

**CONTRACT ENGINEERING SERVICES  
TECHNICAL SUPPORT HVAC CONTROLS SERVICE AGREEMENT**

**THIS AGREEMENT** is made this 1<sup>ST</sup> day of April, 2020, by and between **WHATCOM COUNTY**, a municipal corporation, hereinafter referred to as the "County", and Siemens Industry, Inc. hereinafter referred to as the "Consultant" for the purpose of providing HVAC Control Services for Whatcom County Courthouse, Jail, Jail Work Center, Lottie Street Annex, Williamson Way, Central Shop, East Whatcom Regional Resource Center, Forest Annex, Civic Center Annex, Northwest Annex and Central Plaza Building.

1. **Scope of Work:** The consultant will provide services as described in Exhibit "A" Scope of Work.
2. **Consideration:** As consideration for the services provided pursuant to Exhibit "A" Scope of work, the County agrees to compensate the Consultant an amount not to exceed one hundred seventy one thousand eight hundred thirty-seven dollars and ninety-six cents (\$171,837.96). Consultant will invoice the county on a quarterly basis. Invoice will be based on rates attached in Exhibit "B". The county will issue payment within 30 days of receipt of a valid invoice. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the consultant's expense.
3. **Time Schedule:** The service as outlined shall be completed no later than March 31, 2025.
4. **Extension:** The duration of this Agreement shall remain in effect for a term of Five (5) years beginning April 1<sup>st</sup>, 2020 and ending March 31<sup>st</sup>, 2020.
5. **Modifications:** No change or additions to this Agreement shall be valid or binding upon either party unless such change or additions be in writing and executed by both parties.
6. **Licensing in Compliance with Laws & Regulations:** The Consultant agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals. The Consultant agrees to comply with all applicable provisions of federal, state, and local law, including laws pertaining to public works projects. The Consultant is in compliance with RCW 18.27, the State Licensing Law, with a Certificate of Registration to be in effect throughout the work. The Consultant agrees to pay wages in accordance with RCW 39.12.040, the Prevailing Wage Act. The Consultant agrees to comply with all applicable standards of the Americans with Disabilities Act of 1990.
7. **Property Rights:** When the Consultant creates any copyrightable materials or invents any patentable property, the Consultant may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the material or property and to authorize other governments to use the same for state or local government purposes. Consultant further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.
8. **Public Records Act:** This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Consultant are needed for the County to respond to a request under the Act, as determined by the County, the Consultant agrees to make them promptly available to the County. If the Consultant considers any portion of any record provided to the

County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Consultant shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Consultant and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Consultant (a) of the request and (b) of the date that such information will be released to the requester unless the Consultant obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Consultant fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Consultant to claim any exemption from disclosure under the Act. The County shall not be liable to the Consultant for releasing records not clearly identified by the Consultant as confidential or proprietary. The County shall not be liable to the Consultant for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

9. **Communications:** Communications between the Consultant and the County shall be addressed to the regular places of business. In the case of the Consultant, the address shall be:

Siemens Industry, Inc.  
15900 SE Eastgate Way  
Bellevue, WA 98005  
Phone: (425) 507-4350

10. In the case of the County, communications shall be sent to:

Rob Ney, Project & Operations Manager  
3720 Williamson Way  
Bellingham, WA 98226  
Phone: (360) 778-5360  
Fax: (360) 778-5361

11. **Administration of Contract:** The County hereby appoints and the Consultant hereby accepts the Whatcom County Executive, and his or her designee, as the County's representative for the purpose of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents related to this Agreement.

12. **Relationship of the Parties:** The parties intend that an independent Consultant/County relationship will be created by this Agreement. The County is interested only in the results to be achieved; the implementation of services will lie solely with the Consultant. Neither the Consultant nor any agent, employee, or representative of the Consultant shall be deemed to be an agent, employee, or representative of the County for any purpose.

13. **Indemnification and Hold Harmless:** To the fullest extent permitted by law, the Consultant agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused by the negligent actions of Consultant, its employees, agents or volunteers or Consultant's subConsultants and their employees, agents or volunteers. This indemnification obligation of the Provider shall not apply where the claim, damage, loss or expense is caused by the sole negligence of the County. In the event of the concurrent negligence of the Consultant, its subConsultants, employees or agents, and the County, its employees or agents, this indemnification and

defense obligation of the Consultant shall be valid and enforceable only to the extent of the negligence of the Consultant, its subConsultants, employees and agents. This indemnification obligation of the Consultant shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Consultant hereby expressly waives any immunity afforded by such acts.

