance to prevent system failure. **Labor and material costs shall be included within the scope of this technical support program.**

3. System Performance Services-Review and Evaluation

- a. Account Management: Contractor shall provide dedicated account management to coordinate the delivery of service, offer technical assistance for system programs and engineered control strategies, and implement the quality assurance program.

4. Owner Training

- a. On-Site During Scheduled Site Visits: Contractor shall provide a total of eight (8) hours of operator training during the contract year.

5. Emergency Options for System Performance Services

- a. Response Window: Contractor shall provide emergency service between scheduled preventive maintenance calls, Monday through Sunday, twenty-four (24) hours a day to minimize downtime. Emergencies shall be determined by the County and Contractor.
- b. On-Line Response Time: Contractor shall respond via modem within two (2) hours to requests for

corrective maintenance during the emergency call window specified. If remote diagnosis determines a site visit is required to complete troubleshooting procedures, contractor will be on-site within the response time selected below.

- c. On-Site Response Time: Contractor shall be on-site to provide emergency service within four (4) hours. Non-emergency calls, as determined by the County and Contractor shall be incorporated into the next scheduled preventive maintenance visit.

6. Documentation and Quality Assurance

- a. Documentation of All Service Provided: Contractor shall document each on-line and on-site service call and furnish County with a copy showing time, date, and brief description of activity. Work orders for on-Site system preventive maintenance shall list the inspection date, individual to report to, equipment identification, equipment location, work to be performed, and any special instructions.
- b. Quality Assurance Program: Contractor shall meet with County one (1) time per year to evaluate system performance and County's satisfaction with the quality of service that is being provided under the Technical Support Program.

7. List of Maintained Equipment:

Quantity	Equipment
3	PXCM's (Barracks G, H, Admin
1	Insight Server PC w/TOS and Client PC
1	Printer
1	Outside Air Humidity Sensor
2	MBC Smoke Control Panel (Lobby & IPB)
15	Unitary Controllers (Admin A/H 1-15)
1	SCU (Stand alone unit) IPB Bldg.
1	Trunk Interface
2	FLNC Panels # 2, 3)
4	PXM's (Panel # 1,7,9, A-E Barrack)
All	Digital Point Unit (Admin , IPB)
All	Duct Static Pressures sensors

All	Room (space) temp sensor
All	Duct Sensors
All	Pipe sensors
All	Current Switches
All	Differential Pressure Switches
4	Modems
All	Electronic Dampers Actuators
All	Electronic Valves Actuators
All	Terminal Equipment Controllers (Mod J , Kitchen , Pod A)
4	Edwards Panel (Pod C(1), Pod B(1), Pod A(2),
3	Enunciators (Lobby)
18	Mechanical Equipment Controllers (7 Panels on Pod C, 11 Panels on Pod A)
	Pod B Equipment list
10	Damper Actuators
20	Electric Actuators
10	Temp Duct RTD's
10	Transducer Air Velocities
10	Current Tranducers
10	Electric Flow Rite Valves
10	MEC'c w/FLN
10	TEC Controllers
3	HP TEC Controllers
2	VAV TEC Controllers

ATTACHMENT B**Pricing**

Cost for Preventive Maintenance, Repair(s), and parts for the Energy Management System Hardware and Software shall be as follows:

From September 1, 2011 through and including August 31, 2012 \$ 44,292.00 per year/\$3,691.00 monthly

From September 1, 2012 through and including August 31, 2013 \$ 45,624.00 per year/\$3,802.00 monthly

From September 1, 2013 through and including August 31, 2014 \$ 46,536.00 per year/\$3,878.00 monthly

From September 1, 2014 through and including August 31, 2015 \$ 47,928.00 per year/\$3,994.00 monthly

Additional services related to the system may be requested by the County which are not included in this Scope of Work. The cost of any single job including materials, labor, taxes and permits, performed under this Contract shall not exceed \$5,000 per year.

Parts related to the system but not covered under this maintenance agreement can be purchased and paid against this contract. Parts sold to County by Contractor shall be at a 67% discount from the Contractors catalog list price.

Technician Labor Rate for any additional services requested by the County which is not listed in this Contract shall be \$120.00/per hour.

Contract shall not exceed \$ 49,292.00 for the first Contract term.

ATTACHMENT C

Compensation and Pricing Provisions

This is a fixed fee Contract between the County and Contractor for goods and services provided in Attachment A, Scope of Work. The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for services.

