

City Cape Coral  
1015 Cultural Park Blvd  
Cape Coral, FL 3533

Quote Number: **2024101434731-R0**  
Compas #:  
Date: **10/18/2024**  
This quote is valid for 30 days.

Attention: Matthew Astorino

Job Name: Southwest Water Reclamation FAC  
Job Location: Cape Coral, FL  
Job Number: **33676**

Siemens Industry, Inc. (Company) agrees to sell to Purchaser and Purchaser agrees to purchase from the Company the goods described below. Written quotations are valid for 30 calendar days from price approval date unless otherwise stated in the quotation. Quotations are subject to change by Siemens Industry, Inc. at any time upon written notice to Purchaser. Quoted Lead times refer to the manufacturing cycles, in working days, at time of quotations and are subject to change. See Page 2 for detailed scope of work.

Item	Short Description	Modification Package	Field Service Labor	Total
A	Replace the existing OIP with a new touch screen & box pc running the latest Wonderware software. Replace (2) Modbus Gateways (obsolete) with latest offering. DWG: 33676-P-SWB1	\$27,696.00	\$12,937.00	\$40,633.00

All pricing is fixed price and does not include tax or shipping and handling.

Lead times for shipment of materials are currently being scheduled 43-45 weeks from the date of release.

**\*NOTE: Please select one of the following. This is required upon order submission:**

- Submit for Approval Drawings and Updated O&M Manuals
- Updated O&M Manual Only

Please send purchase orders to:  
[david@c-techna.com](mailto:david@c-techna.com)

The Quote number as listed (**2024101434731**) must be referenced on the PO and in the email subject when submitting a purchase order.

Please make purchase order out to the following:  
Siemens Industry, Inc.,  
Russelectric, A Siemens Business  
99 Industrial Park Road  
Hingham, MA 02043

Authorized Russelectric Sales Representative:  
C-Tech of North America, Inc.  
12532 Stone Tower Loop  
Ft. Myers, FL 33913



David Crider 239 841-3100  
[david@c-techna.com](mailto:david@c-techna.com)

Russelectric Contact:  
John Hobson  
Phone: (918) 615-5331  
Email: [john.hobson@siemens.com](mailto:john.hobson@siemens.com)

## Modification Description of Services

The following are details for the modifications listed above and a description of services to be provided.

**ITEM A:** Replace the existing OIP with a new touch screen and box PC running the latest Wonderware software. Replace (2) Modbus bridges (obsolete) with latest offering.

- 1) Replace the (1) existing OIP & Box PC on the door of the Master Control Cubicle (D12) on 33676-P-SWB1 with a new touch screen panel running the latest version of the Wonderware software. Provide (1) 60k Tag RT License for running the Intouch software.
  - a) The existing door will remain in place and with the aid of a bezel, the existing cutout will accommodate a new 15" Siemens touch panel PC.

Note: This is an Allen Bradley PLC project, but no additional software will be required.

- 2) Replace (2) existing Advantech Adam Modbus Gateways (obsolete) with Moxa MB3170 Modbus Gateways, located in the Master Control Cubicle (D12).
- 3) Provide production setup and in-house testing of hardware.
- 4) Provide engineering services, drawings, parts, testing, and installation services.
- 5) Provide revised drawings incorporating the previously described modifications.

### Customer Responsibilities:

- Provide free and clear access to the equipment with adequate lighting and 120VAC (GFI protected) receptacle for Russelectric personnel equipment.
- Coordinate all power outages and absorb any related costs.

- Provide qualified personnel familiar with the systems operations and electrical equipment, who will perform all switching, de-energization, re-energization, grounding, and lockout of the equipment.
- Provide a list of job site hazards specific to its operation. These may include, but are not limited, to confined spaces, presence of chemicals and contaminants, and other operations in the area.
- Provide emergency response training or documentation to Russelectric field service personnel.

**Services Not Included in this proposal:**

- Labor and expense cost overruns due to: 1) delays by others over one hour; or 2) equipment is not ready to be serviced.
- All costs, if any, incurred due to rescheduling of services.
- Any site-specific or customer-specific safety or clearance training greater than one hour conducted during the date of service or required outside the dates of service.

**Terms of Quote:**

Lead times for these services are currently being scheduled as listed above. Actual scheduling will be determined at the time of release and will be dependent on receipt of all information and available capacity at the time of order release.

*As a result of the global Covid-19 Virus outbreak, temporary delays in delivery, labor or services from Siemens and its sub-suppliers or subcontractors may occur. Among other factors, Siemens' delivery is subject to the correct and punctual supply from sub-suppliers or subcontractors, and Siemens reserves the right to make partial deliveries or modify its labor or services. While Siemens shall make every commercially reasonable effort to meet the delivery or service or completion date mentioned above, such date is subject to change.*

This quotation is based on the Services being completed during anytime hours (unless otherwise noted above) with access to the equipment without restriction. Scheduling adjustments to accommodate availability of access to the equipment could require a revision of the quotation.

