

**AMENDMENT NO. 1  
TO THE  
SIEMENS APOGEE BUILDING CONTROL SYSTEM  
PREVENTATIVE MAINTENANCE AND REPAIR SERVICES BETWEEN  
THE TEXAS FACILITIES COMMISSION  
AND  
SIEMENS INDUSTRY, INC.**

**THIS AMENDMENT NO. 1** is entered into by and between the Texas Facilities Commission (hereinafter referred to as “TFC”), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 and Siemens Industry, Inc. (hereinafter referred to as “Contractor”), located at 1835 B Kramer Lane, Suite 180, Austin, Texas 78758, to amend the original Contract between the parties (hereinafter referred to as the “Contract”).

WHEREAS, TFC has determined to modify subsection 1.16 (a) of the Contract for administrative purposes; and

WHEREAS, subject to Contract Section 10.21, Entire Agreement and Modification, such modification may only be effected by a written amendment to the Contract; and

WHEREAS, the parties desire to amend certain terms to their mutual benefit to reflect the changed circumstances;

NOW, THEREFORE, the parties agree to amend the Contract as follows:

1. The parties hereby agree to modify ARTICLE I - STATEMENT OF WORK, SECTION 1.16 – MAINTENANCE AND DELIVERY RELEASES, by deleting subsection (a) in its entirety, and replacing it with subsection (a) as follows:

“(a) TFC may request a service call, as defined in Section 1.15 above, to complete maintenance and repair services based on deficiencies documented during inspections and testing under this Contract or to effect repairs due to system failures. Such requests for services shall be documented through a separate document (hereinafter referred to as a “Delivery Release”). Each Delivery Release shall subject to the terms and conditions set forth in this Contract, and shall include a description of the scope of services, schedule and term, and compensation specific to the Delivery Release which shall be negotiated at the time of such Delivery Release. Any work completed by Contractor without a Delivery Release will not be paid for by TFC. In the event of an emergency, Contractor may begin service upon verbal direction from the Contract Administrator. Written confirmation in the form of an e-mail will be sent within twenty-four (24) hours of the initial call followed by a fully approved Delivery Release.”

2. The parties hereby agree to modify ARTICLE II – TERM, by adding Section 2.4. – CORRECTIVE ACTION PLAN as follows:

“2.4. **CORRECTIVE ACTION PLAN.** (a) If TFC identifies one (1) or more instances of Contractor’s unsatisfactory performance based on any of the circumstances set forth in Section

2.4 above or otherwise based on Contractor's obligations under this Contract, the Contract Administrator may request a corrective action plan (hereinafter referred to as "Corrective Action Plan") from Contractor by notifying Contractor in writing of the issue(s) which constitute unsatisfactory performance, and direct Contractor to provide a written Corrective Action Plan. Contractor shall deliver a Corrective Action Plan within ten (10) business days of Contract Administrator's notification, and such plan shall be subject to written approval by the Contract Administrator. The Corrective Action Plan shall address how Contractor will correct the instances of unsatisfactory performance identified by TFC, and provide that Contractor shall, unless otherwise approved in advance by the Contract Administrator, complete all actions set forth in the Corrective Action Plan no later than thirty (30) calendar days following Contractor Administrator's approval of the Plan. Failure to correct all identified elements of unsatisfactory performance included in the notice requesting the Corrective Action Plan, within the time as set forth in this section, shall entitle TFC to avail itself of the following remedy at TFC's sole discretion: termination of this Contract.

(b) In addition, if Contractor is required to deliver and perform under more than one (1) Corrective Action Plan within any period of twelve (12) continuous months during the term of this Contract, and regardless of whether or not Contractor successfully completes such Correction Action Plans, TFC may consider such conduct to amount to Contractor's continuing material nonperformance of services under this Contract. In such an event, TFC shall be entitled to avail itself of one or more of the following remedies at TFC's sole discretion:

(i) TFC's imposition of liquidated damages on Contractor in an amount equal to ten percent (10%) of the amount of compensation otherwise payable by TFC to Contractor under this Contract for work performed during the three (3) month period preceding the date the most recently submitted Corrective Action Plan was approved by the Contract Administrator; and/or

(ii) TFC's termination of this Contract."

Except as expressly amended above, all provisions of the Contract remain in full force and effect.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Amendment No. 1 to this Contract to be effective as of the date of the last party to sign.

**TEXAS FACILITIES COMMISSION**

**SIEMENS INDUSTRY, INC.**

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By:  \_\_\_\_\_  
DocuSigned by:  
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John S. Raff

Print Name: Mike Dehart

Interim Executive Director

Title Print: Branch GM

Date of execution: 05/16/2018 | 3:31 PM CDT

Date of execution: 05/16/2018 | 2:32 PM CDT

GC.  \_\_\_\_\_

Dir.  \_\_\_\_\_

D.E.D.  \_\_\_\_\_