

# **PERFORMANCE CONTRACTING AGREEMENT**

between

**Village of Lake Zurich**

and

**Siemens Industry, Inc.,  
Building Technologies Division**

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# PERFORMANCE CONTRACTING AGREEMENT

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Number: 44OP-186215

## Article 1 AGREEMENT

THIS **PERFORMANCE CONTRACTING AGREEMENT** ("Agreement") is made this 28th day of September, 2017 (the "Effective Contract Date", defined below), by and between Siemens Industry, Inc., Building Technologies Division ("SIEMENS") and the party identified below as the CLIENT.

**The CLIENT: Village of Lake Zurich**

70 E. Main Street  
Lake Zurich, IL 60047

DESIGNATED REPRESENTATIVES: Ray Keller and Michael Duebner  
PHONE: 847 540 1683 FAX: 840 540 1768

### **Siemens Industry, Inc., Building Technologies Division**

1000 Deerfield Parkway  
Buffalo Grove, Illinois 60089

With offices at: 585 Slawin Court 6  
Mount Prospect, IL 6005

DESIGNATED REPRESENTATIVE: Danielle Melone  
PHONE: (847) 254-3294 FAX: (866) 794-8347  
Email: danielle.melone@siemens.com

For Work and Services in connection with the following project (the "Project"):

Water Meter Replacement and Fixed Base Meter Reading System

- Replacement of Water Meters with Radio Read Capabilities
- Advanced Metering Infrastructure (AMI) Upgrades

The CLIENT considered performing the following FIMs but at this time, has determined to exclude them from the Scope of Work and Services, Exhibit A:

**SCADA**  
**Building Envelope Work**  
**HVAC Upgrades**

## PERFORMANCE CONTRACTING AGREEMENT

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### Articles and Attachments

This Agreement consists of this document, which includes the following articles and exhibits which are acknowledged by the CLIENT and SIEMENS and incorporated into the Agreement by this reference:

#### Articles

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work BY SIEMENS
6. The CLIENT's Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

#### Exhibits

Exhibit A	Scope of Work and Services
Exhibit B	Payment Schedule(s)
Exhibit C	Performance Assurance
Exhibit D1	Form of Certificate of Substantial Completion
Exhibit D2	Form of Certificate of Final Completion
Exhibit E	Certification Under 720 Ilcs 5/33e-11

This Agreement, when executed by an authorized representative of the CLIENT and authorized representatives of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties relative to the project scope stated in Exhibit A. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same, and may be modified only by a written instrument signed by both Parties.

### COMPENSATION/TERMS OF PAYMENT:

As full consideration for the performance of the Work and Services set forth in Exhibit A, and for the Performance Assurance set forth in Exhibit C, the CLIENT shall pay SIEMENS in such manner and amounts as agreed to in Exhibit B.

Agreed for **Village of Lake Zurich, Illinois**

(Signature) by: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

(Signature) by: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Agreed for **Siemens Industry, Inc.**

(Signature) by: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

(Signature) by: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

# PERFORMANCE CONTRACTING AGREEMENT

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## Article 2

### Glossary

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement:

**Acceptance** means the CLIENT has signed, or is deemed to have signed, a Certificate of Final Completion.

**Acceptance Date** means the date on which the CLIENT signs or is deemed to have signed a Certificate of Final Completion.

**Annual Performance Assurance Report** means the document prepared by SIEMENS and submitted to the CLIENT as part of the Performance Assurance Service Program, which identifies the Savings achieved for the applicable Annual Period.

**Annual Period** means a twelve (12) month period beginning on the Guarantee Date or on any anniversary date thereof.

**Annual Realized Savings** means the actual Savings achieved by the CLIENT during an Annual Period, calculated as the sum of the Measured & Verified Savings plus the Stipulated Savings.

**Applicable Law** means laws, ordinances, codes, rules and regulations applicable to the Work and in effect on the Effective Contract Date.

**Baseline** means the measurements of Facility energy usage taken prior to the Effective Contract Date, and the Facility operating practices in effect prior to the Effective Contract Date, as set forth in the Performance Assurance, Exhibit C.

**Baseline Period** means the period of time from which data is provided to SIEMENS to derive the Baseline measurements. The Baseline Period is set forth in the Performance Assurance, Exhibit C.

**BTU** means a British Thermal Unit and is a unit of thermal energy.

**Capital Off-Set Savings** means a sub-category of Operational Savings where Savings will result in a cost effective upgrade to the Facility to address one or more of the following issues: potential future increased costs, comfort, code non-compliance, usage requirements, user needs and/or expectations.

**Certificate of Final Completion** means a document, in the form attached as Exhibit D2 hereto, indicating that the Work identified in Article 1 of the Scope of Work and Services-Exhibit A has been completed in accordance with the Agreement, including all items in the Outstanding Items List(s).

**Certificate of Substantial Completion** means a document, in the form attached as Exhibit D1 hereto, indicating that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement. A Certificate of Substantial Completion may be accompanied by an Outstanding Items List.

**CLIENT Representative** means the person identified to SIEMENS by the CLIENT as the person authorized to make decisions on behalf of the CLIENT as set forth in Section 6.1(a) hereof.

**Construction Period** means the period between the Effective Contract Date and the first day of the month following the Acceptance Date.

**Construction Period Savings** means the actual accumulated Measured & Verified Savings plus the Stipulated Savings achieved from the Effective Contract Date until the Guarantee Date.

**Contracted Baseline** means the post-FIM-implementation Facility operating profile based on parameters described in Exhibit C, which the CLIENT shall maintain throughout the Performance Guarantee Period and are relied upon by SIEMENS for the calculation of Guaranteed Savings as provided in the Performance Assurance, Exhibit C. The Contracted Baseline must also include stipulated hours of operation and plug-loads for all Facilities, and must include stipulated blended, or non-blended, utility rates.

**Deferred Maintenance** means a sub-category of Operational Savings where Savings result from a reduction of current or potential future repair and maintenance costs due to certain work being performed hereunder where such work had been previously postponed.

**Deliverables** shall mean collectively, (a) any Equipment and any Software Product deliverable to CLIENT from SIEMENS under or in connection with the Work, and (b) any Work Product Deliverables.

**Effective Contract Date** is the date appearing at the top of this Agreement, unless specifically indicated otherwise.

**Energy Conservation Measure or ECM** means the SIEMENS Products and/or other third party equipment, devices, materials and/or software as installed by SIEMENS at the Facilities, or as repaired or replaced by SIEMENS or the CLIENT hereunder, for the purpose of improving the efficiency of utility consumption.

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**Equipment** means the installed physical equipment to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

**Escalation Rate** means an annual percentage increase to be applied to the previous Annual Period's energy savings, operational savings and service pricing, beginning and occurring on dates outlined in the Performance Assurance, Exhibit C. A different Escalation Rate may be applied to differing Savings calculations and/or payment schedules depending on the percentage agreed upon by the Parties.

**Facility or Facilities** means the **building(s)** or structure(s) where Work will be installed or implemented.

**Facility Improvement Measures or FIMs** means the (i) Instruments, know-how and Intellectual Property, including but not limited to methods and techniques for energy conservation, owned or licensed by SIEMENS and employed by SIEMENS to perform the Work and Services under this Agreement; and, (ii) the installation of Equipment and Software Products with the intent of generating net savings or efficiencies at or in connection with the operation of the Facilities. A FIM may include one or multiple ECMs as well as any non-conservation-related activities, means or methods.

**FEMP** means the Federal Energy Management Program managed by the United States Department of Energy.

**FEMP Guidelines** means the FEMP M&V Guidelines v. 3.0 published by FEMP as M&V Guidelines; Measurement and Verification for Federal Energy Management Projects.

**Guarantee Date** means the first day of the month following the date on which the CLIENT executes, or is deemed to have executed, the Certificate of Final Completion.

**Guaranteed Annual Savings** are the Guaranteed Measured & Verified Savings plus the Stipulated Savings that SIEMENS guarantees will be achieved in an Annual Period of the Performance Guarantee Period.

**Guaranteed Measured & Verified Savings** means the Measured & Verified Savings that SIEMENS guarantees will be achieved, as described in the Performance Assurance, Exhibit C.

**Guaranteed Savings** means the amount of Savings that SIEMENS guarantees will be achieved at the Facility during the Performance Guarantee Period. as identified in the Performance Assurance, Exhibit C as subject to the limitation identified in Section 4.8.

**Hazardous Materials** refers to the definition found in Section 11.1.

**Instruments** means all know-how, tools and related documentation owned or licensed by SIEMENS and used by SIEMENS to install or commission Equipment and Software Products for operation at the Facility, including but not limited to tools for installing any Software Products in Equipment, performing diagnostics on Equipment as installed in the Facility as well as any reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS and used by SIEMENS to provide an ECM or a FIM. Instruments excludes Work Product Deliverables.

**Intellectual Property Rights or Intellectual Property** means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

**IPMVP** means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

**kW and kWh** means kilowatt and kilowatt hour, respectively.

**Maintenance Services Program or MSP** means the Services performed by SIEMENS to maintain the Equipment in good working order. The MSP may also contain Services unrelated to the maintenance of the Equipment. If applicable, the MSP is more fully described in the Scope of Work and Services, Exhibit A.

**Material Change** means a measurable deviation in the Contracted Baseline such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall.

**Measured & Verified Savings** means those Savings that can be calculated and ascertained by the methodology set forth in the Performance Assurance, Exhibit C.

**Oil** refers to the definition found in Section 11.1.

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**Operational Savings** means Savings derived from reduced operational expenses, including but not limited to, Deferred Maintenance, or Capital Off-Set Savings. Operational Savings can only be expressed in monetary value and are Stipulated Savings.

**Outstanding Items List** means a list of items in need of completion or correction that relates to the Work, or a designated portion thereof that is Substantially Complete. The absence of such items does not deprive the CLIENT of the ability to put such Work, or a designated portion thereof to beneficial use. An Outstanding Items List may be attached to a Certificate of Substantial Completion.

**Parties** means the CLIENT and SIEMENS.

**Performance Assurance** is the process of ascertaining whether the FIMs are performing at the level necessary to achieve the Guaranteed Savings.

**Performance Assurance Services Program or PASP** means the Services required to monitor the operation of the FIMs so that SIEMENS can provide the Annual Performance Assurance Report detailing the Annual Realized Savings and comparing the same to the Annual Guaranteed Savings based upon the calculations agreed to by the Parties in the Performance Assurance, Exhibit C. The Services provided under the PASP are described in the Scope of Work and Services, Exhibit A.

**Performance Guarantee** means the guarantee that SIEMENS makes to the CLIENT which is reconciled and confirmed through the Performance Assurance process set forth in the Performance Assurance, Exhibit C.

**Performance Guarantee Period** means the timeframe from the Guarantee Date to the last day of the final Annual Period as described in Table 1.1 of the Performance Assurance, Exhibit C, or the period from the Guarantee Date until the termination of this Agreement, whichever occurs earlier.

**Permitted Users** means the CLIENT, its employees and agents.

**Savings** means the Parties' intended result from implementing all FIMs. Savings can be derived from reductions in energy or utility consumption, reductions in operating expenses, a changed utility rate classification or a combination thereof. The Savings that are achieved from reduced energy or utility consumption are converted to a dollar figure based upon the calculation in Article 4.1.1 and as detailed in the Performance Assurance, Exhibit C. When converted to a dollar figure, these Savings become energy cost savings. Operational Savings are only expressed in a dollar figure.

**Savings Shortfall** means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

**Services** means those services to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

**SIEMENS Pre-existing Intellectual Property** means any Intellectual Property: (i) that has been conceived or developed by an employee or subcontractor of SIEMENS before SIEMENS performs any Work or Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of SIEMENS performing the Work under this Agreement; or, (iii) if developed while performing the Work under this Agreement, where the development of Intellectual Property for the benefit of the CLIENT is not expressly identified as a FIM or part of a FIM. SIEMENS Pre-existing Property is included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS.

**SIEMENS Product** means a product, including Software Product and/or Equipment, offered for sale or license by SIEMENS or its affiliates or subsidiaries and developed prior to performing the Work or SIEMENS rendering services in connection with this Agreement. A SIEMENS Product also includes improvements or modifications to any Equipment and any Software Product developed by SIEMENS or developed as part of the Work, including any SIEMENS Product that is configured or modified for operation at a site specified by the CLIENT. Any information that is provided by the CLIENT and incorporated into a SIEMENS Product is not, by itself, a SIEMENS Product. A compilation of such information and the product of such compilation, however, is a SIEMENS Product.

**Software Product** means any software that is owned or licensed by SIEMENS or its affiliates and that is either separately deliverable for use in the Equipment or for use in a computer system owned by the CLIENT or delivered as firmware embedded in the Equipment.

**Stipulated Savings** are a sub-category of Guaranteed Savings that do not require post-FIM implementation measurement and verification because they are agreed upon by the Parties based upon representations made to SIEMENS by the CLIENT and through the application of generally accepted analytical formulae. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. When used as a methodology for representing a FIM's energy savings, such methodology is not recognized as a measurement and verification methodology under IPMVP. Therefore, where the

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IPMVP measurement methodologies are required, a methodology other than Stipulated Savings must be used to calculate energy savings.

**Substantial Completion or Substantially Complete** means the Work, or any identifiable portion thereof, which is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work and Services, Exhibit A, such that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work or the FIMs for their intended purposes.

**Therm** is a measure of energy equal to 100,000 BTUs.

**Total Guaranteed Savings** means the sum of the Savings that are guaranteed for all Annual Periods during the Performance Guarantee Period (inclusive of the Construction Period, if applicable). The Total Guaranteed Savings are reflected in Tables 1.1 and 1.2 in the Performance Assurance, Exhibit C.

**Work** means collective labor, Equipment and services comprising the FIMs to be performed by SIEMENS, as described in the Scope of Work and Services, Exhibit A.

**Work Product Deliverable** means the tangible form of a report or drawing specifically developed for, commissioned by and deliverable to the CLIENT in connection with the Work to be performed by SIEMENS under this Agreement.

### Article 3

#### General

- 3.1 The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.
- 3.2 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and to provide the Work and Services set forth in Exhibit A in accordance with the terms and conditions of this Agreement.
- 3.3 SIEMENS shall perform the Work as an independent contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this Agreement. SIEMENS has no authority to act or make any agreements or representations on behalf of the CLIENT. This Agreement is not intended, and shall not be construed to create, between the CLIENT and SIEMENS, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of SIEMENS shall be, or shall be deemed to be, an employee or agent of the CLIENT.
- 3.4 SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of SIEMENS organizational documents, any Applicable Law, or any agreements with third parties;
  - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
  - (c) This Agreement is the legal, valid and binding obligation of SIEMENS, in accordance with its terms, and all requirements have been met and procedures have been followed by SIEMENS to ensure the enforceability of the Agreement;
  - (d) To SIEMENS best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting SIEMENS that affects the validity or enforceability of this Agreement; and,
  - (e) It is duly authorized to do business in all locations where the Work and Services are to be performed.
- 3.5 The CLIENT represents, warrants and covenants to SIEMENS that:
- (a) It has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of the CLIENT's organizational documents, any Applicable Law, or any agreements with third parties;

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- (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
- (c) This Agreement is the legal, valid and binding obligation of the CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by the CLIENT to ensure the enforceability of the Agreement;
- (d) To the CLIENT's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting the CLIENT that affects the validity or enforceability of this Agreement; and,
- (e) The CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on SIEMENS in this regard.

### Article 4

#### Performance Guarantee

- 4.1 The Annual Realized Savings generated during each Annual Period will be no less than the Guaranteed Annual Savings as shown in Tables 1.1 and 1.2 of the Performance Assurance, Exhibit C, subject to the limits in Section 4.8. The measurement and verification calculation methodology for determining the Savings is set forth in the Performance Assurance, Exhibit C.
- 4.1.1 General. Except as otherwise provided, energy savings will be calculated for each month of each Annual Period as the product of (a) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (b) "cost of energy."
- (a) Units of energy saved are calculated by 1) assuming the Contracted Baseline has been maintained per Section 4.3 below, and 2) subtracting the then current period measured units of energy consumed from the Baseline units of energy defined in Article 5 of Exhibit C.
  - (b) Costs of energy are defined in Article 6 of Exhibit C-Utility Rate Structures and Escalation Rates.
- 4.2 Any future Escalation Rates to be applied to utility, energy or other costs are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data set forth in Exhibit C is a full and accurate reflection of the existing Facility, equipment, operation, business use and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.
- 4.3 SIEMENS and the CLIENT agree that the Contracted Baseline fully described in Exhibit C will represent the new operating and/or equipment profile of the Facility resulting from the FIM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT operates and maintains its Facilities within the Contracted Baseline parameters, as may be adjusted in accordance with the terms herein, during the entire term of the Performance Guarantee Period.
- 4.4 The CLIENT agrees to notify SIEMENS prior to or within thirty (30) days of CLIENT's knowledge of any Material Change.
- 4.5 Within thirty (30) days of notice of a Material Change, SIEMENS' discovery of a Material Change and with prompt notice to CLIENT, SIEMENS will either:
- (a) Require an adjustment to the Performance Assurance and the Performance Guarantee as a result of the Material Change; or,
  - (b) Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate both the Performance Assurance and the Performance Guarantee.
- 4.6 A Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each Annual Period as follows:
- (a) Within ninety (90) days of the Guarantee Date, the Construction Period Savings shall be reconciled and applied to the calculation of the first Annual Period's Annual Realized Savings.
  - (b) At the conclusion of each Annual Period, SIEMENS will calculate the Annual Realized Savings and compare the calculated amount to the applicable Guaranteed Annual Savings amount.
  - (c) Where the Annual Realized Savings are less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded for the applicable Annual Period.