1. Pricing

Pricing set forth in Attachment B shall be firm. All price decreases will automatically be extended to the County of Orange. County will accept decreases only. Pricing will be firm unless a reduction is available.

2. Payment Terms

Invoices are to be submitted in arrears, unless otherwise directed in this Contract, upon the satisfactory completion and acceptance of commodity/services in accordance with Paragraph F, Acceptance/Payment.

Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements. Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

3. Invoicing Instructions:

Payments and/or invoices are to be sent to:

1. Sheriff-Coroner Department
Research Development / Facilities Operations
431 The City Drive South
Orange, CA 92868
Attn: John Radu

The Contractor will provide an invoice for services rendered, not more frequently than monthly. Each invoice will have a number and shall include the following information:

1. Contractor's name and address
2. Contractor's remittance address
3. County Contract number
4. Contractor's Federal I.D. number
5. Date of Order
6. Product description, quantity, prices
7. Sales tax, if applicable
8. Brief description of services

EXHIBIT 1**CHILD SUPPORT ENFORCEMENT REQUIREMENTS**

In order to comply with child support enforcement requirements of the County the required Contractor data and certifications must be submitted within 10 days of notification of award.

Failure of a bidder to submit the data and/or certifications required above shall result in the bid being deemed non-responsive and the bidder may be disqualified from being considered for Contract award. Subsequent to issuance of the Contract, failure to comply with all federal and state reporting requirements for Child Support Enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

The certifications will be stated as follows:

*"I certify that **Siemens Industry, Inc.** is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of **Contract # MA-060-12010125** with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.*

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies.

Failure of the Contractor to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

County of Orange Child Support Enforcement

Contract Certification

INSTRUCTIONS:

UPON NOTIFICATION OF SELECTION FOR CONTRACT AWARD/REQUEST FOR RENEWAL, **COMPLETE PART I AND PART II.**
RETURN COMPLETED FORM TO: SHERIFF-CORONER DEPARTMENT/PURCHASING SERVICES BUREAU, 320 N. FLOWER ST., SANTA ANA, CA 92703.

PART I

A. In case of an individual contractor, provide:

His/her name, date of birth, Social Security number, and residence address:

B. In the case of contractor doing business in a form other than as an individual, provide:

The name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity; OR

C. *If your firm is a non-profit entity please indicate: "N/A, Non-Profit Organization" **OR** If no single person owns an interest of 10 percent or more please state this fact below.

(Please note: Part II "Certification" must also be signed and returned)

1. Name:

D.O.B. _____

SSN No: _____

Residence Address: _____

2. Name:

D.O.B. _____

SSN No: _____

Residence Address: _____

PART II

CERTIFICATION (PART I MUST ALSO BE COMPLETED)

I certify that _____ is in full compliance with all applicable Federal and State reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract Number: _____ with the County of Orange.

I understand that failure to comply shall constitute a material breach of the contract and the failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

AUTHORIZED SIGNATURE _____

PRINTED NAME _____

TITLE _____

EXHIBIT 2**EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS**

Effective January 1, 2001 the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the COUNTY pays \$600 or more or with whom the COUNTY enters into an AGREEMENT for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes an AGREEMENT for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent CONTRACTORS. An independent CONTRACTOR is defined as "as an individual who is not an employee of the government entity for California purposes and who receives compensation or executes an AGREEMENT for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

To comply with the reporting requirements of, County procedures for contracting with independent CONTRACTORS mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

First Name, Middle Initial, and Last Name
 Social Security Number
 Address
 Start and expiration dates of contract
 Amount of contract

PART I

First Name _____	Middle Initial _____	Last Name _____
SSN# _____	Date of Birth _____	
Address _____		
Contract No. _____		
Start Date _____	Expiration Date _____	
Dollar value of contract _____		

CERTIFICATION (PART I must also be completed)

I certify that _____ is in full compliance with all applicable Federal and State reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract Number: _____ with the County of Orange. I understand that failure to comply shall constitute a material breach of the contract and the failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

AUTHORIZED SIGNATURE _____

PRINTED NAME _____

TITLE _____

EXHIBIT 3**Orange County Sheriff's Department****Tool Control Guidelines for Contractors Working in Correctional Facilities**

The Orange County Sheriff's Department has implemented a Tool Control Program at the James A. Musick Facility, Intake Release Center, and Theo Lacy Facility. The purpose of the program is to increase the safety at the facilities by keeping dangerous tools out of the hands of inmates. All contractors entering one of these facilities will be required to comply with the program requirements. The security staff at these facilities will make every effort to minimize any inconvenience caused by this program. We are providing you these guidelines so you can prepare the necessary documentation in advance to minimize any delay entering the facility.