The foregoing indemnification obligations of the Consultant are a material inducement to County to enter into this Agreement, are reflected in the Consultant's compensation, and have been mutually negotiated by the parties.

The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Consultant's indemnity obligations under this Agreement.

The Consultant agrees all Consultant's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

In the event the Consultant enters into subcontracts to the extent allowed under this Agreement, the Consultant's subConsultants shall indemnify the County on a basis equal to or exceeding Consultant's indemnity obligations to the County.

- 14. **Social Security and Other Taxes:** Consultant assumes full responsibility for the payment of all payroll taxes, use, sales, income, other form of taxes, fee, licenses, excises, or payments required by any City, County, Federal or State legislation which are now or may, during the term of this Agreement, be enacted as to the Consultant and all persons employed by the Consultant as to all duties, activities, and requirements by the Consultant in performance of the work pursuant to this Agreement and shall assume exclusive liability therefore, and meet all requirements there under pursuant to any rules and regulations that are now and may be promulgated in connection therewith.
- 15. **Wages, Overtime and Safety:** The Consultant agrees to comply with the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.
- 16. **Proof of Insurance:** The Consultant shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Commercial General Liability		
\$1,000,000 each		per occurrence
\$2,000,000		aggregate (applicable on a per project basis)
\$1,000,000		Additional – Umbrella Coverage
Comprehensive Automobile Liability		
\$1,000,000 each		accident
Professional Errors and Omissions		
\$1,000,000 each		claim
\$2,000,000 annual		aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require), Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 14. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. All Commercial General Liability coverage shall include a waiver of subrogation against Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. Designer agrees to maintain such coverage for six (6) years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

A Certificate of Insurance that also identifies the County as an additional insured. This insurance shall be considered as primary and non-contributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

**17. Reduction in Funding:** In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein.

**18. Suspension/Termination:** If the Consultant fails to comply fully with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including but not limited to, the suspension or termination of this Agreement in the manner specified herein.

18.1 Suspension or termination for cause, If the Consultant is unable to substantiate full compliance with the provisions of this Agreement, the County may suspend or terminate the Agreement pending corrective acts or investigation, which suspension or termination shall be effective upon seven (7) days written notification to the Consultant or its authorized representative.

18.2 For any other reason this Agreement may be terminated in whole or in part by either party hereto upon thirty (30) days advance written notice to the other party.

18.3 In the event of termination under this clause, the County shall be liable only for payments in accordance with the terms of this Agreement for services rendered prior to the effective date of termination.

**20. Non-Discrimination in Employment:** The Consultant shall not discriminate against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, Vietnam-era or disabled veteran status, or disability, except where such constitutes a bona fide occupational qualification. The Consultant shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, Vietnam-era or disabled veteran status, or disability, except where such

constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities.

- 21. Assignment and/or Subcontracting:** The performance of all activities contemplated by this Agreement shall be accomplished personally by the Consultant. The Consultant shall not assign or subcontract performance to others unless specifically authorized in writing by the County in advance. All terms and conditions of this Agreement shall apply to any approved subcontract or assignment related to this Agreement.
- 22. Safeguarding Client Information:** The Consultant agrees that confidential information obtained from the County shall not be disclosed except upon the written consent of the County.
- 23. Non-Waiver of Breach:** The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.
- 24. Time for Performance:** Any work performed prior to the effective date of this Agreement or continuing after the completion date of the same, unless otherwise agreed upon in writing herein, will be in violation of this Agreement and municipal auditing requirements and will be at the Consultant's expense.
- 25. Venue Stipulation:** This Agreement has been and shall be construed as having been made and delivered within the State of Washington. It is mutually understood and agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in lawsuit and equity or judicial proceedings for the enforcement of this Agreement, or any provision thereof, shall be instituted and maintained in the courts of competent jurisdiction located in Whatcom County, Washington.
- 26. Severability:** It is understood and agreed by the parties hereto that if any part of this Agreement is determined to be illegal, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed as if the Agreement did not contain the particular illegal part.
- 27. Extent of Agreement:** This Agreement, with attachments, contains all of the terms and conditions agreed upon by the parties hereto. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.