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- (d) A Savings Shortfall shall be paid by SIEMENS within sixty (60) days following the CLIENT's acceptance of the reconciliation and once paid SIEMENS shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period.
- 4.6.1 As the mutual goal of the Parties is to maximize Savings, if SIEMENS can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the CLIENT and without future operational expenses, and the CLIENT declines to allow such operational improvement, then any future Savings Shortfall that the improvement would have corrected will be negated by deeming the value of the Savings Shortfall as Savings achieved and adding the amount of same to the Annual Realized Savings calculations for each Annual Period thereafter.
- 4.7 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period. If the CLIENT fails to maintain, breaches, cancels or otherwise causes the termination of the PASP then; (a) The Performance Guarantee shall terminate immediately and be void and of no force or effect; or, (b) Where termination of the Performance Guarantee acts to render the Agreement in violation of Applicable Law, all Guaranteed Savings thereafter shall be determined to have been achieved and SIEMENS shall have been deemed to have met its Performance Guarantee obligations under this Agreement for each and every Annual Period thereafter without the obligation to provide the CLIENT, or any third-party as the case may be, with any further Annual Performance Assurance Reports.
- 4.8 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the CLIENT under this Performance Guarantee. ANY PAYMENTS MADE OR TO BE MADE TO THE CLIENT UNDER THE TERMS OF THIS PERFORMANCE GUARANTEE SHALL NOT EXCEED THE PAYMENTS ACTUALLY MADE BY CLIENT TO EITHER SIEMENS AND/OR A THIRD-PARTY (IN THE EVENT THAT THE CLIENT HAS FINANCED THE TRANSACTION) FOR THE AGGREGATE OF: THE PRICE, AS DEFINED IN EXHIBIT B, ARTICLE 1.1; THE PASP PAYMENTS; THE MSP PAYMENTS, IF ANY; AND, IF APPLICABLE, THE CLIENT'S COST OF FINANCING THE WORK. The CLIENT's cost of financing the Work is the cost of financing calculated either: (a) On the date that the escrow account is funded in accordance with Exhibit B, Article 1.2; or, (b) On the Effective Contract Date if the escrow requirement is expressly waived by SIEMENS.
- 4.9 The CLIENT represents that all existing equipment that is not installed by SIEMENS under this Agreement but is deemed necessary to achieve the Performance Guarantee, is in satisfactory working condition. Prior to the beginning of the Performance Guarantee Period, SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT. To the extent that the deficiencies are not remedied by the CLIENT prior to the Guarantee Date, the adverse effect on the ability of the Project to attain the necessary Guaranteed Savings shall be factored into the Annual Performance Assurance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.
- 4.10 If the Equipment or the existing equipment is altered or moved by any person (including the CLIENT) other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense in order to determine if a Material Change has occurred.
- 4.11 SIEMENS will have no liability or obligation to continue providing PASP Services or any Guaranteed Savings under the Performance Guarantee in the event that the CLIENT fails to:
- (a) Authorize a re-acceptance test or re-commissioning that SIEMENS reasonably deems necessary in order to determine if a Material Change has occurred;
  - (b) Provide access to any Facility where Work is to be performed;
  - (c) Service and maintain all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
  - (d) Provide SIEMENS with accurate Facility operating information as soon as such information becomes reasonably available to the CLIENT, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period.
- 4.12 Unless expressly contrary to Applicable Law, should the CLIENT decide to discontinue the PASP before the end of the Performance Guarantee Period, the CLIENT will give SIEMENS thirty (30) days prior written notice.

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- 4.13 Unless expressly contrary to Applicable Law, any disputes concerning the calculation of the Annual Realized Savings or changes to the Contracted Baseline that are not resolved by negotiation between the Parties within thirty (30) days of the notice of the dispute, will be resolved by a third-party professional engineering firm which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of such firm will be final and binding upon CLIENT and SIEMENS. SIEMENS and the CLIENT will each be responsible for half of the fees of such firm.

### Article 5

#### Work by SIEMENS

- 5.1 SIEMENS will perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both Parties. The Work performed by SIEMENS shall be conducted in a workmanlike manner.
- 5.2 SIEMENS shall perform the Work during its normal hours, Monday through Friday inclusive, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Facility available so Work may proceed in an efficient manner.
- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment unless expressly made a part of the Work identified in the Scope of Work and Services, Exhibit A. Any CLIENT request to change the scope or the nature of the Work or Services must be in the form of a mutually agreed change order, effective only when executed by the Parties.
- 5.4 All Work Product Deliverables shall become the CLIENT's property upon receipt by CLIENT. SIEMENS may retain file copies of such Work Product Deliverables. If any Instruments are provided to the CLIENT under this Agreement, any such Instruments shall remain SIEMENS' property, including the Intellectual Property conceived or developed by SIEMENS in the Instruments. All SIEMENS' Pre-existing Intellectual Property that may be included in the Deliverables provided to the CLIENT under this Agreement shall also remain SIEMENS property including the SIEMENS Pre-existing Intellectual Property included in the Work Product Deliverables. All Work Product Deliverables and any Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. SIEMENS hereby grants the CLIENT a royalty-free (once payments due under this Agreement are paid to SIEMENS), non-transferable, perpetual, nonexclusive license to use any SIEMENS Pre-existing Intellectual Property solely as incorporated into the Deliverables and SIEMENS' Intellectual Property as incorporated into any Instruments provided to the CLIENT under this Agreement. Under such license, and following agreement to be bound to such separate confidentiality provisions that may exist between the Parties, Permitted Users shall have a right to:
- (a) Use, in object code form only, the Software Products included in the Deliverables ("Software Deliverables");
  - (b) Make and retain archival and emergency copies of such Software Deliverables (subject to any confidentiality provisions) except if the Software Deliverable is embedded in the Equipment; and,
  - (c) Use all such Deliverables and such Instruments, provided however, the Deliverables and Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Deliverables are provided. All Deliverables provided to the CLIENT are for Permitted Users' use only for the purposes disclosed to SIEMENS, and the CLIENT shall not transfer them to others or use them or permit them to be used for any extension of the Work or any other project or purpose, without SIEMENS' express written consent.
- 5.4.1 Any reuse of such Deliverables or such 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' risk and without liability to SIEMENS; and, the CLIENT shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.
- 5.4.2 In consideration of such license, CLIENT agrees not to reverse engineer any Equipment or Software Product to reconstruct or discover any source code, object code, firmware, underlying ideas, or algorithms of such Equipment or Software Product even to the extent such restriction is allowable under Applicable Law.
- 5.4.3 Nothing contained in this Agreement shall be interpreted or construed to convey to the CLIENT the pre-existing Intellectual Property rights of any third party incorporated into the Deliverables. CLIENT agrees to

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take delivery of any Software Deliverables subject to any applicable SIEMENS or third party end-user license agreement accompanying such Software Deliverable.

5.5 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of the CLIENT 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 the Facility shall not relieve others of their responsibility to the CLIENT or to others.

5.6 SIEMENS warrants that:

- (a) Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date the Equipment is installed, all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service.
- (b) Labor for all Work, excluding PASP or MSP Services, is warranted to be free from defects in workmanship for one year after the Work is performed. PASP Services and MSP Services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.

5.7 Warranty Limitation:

- (a) The limited warranties set forth in Section 5.6 will be void as to, and shall not apply to, any Equipment (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) which the CLIENT or a third party subjects to unreasonable or improper use or storage, uses beyond rated conditions, operates other than per SIEMENS or the manufacturer's instructions, or otherwise subjects to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have had, knowledge of any defect in the Equipment; or (iv) not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS nameplate. However, SIEMENS assigns to the CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment.
- (b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect unless discovered directly by SIEMENS. Such limited warranty only extends to the CLIENT and not to any subsequent owner of the Equipment. The CLIENT's sole and exclusive remedy for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS' option: (i) repair or replacement of defective components of covered Equipment; (ii) re-performance of the defective portion of the Services; or (iii) to the extent previously paid and itemized, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
- (c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment or the portion of the Work and Services actually found to be defective. SIEMENS' warranty liability shall not exceed the purchase price of such item. Repaired or replaced Equipment or Services will be warranted hereunder only for the remaining portion of the original warranty period.

5.8 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

5.9 SIEMENS will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of:

- (a) Non-maintainable, non-replaceable or obsolete parts of the Equipment, including but not limited to: service valves, curb stops, water piping and electrical wiring, unless covered by the warranty provisions herein or otherwise specifically stated herein; or
- (b) The CLIENT's or a third-party's negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond SIEMENS' control. Unless expressly agreed in writing, SIEMENS is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and

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## PERFORMANCE CONTRACTING AGREEMENT

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tamper switches with respect to pipes and ductwork, including vent or drain system. SIEMENS ASSUMES NO RESPONSIBILITY FOR ANY SERVICE PERFORMED ON ANY EQUIPMENT OTHER THAN THAT PERFORMED BY SIEMENS OR ITS AGENTS.

- 5.10 In the event of accidents of any kind which involve the general public and/or private or public property directly caused by Siemens in the performance of Work, SIEMENS shall immediately notify the Innovation Director of the Village and shall provide a full accounting of all details of the accident. SIEMENS shall furnish the Village with copies of all reports of such accidents promptly after the occurrence of the event in accordance with the Article 5.10.

### Article 6

#### CLIENT Responsibilities

6.1 The CLIENT, without cost to SIEMENS, shall:

- (a) Designate a contact person with authority to make decisions for the CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency;
- (b) Coordinate the work of contractors under CLIENT's sole control so as not to disrupt the Work and Services proceeding in an efficient manner;
- (c) Provide or arrange for 24 hour, 7 day per week access and make all reasonable provisions for SIEMENS to enter any Facility where Work is to be performed so that Work may proceed in an efficient manner;
- (d) Permit SIEMENS to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
- (e) Furnish SIEMENS with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Facility where the Work is to be performed as may be reasonably requested by SIEMENS. Such plans and blueprints, along with an executed copy of this Agreement, with its Exhibits, shall be kept and maintained in CLIENT's files for a period of fifteen (15) years from the Effective Contract Date;
- (f) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work, except for those SIEMENS has expressly agreed in writing to obtain;
- (g) [Intentionally Omitted];
- (h) Comply with Applicable Law and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;
- (i) Provide SIEMENS with legally required materials and information (including but not limited to Material Safety Data Sheets) related to all Hazardous Materials located at any Facility where the Work is to be performed;
- (j) Furnish SIEMENS with any contingency plans, safety programs and other policies, plans or programs related to any Facility where the Work is to be performed;
- (k) Operate, service and maintain all Equipment according to the manufacturer's recommendations including those set forth in the manufacturer's operating manuals or instructions, as well as all requirements of Applicable Law or of authorities having jurisdiction. The CLIENT shall furnish all needed servicing and parts for said FIMs, which parts shall become part of the FIMs. Such Equipment shall be operated only in the specified operating environment, which shall be supplied by the CLIENT, including without limitation: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment;
- (l) Promptly notify SIEMENS of any unusual operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or any Services; and,
- (m) If applicable, provide and pay for a dedicated voice grade dial-up phone line, or a mutually agreed communication method, and install a terminal block, or an equivalent communication mechanism, in a mutually agreed upon location. All on-line service Equipment (excluding the phone line) will remain the property of SIEMENS unless otherwise stated herein.

## **PERFORMANCE CONTRACTING AGREEMENT**

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- 6.2 Unless contrary to Applicable Law, the CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent.
- 6.3 The CLIENT acknowledges that it is now and shall at all times remain in control of the Facility. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to the CLIENT's activities or operations, the CLIENT's other contractor(s), the work of any other person or entity, or Facility conditions. SIEMENS shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of the CLIENT or others at the Facility. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Facility, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, the CLIENT shall not hold, or attempt to hold, SIEMENS liable or responsible on account thereof.

### **Article 7**

#### **Changes and Delays**

- 7.1 As the Work is performed, Applicable Law or conditions may change, or circumstances outside SIEMENS' reasonable control may develop, which would require SIEMENS to expend additional costs, effort or time to complete the Work, in which case SIEMENS will notify the CLIENT and an equitable adjustment will be made to SIEMENS' compensation and the time for performance. In the event such changes require the Work to be suspended or terminated, SIEMENS shall be compensated for Work previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 7.2 Either party may request additions, deletions, modifications or changes to the Work. Any such requests shall only become effective upon execution of a written agreement by authorized representatives of both Parties.
- 7.3 The CLIENT believes that the Services and Work are fully defined in the Agreement and Exhibits and that change orders will not be necessary. However, in the event that a change order is required, SIEMENS shall review the scope of work to be performed under the Agreement to suggest alternatives that can be implemented to offset the cost increase of any necessary changes without sacrificing the quality and/or scope of the Agreement specifications. All change orders and alternative suggestions must be approved by the Village prior to execution. A written change order must be issued by the Village Manager prior to commencing any additional work covered by such order. Work performed without proper authorization shall be at SIEMENS' sole risk and expense.
- 7.4 All change orders which authorize a net increase or decrease in the cost of the contract of \$10,000 or more, or in the time of completion by 30 days or more, require a written determination supporting the change, executed first by SIEMENS, then by the Board of Trustees of the CLIENT, or its authorized representative. Requests for change orders must state that the circumstances said to necessitate the change were not reasonably foreseeable at the time the contract was signed and were not within the contemplation of the contract as signed.
- 7.5 SIEMENS may, with the CLIENT's consent, which will not be unreasonably withheld, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality.
- 7.6 Neither CLIENT nor SIEMENS shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control (excluding payment obligations), including but not restricted to acts or omissions by the CLIENT 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 such delay or failure, the time for performance shall be extended by a period equal to the time lost. Additionally, Siemens shall be entitled to a reasonable recovery period. If any such delay exceeds sixty (60) days, SIEMENS may terminate this Agreement upon three (3) days notice to the CLIENT and the CLIENT shall promptly pay SIEMENS for the allocable portion of the Work completed, for any costs and expenses of termination, and for any loss or damage incurred with respect to materials, equipment, tools and machinery, including reasonable overhead and profit.

### **Article 8**

#### **Compensation**

- 8.1 The aggregate amount paid by CLIENT provides for and is solely in consideration of the Scope of Work and Services described in Exhibit A, and is detailed in Exhibit B.

## PERFORMANCE CONTRACTING AGREEMENT

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- 8.2 SIEMENS will invoice the CLIENT in accordance with the schedules set forth in Exhibit B. Unless otherwise agreed in writing, invoices are due and payable upon receipt by the CLIENT. If the CLIENT disagrees with any portion 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, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due. In such event, SIEMENS shall be entitled to compensation for the Work or Services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 8.4 On amounts not paid within thirty (30) days of invoice date, the CLIENT shall pay interest from invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. The CLIENT shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorney and witness fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed herein, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services. The CLIENT shall pay such amounts or reimburse SIEMENS for any such amounts SIEMENS pays to the extent such charges are lawfully due and payable by CLIENT and have been paid or incurred by SIEMENS in furtherance thereof. If the CLIENT claims that the Work or Services is subject to a tax exemption or direct payment permit, it shall provide SIEMENS with a valid exemption certificate or permit and, unless specifically prohibited by law, shall indemnify, defend and hold SIEMENS harmless from any taxes, costs and penalties arising out of the use or acceptance of same.
- 8.6 All other work or services requested by the CLIENT, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis:
- (a) Emergency services, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
  - (b) Work and/or services performed at times other than during SIEMENS' normal working hours, unless otherwise agreed to in Exhibit A; or
  - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.