All connections between equipment (interconnects) required for the above services will be the responsibility of the customer and installed by others. Upon request, the details of these required interconnects can be provided 8-10 weeks following the receipt of a purchase order.

Please be advised the services outlined in this quotation may require a power shutdown of the equipment. Otherwise as many of these procedures as possible will be performed while still maintaining proper safety guidelines per the latest edition of NFPA 70E, OSHA and Russelectric safety guidelines. Please consult Field Service concerning duration of shutdown.

To schedule field service for the services, please provide a purchase order referencing the above quotation number.

This quotation is firm for 30 days. Standard conditions of Aftermarket Sales are attached and hereby become part of this quotation. Prices are firm for 26 weeks from the date of order.

We reserve the right to review warranty claims involving modifications performed by non-Russelectric personnel.

**Issuing a purchase order:** please send to the email address listed on page 1. All purchase orders must include the quote number referenced above.

**Invoicing:** Russelectric shall issue partial invoicing upon shipment of products, parts and materials. Field service labor will be invoiced upon completion of service.

**Payment Terms:** Our payment terms on open accounts are net-30 days, no retention, and are subject to credit approval. Terms become effective upon invoicing. If payment is made by credit card (Master Card, Visa or American Express), a 3% credit card fee will be applied to all payments. For orders \$500,000 or greater, the payment shall be according to the following schedule:

Upon receipt of purchase order	10%
Upon release to manufacturing	20%
Upon shipment from factory	70%

Any changes to the milestone payment schedule listed above must be approved in writing by Siemens and the customer.

**Tax:** All orders will have any applicable tax added, unless a tax exempt certificate is furnished at the time of order placement, or one is on file with Russelectric and is referenced with the order. Please use the above quotation number when making any inquiries to this quotation.

**Cancellation Schedule:** In the event that Buyer cancels the purchase order, or portions of the purchase order in writing, the following charges, as a percentage of the total purchase order price for the order, or application portions thereof, will apply:

After receipt of order or before approval drawings are completed	15%
After approval drawing completion, but before release to manufacturing	30%
Before start of fabrication, but after major component purchase	60%
After start of fabrication, but before start of assembly	80%
After assembly has started	100%

**Shipping Address Confirmation:** The Buyer must provide confirmation of the shipping address and point of contact at least fourteen (14) days prior to the delivery date for products shipped to the US and at least thirty (30) days prior to the delivery date for products shipped outside of the US. After these dates, if no confirmation was provided, the products will be shipped to the address indicated in the Buyer's Purchase Order. Any modifications to the shipping address received less than fourteen (14) days from the date of delivery may result in additional charges.

**Questions:** Please contact your local manufacturers as listed on the quote above. Please use the above quotation number when making any inquiries to this quotation.

Version 1.1

**RUSSELECTRIC, A SIEMENS BUSINESS**

Date: 01/14/2020

**STANDARD TERMS AND CONDITIONS OF SALE FOR SIEMENS JOINT PRODUCT AND SERVICES OFFERING**

1. **APPLICABLE TERMS.** This Agreement governs the sale and performance of equipment, components, parts and materials ("Products") and services provided by Russelectric ("Services"). Collectively this Agreement may refer to the joint offering as "Russelectric Products and Services"). The Standard Terms Addenda, these terms, any other applicable addenda, Russelectric's proposal, price quote, purchase order or acknowledgement issued by Russelectric form the parties' final agreement ("Agreement"). In the event of any ambiguity or conflict between these documents, precedence shall apply in accordance with the order written in the previous sentence. Russelectric's proposal, offer or acceptance is conditioned on Buyer's acceptance of this Agreement. Any additional or conflicting terms in Buyer's request for proposal, specifications, purchase order or any other written or oral communication are not binding on Russelectric unless separately signed by Russelectric. Russelectric's failure to object to Buyer's additional or conflicting terms does not operate as a waiver of the terms contained in this Agreement.

2. **PRICING & PAYMENT.** Prices and payment terms are: (i) as stated in Russelectric's proposal, or if none are stated; (ii) Russelectric's standard rates in effect when Russelectric receives Buyer's purchase order. If neither (i) nor (ii) apply, then Russelectric's standard rates for Services shall be those in effect at the time Russelectric renders the services and Russelectric's rates for Products shall be those in effect at the time of shipment.

(a) Payment – Unless stated in Russelectric's proposal, all payments are due net thirty (30) days from the invoice date in United States Dollars. Discounts, if any, are only applicable for payments made by cash, check, ACH or wire.

(b) Credit Approval – All orders are subject to credit approval by Russelectric. Russelectric may modify, suspend or withdraw the credit amount or payment terms at any time. If there is doubt as to Buyer's financial condition, Russelectric may withhold manufacturing and/or shipment of Product and performance of Services, require cash payments or advance payments, or require other satisfactory financial security before manufacturing and/or shipment of Product and performance of Services.