**FOR WHATCOM COUNTY:**

APPROVED AS TO FORM:

\_\_\_\_\_  
Brandon Waldron, Senior Deputy Prosecutor      Date

By \_\_\_\_\_  
Satpal Singh Sidhu, County Executive

Date Signed: \_\_\_\_\_

Contractor Information:

**Siemens Industry, Inc.**

**Address:**  
15900 SE Eastgate Way  
Bellevue, WA 98005  
Phone: (425) 507-4350

**Mailing Address:**  
15900 SE Eastgate Way  
Bellevue, WA 98005  
Phone: (425) 507-4350

**Contacts:**  
Cynthia Eng, Sales Manager  
[Cynthia.marks@siemens.com](mailto:Cynthia.marks@siemens.com)

Eric Rautenberg, P.E., LEED Green Associate  
[Eric.rautenberg@siemens.com](mailto:Eric.rautenberg@siemens.com)

Exhibit "A"  
Scope of Work

Customer Support Services:

- Educational Services – Delivered at Siemens Locals Office:
  - Two (2) classes, annually held in the Pacific Northwest Training Center
- Customer Directed Support:
  - 40 Hours, annually of specialist time to perform service and repairs or projects as determined by customer.

Technical Support Services:

- Emergency Onsite Response:
  - Monday through Friday, 8:00am – 5:00pm
- Emergency Online/Phone Response
  - Monday through Friday, 8:00am – 5:00pm
- Automated Controls Analysis & Optimization
  - Maintenance consists of the physical verification and integrity check of our field panels. Tasking includes items such as visual inspection of cabinet, verify position of H-O-A switches, verify panel layout vs. panel configuration and verify electrical connection.

Technical Support Services:

- Software Analysis & Optimization
  - Siemens will help ensure that the HVAC Control System is operating properly to minimize any software problems that would negatively impact system performance. We will address any programming errors, failed points, and points in alarm, unresolved points or points in operator priority, both at the front end workstation and at the field panel.
  - This maintenance consists of the physical verification and integrity check of the Apogee workstation. Tasking includes items such as verify user accounts, perform system back-up, defrag the hard drive, review system activity log, verify necessary network services are installed and operating, verify PC has the necessary configuration to operate software, and verify the integrity of the Apogee software.

**NOTE: The Automation Controls Analysis & Optimization and Software Analysis & Optimization are performed during the same scheduled maintenance visit, twice a year. Each maintenance visit is eight (8) hours.**

- Data Protection & Data Recovery Services:
  - Siemens will perform scheduled database back-ups of 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 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.
  - The on-site dispatch to reload a database will be billable service call or deducted from the Customer Directed Support hours (if available).



### System Performance Updates & Upgrades

- Firmware Updates – Siemens will provide firmware and documentation updates to the existing APOGEE field panels upon development. Onsite training will familiarize you with the new features and their associated benefits.
  - Field panels included under this service are itemized in the List of Maintained Equipment. (Upgrades to Field Panel hardware, processors, memory boards, and related hardware are excluded unless specified elsewhere.)
  - Firmware Updated are included for nineteen (19) field panels

### Maintained Equipment

Equipment Category	Equipment Sub-Category	Equipment	Quantity
Controls Systems – Summary Level	Data Protection & Data Recovery	Insite 3.X B/ on-site	1
Services (Times per year): Data Protection & Recovery Services (2)			
System 600 ALN	System 600 ALN	PXC Modular	11
Services (Times per year): Software Maintenance (1)			
System 600 ALN	System 600 ALN	PXC Compact	8
Services (Times per year): Software Maintenance (1)			
System Performance Updates	Firmware Updates	Firmware Flashes	19
Services (Times per year): Firmware Update (1)			
System Performance Updates	Software Support and Updates	Insight 3.X Adv first/single server Update	0
Service (Times per year): No longer available			

**Exhibit "B"**  
**Compensation**

This agreement shall remain in effect for an Initial Term of Five (5) years beginning April 2020 and from year to year thereafter.

Investments:

Year 1	04/01/2020 to 03/31/2021	\$29,832 annually	paid \$7,458.00 quarterly
Year 2	04/01/2021 to 03/31/2022	\$30,728 annually	paid \$7,682.00 quarterly
Year 3	04/01/2022 to 03/31/2023	\$31,648 annually	paid \$7,812.00 quarterly
Year 4	04/01/2023 to 03/31/2024	\$32,596 annually	paid \$8,149.00 quarterly
Year 5	04/01/2024 to 03/31/2025	\$33,572 annually	paid \$8,393.00 quarterly

Applicable sales tax is not included.