### Article 9

#### Acceptance

- 9.1 When SIEMENS believes that all or an independent definable phase or portion of the Work is Substantially Complete, SIEMENS will submit a Certificate of Substantial Completion to the CLIENT which shall be subject to the following:
- (a) If the CLIENT concurs that the described portion of the Work as performed is Substantially Complete, the CLIENT will sign the Certificate of Substantial Completion and return it to SIEMENS;
  - (b) A Certificate of Substantial Completion may include, as an attachment to it, an Outstanding Items List prepared by SIEMENS;
  - (c) If the CLIENT does not concur that the Work is Substantially Complete, then, within thirty (30) business days of receiving the Certificate of Substantial Completion, the CLIENT shall notify SIEMENS in writing of the reasons it believes the Work is not Substantially Complete;
  - (d) If SIEMENS disagrees with the CLIENT as to whether the Work is Substantially Complete, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with Section 9.3 herein;
  - (e) If, within five (5) business days of receiving the Certificate of Substantial Completion the CLIENT fails to sign the Certificate, and within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice of the reasons the CLIENT believes that the Work is not Substantially Complete, then in the mutual interests of the Project proceeding in a timely manner, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial Completion.
- 9.2 After the CLIENT signs and returns, or is deemed to have signed and returned to SIEMENS all of the Certificates of Substantial Completion relating to the Work, and after SIEMENS corrects and completes all of the items on all of the Outstanding Items Lists, if any, SIEMENS will submit to the CLIENT a Certificate of Final Completion which shall be subject to the following:

## PERFORMANCE CONTRACTING AGREEMENT

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- (a) If the CLIENT concurs that all of the items on all of the Outstanding Items Lists have been completed or corrected, the CLIENT will indicate its final acceptance of the Work by signing the Certificate of Final Completion and returning it to SIEMENS;
- (b) If the CLIENT does not concur that all of the items on all of the Outstanding Items Lists have been completed or corrected, then the CLIENT shall, within thirty (30) business days of receiving the Certificate of Final Completion, identify the items that, it believes, were not completed or corrected;
- (c) If SIEMENS disagrees that the items identified by the CLIENT have not been completed or corrected, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with section 9.3 herein;
- (d) If, within five (5) business days of receiving a Certificate of Final Completion, the CLIENT fails to sign that Certificate, and, within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice identifying the items on the Outstanding Items List(s) that, the CLIENT believes, were not completed or corrected, then the CLIENT will be deemed to have agreed to and signed and returned the Certificate of Final Completion.

9.3 Any disputes concerning the Substantial Completion or the Final Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm and which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of this firm with respect to Final Completion or Substantial Completion will be final and binding upon the Parties. SIEMENS and the CLIENT shall share equally the costs or fees for such firm in connection with such dispute resolution process.

### Article 10

#### Insurance and Allocation of Risk

10.1 SIEMENS shall maintain, at SIEMENS' expense, the following insurances while performing the Work and shall add the CLIENT as an "Additional Insured" to each policy that is referenced in subsections (c) through and including (e) hereof:

- (a) Workers' Compensation at the statutory amounts and limits as prescribed by Applicable Law.
- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
  - \$1,000,000 per occurrence
  - \$1,000,000 Disease Policy
  - \$1,000,000 Each Employee
- (c) SIEMENS shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering SIEMENS' operations and providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for:
  - Products and Completed Operations
  - Contractual Liability insuring the obligations assumed by SIEMENS in this Agreement
  - Broad Form Property Damage (including Completed Operations)
  - Explosion, Collapse and Underground Hazards
  - Personal Injury Liability:
    - Limits of liability shall be \$1,000,000 per occurrence/aggregate
- (d) SIEMENS shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of SIEMENS providing insurance for bodily injury liability and property damage liability for the limits of:
  - \$1,000,000 per occurrence/aggregate
- (e) SIEMENS shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of:
  - \$5,000,000 per occurrence/aggregate

10.2 The CLIENT will either maintain at its own expense, or self-insure for the equivalent risks, property insurance written on a builder's "all-risk" or equivalent policy form in an amount no less than the Price identified in Exhibit B, Article 1.1, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract

## PERFORMANCE CONTRACTING AGREEMENT

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Documents or otherwise agreed in writing by SIEMENS, until final payment has been made to SIEMENS or no person or entity other than the CLIENT has an insurable interest in the property, whichever is later. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for SIEMENS' services and expenses required as result of such insured loss. If the insurance requires deductibles or retentions, the CLIENT shall pay costs not covered because of such deductibles or retentions. This insurance shall cover portions of the Work off the Facility, and also portions of the Work in transit. Partial occupancy or use shall not commence unless the insurance company providing this insurance has consented to such partial occupancy or use by endorsement for otherwise. The CLIENT shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until Acceptance by the CLIENT. The insurance required by this section shall include the interests of the CLIENT, SIEMENS, subcontractor and sub-subcontractor in the Work. SIEMENS shall be included as an additional insured on each such insurance coverage. The CLIENT and SIEMENS waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by the insurance required by this section and for any other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the CLIENT as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Insurance certificates shall be furnished upon request.

10.3 Title and risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Facility, and the CLIENT shall be responsible for protecting them against theft and damage.

10.4 SIEMENS will indemnify the CLIENT from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property (collectively "Damages"). Such indemnification shall be solely to the extent the Damages are caused by or arise directly from SIEMENS or its employees', consultants' or agents' negligent acts or omissions or willful misconduct in connection with SIEMENS' performance of the Work or Services. SIEMENS' obligations under this indemnity shall not extend to Damages arising out of or in any way attributable to the negligence of the CLIENT or its agents, contractors or employees. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT OR SIEMENS BE LIABLE UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS OR THE CLIENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT, UNLESS CONTRARY TO APPLICABLE LAW, SIEMENS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR 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 TO THE LESSER OF \$1,500,000 OR THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THE CLIENT UNDER THIS AGREEMENT. The preceding limit shall not apply to the CLIENT's remedy under the Performance Guarantee as such is limited by Section 4.8.

10.5 As to Patents and Copyrights:

- (a) SIEMENS will, at its own expense, defend or at its option settle any suit or proceeding brought against the CLIENT in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if SIEMENS is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. SIEMENS will pay the damages and costs awarded in any suit or proceeding so defended. SIEMENS will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by the CLIENT is enjoined, SIEMENS will, at its option and its own expense, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.



## PERFORMANCE CONTRACTING AGREEMENT

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- (b) SIEMENS will have no duty or obligation to the CLIENT under Section 10.5(a) to the extent that the Work is: (i) supplied according to the CLIENT's design or instructions, wherein compliance therewith has caused SIEMENS to deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors after delivery; or, (iii) combined by the CLIENT or its contractors with items not furnished hereunder, and by reason of said design, instruction, modification, or combination, a suit is brought against the CLIENT. If by reason of such design, instruction, modification or combination, a suit or proceeding is brought against SIEMENS, unless expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner and to the same extent that SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a) above.
- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute fulfillment of all liabilities of the Parties under the Agreement with respect to the intellectual property indemnification.

10.6 The Parties acknowledge that the price for which SIEMENS has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each Party has expressly relied on and would not have entered into this Agreement but for such allocations of risk.

10.7 SIEMENS shall exercise all necessary caution to protect all public and private property from injury or damage caused by the operations of SIEMENS, during the provision of Services and completion of Work. SIEMENS shall comply with all applicable safety standards. Should SIEMENS or its representatives damage property of the Village or that of other persons, the repair or replacement shall be the responsibility of SIEMENS.

10.8 SIEMENS shall provide for review a certified copy of the policy (s) to the Village upon reasonable advance written request which review shall take place at the corporate offices of Siemens Corporation in Iselin, New Jersey. The policy(s) shall provide, in the event the insurance should be canceled, such cancellation shall not be effective until thirty (30) days after the Village has received written notice from the insurance company(s). Such notice shall be mailed to the Village in care of the Innovation Director, in compliance with the notice provisions of this Agreement. SIEMENS will utilize only an insurance company having at least an "A" Policyholders Rating as listed in the most recently published "Alfred M. Best and Company Insurance Guide".

### Article 11

#### Hazardous Materials Provisions

11.1 The Work does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Facility at which Work is performed and any soil or groundwater at the Facility by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any other Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that, to the best of its knowledge following due inquiry, there are no Hazardous Materials or Oil present where the Work is to be performed. SIEMENS will notify the CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on the CLIENT's representations as set forth in this Article. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Facility where SIEMENS is to perform Work, or of contamination of the Facility by Oil or Hazardous Materials not previously disclosed pursuant to Section 11.2, shall entitle SIEMENS to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work and to be paid for Work previously performed.

11.2 The CLIENT warrants that, prior to the execution of the Agreement, it notified SIEMENS in writing of any and all Oil or Hazardous Materials, to the best of its knowledge following due inquiry, known to be present, potentially present or likely to become present at the Facility and provided a copy of any Facility safety policies and information, including but not limited to lock-out and tag procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by Applicable Law.

11.3 Regardless of whether Oil or Hazardous Material was disclosed pursuant to Section 11.2, the CLIENT shall be solely responsible for properly testing, abating, encapsulating, removing, disposing, remedying or neutralizing such Oil or

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Hazardous Materials, and for the costs thereof. Even if an appropriate change order has been entered into pursuant to Section 11.1, SIEMENS shall have the right to stop the Work until the Facility is free from Oil or Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete the Work, and compensation for delays caused by Oil or Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. The CLIENT shall sign any required waste manifests in conformance with all government regulations, listing the CLIENT as the generator of the waste. If someone other than the CLIENT is the generator of the waste, the CLIENT shall arrange for such other person to sign such manifests.

11.4 Except where expressly prohibited by Applicable Law, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CLIENT 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 the CLIENT's breach of, or failure to perform its obligations under this Article.

11.5 For purposes of this Article 11, in the context of the phrase "to the best of its knowledge following due inquiry"; "knowledge" means actual awareness of the facts by the CLIENT's directors, officers, employees or agents, or the presence of relevant information contained in the CLIENT's books or records; and, "due inquiry" means inquiry of those persons under the CLIENT's control who should have knowledge of the subject matter of such inquiry.

### Article 12

#### Miscellaneous Provisions

12.1 Notices between the Parties shall be in writing and shall be hand-delivered or sent by certified mail, express courier, or acknowledged telefax properly addressed to the appropriate party. Any such notice shall be deemed to have been received when delivered in-person or when sent by telefax, or five (5) business days subsequent to deposit in the U.S. mails, or one (1) day after deposit with express courier. Notices to be sent to the CLIENT using address and contact information for it shall be as provided on page 2 of the Agreement.

12.2 Neither the CLIENT nor SIEMENS shall assign or transfer any rights or obligations under this Agreement, except that either party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work or Services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express written consent of both Parties.

12.3 This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth within which the Facilities are located.

12.4 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work, the Services, and the termination of this Agreement.

12.5 Unless contrary to Applicable Law and with the exception of disputes arising under Article 4 or Article 9, all disputes not resolved by negotiation between the Parties shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at that time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the Parties. Except as provided in Article 8.4, the arbitrator shall have no authority to award, and shall not award, attorneys' fees. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter.

12.6 SIEMENS' performance of the Work and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Work or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement

12.7 Any provision of this Agreement found to be invalid, unlawful or unenforceable by a court of law shall be ineffective to the extent of such invalidity, and deemed severed herefrom, without invalidating the remainder of this Agreement. All other provisions hereof shall remain in full force and effect.

12.8 The waiver by a party of any breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof. No waiver shall operate or be effective unless made in writing and executed by the party to be bound thereby.

## PERFORMANCE CONTRACTING AGREEMENT

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- 12.9 In the event that Applicable Law or the CLIENT requires that SIEMENS procure a performance bond and/or a payment bond, SIEMENS shall provide a performance and payment bond in the amount of \$3,059,554.00. The performance and payment bond will solely apply to the Work performed during the Construction Period and to the required statutory lien filing period thereafter. The performance and payment bond will not apply to any of the obligations included in the Performance Assurance, Exhibit C. Furthermore, the CLIENT's funding source may be named as "Co-Obligee" on the performance bond if so requested by the CLIENT.
- 12.10 In the event that Applicable Law or the CLIENT requires that SIEMENS procure a performance bond and/or a payment bond," and replacing it with the following: SIEMENS will be required to submit an acceptable performance and payment bond for 100% of the contract amount of work to be completed, in the amount of \$3,059,554.00. If at the end of the completed project SIEMENS has suitably performed and has fulfilled the terms of the Agreement, the Innovation Director will, upon request, issue to SIEMENS and the bonding company a release from all liability under the terms of the issued performance and payment bonds. Issuance of this release will not relieve SIEMENS, its Subcontractors, or their insurance carriers from satisfactorily resolving any and all liability and/or damage claims incurred during the full term of the Agreement.
- 12.11 SIEMENS shall maintain books, records, documents and other evidence directly pertinent to performance of the work under this Agreement as may be required by and consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. SIEMENS shall also maintain the financial information and data used by SIEMENS in the preparation or support of any cost submissions required under this Agreement. The CLIENT or any of its duly authorized representatives shall have access to the non-proprietary books, records, documents, and other evidence for purposes of inspection, audit, and copying as may be legally required. SIEMENS agrees to the disclosure of all non-proprietary information and reports resulting from access to records pursuant to the subsection above, as may be legally required. Records covered herein shall be maintained and non-proprietary records made available during performance of the Services or the Work under this Agreement and until three years from the date of final audit for the project.

### Article 13

#### Maintenance Services Program

- 13.1 If applicable, the scope of Services provided by SIEMENS for the Maintenance Services Program is stated in Exhibit A.
- 13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSP commencement or no later than the first scheduled inspection. Testing and inspection will not be deemed to be complete until all such equipment has been so tested and inspected.
- 13.3 If the equipment is altered or moved by any person, including the CLIENT, other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense.
- 13.4 If SIEMENS reasonably determines as a result of such inspection and/or testing that any equipment requires repair or replacement, the CLIENT will be so notified and shall take corrective action within thirty (30) days, or such equipment shall be removed from coverage hereunder without further action by the Parties. SIEMENS is not liable or responsible for the continued testing, maintenance, repair, replacement or operating capabilities of any portion of the equipment until it has been inspected and/or tested and has been, if necessary, restored to an acceptable initial condition at the CLIENT's sole expense. Any services provided by SIEMENS in the course of such restoration will be separately charged on a time and materials basis, and not included in fees paid hereunder. If individual items of equipment cannot, in SIEMENS' sole determination, be properly repaired or replaced due to age, obsolescence, lack of availability of refrigerant gas, halon gas, necessary parts, materials, compatibility or otherwise, or as a result of excessive wear or deterioration, SIEMENS may, within ten (10) days of such inspection, give written notice that it is withdrawing such items from coverage under the MSP and adjust the MSP payments due hereunder accordingly.
- 13.5 If the removal of equipment from coverage would compromise or impair the integrity of the Work, Services or compliance with law of any system, then SIEMENS will provide a written statement thereof for execution by the CLIENT. The CLIENT's failure to execute such statement within ten (10) days will void the MSP and release SIEMENS from any further obligations with respect to the MSP.

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## PERFORMANCE CONTRACTING AGREEMENT

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13.6 If the MSP scope of Services provides for equipment maintenance, repairs and/or replacements of equipment by SIEMENS, those Services are limited to restoring the proper working condition of such equipment. SIEMENS will not be obligated to provide replacement equipment that represents significant capital improvement compared to the original. Exchanged components become the property of SIEMENS, except Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.

13.7 Neither party shall at any time, either directly or indirectly, disclose, use or communicate or attempt to disclose, use or communicate to any person, firm, or corporation any Confidential Information belonging to the other party. Confidential Information is any proprietary, business, financial, technical or operational information of SIEMENS or the CLIENT. The party receiving Confidential Information ("Receiving Party") of the other ("Disclosing Party") shall not, and shall cause its employees or agents not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this Agreement. SIEMENS and the CLIENT shall treat such Confidential Information at all times as confidential. Siemens and the CLIENT acknowledge that the disclosure of any Confidential Information without the Disclosing Party's express authorization would be harmful and damaging to the Disclosing Party's interests.

Each party may disclose Confidential Information to the other party. For such Confidential Information to be subject to the terms of this Agreement, it must be conspicuously marked by the Disclosing Party as "Confidential," "Proprietary," "Restricted," or other similar marking. Verbal or visual disclosures shall be deemed Confidential Information from the date of the disclosure provided that: (i) it is indicated at the time of the disclosure that the information is confidential or proprietary; and (ii) within thirty (30) calendar days of the date of the disclosure, the essence of the oral or visual disclosure is reduced to writing, marked in accordance with this Section and transmitted to the Receiving Party. Compilations of resident names and addresses, resident lists, resident information reports, any other resident information and CLIENT financial information that is provided by the CLIENT to Siemens under this Agreement shall be deemed Confidential Information. Each Receiving Party will use Confidential Information only in connection with the business purpose of the Letter and for no other purpose.