(c) Taxes – Unless stated in writing by Russelectric, Russelectric's rates exclude charges for taxes, tariffs charged on the importation of goods into the United States, excises, fees, duties or other government charges related to the Russelectric Products and Services. Buyer will pay these amounts or reimburse Russelectric. If Buyer claims a tax or other exemption or direct payment permit, Buyer will provide a valid exemption certificate or permit and indemnify, defend and hold Russelectric harmless from any taxes, tariffs charged on the importation of goods into the United States, costs and penalties arising from same. Increases, changes (including in application), adjustments or surcharges which may be incurred are for Buyer's account.

(d) Late Payments – Late payments shall bear interest at an annual percentage rate equal to the LIBOR rate plus 2.50% or the highest rate allowed by law, whichever is lower.

(e) Disputed Invoice – If Buyer disputes all or any portion of an invoice, it must first deliver written notice to Russelectric of the disputed amount and the basis for the dispute within twenty-one (21) days of receiving the invoice. Failure of Buyer to timely notify Russelectric of any dispute constitutes a waiver of Buyer's claim. If Buyer only disputes a portion of the invoice Buyer must pay the undisputed portion in accordance with Article 2(a). Upon resolution of the dispute in favor of Russelectric, Buyer must pay the invoice or the remainder of the invoice, plus any accrued interest on the late payment.

(f) Suspension/Termination Right – Russelectric may suspend Services and manufacturing and/or shipment of Product if an undisputed invoice is more than fifteen (15) days past due. Russelectric may terminate this Agreement if an undisputed invoice is more than thirty (30) days past due. Unless otherwise prohibited by law, Russelectric may also terminate this Agreement immediately in the event of a material adverse change in the Buyer's financial condition, including, but not limited to bankruptcy, insolvency, or liquidation.

(g) Installment Shipment of Product – Where Products are delivered in shipments or only part of a shipment fails to comply with this Agreement, the Buyer may only reject the non-compliant portion. Buyer will separately pay for each shipment. If Russelectric holds or stores Products for Buyer, it shall do so at Buyer's sole risk and expense.

(h) Shipping, Packing and Handling of Product – Unless stated in writing by Russelectric, Russelectric's prices exclude charges for freight, unloading, storage, insurance, taxes, excises, fees, duties or other government charges related to the Products. Buyer will pay these amounts or reimburse Russelectric. Russelectric's prices include the costs of its standard domestic packing only. Any packing deviation, including U.S. Government sealed packing, will be charged to Buyer. Increases, changes (including in application), adjustments or surcharges which may be incurred are for Buyer's account.

3. **RISK OF LOSS AND SCHEDULE OF SERVICES.** Services shall be performed at the location identified in the Agreement ("Site"). Risk of loss or of damage to Buyer's equipment, including "Equipment" (equipment, materials, components and Items of any kind for which Russelectric is to provide Services under the Agreement), shall remain with Buyer at all times during the performance of the Services hereunder. If Buyer procures or has procured property damage insurance applicable to occurrences at the Site, Buyer shall obtain a waiver by the insurers of all subrogation rights against Russelectric.

Any performance or completion dates are estimated dates only. Russelectric is not liable for any loss or expense incurred by Buyer or Buyer's customers if Russelectric fails to meet any such dates.

4. **DELIVERY; TITLE; RISK OF LOSS OF PRODUCTS.** Products will be delivered F.O.B. Russelectric point of shipment with title and risk of loss or damage passing to Buyer at that point. Buyer is responsible for all transportation, insurance and related expenses. The related expenses shall include any taxes, duties or documentation fees. Russelectric may make partial shipments. Any shipping, delivery and installation dates are estimated dates only. Russelectric is not liable for any loss or expense incurred by Buyer or Buyer's customers if Russelectric fails to meet its delivery schedule.

5. **TRANSPORTATION AND STORAGE OF PRODUCTS.** (a) When Products are ready for shipment, Russelectric will: (i) inform Buyer, and Buyer will then promptly give shipping instructions to Russelectric; (ii) determine the method of transportation and shipment routing; and (iii) ship the Products with freight prepaid by normal transportation. If Buyer fails to provide timely shipping instructions, Russelectric will ship the Products by normal transportation means to Buyer or to a storage location selected by Russelectric. Buyer will pay or reimburse any excess transportation charges for special or expedited transportation.

(b) If Products are placed into storage, delivery occurs and risk of loss transfers to Buyer when the Products are placed on the carrier for shipment to the storage location. If the Products are to be stored in the facility where manufactured, delivery occurs and risk of loss transfers to Buyer when placed in the storage location.

Buyer will pay all Russelectric's storage expenses, including but not limited to, preparation for and placement into storage, handling, freight, storage, inspection, preservation, maintenance, taxes and insurance, upon receipt of an invoice(s) from Russelectric. When conditions permit and upon payment to Russelectric of all amounts due, Buyer must arrange, at its expense, to remove the Products from storage. Buyer bears the risk of loss, damage or destruction to Products in storage.