All contractors performing work inside the security area of the facilities will be required to have their tools inventoried upon entry to, and exit from the facility.

Instructions for persons entering the facility:

- Complete the attached inventory form listing all of the tools you will need to take inside (preferably prior to arrival at the facility). Limiting the number of tools needed will speed your entry and departure.
- Present the written inventory at the entrance to the facility at which you are working.
- A member of the security staff will compare the tools you are taking into the facility to your written inventory and return the form to you after signing it.
- A member of the security staff will repeat the inventory on your way out of the building to make sure you have not left any tools at the job site.
- The security staff will retain the original inventory, but will make you a copy if you need one.
- Contractors performing regular work at these facilities should prepare advance inventories for each toolbox with a few blank lines at the bottom and store the inventories on a computer. When you need to come to a facility, you can print the appropriate pages to take with you and handwrite any additional special tools at the bottom.
- If needed, you will be allowed entry to the facility to look at the work to be done prior to determining what tools you will need to minimize the number of tools subject to the inventory requirement.

Instructions for vehicles entering the facility:

- All vehicles entering the secured parking area of any correctional facility operated by the Orange County Sheriff's Department will be subject to search and will be logged in and out at the gate.
- Vehicles entering the Intake Release Center or Theo Lacy Facility will not need to have the tools inventoried. You will only need to inventory the tools to be carried inside the facility.
- Vehicles entering the James A. Musick Facility will need to be inventoried prior to entering and exiting the facility.

Contact Information if you have questions about this policy or need more information:

James A. Musick Facility • (949) 855-7777

Intake Release Center • (714) 647-6120

Theo Lacy Facility • (714) 935-6216

JOB TOOL INVENTORY LIST

Date: _____ Name: _____ WO# _____

*Security staff must initial and write down their badge number for both the in and out inventory.

<u>Tool / Id #</u>	<u>In</u>	<u>Out</u>
1) _____	<input type="checkbox"/>	<input type="checkbox"/>
2) _____	<input type="checkbox"/>	<input type="checkbox"/>
3) _____	<input type="checkbox"/>	<input type="checkbox"/>
4) _____	<input type="checkbox"/>	<input type="checkbox"/>
5) _____	<input type="checkbox"/>	<input type="checkbox"/>
6) _____	<input type="checkbox"/>	<input type="checkbox"/>
7) _____	<input type="checkbox"/>	<input type="checkbox"/>
8) _____	<input type="checkbox"/>	<input type="checkbox"/>
9) _____	<input type="checkbox"/>	<input type="checkbox"/>
10) _____	<input type="checkbox"/>	<input type="checkbox"/>
11) _____	<input type="checkbox"/>	<input type="checkbox"/>
12) _____	<input type="checkbox"/>	<input type="checkbox"/>
13) _____	<input type="checkbox"/>	<input type="checkbox"/>
14) _____	<input type="checkbox"/>	<input type="checkbox"/>
15) _____	<input type="checkbox"/>	<input type="checkbox"/>
16) _____	<input type="checkbox"/>	<input type="checkbox"/>
17) _____	<input type="checkbox"/>	<input type="checkbox"/>
18) _____	<input type="checkbox"/>	<input type="checkbox"/>
19) _____	<input type="checkbox"/>	<input type="checkbox"/>
20) _____	<input type="checkbox"/>	<input type="checkbox"/>
21) _____	<input type="checkbox"/>	<input type="checkbox"/>
22) _____	<input type="checkbox"/>	<input type="checkbox"/>
23) _____	<input type="checkbox"/>	<input type="checkbox"/>
24) _____	<input type="checkbox"/>	<input type="checkbox"/>
25) _____	<input type="checkbox"/>	<input type="checkbox"/>
26) _____	<input type="checkbox"/>	<input type="checkbox"/>
27) _____	<input type="checkbox"/>	<input type="checkbox"/>
28) _____	<input type="checkbox"/>	<input type="checkbox"/>

Supervisor Review