The Receiving Party will use the same reasonable efforts to protect the Confidential Information of Disclosing Party as it uses to protect its own proprietary information and data. Prior to disclosing the Confidential Information to its employees or agents in the course of the performance of the Agreement, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure.

Confidential Information will not include any information or data if the Receiving Party can show that such information: (1) was or becomes generally available to the public through no breach of this Letter by receiving party; (2) was rightfully in the receiving party's possession prior to receipt from the disclosing party; (3) becomes rightfully available to the receiving party from a source other than the Disclosing Party who is free to lawfully disclose such information to the Receiving Party; (4) is approved for release by written agreement of the Disclosing Party; or (5) is independently developed by the Receiving Party, as evidenced by written records, without the use of the Disclosing Party's Confidential Information. Confidential Information shall not be deemed to be in the public domain merely because any part of the Confidential Information is embodied in general disclosures or because individual features, components or combinations thereof are known or become known to the public.

In the event the Receiving Party is required by a court or federal, state or local agency to disclose Confidential Information, such Receiving Party shall promptly notify the Disclosing Party of such order so that the Disclosing Party may seek a protective order or take any other action as it deems appropriate. In such circumstances, the Receiving Party shall exercise all reasonable efforts to disclose only the minimal amount of Confidential Information required to satisfy such order.

Notwithstanding anything herein to the contrary, in the event that the CLIENT has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) ("the Act"), or similar law for the disclosure of information that Siemens has designated as confidential, trade secret or proprietary the CLIENT shall notify Siemens of such request and cooperate with Siemens in opposing such request.

### Article 14

#### Regulatory Provisions

## PERFORMANCE CONTRACTING AGREEMENT

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By signing this Agreement, SIEMENS acknowledges the following statutory requirements and certifies the following:

14.1 SIEMENS at all times during the term of this contract shall observe and abide by all Federal, State, and local laws which are in any way applicable to the conduct of the work and shall comply with all decrees and order of courts of competent jurisdiction.

14.2 SIEMENS shall comply fully and completely with any and all applicable State and Federal statutes, rules and regulations as they relate with hiring, wages, and any other applicable conditions of employment as further detailed in these specifications, including but not limited to Title 7 of the Civil Rights Act of 1964, the Immigration Reform and Control Act, the Americans With Disabilities Act, as amended, the Illinois Drug-Free Workplace Act, Article 33E of the Illinois Criminal Code of 1961 and the Illinois Human Rights Act (775 ILCS 5/1-101, et seq.).

14.3 With regard to the Illinois Human Rights Act, SIEMENS hereby agrees that this Contract shall be performed in compliance with all requirements of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and that SIEMENS and its Subcontractors shall not engage in any prohibited form of discrimination in employment as defined in that Act and shall maintain a sexual harassment policy as the Act requires.

Pursuant to Section 2-105 (A)(4) of the Illinois Human Rights Act, the Contractor and each subcontractor shall adopt and maintain written sexual harassment policies that shall include, at a minimum, the following information:

- (1) the illegality of sexual harassment;
- (2) the definition of sexual harassment under state law;
- (3) a description of sexual harassment, utilizing examples;
- (4) the Contractor/subcontractor's internal complaint process, including penalties;
- (5) the legal recourse, investigative and complaint process available through the Department and Commission (of Human Rights);
- (6) directions on how to contact the Department and the Commission; and
- (7) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act.

14.4 SIEMENS shall maintain, and require that its subcontractors maintain, policies of equal employment opportunity which shall prohibit discrimination against any employee or applicant for employment on the basis of race, religion, color, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental disability unrelated to the individual's ability to perform the essential functions of the job, association with a person with a disability, or unfavorable discharge from military service. SIEMENS and all subcontractors shall comply with all requirements of the Act and of the Rules of the Illinois Department of Human Rights with regard to posting information on employees' rights under the Act.

14.5 With regard to the Illinois Drug-Free Workplace Act, SIEMENS, having 25 or more employees, certifies that it shall provide a drug-free workplace for all employees engaged in the performance of the work under the Agreement by complying with the requirements of the Illinois Drug-Free Workplace Act and, further certifies, that it is not ineligible for award of this Agreement by reasons of debarment for a violation of the Illinois Drug-Free Workplace Act.

14.6 The Prevailing Wage Act (820 ILCS 130.01 et seq.) prohibits the use of alcohol and controlled substances by workers employed by contractors and subcontractors while employed on any public works project. The provisions of the statute apply only to the extent SIEMENS or its subcontractors have no collective bargaining agreement in effect dealing with substance abuse by its employees.

Before any contractor or subcontractor commences work on a public works project, it must have in place a written program for the prevention of substance abuse among its employees which meets or exceeds the program requirements in the Act.

14.7 SIEMENS shall comply with all State laws to provide an equal opportunity for the employment of its workers, agents or representatives, pursuant to the Illinois Constitution, Article I, Section 17; Article I, Section 18; and the Public Works Employment Discrimination Act, 775 ILCS 10/1.

14.8 The State of Illinois requires under Public Works contracts that the general prevailing rate of wages in this locality be paid for each craft or type of worker hereunder. This requirement is in accordance with The Prevailing Wage Act (820

## PERFORMANCE CONTRACTING AGREEMENT

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ILCS 130) as amended. It shall be mandatory upon SIEMENS and any of its subcontractors. A copy of the prevailing wage rates is attached to this Agreement, if applicable. If the Department of Labor revises the prevailing rate of hourly wages to be paid by the Village, the revised rate, shall apply to this Agreement.

The IDOL website can be accessed for updates [www.state.il.us/agency/idol](http://www.state.il.us/agency/idol).

SIEMENS is also required to insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the Agreement. It shall also be mandatory upon each subcontractor to cause to be inserted into each lower tiered subcontract and into the project specifications for each lower tiered subcontract a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers workers, and mechanics performing work under the contract. A contractor or subcontractor who fails to comply is in violation of the Act.

SIEMENS and each of its subcontractors shall maintain monthly, certified payrolls of the project. The certified payrolls shall consist of a complete copy of the records. The certified payrolls shall be accompanied by a statement signed by SIEMENS or subcontractor which avers that: (i) such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required; and (iii) SIEMENS or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

## Article 1: Scope of Work and Services

1.1 **Description:** Except as otherwise expressly provided herein, SIEMENS shall provide the items of cost and expenses necessary to implement the following Facility Improvement Measures ("FIMs"), which are further described in Section 1.2 (collectively, the "Work"):

- Replacement of Water Meters with Radio Read Capabilities
- Advanced Metering Infrastructure (AMI) Upgrades

1.2 **Specific Elements:** The Work shall include the following:

1.2.1 Replacement of Water Meters with Radio Read Capabilities

SIEMENS will furnish and install new water meters, furnish and install new Smartpoint transmitters, and reprogram existing Smartpoint transmitters as outlined below. Meter and Smartpoint transmitter quantities are based on data provided by the CLIENT, and the types and quantities are listed below in Table A.1. To the extent that this information is not correct, the parties will confer and amend the Scope of Work as provided in Article 1.3 of Exhibit B, as applicable. Installation costs will be charged and credited using the unit price schedule shown in Exhibit B Table B.1.

**Table A.1, Meter & Transmitter Quantities**

Meter Replacement	
Scope of Work	Estimated Quantity
5/8, 3/4"S Sensus iPERL	4,777
3/4" Sensus iPERL	0
1" Sensus iPERL	1,592
1 1/2" Sensus OMNI R2	129
2" Sensus OMNI R2	103
2" Sensus OMNI C2	4
3" Sensus OMNI C2	22
4" Sensus OMNI C2	3
<b>Total</b>	<b>6,630</b>
Smartpoint Transmitters	
Scope of Work	Estimated Quantity
Furnish & Install new Sensus 510-M Smartpoint transmitter	3,000
Reprogram existing Sensus 510-M Smartpoint transmitter	3,591
<b>Total</b>	<b>6,591</b>

The following items are not currently included in the scope of work for this project. Additional cost (Per Item or Time & Material) for these items are listed in Exhibit B Table B.2, Out of Scope Contract Price Adjustments. SIEMENS can include these items on an as-needed basis:

- Furnish and install new communication wire (Per Item).
- Furnish and Install new water meter isolation valve to replace defective/leaking meter isolation valve located inside the facility (Per Item).
- Furnish and install electrical grounding strap (Per Item).
- Perform plumbing modifications as required to accommodate non-standard meter lay lengths, changes to the meter size, or meter couplings, repair leaks, etc. (Time and Material).

To the extent that any additional work not priced in the scope as of the Effective Date is added, and that such work causes the total project cost to exceed the then current total project savings, additional Guaranteed Savings will be required in an amount equal to or greater than the Savings deficit created in order for the work to be undertaken.

It is represented by CLIENT to SIEMENS, and is an assumption of the Parties, that the components of the new AMI system will properly fit inside of CLIENT's current meter environment where applicable unless lay-length or other rework is specifically stated in this Scope of Work, or a size change is desired by the client. To the extent that this assumption is incorrect, SIEMENS will present CLIENT with a cost (time and material) to remedy the same, and will gain approval before proceeding, which approval shall not be unreasonably withheld.

SIEMENS has done its due diligence to verify that the meter and Smartpoint transmitter quantities listed in Table A-1 above are accurate and CLIENT is in agreement with these quantities.

The CLIENT will be responsible for all line breaks, unless and to the extent the break is caused by SIEMENS negligence in which SIEMENS will be responsible on a comparative basis.

All removed meters shall become unavailable to the CLIENT. The final reading of the removed old meter will be provided from the direct read dial face of the meter, If the reading is illegible due to dial face condition, SIEMENS will break the glass of the dial face to obtain the final reading, with CLIENT's permission which is granted in advance. All final reads will be photo documented.

SIEMENS will work on the CLIENT's behalf to manage recycling of the removed water meters. CLIENT will receive any monetary value of these recycled meters.

Meter Access Procedure for the Project is outlined below:

- SIEMENS will draft an introductory letter to be approved by the CLIENT and sent by SIEMENS to customers describing the project, outlining the work to be done and what can be expected as installations move forward. SIEMENS will establish an appointment system where water customer will call in or go online to establish a date



and time for each appointment. SIEMENS will attempt to access the meter during normal construction hours.

- Following mailing of letter to customers, SIEMENS will send out a series of three postcards in an attempt to get the water customer scheduled for a meter replacement. SIEMENS will make at least three attempts to schedule an appointment over a period of two calendar weeks.
- Each attempt to access the meter will be documented with a date and time recorded electronically into the SIEMENS installation portal.
- After the third documented attempt, SIEMENS will return the account to CLIENT for access assistance as a Return To Utility ("RTU").
- CLIENT will take reasonable actions, including service disconnection as allowed by CLIENT ordinances, as a means to gain access to the RTU account.
- If during project closeout the account remains inaccessible, the account will be deemed permanently inaccessible and removed from the project scope. To the extent that SIEMENS obligations under the Performance Guarantee are adversely impacted by not being able to implement the Work due to facility inaccessibility, such obligations deemed satisfied with no further liability as to SIEMENS under this Agreement and it shall have no obligation to make any shortfall payments caused by any Savings Shortfall due to inaccessible account(s) during the Construction Period, which Savings Shortfall payments are waived by CLIENT.
- SIEMENS must ensure that installation staff wears Lake Zurich contractor photo identification cards at all times, and present it upon meeting any residents or customers. SIEMENS installers will drive marked vehicles and wear SIEMENS shirts. SIEMENS installation staff shall conduct themselves in a professional manner and maintain a presentable appearance in the field.

SIEMENS will coordinate closely with the CLIENT staff for scheduling and workflow as each route is installed. SIEMENS will create and maintain a project installation web portal that will have current information as to location of work crews, routes completed and other relevant information.

Install crews will document and digitally photograph the meter and Smartpoint transmitter serial numbers, meter size, and the final reading from the existing register prior to removal; and will photograph and document the new meter and Smartpoint serial numbers, new meter size, latitude, longitude, and configure, program and verify communication of each new set upon installation. The installer will present the final read of the old meter for resident signature. As each route is completed, the commissioning and acceptance plan described will be performed to verify proper performance.

Should SIEMENS encounter an inoperable meter isolation valve during the new meter installation; SIEMENS will attempt to operate the curb stop to facilitate meter installation. SIEMENS will contact CLIENT Public Works if they need assistance operating or locating the curb stop, but the CLIENT should make an effort to pre-locate curb stops prior to install. If the curb stop needs to be serviced or SIEMENS is unable to locate it, SIEMENS will classify the account as RTU. Upon resolution of the issue, the CLIENT will return the account to SIEMENS for rescheduling.

A successful and complete meter installation is defined as:

- The new meter is installed to manufacturer's specifications and is free of leaks and the Smartpoint is communicating via the Sensus Analytics AMI network.

- The new meter data is successfully imported into the CLIENTS existing Superior utility billing software, and the CLIENT can produce a billing on the new meter.

Public Outreach Responsibilities:

- SIEMENS will provide a description of the project, and a list of frequently asked questions that CLIENT can include on the utility website to inform residents about the project
- SIEMENS will attend an informational town hall meeting scheduled by the CLIENT, at a mutually agreed upon time, to provide a question and answer period for the residents
- SIEMENS will provide residents with a 24-hour call response number to contact in the case of a problem with the installation of a meter.
- All forms of media relations and documents used to communicate with water customers shall be reviewed and approved of by the CLIENT and SIEMENS prior to use by SIEMENS.

Exclusions:

- Repair of any existing leaks found prior to beginning the meter retrofit.
- Repair of any leaks which occur outside of the immediate area on either side of the meter connection work area.
- Installation of strainers, test valves, bypasses or piping modifications, except as expressly stated in this contract.
- Replacing old or damaged service pipe, either from the City-side or the customer side.
- Furnishing and installation of new valves.
- Correcting any observed plumbing code violations.
- Re-plumbing settings to accommodate non-standard meter lay lengths, changes to the meter size, or meter couplings.
- Environmental abatement or remediation work.

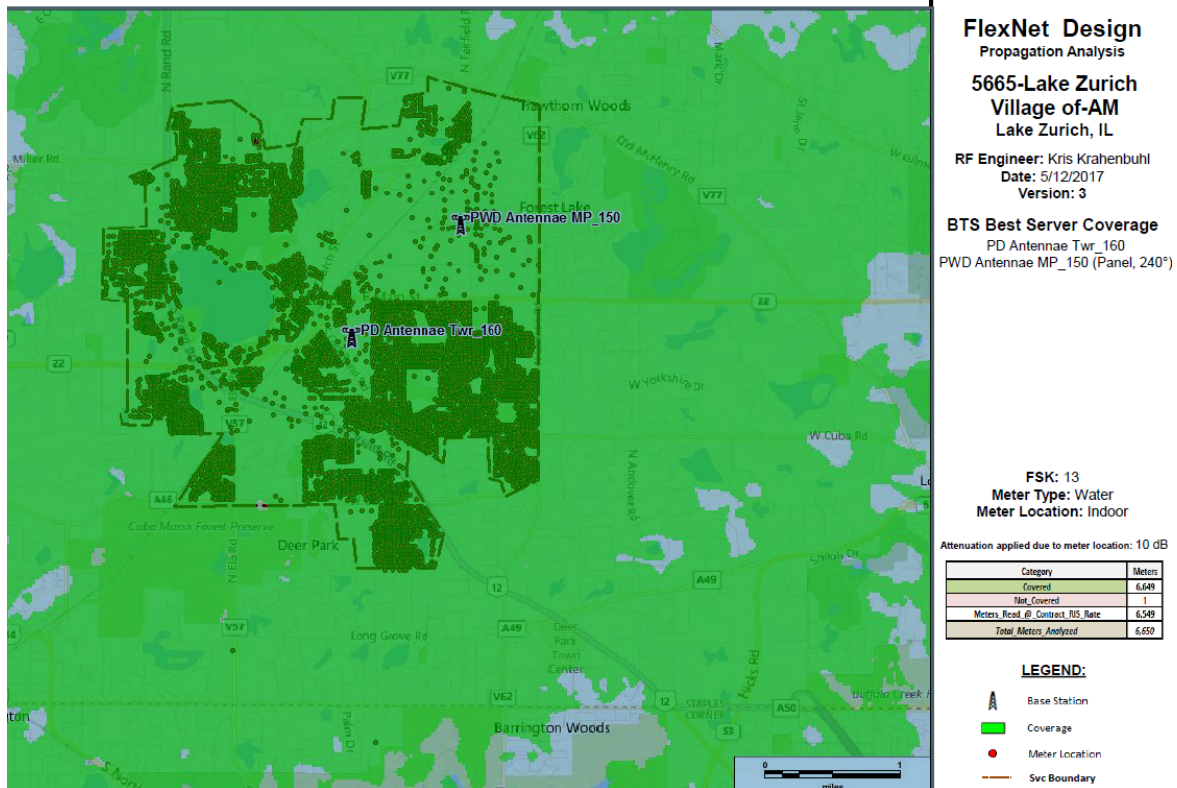
1.2.2 Advanced Metering Infrastructure (AMI) Upgrades

SIEMENS will install a new Sensus Analytics Fixed Network AMI system as selected by the CLIENT and provide material and labor to make the system functional, which includes installation of the following:

- Sensus Analytics Fixed Network AMI system which includes:
  - Two (2) Sensus M400 Tower Gateway Base Stations (See Table A.2).
  - One (1) 6501 Handheld, Command Link.
  - Project and Data Training.