6. **CANCELLATION.** Buyer may cancel this Agreement at any time on thirty (30) days written notice. Buyer shall have no right to defer shipment of Product. Except for Russelectric's right to terminate in accordance with Article 2, either party may terminate this Agreement for material breach of the other party, provided that the breaching party has not remedied the breach or commenced to cure the breach within a reasonable period, having due regard to the nature of the breach. In the event of a termination or cancellation, unless the Agreement includes a defined termination or cancellation schedule, Buyer is liable for cancellation charges, including without limitation: (i) the full price for any completed Russelectric Products and Services; (ii) the allocable portion of the price as determined by Russelectric for any partially completed Russelectric Product and Services, including reasonable overhead and profit, (iii) reasonable demobilization costs, and (iv) payments due to subcontractors which cannot be: (1) cancelled without any payment obligation; or (2) refunded.

7. **FORCE MAJEURE / DELAYS.** If either party is unable to perform or suffers delay in performance, due to any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, inclement or unusually severe weather conditions, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, cyber-attacks, terrorist attacks, failure of normal sources of supply, or acts or inaction of government, the time of performance will be extended by a period equal to the length of time it takes to overcome the effect of the event. In addition, Russelectric shall be entitled to be compensated by Buyer for reasonable and direct additional costs of Service incurred during such event. Russelectric will notify Buyer within a reasonable time after becoming aware of any such event. If there are force majeure delays exceeding 180 days in the aggregate, Russelectric may terminate the Agreement pursuant to Article 4. Failure to pay shall not constitute a force majeure delay.

8. **BUYER'S REQUIREMENTS.** Russelectric's performance is contingent upon Buyer timely complying with and fulfilling all of its obligations under this Agreement. These obligations include the Buyer supplying all necessary access to Equipment and Products, where applicable, and all required "Third Party Parts" (parts, components, equipment or materials provided by Buyer or that exist in the Equipment which were not manufactured or supplied by Russelectric or which were originally supplied by Russelectric and subsequently repaired, serviced or otherwise altered by any party not affiliated with Russelectric), documents, permits and approvals needed for Russelectric to perform including, but not limited to, accurate technical information and data,

drawing and document approvals, and all necessary commercial documentation. Buyer shall provide access to the Site as reasonably required by Russelectric for the performance of the Services. Russelectric may request a change order for an equitable adjustment in prices and times for performance, as well as to adjust for any additional costs or any delay resulting from the failure of Buyer, Buyer's contractors, successors or assigns to meet these obligations or any other obligations in this Agreement.

Buyer shall also maintain the Site in a safe condition, notify Russelectric promptly of any site conditions requiring special care, and provide Russelectric with any available documents describing the quantity, nature, location and extent of such conditions, including any Material Safety Data Sheets (MSDS) related to all hazardous materials at the Site which may impact the Russelectric Products and Services.

**9. INDEMNITY.** Russelectric and Buyer (each as an "Indemnitor") shall indemnify, hold harmless and defend the other ("Indemnitee") from and against all third party claims alleging bodily injury, death or damage to a third party's tangible property, but only to the extent caused by the Indemnitor or its subcontractor's negligent acts or omissions. If the injury or damage is caused by the parties' joint or contributory negligence, the loss and/or expenses shall be borne by each party in proportion to its degree of negligence. No part of Buyer's Site or other property of Buyer (or Site Owner) is considered third party property.

Indemnitee shall provide the Indemnitor with prompt written notice of any third party claims covered by this Article. Indemnitor has the unrestricted right to select and hire counsel, and the exclusive right to conduct the legal defense and/or settle the claim on the Indemnitee's behalf. Indemnitee shall not make any admission(s) which might be prejudicial to Indemnitor and shall not enter into a settlement without the express permission of Indemnitor.

#### **10. WARRANTIES.**

(a) *Warranties.* Russelectric warrants that: (i) it will perform the Services in a professional and workmanlike manner; (ii) each Product is free from defects in material and workmanship; (iii) each Product materially conforms to Russelectric specifications that are attached to, or expressly incorporated into this Agreement; and (iv) at the time of delivery, Russelectric has title to each Product free and clear of liens and encumbrances (the "Warranties"). The Warranties do not apply to software furnished by Russelectric. The sole and exclusive warranties for any software are set forth in the applicable Software License/Warranty Addendum.

(b) *Remedies.* If the Services or Product fail to meet the warranty standards set forth in Article 10(a) within the applicable Warranty period defined in Article 10(c), and Buyer promptly reports such non-conformance to Russelectric during the above mentioned Warranty period, Russelectric shall at its own expense as Buyer's sole and exclusive remedies for breach of the Warranties: (i) for Services, re-perform the relevant Services or, in Russelectric's sole discretion, refund Buyer the pro rata portion of the fees paid to Russelectric under this Agreement allocable to the nonconforming Services; and (ii) for Product, at Russelectric's discretion, repair or replace the Product, or its non-conforming parts, within a reasonable time period, or refund of all or part of the purchase price. The warranty on repaired or replaced Product, Services or parts is limited to the remainder of the original Warranty period.

Unless Russelectric agrees otherwise in writing, Buyer will be responsible for any costs associated with: (i) gaining access to the Product or Services; (ii) removal, disassembly, replacement, installation, or reinstallation of any equipment, materials or structures to permit Russelectric to perform its warranty obligations; (iii) transportation to and from the Russelectric factory or repair facility; and (iv) damage to equipment components or parts resulting in whole or in part from non-compliance by the Buyer with Article 10(d) or from their deteriorated condition. All exchanged Products replaced under this Warranty will become the property of Russelectric.

