



LOWER COLORADO RIVER AUTHORITY
CONTRACT #4297 WITH SIEMENS INDUSTRY, INC.

This Goods Contract ("Contract") is entered into on December 18th, 2015 ("Effective Date") by and between the **Lower Colorado River Authority ("LCRA")**, a conservation and reclamation district of the State of Texas, and Siemens Industry, Inc. ("**Supplier**"). Separately, each party may hereafter be referred to as a "Party"; collectively, the parties may be referred to as the "Parties."

This Contract is for Circuit Breakers as described in the Exhibits.

SECTION 1: TERM

This Contract is a master contract.

The term of the Contract is one year from the Effective Date, with annual automatic renewal periods, not to exceed a total maximum term of five (5) years. At LCRA's sole option, these annual renewals may be discontinued by LCRA upon written notice to Supplier prior to the next annual renewal date. This Contract will be deemed to extend beyond its expiration or termination date with respect to any Order being performed under it at that time, unless the Order (as defined in the Terms and Conditions) is also terminated.

SECTION 2: CONTRACT DOCUMENTS

This Contract consists of the following documents ("Contract Documents") and all exhibits and attachments thereto, each of which are incorporated by reference. The documents are listed in their order of precedence from highest to lowest.

1. These execution pages;
2. The Terms and Conditions;
3. Each Order issued under this Contract and any Change Orders, if any;
4. A Statement of Work, if any; and
5. All other Exhibits.

The duly authorized representatives of the Parties have read all the Contract Documents and execute this Contract by their signatures below:

[SUPPLIER]:

By: 

Authorized Signature

Printed Name: Muhammad Sohail

Title: VP & GM

Date: Dec. 18, 2015

LCRA:

By: 

Authorized Signature

Printed Name: Matthew D. Januski

Title: Sr. Category Mgr

Date: 12-18-15

SECTION 3: TERMS AND CONDITIONS

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The titles and section headings of this Contract are included for convenience only and shall not be deemed to constitute a part of this Contract.

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ARTICLE 1: DEFINITIONS

Amendment - A written instrument executed by an LCRA Agent and a designated representative of the Supplier that expressly modifies specific and identified terms of this Contract other than those that are allowed to be modified by Change Order.

Ancillary Services – Any services that may be required related to the Goods sold hereunder, including, without limitation, installation, configuration and testing, training, consulting, maintenance, or other services.

Change Order - A written instrument executed by an LCRA Agent and a designated representative of the Supplier that adds to, deletes from, or otherwise modifies (1) the Goods to be supplied by the Supplier under an Order; (2) the Deliverables to be provided by a Supplier under an Order; (3) the time for completion of Supplier's performance under an Order or; (4) the price to be paid by LCRA under an Order. The foregoing four terms are the exclusive list of terms that may be changed by a Change Order.

Contract Documents - Those documents as described in the Contract Documents section of the execution pages.

Contract Time - The number of days or the dates stated in the Order to achieve Completion for a Project.

Corrective Action – Any repair, replacement, modification, re-performance or other action necessary to cure any Defective Goods or any defect in the Ancillary Services.

Corrective Action Request - Instructs the Supplier to provide a corrective action plan within five (5) business days of issuance that will cure the default or nonconformity.

Defective Goods – Goods which do not conform to the requirements of the Contract Documents.

Deliverables – Work products, including without limitation, documentation, photographs, studies, data, schedules, test results, drawings, specifications and reports under an Order.

F.O.B. Destination - As used under Chapter 2 of the Texas Business and Commerce Code, Supplier is responsible for all shipping, packaging, insurance, title, and risk of loss until delivered at LCRA's site as listed on an Order. INCOTERMS do not apply to this Contract.

Goods – All tangible goods, materials, Deliverables, and accessories to be purchased under the Contract.

LCRA - Lower Colorado River Authority, a conservation and reclamation district of the State of Texas created pursuant to Article XVI, Section 59, of the Texas Constitution.

LCRA Affiliate - Includes Gentex Power Corporation, LCRA Transmission Services Corporation and any similar entity currently existing or hereafter created, membership on the governing body of which is controlled by LCRA.

LCRA Agent - A designated representative of LCRA, as identified at http://www.lcra.org/BusinessOpportunitiesAttachments/LCRA_Agents_with_Purchasing_Authority.pdf, who shall have primary responsibility for overall management of the Contract. Only an LCRA Agent may execute this Contract or any Amendment to it; send and receive notices; or enforce contract remedies. An LCRA Agent is also authorized to execute Orders and Change Orders.

LCRA Indemnitees – LCRA, its directors, officers, and employees.

LCRA Representative(s) – LCRA employee(s) who assist the LCRA Agent in monitoring the performance of work. Examples of the LCRA Representative’s activities, in conjunction with the LCRA Agent, include: communicate informally with supplier; communicate with LCRA Agent; coordinate work; monitor performance of Ancillary Services against contract requirements; monitor environmental and safety compliance; help evaluate proposals and Supplier responses; accept Ancillary Services; participate in invoice approval; and assist in negotiations. **AN LCRA REPRESENTATIVE IS NOT AUTHORIZED BY LCRA TO EXECUTE, MODIFY, TERMINATE, ENFORCE, WAIVE COMPLIANCE WITH OR ACCEPT ON LCRA’S BEHALF WORK PERFORMED UNDER THIS CONTRACT AND ASSOCIATED ORDERS.**

Order – A request by LCRA for Goods and Ancillary Services to be provided by Supplier under this Contract. A written Order will be signed by an LCRA Agent and may include any or all of the following: a SOW, Technical Specifications, pricing, schedules, purchase order, and other pertinent documents.