### Table A.2, Base Station Locations

Facility ID	Location	Description
Police Station	LAT 42-11-39.84 N / LONG 88-05-05.28 W	Existing 180' monopole tower
Public Works Building	LAT 42-12-22.86 N / LONG 88-04-08.73 W	Existing 150' monopole tower



- For each base station location, CLIENT shall coordinate with SIEMENS and Sensus to provide an A/C power. CLIENT shall also provide backhaul for each location.

SIEMENS shall also include a mass meter transfer program, integration data sync programs, and system commissioning. SIEMENS will work with the CLIENT, Sensus and Superion to validate programs before mass installations begin. A description of the Data Integration Programs is as follows:

- Writing of a program to update billing system with new and old meter data through batch updates to the CLIENT's water billing system. The modification is to be thoroughly tested on the test database before put into use on the live database. All updates are completed and monitored by SIEMENS IT staff.
- Interface Program between the Sensus Analytics software package and the CLIENT billing system. The IT staff required to make this interface a success will be included as part of this project. This interface typically includes the generation of text (.txt) or comma separate value (.csv) file format. This file will be exported from the Sensus Analytics software package once the readings have been completed and the CLIENT

- is ready for billing. The file will then be imported into the CLIENT billing program. Billing can then be completed as usual by the CLIENT.
- An IT person will be assigned to the project and will interface with the installation team, the CLIENT, Sensus and Superion to ensure the smooth transition of the data from the collection system to the billing software. This person will be onsite, as needed, to provide this service.
  - Turnkey AMI system start up/testing/commissioning;
  - Onsite field training to include 5 days, for 5 people
    - Training on use of AMI System and Meters
    - Training for field personnel of proper installation and maintenance of system;
    - Training on the use of interface billing software to Sensus Analytics data collection system.
    - Supplemental Training as necessary
    - A Staffing Plan

Exclusions:

- Any fees associated with any tower lease agreement.
- Any ongoing service fees charged by manufacturers of software, meters, or AMI system.
- Compliance with state or local requirements/environmental reviews is not included in SIEMENS scope.
- Any repairs or upgrades to the existing electrical system required by the applicable inspecting authority. In the event SIEMENS is required to perform such work, it shall be considered an extra and subject to additional compensation to SIEMENS.
- Any landscaping work beyond the original state of the site
- Any deficiencies in existing electrical system at sites chosen for base stations, including proper grounding and bonding.
- Any repairs or upgrades to the existing system required by any applicable inspecting authority. In the event SIEMENS is required to perform such work, it shall be considered an extra and subject to additional compensation to SIEMENS.
- Any permitting fees required by any State, local or Federal agency for installation of the base stations.
- Any environmental remediation or abatement work.

**1.3 Technical Specifications, Drawings, and Exhibits:**

- All O&M manuals, wiring diagrams, and manufacturer's warranties to be supplied to CLIENT. Three hard copies and one digital copy of all manuals shall be provided to the CLIENT

**CLIENT'S Responsibilities** (in addition to those in Article 6 of the Agreement):

- Provide a designated representative to interface with SIEMENS on all issues related to the project.
- Provide for timely review of project schedules and submittals (typically a 5-day approval turn-around unless otherwise specified).

- Provide escorts as required in public facilities, all such access must be scheduled 24 hours in advance.
- Provide for timely review and approval of completed Work.
- Provide for timely uploading of meter change out batch files (typically a 5-day period).
- CLIENT will be responsible for the monthly service fee for the backhaul communication for the water meter AMI system.
- Isolating the utility system to allow for meter/valve change out, including identification of all shut-off valves and curb stops as required; CLIENT shall continue to be responsible for reading meters until all commissioning and acceptance plan steps are completed for the AMI system.
- CLIENT shall continue to be responsible for reading meters until all commissioning and acceptance plan steps are completed for the AMI system.
- For sites with adjacent available power, CLIENT shall provide 120 VAC power to the data collection units at the locations determined by the propagation study, as well as any necessary grounding.
- CLIENT responsible for locating and identifying any underground utility lines within any proposed trenching path for each site. SIEMENS reserves the right to handle any deviation from proposed trenching path as a change in scope of work, and issue a change order;
- CLIENT shall select a communication link at each of the data collection unit locations that will be able to transmit data from the base station back to the Regional Network Interface (RNI) for processing.
- CLIENT shall provide assistance in locating Hard to Find meters.
- CLIENT shall, with SIEMENS assistance, obtain legal rights to install, operate and maintain any and all parts of the collection system at proposed locations.
- CLIENT shall work with SIEMENS to validate the Data Integration Programs and run test billings.

## Article 2: Work Implementation Period

- 2.1 *Commencement of Work:* SIEMENS shall commence the Work within **thirty (30)** days from the Effective Contract Date and shall perform the Work diligently, and shall complete the Work within one calendar year from the day of commencement.
- 2.2 *Milestones:* Specific scheduling milestones and coordination requirements will be defined in Project schedule.

## Article 3: Scope of Performance Assurance Services Program (PASP)

- 3.1 PASP Services will commence on the Guarantee Date and shall be performed annually for the Performance Guarantee Period unless terminated earlier by CLIENT in accordance with terms and conditions of the Agreement.
- 3.2 SIEMENS will provide the following PASP Services and Deliverables annually:
- Water meter accuracy testing.

- Determination of the Calculated Billable Usage Increases, based on baseline consumption and most recent tested meter accuracy tests.
- One (1) Performance Assurance Report, to be provided within (90) calendar days of the anniversary of the Guarantee Date for the period of the PASP.

#### **Article 4: Scope of Services-Maintenance Services Program**

CLIENT has elected to self-implement maintenance, in accordance with manufacturers' recommendations and prudent industry standards. Therefore SIEMENS shall not perform any on-going maintenance services, although the Parties may negotiate a separate agreement for such services at a later date. CLIENT agrees that it will maintain the equipment per manufacturer specifications and that it will operate the Equipment in accordance with the Contracted Baseline described in Article 7 of Exhibit C. If CLIENT fails to properly maintain or operate the Equipment, per manufacturer's recommendations, which will be detailed in provided operations and maintenance manuals, SIEMENS shall have the right to modify the Performance Guarantee pursuant to Article 4 of the Agreement.

By signing below, this Exhibit A is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

**CLIENT:**            **Village of Lake Zurich,  
Illinois**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**SIEMENS:**            **Siemens Industry, Inc.**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**SIEMENS:**            **Siemens Industry, Inc.**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



## Article 1: Payment for Scope of Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of Work, the CLIENT shall pay to SIEMENS \$3,199,425.58 plus taxes if applicable.

The Contract Price is based on the quantities and cost given in Table B.1 below.

**Table B.1, Quantities and Cost**

Item	Quantity	Unit Cost	Extended Cost
5/8, 3/4S" Sensus iPERL meter – material only	4,777	\$117.30	\$560,342.10
3/4" Sensus iPERL meter – material only	0	\$146.63	\$0.00
1" Sensus iPERL meter – material only	1,592	\$172.43	\$274,510.15
1.5" Sensus OMNI R2 meter – material only	129	\$439.88	\$56,743.88
2" Sensus OMNI R2 meter – material only	103	\$615.83	\$63,429.98
2" Sensus OMNI C2 meter – material only	4	\$1,196.46	\$4,785.84
3" Sensus OMNI C2 meter – material only	22	\$1,515.52	\$33,341.35
4" Sensus OMNI C2 meter – material only	3	\$2,633.39	\$7,900.16
510M Smartpoint Transmitter SP T/C (Non-Pit) – material only	3,000	\$114.95	\$344,862.00
Install 1" and smaller Sensus iPERL meter and new Smartpoint transmitter – labor only	2,928	\$126.13	\$369,308.64
Install 1" and smaller Sensus iPERL meter and reprogram existing Smartpoint transmitter – labor only	3,441	\$123.14	\$423,724.74
Reprogram existing Smartpoint transmitter only – labor only	150	\$76.00	\$11,400.00
Install new Smartpoint transmitter only on existing test meters – labor only	72	\$83.52	\$6,013.44
Install 1.5" Sensus OMNI R2 meter – labor only	129	\$326.78	\$42,154.62
Install 2" Sensus OMNI R2 meter – labor only	103	\$385.28	\$39,683.84
Install 2" Sensus OMNI C2 meter – labor only	4	\$490.58	\$1,962.32
Install 3" Sensus OMNI C2 meter – labor only	22	\$765.53	\$16,841.66
Install 4" Sensus OMNI C2 meter – labor only	3	\$1,122.90	\$3,368.70
Tower Infrastructure and Equipment Installation	1	\$168,514.00	\$168,514.00
Mobilization/Testing/Warehouse	1	\$78,367.75	\$78,367.75
Project Development	1	\$192,155.00	\$192,155.00
Performance and Payment Bond	1	\$38,237.50	\$38,237.50
Project Engineering	1	\$67,136.00	\$67,136.00
Project Management	1	\$310,925.91	\$310,925.91
Data Integration	1	\$83,716.00	\$83,716.00
Contingency Funds - CLIENT directed	1	\$ 0.00	\$ 0.00
<b>Contract Total</b>			<b>\$3,199,425.58</b>

Contract price is based on the meter and Smartpoint transmitter quantities and cost in Table B.1, but the final contract price shall be calculated using the final contract meter and transmitter quantities and their associated material and labor costs.

**Table B.2, Out of Scope Contract Price Adjustments**

Additional Items	Quantity	Unit Cost
Furnish and install new communication wire	Per item	\$ 85.92
Furnish and install indoor replacement valve up to 1"	Per item	\$ 206.66
Furnish and install grounding strap	Per item	\$ 24.65
Parts	Per item	Cost plus 15%
Labor hourly (billed in 30 min intervals)	Per hour	\$ 132.78

Contract price increases for the specific Out of Scope instances listed in above Table B.2 shall be calculated using the associated labor and material rate or per item rate.

- 1.2 **Timely Payments:** The CLIENT agrees to pay SIEMENS per monthly invoices. All invoices submitted to CLIENT shall include a description of the work performed and the total cost of such Work as it describes. These invoices shall contain a back up of individual completed accounts and services. CLIENT agrees to pay all invoices submitted by SIEMENS per Article 8 of the Agreement.
- 1.3 **Price and Scope Adjustments:** The Price of Three Million, One Hundred and Ninety-Nine Thousand, Four Hundred and Twenty-Five Dollars and 58 cents (\$3,199,425.58) in Exhibit B, Article 1.1 is based on information reasonably available to SIEMENS from the CLIENT respecting the various components of the Work required to perform the Work and the necessary number of meters and related equipment to fulfill the intention of the Project.
- (a) To the extent that the Project due diligence conducted once the Project commences indicates that, including those components of the Work described in Exhibit A, Section 1.1 the amount of water meters and related equipment to fulfill the intentions of the Project is greater than water meter, related equipment and labor price cost basis for the price of \$3,199,425.58, SIEMENS agrees to make reasonable efforts to include all FIMS reasonably required for the Work defined in Exhibit A, as expanded, for the price of \$3,199,425.58. If, following such efforts of SIEMENS, SIEMENS determines that due to water meter and related equipment and labor pricing it cannot include all the desired FIMS comprising the Work for \$3,199,425.58, it will therefore be necessary to request to draw down funds from construction contingency fund ("Contingency") controlled by the CLIENT, which shall be funded in the amount of zero dollars and 00 cents (\$0.00).
- (b) Any addition to the Work and attendant amendment of Exhibits A, B or C resulting from the acquisition of additional water meters or related equipment must be agreed upon by both Parties, which agreement and approval shall not be unreasonably withheld. After addition to the FIMS(s), the ultimate contract costs, cost of financing and PASP price shall not fall below the value of the guarantee performance savings identified in Exhibit C, even if Exhibit C is amended to reflect the adjusted Scope of Work.
- (c) In the event and to the extent that the Contingency Funds are insufficient to pay for such increases or CLIENT elects not to use Contingency Funds to pay for such, there will be no additional FIMS over those agreed to by the Parties as of the Effective date, unless the Parties agree to the same by way of mutually agreed Change Order.



Article 1 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT

**CLIENT:**        **City of Elmhurst, Illinois**

**SIEMENS:**        **Siemens Industry, Inc.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_

## Article 2: Payment for Performance Assurance Services Program (PASP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the CLIENT shall pay to SIEMENS the amounts identified in Table B.3 plus taxes, if applicable, on the dates identified therein.
- 2.2 **Performance Assurance Services Program Term:** The term of the PASP shall commence on the Guarantee Date and shall extend for either: (a) the term of the Performance Guarantee Period where multi-year obligations are allowed; or (b) for twelve (12) month periods corresponding to the term of each Annual Period.
- 2.3 **Automatic Renewal:** Where the PASP term is limited to an Annual Period, the PASP shall automatically renew for successive Annual Periods beginning on the anniversary date of Guarantee Date. Either party may request to amend the PASP at the end of an Annual Period by giving the other party at least sixty (60) days prior written notice of such amendments and such amendment shall be mutually negotiated by the Parties and effective upon a written amendment signed by both Parties prior to commencement of the next Annual Period. Each automatic renewal shall be and remain subject to the terms and conditions of this Agreement. SIEMENS obligations under the Performance Guarantee are dependent upon and subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period. The CLIENT has the right to cancel the PASP pursuant to reasonable notice at any time.
- 2.4 **Termination:** See Section 4.7 of the Agreement.

**Table B.3, Performance Assurance Program Payment Schedule**

Period	Annual Payments (\$)
Year 1	\$15,060.24
Year 2	\$15,512.05
Year 3	\$15,977.41
Year 4	\$16,456.73
Year 5	\$16,950.43
Year 6	\$17,458.95
Year 7	\$17,982.72
Year 8	\$18,522.20
Year 9	\$19,077.86
Year 10	\$19,650.20
Year 11	\$20,239.70
Year 12	\$20,846.90
Year 13	\$21,472.30
Year 14	\$22,116.47
Year 15	\$22,779.97
Year 16	\$23,463.36
Year 17	\$ 24,167.27
Year 18	\$ 24,892.28
Year 19	\$25,639.05
Year 20	\$26,408.22

Article 2 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

**CLIENT:**        **City of Elmhurst, Illinois**

Signature: \_\_\_\_\_  
Printed \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SIEMENS:**        **Siemens Industry, Inc.**

Signature: \_\_\_\_\_  
Printed \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The following Articles and Tables are hereby included and made part of this Exhibit C:

**Article 1: Summary of Articles and Total Guaranteed Savings**

Article 1	Summary of Articles and Total Guaranteed Savings
Article 2	Measurement and Verification Options
Article 3	Performance Guarantee Period Responsibilities of CLIENT
Article 4	Measurement and Verification Plan
Article 5	Baseline Data
Article 6	Utility Rate Structures and Escalation Rates
Article 7	Contracted Baseline Data
Appendix 1	Unused
Appendix 2	Baseline Meter Testing Data
Appendix 3	Unused
Appendix 4	Rate Structures for Water and Sewer Services
Appendix 5	Unused
Appendix 6	Water Quality Report

**SUPPLEMENTAL GLOSSARY:**

In addition to the Glossary set forth in Article 2 of the Agreement, the following additional definitions shall apply to this Exhibit C

**AMI System** means Advanced Metering Infrastructure System.

**AMR System** – means Automatic Meter Reading System.

**Baseline Period** means the time period described in Article 5, Section 5.1 of this Exhibit C.

**Baseline Consumption** means water consumption by the CLIENT's water and sewer systems, in kgals, ccf or other, measured by the pre-existing metering system during the Baseline Period.