(c) *Warranty Period.* Buyer must provide written notice of any claims for breach of the Warranties by: (i) for Services, within one (1) year from completion of the Services; and (ii) for Product, five (5) years for automatic transfer switches (ATS) and two (2) years for switchgear, beginning at commissioning or six (6) months from shipment, whichever occurs first. Additionally, absent written notice within the applicable Warranty period, any use or possession of the Product or Services after expiration of the applicable Warranty period is conclusive evidence that the applicable Warranties have been satisfied.

(d) *Conditions to the Warranties.* The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Product and Equipment other than by Russelectric or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Product and Equipment in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement, (iii) or in the absence of such conditions, parameters or instructions or to the extent not applicable, in accordance with the generally accepted industry standards applicable in the locale where the Services are being performed and having regard to the nature of the Product and Services; (iv) Buyer discontinuing use of the Product and Equipment after it has, or should have had knowledge of any defect in the Product or Equipment; (v) Buyer providing Russelectric with reasonable access to operating and maintenance data as requested by Russelectric, (which may include secure broadband connection). Without expense to Russelectric, Buyer shall provide to Russelectric and Russelectric's subcontractors and their respective employees and agents on a twenty four (24) hours a day, seven (7) days a week basis, access to the Site, and each unit, including rights of way and easements required for safe access of such persons and equipment, as well as, to the extent applicable, online access to the Site, including to an installed remote monitoring system and to all units, as necessary to permit Russelectric to perform the Services; (vi) Buyer providing prompt written notice of any warranty claims within the Warranty Period; (vii) at Russelectric's discretion, Buyer either removing and shipping Product or Equipment or non-conforming part thereof to Russelectric, at Buyer's expense, or granting Russelectric reasonable access to Products or Equipment to assess the warranty claims; (viii) Product and Equipment not having been subjected to accident (including force majeure), alteration, abuse or misuse; and (ix) Buyer not being in default of any payment obligation. Buyer shall provide, without cost to Russelectric, access to the nonconformity by disassembling, removing, replacing and reinstalling any Equipment, materials or structures to the extent necessary to permit Russelectric to perform its warranty obligations.

(e) *Exclusions from Warranty Coverage.* The Warranties do not apply to (i) any product not supplied by Russelectric; (ii) any Third Party Parts or Equipment; or (iii) to services not performed by Russelectric pursuant to this Agreement. Russelectric will have no liability to Buyer under any legal theory for such products, Third Party Parts, Equipment, services or any related assignment of warranties. Any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Warranties and is provided to Buyer "as is" with no warranties of any kind. Normal wear and tear is excluded, including any expendable items that comprise part of the Product (such as fuses, light bulbs and lamps). Russelectric does not warrant or guarantee that any Product will be secure from cyber threats, hacking or similar malicious activity. Products that are networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Buyer and/or end user against unauthorized access.

(f) *Transferability.* The Warranties are only transferable during the warranty period and only to the Product's initial end-user.

(g) THE WARRANTIES IN THIS ARTICLE 10 ARE RUSSELECTRIC'S SOLE AND EXCLUSIVE WARRANTIES AS TO RUSSELECTRIC PRODUCTS AND SERVICES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 11 BELOW. RUSSELECTRIC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

**11. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, RUSSELECTRIC IS NOT LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, LOSS OF PRODUCTION, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

RUSSELECTRIC'S MAXIMUM LIABILITY UNDER THIS AGREEMENT UNDER ANY THEORY OF RECOVERY, SHALL NOT EXCEED THE TOTAL PRICE PAID TO RUSSELECTRIC UNDER THIS AGREEMENT.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 11 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF RUSSELECTRIC HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 11 EXTEND TO RUSSELECTRIC'S AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUBCONTRACTORS, AGENTS AND SUCCESSORS AND ASSIGNS OF RUSSELECTRIC.

IN THE EVENT THAT PHYSICAL LOSS OR DAMAGE TO THE BUYER'S PROPERTY RESULTS FROM THE FAILURE OF A PORTION OF THE RUSSELECTRIC PRODUCTS AND SERVICES TO CONFORM TO ITS RESPECTIVE WARRANTY DURING THE APPLICABLE WARRANTY PERIOD RUSSELECTRIC'S LIABILITY SHALL IN NO CASE EXCEED RUSSELECTRIC'S OBLIGATION TO PERFORM THE REMEDIES SPECIFIED IN ARTICLE 10, AS APPLICABLE, WHICH RUSSELECTRIC WOULD HAVE HAD TO PERFORM IF SUCH REMEDY HAD BEEN CARRIED OUT IMMEDIATELY PRIOR TO THE OCCURRENCE OF THE PHYSICAL LOSS OR DAMAGE.