**Adjusted Baseline Consumption** means the Baseline Consumption that would have been measured, had the meters been 100% accurate.

**Baseline Billable Usage** means the Adjusted Baseline Consumption multiplied by the Baseline Meter Accuracy.

**Measured Billable Usage** means the Adjusted Baseline Consumption multiplied by the Measured Meter Accuracy.

**Expected Billable Usage** means the Adjusted Baseline Consumption multiplied by the Guaranteed Meter Accuracy.

**Tested Baseline Meter Accuracy** is the pre-retrofit measured accuracy of the existing meter, not including any accuracy degradation over time.

**Baseline Meter Accuracy** is the Tested Baseline Meter Accuracy of the existing meters including accuracy degradation over time, as defined in Table 5.7 of this Exhibit.

**Guaranteed Meter Accuracy** is the expected accuracy of the new meters installed with the new AMI/AMR System.

**Measured Meter Accuracy** is the post-retrofit measured accuracy of the meters installed with the new AMI/AMR System, as defined in Article 4 of this Exhibit.

**Measured Usage Increase (volume)** means the additional billable volume of water metered from the CLIENT's water distribution system, in volumetric units (kgals, ccf, or other), that will be calculated under the Measurement and Verification Plan for each year of the Performance Guarantee Period. The calculation will be based on the difference between the Baseline Billable Usage and the Measured Billable Usage. (For details, see Section 4.2.1 of this Exhibit C)

**Measured Revenue Increase (\$)** means the additional billable revenue, in dollars, that will be calculated under the Measurement and Verification Plan for each year of the Performance Guarantee Period. The calculation will be based on the Measured Usage Increase billed at the Contract Water Rates. (For details see Section 4.2.1 of this Exhibit C)

**Expected Usage Increase (volume)** means the additional billable volume metered through the CLIENT's water distribution systems, in kgals, ccf or other, that is expected to be metered as a result of the installation of the new meters and AMI/AMR system. The calculation will be based on the difference between the Baseline Billable Usage and the Expected Billable Usage. (For details see Section 1.1 of this Exhibit C)

**Expected Revenue Increase (\$)** means the additional billable revenue, in dollars, that is expected to result from the Expected Usage Increase billed at the Contract Water Rates. (For details see Section 1.2 of this Exhibit C).

**Contract Water Rates** mean stipulated water and sewer rates during the Performance Guarantee Period. The Contract Water Rates for each year of the Performance Guarantee Period are shown in Table 6.1.

- 1.1 Table 1.1 shows the CLIENT'S Expected Usage Increase for each year of the Performance Guarantee Period. While actual consumption may vary in each Performance Guarantee Period, the Expected Usage Increase is calculated based on Adjusted Baseline Consumption and the expectation that the new replacement meters under this Agreement will be accurate as guaranteed. Guaranteed Meter Accuracy of the meters during each year of the Performance Guarantee Period is shown in Table 1.1.

**Table 1.1, Meter Accuracy Guarantee and Expected Usage Increase (Volume) – Guaranteed Savings**

<b>Performance Guarantee Period</b>	<b>Guaranteed Meter Accuracy</b>	<b>Expected 1" and Smaller Water Meter Usage Increase (kgal)</b>
Annual Period 1	98.5%	11,914
Annual Period 2	98.5%	13,415
Annual Period 3	98.5%	14,900
Annual Period 4	98.5%	16,369
Annual Period 5	98.5%	17,824
Annual Period 6	98.5%	19,361
Annual Period 7	98.5%	20,897
Annual Period 8	98.5%	22,434
Annual Period 9	98.5%	23,970
Annual Period 10	98.5%	25,507
Annual Period 11	98.5%	27,044
Annual Period 12	98.5%	28,580
Annual Period 13	98.5%	30,117
Annual Period 14	98.5%	31,653
Annual Period 15	98.5%	33,190
Annual Period 16	98.5%	34,726
Annual Period 17	98.5%	36,263
Annual Period 18	98.5%	37,799
Annual Period 19	98.5%	39,336
Annual Period 20	98.5%	40,873
<b>TOTALS</b>		<b>526,172</b>

- Table 1.2 shows the Expected Revenue Increase in dollars for each year of the Performance Guarantee Period. These values are calculated by multiplying the Expected Usage Increase shown in Table 1.1 by the Contract Water Rates (see Table 6.1, including the stipulated Escalation Rates found in that Table).
- 1.2 Table 1.2 shows the CLIENT'S Operational Savings. The basis and methods of determining Operational Savings are described in detail in the Article 4.

**Table 1.2, Total Guaranteed Expected Revenue Increase, Operational Savings and Guaranteed Savings**

<b>Performance Guarantee Period</b>	<b>Expected Water Meter Revenue Increase (\$)</b>	<b>Operational Savings (\$)</b>	<b>Total Savings (\$)</b>
Annual Period 1	\$133,679.39	\$0.00	\$133,679.39
Annual Period 2	\$153,522.69	\$0.00	\$153,522.69
Annual Period 3	\$173,927.64	\$0.00	\$173,927.64
Annual Period 4	\$194,906.58	\$0.00	\$194,906.58
Annual Period 5	\$216,472.07	\$0.00	\$216,472.07
Annual Period 6	\$239,836.12	\$0.00	\$239,836.12
Annual Period 7	\$264,048.15	\$0.00	\$264,048.15
Annual Period 8	\$289,132.73	\$0.00	\$289,132.73
Annual Period 9	\$315,115.07	\$0.00	\$315,115.07
Annual Period 10	\$342,021.04	\$0.00	\$342,021.04
Annual Period 11	\$369,877.22	\$0.00	\$369,877.22
Annual Period 12	\$398,710.83	\$0.00	\$398,710.83
Annual Period 13	\$428,549.83	\$0.00	\$428,549.83
Annual Period 14	\$459,422.91	\$0.00	\$459,422.91
Annual Period 15	\$491,359.49	\$0.00	\$491,359.49
Annual Period 16	\$524,389.77	\$0.00	\$524,389.77
Annual Period 17	\$558,544.71	\$0.00	\$558,544.71
Annual Period 18	\$593,856.10	\$0.00	\$593,856.10
Annual Period 19	\$630,356.52	\$0.00	\$630,356.52
Annual Period 20	\$668,079.42	\$0.00	\$668,079.42
<b>TOTALS</b>	<b>\$7,445,808.29</b>	<b>\$0.00</b>	<b>\$7,445,808.29</b>

- 1.3 SIEMENS cannot and does not predict fluctuations in water and sewer rates. Therefore, the CLIENT and SIEMENS agree that the Expected Revenue Increase for each Annual Period will be calculated by multiplying the Expected Usage Increase, in kgals, ccf or other, by the Annual Period's stipulated water and sewer rates, including Escalation Rates shown in Table 6.1, and not the Annual Period's actual water and sewer rates.
- 1.4 SIEMENS GUARANTEES THE ACCURACY OF THE WATER METERS. THE GUARANTEED ACCURACIES ARE SHOWN IN TABLE 1.1. NOTHING HEREIN SHALL BE CONSTRUED AS A GUARANTEE THAT THE INCREASE IN ACCURACY OF THE WATER METERS WILL RESULT IN AN INCREASE IN THE CLIENT ACTUAL WATER REVENUES. Increased meter accuracy will enable the CLIENT to bill for saved water and sewer consumption which would otherwise not have been measured. However, actual revenues derived from metered water and sewer consumption depend on several variables which are not within SIEMENS' control, including variations in actual water and sewer rates, variations in overall consumption by the clients of the CLIENT, and weather conditions.
- 1.5. For the water meters installed under this contract, the determination of the annual weighted average accuracy of the test sample will follow current best practices, in accordance with IPMVP (International Performance Measurement & Verification Protocol) and as proscribed by FEMP (Federal Energy Management Program) Guidelines and the AWWA Manual of Practice M6, unless otherwise agreed by the Parties. For meter types not addressed by the AWWA standards, the AWWA testing guidelines for positive displacement meters will be used.

By signing below, this Exhibit C, comprised of 16 pages plus Appendices, is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

**CLIENT:**            **Village of Lake Zurich,  
Illinois**

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

**SIEMENS:**            **Siemens Industry, Inc.**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



## Article 2: Measurement and Verification Options

2.1 Measurement and Verification (“M&V”) Options: There are five options to measure and verify energy/utility Savings: Option A - Retrofit Isolation: Key Parameter Measurement; Option B - Retrofit Isolation: All Parameter Measurement; Option C - Whole Facility; Option D – Calibrated Simulation; and Option E - Stipulated. Options A through D are part of the IPMVP. Option E-Stipulated is based on industry-accepted engineering standards and is the Option used for calculating Operational Savings.

**Option A - Retrofit Isolation:** Key Parameter Measurement. Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the Facility Improvement Measures (FIMs) affected system(s) and/or the success of the Project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer’s specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

**Option B – Retrofit Isolation:** All Parameter Measurement. Savings are determined by field measurement of the energy use of the FIM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

**Option C - Whole Facility:** Savings are determined by measuring energy use at the whole Facility or sub-Facility level. Continuous measurements of the entire Facility’s energy use are taken throughout the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

**Option D - Calibrated Simulation:** Savings are determined through simulation of the energy use of the whole Facility, or of a sub-Facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the Facility. This Option usually requires considerable skill in calibrated simulation. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

**Option E – Stipulated:** Savings are established through mutual agreement of the CLIENT and SIEMENS. This option is the method of measurement and verification applicable to FIMS consisting either of Operational Savings or where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer’s measurements, industry standard efficiencies or operating hours are known in advance, and used in a calculation or analysis method that will stipulate the outcome. Both CLIENT and SIEMENS agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology the Savings stipulated will be achieved upon completion of the FIM and no further measurements or calculations will be performed during the Performance Guarantee Period. If applicable, the methodology and calculations to establish Savings value will be defined in Section 4.6 of this Exhibit C.

- 2.2 Table 2.1 below summarizes the first Annual Period's Expected Revenue Increase based on Guaranteed Meter Accuracy (See Article 1, Tables 1.1 and 1.2) using the applicable Measurement and Verification Options.

**Table 2.1, Expected Revenue Increase and Operational Savings for First Annual Period by Option**

FIM	Energy/Utility/ Revenue Savings \$						Operational Savings \$	Total Savings \$
	Measurement and Verification Options						E Stipulated	
	A Retrofit Isolation: Key Parameter Measurement	B Retrofit Isolation: All Parameter Measurement	C Whole Facility	D Calibrated Simulation	E Stipulated	Total Energy / Utility Savings		
Water Meters/ AMI	\$133,679.39	\$0	\$0	\$0	\$0	\$133,679.39	\$0	\$133,679.39
TOTALS	\$133,679.39	\$0	\$0	\$0	\$0	\$133,679.39	\$0	\$133,679.39

- 2.3 Table 2.2 identifies the source of Operational Savings defined and quantified by both SIEMENS and the CLIENT. SIEMENS and the CLIENT agree that such amounts are Stipulated Savings, and that they have been based on the CLIENTS affirmation.

**Table 2.2, Source of Operational Savings**

Account/Vendor	Description	Annual Cost \$	# of Annual Periods Savings Are Applied	Annual Period Savings Begin
None	None	\$0	0	1
<b>TOTALS</b>		<b>\$0</b>		

- 2.4 SIEMENS has explained to the CLIENT and the CLIENT has satisfied itself as to how Operational Savings are incorporated into the Annual Savings.

- 2.5 The Annual Escalation Rate applicable to the Operational Savings is 3%.

BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE REVIEWED THE INCLUDED MEASUREMENT AND VERIFICATION OPTIONS AND THEIR APPLICATION TO BE USED IN CALCULATING SAVINGS UNDER THE AGREEMENT.

**CLIENT:** Village of Lake Zurich, Illinois

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SIEMENS:** Siemens Industry, Inc.

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Article 3: Performance Guarantee Period Responsibilities of the CLIENT**

In addition to the CLIENT'S responsibilities under Article 6 of the Agreement, this Article details the responsibilities of the CLIENT in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative at each Facility to coordinate work and provide required data described below.
- 3.2 The CLIENT will provide SIEMENS with accurate operating information as defined below and in the Contracted Baseline Article 7 of this Exhibit C during each Annual Period, and/or within thirty (30) days of any Material Change that may increase or decrease water usage.
  - a) Annually provide monthly database records of meter information including but not limited to meter install date, accumulated consumption per meter, monthly water consumption per meter, meter size, meter serial number and address. This information shall be used for the sole purposes of this Agreement. This information must be provided within thirty (30) days of the end of each Annual Period.
  - b) Annually provide a list of any meter or register change-outs that have been made in that year, including the old register reading (total volume of water through the meter) at the time of the change-out. This information will be used for warranty tracking.
  - c) Annually provide accumulated consumption per meter, meter serial number, and meter address one hundred twenty (120) days prior to the end of the Annual Period.
  - d) If requested by SIEMENS, annually provide copies of all water and sewer rate schedules used for billing during the previous 12 month period if changed from the previous year.
  - e) If requested by SIEMENS, annually provide monthly purchased, pumped, and/or distributed water volumes from the water plant records.
  - f) If requested by SIEMENS, annually provide the most recent copy of the Water Quality Report for all water produced and used by the metering system.
  - g) City to identify and notify SIEMENS of all zero read meters on a monthly basis.
- 3.3 CLIENT will assist with the meter testing including:
  - Providing a electronic database in Microsoft Excel or 'csv' format of all meters installed in the system,
  - Providing access, notification and scheduling of test meter replacements
- 3.4 CLIENT will provide SIEMENS with access to the AMI/AMR Meter Data Management System on a quarterly basis for the first year of the contract and meet with SIEMENS representatives to review the operation of the system when SIEMENS deems necessary.
- 3.5 CLIENT must maintain water quality at or above the levels in the attached Appendix 6 Water Quality Report for each year of the M&V period. If a meter shows evidence of poor water quality or debris as determined by a third party laboratory, the accuracy guarantee for that meter will be void. The accuracy results for this meter will be removed from the sample and the weighted average accuracy for the sample will be recalculated. Additional testing may be required to obtain the appropriate sample size per AWWA and FEMP guidelines. It will be the responsibility of the CLIENT to correct the water quality and/or debris issue.
- 3.6 If CLIENT changes a register, transmitter or any other part of the meter, they will record the cumulative volume of water that had flowed through that meter at the time of changing any register, transmitter or any other part of the meter, and ensure that records are kept to measure the cumulative flow through the each meter.

#### **Article 4: Measurement and Verification Plan**

The following information is applicable to this Agreement:

- Article 4.1 General Overview
- Article 4.2 Option A - Retrofit Isolation: Key Parameter Measurement
- Article 4.3 Option B - Retrofit Isolation: All Parameter Measurement
- Article 4.4 Option C - Whole Facility
- Article 4.5 Option D - Calibrated Simulation
- Article 4.6 Option E – Stipulated-Energy/Utility Savings

##### **4.1 General Overview –**

The purpose of the Measurement and Verification (M&V) Plan is to identify the methods, measurements, procedures and tools that will be used to verify the Savings for each FIM which has energy/utility Savings. Savings are determined by comparing prior usage, consumption or efficiencies (defined as the “Baseline”) against the post-FIM implementation usage, consumption or efficiencies. The Baseline usage, consumption or efficiencies are described in this Exhibit C, Article 5. The post-FIM implementation usage, consumption or efficiencies is defined as the Contracted Baseline and are described in this Exhibit C, Article 7.

##### **4.2 Option A - Retrofit Isolation: Key Parameter Measurement**

###### **4.2.1 Meter Replacements**

The Performance Guarantee applicable to this FIM and to the M&V process for this FIM is an accuracy guarantee for the new meters. A new, residential water meter will mechanically wear in response to two primary factors: the amount of cumulative water and age. Meters with greater amounts of cumulative water measured at any given time are likely to be less accurate than meters with lower accumulated reading due to increased wear accompanying the increased amount of measured water. Age and water quality are also contributing factors in meter accuracy.

Meter testing will be performed on a sampling of SIEMENS installed residential meters to confirm that the installed meters maintain the guaranteed level of accuracy, as provided in the Guaranteed Meter Accuracy Table 1.1 and Table 7.2 – Guaranteed Meter Accuracy. Measured Meter Accuracy will be determined based on a sample population of the installed meters according to AWWA and FEMP guidelines and as described below.

Annually, throughout the Performance Guarantee Period, the CLIENT will provide a list of baseline meters in electronic format (csv or xls).