## 12. PATENT AND COPYRIGHT INFRINGEMENT.

Russelectric will, at its own option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any processes performed by Russelectric in connection with the Russelectric Products and Services constitutes an infringement of any Patent Cooperation Treaty ("PCT") country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Buyer's Site is located. Buyer will promptly give Russelectric written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Russelectric shall have full and exclusive authority to defend and settle such claim and will pay the damages and costs awarded against Russelectric in any suit or proceeding so defended. Buyer shall not make any admission(s) which might be prejudicial to Russelectric and shall not enter into a settlement without Russelectric's consent. If and to the extent any process performed by Russelectric in connection with the Russelectric Products and Services as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Russelectric will, at its option and expense, either: (i) procure for Buyer the right to continue using said process; (ii) replace it with substantially equivalent non-infringing process; or (iii) modify the process so its use is non-infringing.

Russelectric will have no duty or obligation under this Article 12 if the process is: (i) performed according to Buyer's design or instructions and compliance therewith has caused Russelectric to deviate from its normal course of performance; (ii) modified by Buyer or its contractors after performance; or (iii) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Russelectric, Buyer must protect Russelectric in the same manner and to the same extent that Russelectric has agreed to protect Buyer under this Article 12.

THIS ARTICLE 12 IS AN EXCLUSIVE STATEMENT OF RUSSELECTRIC'S DUTIES AND BUYER'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

## 13. CONFIDENTIALITY.

(a) Both during and after the term of this Agreement, the parties will treat as confidential all information obtained from the disclosing party and all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, the quotation, the Agreement, processes and procedures, know-how, methods and techniques employed by Russelectric in connection with the Russelectric Products and Services, technical data, drawings, flow charts, program listings, software code, and other software, plans and projections. Neither party may disclose or refer to the Russelectric Products and Services to be performed under this Agreement in any manner that identifies the other party without advance written permission. Except for security surveillance, the observing or recording of the Russelectric Products and Services or any part thereof, whether by photographic, video or audio devices or in any other manner is prohibited. In the event any such prohibited observation or recording occurs, Russelectric may (in addition to any other legal or equitable rights and remedies) stop the Services until Russelectric has satisfied itself that the prohibited conduct has ceased, and in such event (a) the date of delivery or time for performance will be extended by a period of time which Russelectric determines necessary and (b) Buyer will reimburse Russelectric for Russelectric's and its Suppliers' additional costs and expenses resulting from such delay, including but not limited to any for demobilization or remobilization. Unless required by appropriate governmental authorities, neither party shall, without the prior written consent of the other party, issue any public statement, press release, publicity hand-out or other material relating to the Russelectric Products and Services performed or installed on Buyer's Site or Equipment. However, Russelectric has the right to share confidential information with its affiliate and subcontractors provided those recipients are subject to the same confidentiality obligations set forth herein.

(b) Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was previously known to the receiving party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are in the possession of the receiving party upon the date of this Agreement; or (iv) was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's confidential information, or (v) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, provided that the party required to disclose by law will promptly advise the originating party of any requirement to make such disclosure to allow the originating party the opportunity to obtain a protective order and assist the originating party in so doing.

(c) It is Russelectric's policy not to unlawfully or improperly receive or use confidential information, including trade secrets, belonging to others. This policy precludes Russelectric from obtaining, directly or indirectly from any employee, contractor, or other individual rendering services to Russelectric confidential information of a prior employer, client or any other person which such employee, contractor, or individual is under an obligation not to disclose. Buyer agrees to abide by this policy.

(d) Russelectric shall retain all intellectual property rights in the Russelectric Products and Services, works, Russelectric's documents, processes, Russelectric's confidential information, and any design information and/or documents made by (or on behalf of) Russelectric. Upon receipt of all fees, expenses and taxes due in respect of the relevant Russelectric Products and Services, Russelectric grants to the Buyer a non-transferable, non-exclusive, royalty-free license to copy, use and communicate Russelectric's documents for the sole purpose of operation and maintenance of the facility upon which the Russelectric Products and Services have been performed.

14. **COMPLIANCE WITH LAWS.** The parties agree to comply with all applicable laws and regulations.

15. **CHANGES IN RUSSELECTRIC PRODUCTS AND SERVICES.** No change will be made to the scope of Russelectric Products and Services unless Buyer and Russelectric agree in writing to the change and any resulting price, schedule or other contractual modifications. If any change to any law, rule, regulation, order, code, standard or requirement impacts Russelectric's obligations or performance under this Agreement, Russelectric shall be entitled to a change order for an equitable adjustment in the price and time of performance.

16. **NON-WAIVER.** Any waiver by a party of strict compliance with this Agreement must be in writing, and any failure by the parties to require strict compliance in one instance will not waive its right to insist on strict compliance thereafter.

17. **MODIFICATION OF TERMS.** These terms may only be modified by a written instrument signed by authorized representatives of both parties.

18. **ASSIGNMENT.** Neither party may assign all or part of this Agreement, or any rights or obligations under this Agreement without the prior written consent of the other; but either party may assign its rights and obligations, without recourse or consent to, any parent, wholly owned subsidiary or affiliate or affiliate's successor organization (whether as a result of reorganization, restructuring or sale of substantially all of a party's assets). However, Buyer shall not assign this Agreement to a competitor of Russelectric; an entity in litigation with Russelectric; or an entity lacking the financial capability to satisfy Buyer's obligations. Any assignee expressly assumes the performance of any obligation assigned. Russelectric may grant a security interest in this Agreement and/or assign proceeds of this Agreement without Buyer's consent.

19. **APPLICABLE LAW AND JURISDICTION.** This Agreement is governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BOTH RUSSELECTRIC AND BUYER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT. Each party agrees that claims and disputes arising out of this Agreement must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which either Buyer or Russelectric maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

20. **SEVERABILITY.** If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the parties' original intent.

21. **EXPORT/IMPORT COMPLIANCE.** Buyer acknowledges that Russelectric is required to comply with applicable export/import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the Products and information provided in the performance of the Services, including any export/import license requirements. Buyer agrees that such goods or information

shall not at any time directly or indirectly be used, exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export/import laws and regulations. Russelectric's continuing performance hereunder is conditioned on compliance with such export/import laws and regulations at all times.

**22. NUCLEAR.** In the event the Russelectric Products and Services provided under the Agreement are to be used in or performed at or are connected with in any manner a nuclear installation, the following conditions shall apply:

(a) Buyer's Insurance:

(i) If Buyer procures property damage insurance applicable to occurrences at the Site and third party non-nuclear liability insurance, or either of such types of insurance, such insurance will name Russelectric and its subcontractors as additional insureds.

(ii) Buyer shall have at its own cost, prior to the arrival of nuclear fuel at the Site, secured and shall thereafter maintain in force protection against liability arising out of or resulting from a Nuclear Incident (as defined in the Atomic Energy Act of 1954, as amended) as required by the Nuclear Regulatory Commission; provided, however, that if the nuclear liability protection system in effect on the date of the Agreement expires or is repealed, changed, or modified, Buyer will, without cost to Russelectric, maintain liability protection through government indemnity, limitation of liability, and/or liability insurance which will not result in a material impairment of the protection afforded Russelectric and its subcontractors by such nuclear liability protection system which is in effect as of the date of the Agreement, taking into account the availability of insurance, customary practice in the industry for plants of similar size and character, and other relevant factors in light of then existing conditions. In any event, the protection provided pursuant to this Article shall remain in effect until the decommissioning of the nuclear plant.

(b) Waivers by Buyer: neither Russelectric, nor its subcontractors shall be liable for any loss of, damage to, or loss of use of property or equipment wherever located, arising out of or resulting from a "Nuclear Incident." Buyer waives and will require its insurers to waive all rights of recovery against Russelectric and its subcontractors on account of any such loss, damage, or loss of use. All such waivers shall be full and unrestricted and in a form acceptable to Russelectric.

In the event Buyer recovers damages from a third party based on losses at the Site resulting from the hazardous properties of source, special nuclear or byproduct material (as defined in the Atomic Energy Act of 1954, as amended), Buyer shall defend, indemnify and hold Russelectric and its subcontractors harmless against claims by such third party which are based on Buyer's recovery of such damages. In addition, Buyer waives and will require its insurers to waive all rights of recovery against Russelectric and its subcontractors, for any and all costs or expenses arising out of or in connection with the investigation and settlement of claims or the defense of suits for damage resulting from the nuclear energy hazard.

(c) Third Party Property Protection: Buyer will indemnify and hold Russelectric and its subcontractors harmless for any liability arising out of loss of or damage to property at the Site which arises out of a Nuclear Incident. In addition, Buyer shall obtain for the benefit of Russelectric and its subcontractors, protection against liability for, arising out of, or resulting from damage to any property or equipment located at the Site which is used or intended for use by Buyer in connection with the operation of the nuclear power plant (including but not limited to fuel) and which is owned by parties other than Buyer.

(d) Decontamination: Buyer shall, without cost to Russelectric, perform any required decontamination and health physics necessary for, related to or resulting from Russelectric performance of its contractual obligations. This includes but is not limited to decontamination of any Russelectric equipment or tools used in the performance thereof. Buyer shall provide documentation demonstrating that components or parts being returned to Russelectric after such decontamination meet the requirements designated for unrestricted release as set forth in the United States Code of Federal Regulations, Title 10 Part 20.

**23. SURVIVAL.** The Articles entitled "Intellectual Property," "Limitation of Liability," "Indemnity," "Confidentiality," "Risk of Loss and Schedule," "Export/Import Compliance," and "Nuclear" survive any termination, expiration or cancellation of this Agreement.

**24. SITE SAFETY.** Buyer shall comply with all federal, state, and local safety regulations and standards applicable to the Site and to the Equipment and/or Product on which Russelectric will perform the Services. Russelectric shall not be obligated to commence or perform Services unless Buyer's Site complies with all applicable safety requirements. In the event Buyer's Site safety is non-compliant, Russelectric may suspend the Services until such time as Buyer corrects the non-compliance. To the extent Russelectric incurs additional time and expense as the result of Buyer's non-compliance, Russelectric shall be entitled to an equitable adjustment in the schedule, price and other affected provisions of the Agreement.