The accuracy tests will be based on AWWA standards for testing residential water meters per AWWA Manual M6. For meters types not addressed by the AWWA testing standards, AWWA testing guidelines for positive displacement meters will be followed. The formulation for that testing is as follows:

For a true test of a water meter at all flow rates, AWWA standards recommend first testing low, medium, and high flow rates and then calculating the aggregate meter accuracy by weighted formula. The three test points (High, Med, and Low flow) are weighted 15%, 70%, and 15%. The formula for meter accuracy is as follow:

$$\begin{aligned} & (15\% \times \text{Measured Meter Accuracy @ High flow}) \\ & + (70\% \times \text{Measured Meter Accuracy @ Medium flow}) \\ & + (15\% \times \text{Measured Meter Accuracy @ Low flow}) \\ & \text{Average Weighted Accuracy of the Meter*} \end{aligned}$$

(\*reference: AWWA Meter Manual M6, Fourth Edition; pg 60, “Meter Testing”)

The tested meters will be subsequently returned to the CLIENT for use as future maintenance replacements, reactivations, or for new customer accounts if the tested condition is within acceptable meter performance parameters as determined by SIEMENS. The meters that do not pass the accuracy test, nor have evidence of scoring, and do not have cumulative flows in excess of the meter manufacturer's warranty will be returned to the manufacturer for repair under warranty and then returned to the CLIENT's inventory.

The sample size for Measured Meter Accuracy will consider the ¾" through 2" meters as one aggregated population and will be determined based on FEMP guidelines for sample size determination using a minimum confidence and precision of 80% and 20%, respectively, with the overall population sample size not to exceed 11 meters. Each sample meter will be selected using a random number generator that arbitrarily selects accounts from the Baseline meter account list.

In the event that the Measured Meter Accuracy is below the Guaranteed Meter Accuracy, SIEMENS will conduct a review of the test data.

If further analysis of the failed meters show signs of scoring from particles or debris or accumulation of deposits as determined by third party laboratory, then the tests results for those meters will be removed from the average and the CLIENT will be responsible for replacements of the affected meters. If the meters fail due to volumes in excess of the manufacturer's warranty limits, the test results will be removed from the average and the CLIENT will be responsible for meter replacement.

If, after these meters have been removed from the average, the average tested meter accuracy of the first round of testing is below the Guaranteed Meter Accuracy as defined in Table 7.1, Guaranteed Meter Accuracy, then at SIEMENS' expense, an additional round of testing may be conducted.

If the additional testing is performed and SIEMENS determines that the results do not prove to be equal or greater than the Guaranteed Meter Accuracy, SIEMENS may discontinue the testing and accept the financial responsibility as calculated in the reconciliation M&V report.

The calculation of Measured Revenue Increase will be based on the Adjusted Baseline Consumption and Contract Water Rates and will be the difference between the Measured Revenue Increase (see Article 4, Section 4.2.2) and the Expected Usage Increase (see Article 1, Table 1.1) for the relevant Annual Period. For the meters that tested below the manufacturers warranted accuracy range, SIEMENS will assist CLIENT with obtaining replacement meters through the warranty process with the meter manufacturer.

#### 4.2.2 Calculation of Measured Usage Increase

The Adjusted Baseline Consumption is the water that would have been measured by the existing meters during the baseline year, had the meters been 100% accurate. It is calculated by dividing the Baseline Consumption by the Tested Baseline Meter Accuracy.

##### Example Calculation of Adjusted Baseline Consumption

Baseline Consumption	= 90,000 kgals
Tested Actual Meter Accuracy	= 90%
Adjusted Baseline Consumption	= 90,000 kgals / 90% = 100,000 kgals

The Measured Usage Increase for each Annual Period will be calculated as the difference between the Baseline Billable Usage and the Measured Billable Usage. Baseline Billable Usage

is calculated by multiplying the Adjusted Baseline Consumption by the Baseline Meter Accuracy as shown in Table 5.7.

Example Calculation of Baseline Billable Usage:

Adjusted Baseline Consumption	= 100,000 kgals
Baseline Meter Accuracy – Year 1	= 90%
Baseline Billable Usage – Year 1	= 100,000 x 0.90 = 90,000 kgals

Measured Billable Usage will be calculated by multiplying the Adjusted Baseline Consumption by the average tested meter accuracy for that Performance Period (i.e., Measured Meter Accuracy).

Example Calculation of Measured Billable Usage

Adjusted Baseline Consumption	= 100,000 kgals
Measured Meter Accuracy – Year 1	= 99%
Measured Billable Usage – Year 1	= 100,000 x 0.99 = 99,000 kgals

The Measured Usage Increase for an Annual Period is the difference between the Baseline Billable Usage and the Measured Billable Usage for the same Annual Period. In the example above, the Measured Usage Increase Volume is 9,000 kgals.

Example Calculation for Measured Usage Increase

Baseline Billable Usage – Year 1	= 100,000 kgal x 90% = 90,000 kgal
Measured Billable Usage – Year 1	= 100,000 kgal x 99% = 99,000 kgal
Measured Usage Increase	= 99,000 kgal – 90,000 kgal = 9,000 kgal

The Measured Revenue Increase for an Annual Period is calculated by multiplying the Measured Usage Increase by the Contract Water Rate for that Annual Period.

Example Calculation of Measured Revenue Increase:

Contract Water Rate – Year 1 (\$/kgal)	= \$5.00 \$/kgal
Measured Revenue Increase	= 9,000 kgal x \$5/kgal = \$45,000

Typically, sewer charges are included in the Contract Water Rates and are directly calculated based on water usage. Where applicable, any sewerage revenue associated with the Measured Billable Usage Increase Revenue will be included in the calculation.

4.3 **Option B - Retrofit Isolation: All Parameter Measurement:** Not Applicable

4.4 **Option C - Whole Facility:** Not Applicable

4.5 **Option D – Calibrated Simulation:** Not Applicable

4.6 **Stipulated Utility and Operational Savings**

The energy savings for the following FIMS have been stipulated and agreed upon by Siemens and the client. Savings are measured via the PASP through the annual verification of the intended operation of the applicable systems and the application of relevant engineering calculations.

4.6.1 Leak Detection

The reported Operational Savings used in the calculations for this FIM are stipulated for each Annual Period of the Performance Guarantee Period and were mutually agreed upon by the CLIENT and SIEMENS after discussion and review. The Operational Savings may include savings resulting from reductions in lost water, as well as reduced labor from city resources to identify and track down leaks manually.

#### Article 5: Baseline Data

- 5.1 The year selected as the Baseline Period starts on January 1, 2016 on December 31, 2016. Table 5.1 outlines the Baseline Consumption that occurred during this Baseline Period. This Baseline Consumption will be used as the reference for determining the Adjusted Baseline Consumption as fully described in Article 4.

The following Table 5.1 shows the results of the Baseline Consumption analysis grouped by meter size.

**Table 5.1, Baseline Consumption**

Description	Annual Baseline Volume (kgal)
Water Meters (1" and smaller)	296,919
<b>TOTALS</b>	296,919

- 5.2 The performance Baseline used for ongoing comparison of future meter test results is as follows:
- (a) Baseline Period (12 months) – 01/01/2016 to 12/31/2016
  - (b) The Baseline meter testing data is included as Appendix 2.
  - (c) The CLIENT'S water and sewer billing rate schedules in force during the Baseline Period are shown in Table 6.1
- 5.3 The Baseline Period is chosen using the most recent typical 12 months of continuous data available through the baseline utility billing system.
- 5.4 The data regarding the number of baseline meters and meter sizes during the Baseline Period was obtained from the CLIENT's billing system. That data was then used to estimate Baseline Consumption. SIEMENS is not responsible for the variances, if any, between the data in the CLIENT's billing system and the number or sizes of meters that were used by the CLIENT during the Baseline Period.
- 5.5 SIEMENS does not assume responsibility for loss of water consumption due to declines in installed capability to supply water, population changes, or restrictions enforced by CLIENT or any other 3<sup>rd</sup> party.
- 5.6 Meter testing was performed on a sampling of meters to provide the Baseline Meter Accuracy for all meters. The meters were tested to AWWA standards.

The CLIENT provided a complete account download of historical data for each metered account including monthly consumption, meter size, meter installation data, meter serial number, billed charges, account number, account ID, etc.



Based on AWWA guidelines for meter sampling and testing, a random sample of the meters were selected, removed from service, and delivered to a third-party testing facility with the results presented in Appendix 2. The accuracy tests will be based on AWWA standards for testing residential water meters per AWWA Manual M6. For a true test of a water meter at all flow rates, AWWA standards recommend first testing low, medium, and high flow rates and then calculating the aggregate meter efficiency by weighted formula. The three test points (High, Med, and Low flow) are weighted 15%, 70%, and 15%. The formula for meter accuracy is as follow:

$$\begin{aligned} & (15\% \times \text{Baseline Meter Accuracy @ High flow}) \\ & + (70\% \times \text{Baseline Meter Accuracy @ Medium flow}) \\ & + (15\% \times \text{Baseline Meter Accuracy @ Low flow}) \\ & \text{Average Weighted Efficiency of the Meter*} \end{aligned}$$

(\*reference: AWWA Meter Manual M6, Fourth Edition; pg 60, “Meter Testing”)

5.7 The Baseline Meter Accuracy is shown in Table 5.7.

**Table 5.7, Baseline Meter Accuracy over Project Term**

<b>Performance Guarantee Period</b>	<b>Baseline Meter Accuracy</b>
Annual Period 1	94.70%
Annual Period 2	94.20%
Annual Period 3	93.70%
Annual Period 4	93.20%
Annual Period 5	92.70%
Annual Period 6	92.20%
Annual Period 7	91.70%
Annual Period 8	91.20%
Annual Period 9	90.70%
Annual Period 10	90.20%
Annual Period 11	89.70%
Annual Period 12	89.20%
Annual Period 13	88.70%
Annual Period 14	88.20%
Annual Period 15	87.70%
Annual Period 16	87.20%
Annual Period 17	86.70%
Annual Period 18	86.20%
Annual Period 19	85.70%
Annual Period 20	85.20%

5.8 Applicable codes - Federal, State (Provincial), County or Municipal codes or regulations are applicable to the use and operation of the Facility. SIEMENS will maintain the baseline level of Facility compliance relative to applicable codes. Unless specifically set forth in the Scope of Work and Services, Exhibit A, nothing herein should be construed to require SIEMENS to provide additional work or services in the event that the applicable code or regulation is modified after the Contract Execution Date.



**Article 6: Utility Structures and Escalation Rates**

- 6.1 In order to predict the Baseline and Calculated Billable Usage Increase Revenues, the Client was consulted to determine the mutually-agreed annual rate increase to be used in these calculations. Using the Baseline rate structure included in Appendix 4, the following Table 6.1 was generated to show the Contract Water Rates used in the calculations for the Performance Guarantee Period.

**Table 6.1, Contract Water Rates: Water and Sewer Rate Structure Increases over Contract Term**

Rate Structures - In Village, per 1,000 gallons									
Rate Increase Percentage		0%	2%	2%	2%	2%	2%	2%	2%
Item	Description	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
1	Inside Village - All Water & Sewer 1" and below	\$ 11.00	\$ 11.22	\$ 11.44	\$ 11.67	\$ 11.91	\$ 12.14	\$ 12.39	\$ 12.64
Rate Structures - In Village, per 1,000 gallons									
Rate Increase Percentage		2%	2%	2%	2%	2%	2%	2%	2%
Item	Description	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
1	Inside Village - All Water & Sewer 1" and below	\$ 12.89	\$ 13.15	\$ 13.41	\$ 13.68	\$ 13.95	\$ 14.23	\$ 14.51	\$ 14.80
Rate Structures - In Village, per 1,000 gallons									
Rate Increase Percentage		2%	2%	2%	2%	2%			
Item	Description	Year 16	Year 17	Year 18	Year 19	Year 20			
1	Inside Village - All Water & Sewer 1" and below	\$ 15.10	\$ 15.40	\$ 15.71	\$ 16.02	\$ 16.35			

**Article 7: Contracted Baseline Data**

7.1 The following criteria detail the Facility operating parameters that are required to be implemented on the Guarantee Date or on such time as agreed upon by the Parties. This specific configuration of Facility operating parameters is the Contracted Baseline and failure of the CLIENT to maintain the Contracted Baseline may result in a Material Change which may require a modification of the Performance Guarantee pursuant to Article 4 of the Agreement.

- (a) Water quality at or above average quality over the most recent 12 month period;
- (b) Source of water supply at or above average quality water over the most recent 12 month period from previous source of water supply used;
- (c) Water distribution integrity at or above Baseline maintenance levels; and,
- (d) Meter/collection system compatibility with the new system.
- (e) Maintenance of water supply with sediment or debris levels that do not result in scoring or other damage to the installed such that meter accuracy is affected.

**Table 7.1, Guaranteed Meter Accuracy of new water meters during Performance Guarantee Period (3/4”S and 1” meters)**

<b>Performance Guarantee Period</b>	<b>Guaranteed Meter Accuracy</b>
Annual Period 1	98.5%
Annual Period 2	98.5%
Annual Period 3	98.5%
Annual Period 4	98.5%
Annual Period 5	98.5%
Annual Period 6	98.5%
Annual Period 7	98.5%
Annual Period 8	98.5%
Annual Period 9	98.5%
Annual Period 10	98.5%
Annual Period 11	98.5%
Annual Period 12	98.5%
Annual Period 13	98.5%
Annual Period 14	98.5%
Annual Period 15	98.5%
Annual Period 16	98.5%
Annual Period 17	98.5%
Annual Period 18	98.5%
Annual Period 19	98.5%
Annual Period 20	98.5%

Exhibit C

Appendix 2

Baseline Meter Testing Data

Exhibit C – Performance Assurance  
Village of Lake Zurich, Illinois

AWWA Standard Tests												
						Min.	Inter.	Max.				
						Weighted Factor	15.0%	70.0%	15.0%			
	Meter Type:	PD (Positive Displacement) except where iPERL noted							Average:		94.7%	
	Test Dates:	5/10/2017										
	Water Utility:	Village of Lake Zurich										
								</				

Exhibit C – Performance Assurance  
Village of Lake Zurich, Illinois

Ref #	Manufacturer	Meter Size	Serial #	Reading (kgal)	Minimum Flow		Intermediate Flow		High Flow		Weighted Average Accuracy	From
					Rate (gpm)	Accuracy (%)	Rate (gpm)	Accuracy (%)	Rate (gpm)	Accuracy (%)		
60	Sensus	3/4"	44962961	1,449	0.50	0.0%	3.00	100.0%	25.00	101.0%	85.2%	9 CRAIG TERR
61	Sensus	3/4"	47719886	1,685	0.50	98.0%	3.00	99.0%	25.00	101.0%	99.2%	900 SURRYSE RD
62	Sensus	3/4"	49596790	732	0.50	98.0%	3.00	100.0%	25.00	101.0%	99.9%	910 SILVERWOOD CT
63	Sensus	3/4"	46122579	1,901	0.50	70.0%	3.00	96.0%	25.00	99.8%	92.7%	93 GOLFVIEW DR
64	Sensus	3/4"	47203513	2,744	0.50	60.0%	3.00	100.0%	25.00	100.5%	94.1%	930 COLONIAL CT
65	Sensus	3/4"	48236590	645	0.50	98.0%	3.00	101.0%	25.00	100.5%	100.5%	950 HEARTWOOD LN
66	Sensus	3/4"	46203620	2,163	0.50	95.0%	3.00	99.0%	25.00	99.8%	98.5%	965 COLONIAL CT
67	Sensus	3/4"	49396784	2,158	0.50	98.0%	3.00	99.5%	25.00	100.6%	99.4%	980 OLD MILL GROVE RD
1	Sensus (iPERL)	1	75952082	106	0.75	100.1%	4.00	100.0%	40.00	100.4%	100.1%	1025 SAMANTHA DR
2	Sensus	1	44133309	2,551	0.75	100.0%	4.00	98.0%	40.00	100.5%	98.7%	SANDY POINT LN 231-233
3	Sensus (iPERL)	1	76703900	219	0.75	99.9%	4.00	99.8%	40.00	100.2%	99.9%	915 INTERLAKEN DR
4	Sensus	1	45358173	1,231	0.75	0.0%	4.00	100.0%	40.00	100.0%	85.0%	269 SEBBY LN