**25. ENVIRONMENTAL COMPLIANCE.** To the extent that the performance of Services at the Site may involve the generation of hazardous waste as such term is defined in the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the laws of the state in which the Site is located and the rules or regulations issued thereunder as are now in effect or hereafter amended from time to time (such generated hazardous waste being herein referred to as "Hazardous Waste") shall apply.

Buyer shall at its expense and in accordance with all applicable federal, state and local laws, rules, regulations and ordinances (i) furnish Russelectric with containers for Hazardous Waste, (ii) designate a storage area at the Site proximate to the Services where such containers are to be placed; and (iii) handle, store and dispose of Hazardous Waste. Buyer shall reimburse Russelectric for additional costs, if any, incurred in complying with any such laws, regulations, rules and/or ordinances.

Russelectric shall have no responsibility or liability with regard to any Hazardous Waste which it does not know or have reason to know will be generated or released in the performance of the Services, and Buyer shall indemnify and hold Russelectric harmless for all damages, losses, costs, liabilities, fines and penalties, (including reasonable attorneys' fees) related to pollution and environmental impairment arising from the Buyer's property, the Equipment or the Services.

**26. ASBESTOS.** The terms "Asbestos" and "Presumed Asbestos Containing Material" shall have the meanings set forth in United States Code of Federal Regulations Chapter 29 Section CFR 1926.1101 et seq., and "ACM" shall mean Asbestos and Asbestos containing materials.

(a) The Buyer warrants and represents that, in any areas which may be accessed by Russelectric or its Suppliers, any ACM which is or is contained in thermal insulation or sprayed-on surfacing material is conspicuously and specifically marked as ACM, and any other ACM is in a lawful condition.

(b) Prior to Russelectric's commencement of Services at any Site:

(i) The Buyer shall, at Buyer's expense remove all thermal insulation, sprayed-on surfacing material, and/or Presumed Asbestos Containing Material (any or all of the foregoing hereinafter "PACM"), and ACM which may be disturbed during or removal of which is required for the performance of the Services; and,

(ii) The Buyer shall ensure that any areas where any activities involving the abatement or removal of PACM or ACM shall be conspicuously identified, posted and isolated, all as required by applicable law.

BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, IN PERFORMING THE SERVICES AND DISPATCHING EMPLOYEES TO WORK AREAS, RUSSELECTRIC IS RELYING UPON THE AGREEMENTS, WARRANTIES, AND REPRESENTATIONS MADE BY BUYER IN THIS ARTICLE 26. Without limiting its other rights and remedies, Russelectric: (i) shall not be obligated to commence, and may stop any affected Services, unless and until it is fully satisfied that the Buyer is in compliance with this Article 26, and (ii) shall be entitled to an equitable adjustment in the schedule, price and other provisions of the Agreement resulting from Buyer's non-compliance.

(c) In no event shall Russelectric be obligated to install, disturb, handle, or remove any PACM.

(d) Russelectric makes no representation that it is licensed to abate ACM.

(e) Buyer shall defend, indemnify and hold Russelectric harmless against any and all claims, demands, damages, losses, liabilities, fines, penalties, costs or expenses, including without limitation any clean up or remedial measures arising out of, connected with, or resulting from the Buyer's failure to comply with the provisions of this Article 26.

**27. THIRD PARTY PARTS.** Buyer warrants that any and all Third Party Parts which may be the subject of any Services shall (a) be fully compatible with the corresponding part, component, equipment or material of the Original Equipment Manufacturer ("OEM") in terms of form, fit, and function; (b) shall be timely provided to Russelectric hereunder; and (c) shall be capable of installation in the same manner and within the same time as the corresponding OEM part, component, equipment, or material.

**28. PRODUCT RETURNS.** Prior to the return of any Product, Buyer must identify the Product or portion thereof and obtain written authorization and shipping instructions from Russelectric. Russelectric has the right, in its sole discretion, to permit or reject any such return. Russelectric's authorization to return any Product to Russelectric does not relieve Buyer of its obligation to pay for such Product. Upon receipt, inspection, and acceptance of the Product by Russelectric, Russelectric will issue a credit memo to Buyer, less applicable re-stocking fees. Russelectric reserves the right to reject any hazardous material.

## Service Agreement Form

Term start date: \_\_\_\_\_

Payment Methods: Company Purchase Order or Signed Selection Form

Purchase order number: \_\_\_\_\_ (Attached hard copy)

Contact name: \_\_\_\_\_

Contact title and company: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Tax Exemption #: \_\_\_\_\_

Bill to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Site contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Applicable taxes will be included on your invoice unless formal documentation is provided with your order. If you are classified as tax exempt, please provide your tax exemption number and a copy of your exemption certificate.

Buyer:

Name:

Title:

**Please Remit the Completed Form to your Local Rep as listed on Page 1 of this proposal.**

APPROVED AS TO FORM:

By: AM  
City Attorney's Office

Date: 4/5/2024