Exhibit C

Appendix 4

Rate Structures for Water and Sewer Services

Exhibit C – Performance Assurance  
Village of Lake Zurich, Illinois

Village of Lake Zurich  
Water Rates  
As of Jan 2017

	EFFECTIVE DATE	
	5/1/2016	1/1/2017
<b>IN-VILLAGE</b>		
Combined Rates per 1,000 Gallons		
Village Control		
Water O&M	\$ 5.10	\$ 5.10
Water Debt	0.92	0.99
Sewer O&M	3.46	3.92
Sewer Debt	0.91	0.99
Sub-Total	10.39	11.00
Lake County Treatment	4.00	4.00
Combined Total	\$ 14.39	\$ 15.00
Minimum Bill		
Based on 2,000 Gallons	\$ 28.78	\$ 30.00
Senior Discount - Flat Rate	\$ 14.24	\$ 14.24
Irrigation Only per 1,000 Gallons		
Water O&M	\$ 5.10	\$ 5.10
Water Debt	1.84	1.99
	\$ 6.94	\$ 7.09
Sewer Only Flat Charge		
Sewer Fees X 7,000 Gallons	\$ 58.59	\$ 62.37
<b>OUTSIDE OF VILLAGE</b>		
Combined Rates per 1,000 Gallons		
Village Control		
Water O&M	\$ 10.20	\$ 10.20
Water Debt	0.92	0.99
Sewer O&M	6.80	7.84
Sewer Debt	2.73	2.97
Sub-Total	20.65	22.00
Lake County Treatment	4.00	4.00
Combined Total	\$ 24.65	\$ 26.00
Minimum Bill		
Based on 2,000 Gallons	\$ 49.30	\$ 52.00
Irrigation Only per 1,000 Gallons		
Water O&M	\$ 10.20	\$ 10.20
Water Debt	0.92	0.99
	\$ 11.12	\$ 11.19
Sewer Only per 1,000 Gallons (metered)		
Sewer O&M	\$ 6.80	\$ 7.84
Sewer Debt	2.73	2.97
Lake County Treatment	4.00	4.00
	\$ 13.53	\$ 14.81
Sewer Only Flat Charge	\$ 83.91	\$ 88.95



Exhibit C

Appendix 6

Water Quality Report



*At the Heart of Community*

**PUBLIC WORKS DEPARTMENT**

505 Telser Road  
Lake Zurich, Illinois 60047

(847) 540-1696  
Fax (847) 726-2182  
[LakeZurich.org](http://LakeZurich.org)

## **2016 Drinking Water Quality Report Calendar Year 2015**

This is the Annual Water Quality Report for the period of January 1, 2015 to December 31, 2015. This report is intended to provide you with important information about your drinking water and the efforts made by the water system to provide safe drinking water. **Este informe contiene informacion muy importante sobre el agua que usted bebe. Traduzcalo o hable con alguien que lo entienda bien.**

This year, your tap water met all USEPA and state drinking water health standards. Our system vigilantly safeguards its groundwater supply and we are able to report that we did not have any violation of a contaminant level or of any other water quality standard in 2015. This report includes details about where your water comes from, what it contains and how it compares to standards set by regulatory agencies.

### **Water System Information**

The Utilities Division of Public Works is located at the Community Services facility, 505 Telser Road. If you have any questions about this report or concerning the Village's water system, please contact Betty Harrison or Steve Schmitt at 847-540-1696. Information regarding the Village's water system may at times be discussed at Village Board meetings. Typically, Board meetings are held on the first and third Monday of each month at 7:00 PM, in the boardroom at the Village Hall. The agenda for each meeting is posted on the Friday prior. These meetings are also broadcast on Comcast local cable access channel 4, AT&T U-verse channel 99 and are available for streaming on the Internet via the Village website. For more information, visit [LakeZurich.org](http://LakeZurich.org).

### **Drinking Water Information**

Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the USEPA's Safe Drinking Water Hotline (1-800-426-4791).

The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and can come into contact with substances resulting from the presence of animals or human activity. Contaminants that may be present in source water include:

- Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations and wildlife.
- Inorganic contaminants, such as salts and metals, which may be naturally occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining or farming.
- Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban storm water runoff and residential uses.
- Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and may also come from gas stations, urban storm water runoff and septic systems.
- Radioactive contaminants, which may be naturally occurring or be the result of oil and gas production and mining activities.

Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. USEPA/CDC guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the USEPA's Safe Drinking Water Hotline (1-800-426-4791).

In order to ensure that tap water is safe to drink, EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water, which must provide the same protection for public health. Should you elect to drink bottled water only, please be aware that most bottled water does not contain fluoride and other minerals recommended for good health. Check with your dentist and/or physician about daily supplements to provide these vital elements.

### **Water Source**

The Village uses groundwater provided by six wells drilled into the St. Peter, Galesville Sandstone portion of the Cambrian-Ordovician Aquifer. All six wells are located within the Village limits. Water is pumped from each well based on a rotational duty cycle and demand. Wells 7, 8, 9, 10 and 12 have Ion Exchange treatment to reduce combined radium levels below EPA limits. Well 11, which does not currently have Ion Exchange treatment, is on emergency use only status. Your home can receive water from any of our well locations but typically the water you receive is a blend from multiple wells.

### Source Water Assessment Availability

The Illinois EPA has determined that the Lake Zurich Community Water Supply's source water is not susceptible to contamination. This determination is based on a number of criteria including: monitoring conducted at the wells; monitoring conducted at the entry point to the distribution system; and the available hydrogeologic data on the wells. A summary version of the completed Illinois EPA source water assessment of our community water supply is available on the Illinois EPA website at <http://www.epa.state.il.us/cgi-bin/wp/swap-fact-sheets.pl>.

### Vulnerability Waiver

Due to the favorable monitoring history, aquifer characteristics, and inventory of potential sources of contamination, our water supply was issued a vulnerability waiver renewal from the Illinois EPA. Monitoring for VOC's and SOC's is not required between January 1, 2014 and December 31, 2016.

### Data Abbreviations

USEPA: United States Environmental Protection Agency  
EPA: Environmental Protection Agency  
HIV/AIDS: Human Immunodeficiency Virus Infection/Acquired Immunodeficiency Syndrome  
CDC: Center for Disease Control  
FDA: Food and Drug Administration  
VOC: Volatile Organic Contaminant  
SOC: Synthetic Organic Contaminant

### 2015 Regulated Contaminants Detected

#### Definitions

The following tables contain scientific terms and measures, some of which may require explanation.

<b>MCLG</b>	<b>Maximum Contaminant Level Goal:</b> The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.
<b>MCL</b>	<b>Maximum Contaminant Level:</b> The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.
<b>MRDLG</b>	<b>Maximum Residual Disinfectant Level Goal:</b> The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.
<b>MRDL</b>	<b>Maximum Residual Disinfectant Level:</b> The highest level of a drinking water disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.
<b>ALG</b>	<b>Action Level Goal:</b> The level of a contaminant in drinking water below which there is no known or expected risk to health. ALGs allow for a margin of safety.
<b>AL</b>	<b>Action Level:</b> The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.
<b>Avg</b>	Regulatory compliance with some MCLs are based on running annual average of monthly samples.
<b>ppm</b>	Milligrams per liter or parts per million – or one ounce in 7,350 gallons of water.
<b>ppb</b>	Micrograms per liter or parts per billion – or one ounce in 7,350,000 gallons of water.
<b>pCi/L</b>	Picocuries per liter (a measure of radioactivity).
<b>N/A</b>	Not applicable.

## 2015 Regulated Contaminants Detected

### Lead and Copper

Lead & Copper	Date Sampled	MCLG	Action Level (AL)	90 <sup>th</sup> Percentile	# Sites Over AL	Units	Violation	Likely Source of Contamination
Copper (1)	2014*	1.3	1.3	0.102	0	ppm	No	Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives.
Lead (1)	7/31/2014*	0	15	0	1	ppb	No	Corrosion of household plumbing systems; erosion of natural deposits.

If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. We cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (1-800-426-4791) or at <http://www.epa.gov/safewater/lead>.

\*The date and analytical results of the most recent detection. Refer to footnote (1).

### Disinfectants and Disinfection By-Products

Disinfectants and Disinfection By-Products	Collection Date	Highest Level Detected	Range of Levels Detected	MCLG	MCL	Units	Violation	Likely Source of Contamination
Chlorine	12/31/2015	0.4 **	0.28 – 0.5	MRDLG = 4	MRDL = 4	ppm	No	Water additive used to control microbes.
Haloacetic Acids (HAA5)	2015	1 ^	0 – 1.05	No goal for the total	60	ppb	No	By-product of drinking water disinfection.
Total Trihalomethanes (TTHM)	2015	13 ^	2.44 – 12.85	No goal for the total	80	ppb	No	By-product of drinking water disinfection.

\*\* Based on the highest annual average calculated for each sample location. ^ Based on the highest Locational Running Annual Average (LRAA).

### Inorganic Contaminants

Inorganic Contaminants	Collection Date	Highest Level Detected	Range of Levels Detected	MCLG	MCL	Units	Violation	Likely Source of Contamination
Barium	2015	1.75	0.115 – 1.75	2	2	ppm	No	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits.
Chromium (total)	2/10/2015	0.2	0 – 0.2	100	100	ppb	No	Discharge from steel and pulp mills; erosion of natural deposits.
Fluoride	2015	1.07	0.944 – 1.07	4	4.0	ppm	No	Erosion of natural deposits; water additive which promotes strong teeth; discharge from fertilizer and aluminum factories.
Iron (2)	2015	0.224	0 – 0.224		1.0	ppm	No	This contaminant is not currently regulated by the USEPA. However, the state regulates. Erosion of natural deposits.
Selenium	2015	3.14	0 – 3.14	50	50	ppb	No	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.
Sodium (3)	2015	102	102 – 102			ppm	No	Erosion from naturally occurring deposits; used in water softener regeneration.

## 2015 Regulated Contaminants Detected

### Radioactive Contaminants

Radioactive Contaminants	Collection Date	Highest Level Detected	Range of Levels Detected	MCLG	MCL	Units	Violation	Likely Source of Contamination
Combined Radium 226/228	2015	4	2.3 – 7.1^^	0	5	pCi/L	No	Erosion of natural deposits.
Gross alpha excluding radon and uranium	2015	7.7^^	7.7 – 7.7^^	0	15	pCi/L	No	Erosion of natural deposits.

^^Based on result from Well 11 (Emergency Status Only) pumping to waste (not providing water for consumer use) for required water quality monitoring only.

### Abbreviations

<b>AL</b>	Action Level
<b>pCi/L</b>	picocuries per liter (a measure of radioactivity)
<b>ppm</b>	parts per million, or milligrams per liter (mg/l)
<b>ppb</b>	parts per billion, or micrograms per liter (ug/l)
<b>ug/l</b>	micrograms per liter, or parts per billion

## 2015 Unregulated Contaminants

Our water system sampled for a series of unregulated contaminants in 2015. Unregulated contaminants are those that do not yet have drinking water standards set by the USEPA. The purpose of monitoring for these contaminants is to help the USEPA decide whether the contaminants should have a standard. The following table contains information about the unregulated contaminants that were detected.

### Unregulated Contaminants Detected

Unregulated Contaminants	Collection Date	Highest Level Detected	Range of Levels Detected	Avg	Units	Likely Source of Contamination
Chromium-6 (4)	1/12/2015	0.03	0 – 0.03	0.005	ppb	Erosion from naturally occurring deposits; used for chrome plating, dyes and pigments, leather tanning and wood preservation.
Strontium (4)	2015	2252.0	1488.2 – 2252.0	1918.8	ppb	Erosion from naturally occurring deposits; used in the glass of cathode-ray tube televisions.



**Footnotes**

- (1) The state requires us to monitor for certain contaminants less than once per year because the concentrations of these contaminants do not change frequently. Some of our data, though accurate, is more than one year old.
- (2) This contaminant is not currently regulated by the USEPA. However, the state has set an MCL for this contaminant for supplies serving a population of 1000 or more.
- (3) This information is provided to consumers and health officials that are concerned about sodium intake due to dietary precautions. If you are on a sodium-restricted diet, you should consult a physician about the level of sodium in the water.
- (4) A maximum contaminant level (MCL) for this contaminant has not been established by either state or federal regulations, nor has mandatory health effects language been set. The purpose of unregulated contaminant monitoring is to assist USEPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted.



## Certificate of Substantial Completion

<b>PROJECT NAME:</b>	<u>Water Meter Replacement and Fixed Base Meter Reading System</u>
<b>CLIENT:</b>	<u>Village of Lake Zurich</u>
<b>CERTIFICATE DATE (mm/dd/yyyy):</b>	
<b>CERTIFICATE NUMBER:</b>	
<b>PROJECT NUMBER:</b>	<u>44OP-186215</u>

Deleted:

Deleted:

Deleted:

The following portions of the Work are at Substantial Completion in accordance with the Agreement.  
(Insert unique Work item such as Facility Improvement Measure title, system name, building, etc.)

<b>Work Item:</b>	
<b>Warranty Start Date (mm/dd/yyyy):</b>	
<b>Work Item:</b>	
<b>Warranty Start Date (mm/dd/yyyy):</b>	
<b>Work Item:</b>	
<b>Warranty Start Date (mm/dd/yyyy):</b>	

The Building Technologies Division of Siemens Industry, Inc. guarantees the workmanship and materials of the above Substantially Complete Work in accordance with the Agreement.

The Work indicated above has been reviewed by the CLIENT and has been found, to the best of the CLIENT's knowledge, to be Substantially Complete. Substantial Completion is the milestone in the progress of the Work at which time the Work is sufficiently complete and available for the CLIENT to have beneficial use of the Work for its intended purpose. A list of items to be completed and corrected (if any) shall be identified as the Outstanding Items List, attached to this form, and indicated by checking the appropriate box below:

**Outstanding Items List Attached:** ☐ **No Outstanding Items Noted:** ☐

The failure of the CLIENT to note items requiring completion or correction does not relieve the contractual responsibility of Building Technologies Division of Siemens Industry, Inc. to complete or correct the Work. Work found to require completion or correction after the Certificate Date of this



Certificate, but within the warranty period shall be corrected in accordance with the Agreement's warranty provisions.

Building Technologies Division of Siemens Industry, Inc. agrees to complete or correct all items indicated on the Outstanding Items in a timely manner.

Building Technologies Division of Siemens Industry, Inc. Representative: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The CLIENT accepts the Work indicated above as Substantially Complete and assumes possession and beneficial use of the Work on the Warranty Start Date indicated above.

CLIENT: \_\_\_\_\_

CLIENT Representative: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Note:** The CLIENT shall, upon execution of this Certificate of Substantial Completion, assume all contractual responsibilities for maintenance, insurance, operation, and protection of the Substantially Complete Work in accordance with the Agreement.

**Certificate of Final Completion**

<b>PROJECT NAME:</b>	<u>Water Meter Replacement and Fixed Base Meter Reading System</u>
<b>CLIENT:</b>	<u>Village of Lake Zurich</u>
<b>CERTIFICATE DATE (mm/dd/yyyy):</b>	
<b>PROJECT NUMBER:</b>	<u>44OP-186215</u>

Deleted:

Deleted:

Deleted:

All elements of the project Work have been reviewed by the CLIENT and have been found, to the best of the CLIENT's knowledge, to be at Final Completion. All items noted in the Outstanding Items Lists associated with Certificate(s) of Substantial Completion have been resolved, and all Work as defined in Exhibit A of the Agreement is complete.

The failure of the CLIENT to note items requiring completion or correction does not relieve the contractual responsibility of Building Technologies Division of Siemens Industry, Inc. to complete or correct the Work. Work found to require completion or correction after the date of this Certificate, but within the warranty period shall be promptly corrected in accordance with the Agreement's warranty provisions.

Building Technologies Division of Siemens Industry, Inc. has reviewed the project Work, as well as all contractual requirements, and the requirements for Final Completion have been met.

Building Technologies Division of Siemens Industry, Inc. Representative: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The CLIENT accepts the project Work as meeting the requirements for Final Completion.

CLIENT: \_\_\_\_\_

CLIENT Representative: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit E - Certification Under 720 Ilcs 5/33e-11**

SIEMENS certifies that it is not barred under Article 33E of the Criminal Code of 1961 for bidding or entering into this Agreement as a violation of either the bid rigging or bid rotating prior thereto. SIEMENS also certifies that it is not delinquent in any taxes to the Illinois Department of Revenue.

I, \_\_\_\_\_ (name), certify that I am employed as the \_\_\_\_\_ (title) of Siemens Industry, Inc., Building Technologies Division, a bidder for the prime contract for the work described in the bid to which this certificate is attached, and I hereby certify that I am authorized to make this certificate and that I have personal knowledge of the matters certified to herein, and that the company named above is not barred from contracting with any unit of state or local government as a result of a violation of either Section 33E-3 or 33E-4 of Article 33E of the Illinois Criminal Code of 1961.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date