Purchase Order Number - A number that refers to LCRA’s internal accounting number by which expenditures under this Contract and its associated SOWs are tracked.

Site - The LCRA’s and its Affiliate’s property (which may be owned as fee owner or tenant in common or held subject to an easement), including adjacent bodies of water, to which Goods are to be delivered or at which Ancillary Services are to be performed.

Statement of Work (SOW) - Describes any Ancillary Services to be provided by Supplier and will also include the period of performance, the place of performance, price and any other pertinent information agreed to by the parties.

Supplier - LCRA’s counterparty to a contract and its employees, agents and subcontractors, who will supply Goods and Ancillary Services to LCRA.

Technical Specifications - That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Goods and Ancillary Services, and certain administrative details applicable thereto.

ARTICLE 2: NOTICES

All notices required under this Contract must be made in writing and sent by registered or certified United States mail, return receipt requested or by nationally recognized courier service to the address below. Notice may additionally be sent by email or fax as indicated below (referencing the contract number in the Subject line), but such service shall not excuse proper notice as set forth above. Parties may change their address by notifying the other party pursuant to this Article.



Siemens Industry, Inc
Authorized Representative:
Attn: HV CB Marketing Manager
444 Highway 49 South
Richland, MS 39218
Email: joel.mathewson@siemens.com

LCRA:
Lower Colorado River Authority
Attn: Supply Management
Re: Contract #4297
3700 Lake Austin Blvd.
Austin, TX 78703
Email: notices@lcra.org

With a copy to:

Goods Contract
Contract #4297

Lower Colorado River Authority
Attn: Office of the General Counsel
3700 Lake Austin Blvd.
Austin, TX 78703
Email: legalreview@lcra.org

Nothing contained in the foregoing shall be construed to apply to routine communications between representatives of Supplier and LCRA.

ARTICLE 3: AMENDMENTS AND CHANGE ORDERS

- 3.A. Amendments.** Except as an Order may be modified through a Change Order, this Contract shall be modified only through an Amendment. No verbal modifications to the Contract shall have any effect.
- 3.B. Change Order Contents.** All Change Orders must be in a form substantially conforming to the Change Order Templates Exhibit.

ARTICLE 4: GOODS TO BE PROVIDED

- 4.A.** Supplier shall provide Goods to LCRA and if applicable, Ancillary Services, as further described in the Exhibits or any Order issued under this Contract. No Goods or Ancillary Services will be provided to LCRA unless Supplier receives an Order from LCRA. This Contract does not guarantee a minimum amount Supplier will be paid or a minimum number of Orders. In no event is LCRA liable to Supplier for any costs or expenses other than for those stated in an Order and allowed under this Contract.
- 4.B.** Supplier shall at its expense provide everything necessary for the complete, proper and timely execution of each Order to be provided including, but not limited to, labor, home office support, engineering, design, fabrication, materials, fuels, supplies, manufacturing, transportation, technical field assistance, drawings and documentation. Supplier is responsible for considering the conditions affecting the performance of the Order including, but not limited to, conditions affecting the transportation, handling and storage of materials; the availability and cost of labor and materials in and around all locations pertinent to the Delivery; and the uncertainties of weather, river stages and similar physical conditions affecting delivery of the Goods or Ancillary Services.
- 4.C.** Goods shall be new and meet the requirements of all applicable codes, regulations, and industry standards to be new. Supplier shall not substitute Goods specified in the Contract unless authorized by LCRA Agent in writing. Unless substitution has been so authorized, Supplier shall, at its sole expense, remove and replace any improperly substituted Goods.
- 4.D.** RESERVED.
- 4.E.** Supplier shall properly connect and coordinate its performance with LCRA and other contractors, and shall notify LCRA Agent if a problem with the work of others hinders Supplier in the performance of its Order.
- 4.F.** If required by an Order, Supplier shall furnish for LCRA's approval, prior to commencement of manufacturing or fabrication, general and detailed drawings of the Goods in the format requested. Such drawings shall be certified as to accuracy and completeness and shall show information adequate to enable LCRA to design and provide suitable clearances. Figures shall take precedence in all cases

over scaled measurements on drawings. Where obvious discrepancies exist in any LCRA provided drawings, or between the drawings and other Contract Documents, Supplier shall consult with and follow the instructions of LCRA Agent. LCRA Agent's approval of Supplier's drawings shall not relieve Supplier of its obligation to comply with the Contract requirements.

- 4.G.** In addition to all other copies that may otherwise be required under the Contract, Supplier shall supply LCRA with true and correct copies of all documents and reports.
- 4.H.** Supplier is to provide all personnel necessary to timely complete any Ancillary Services in accordance with each Order.

ARTICLE 5: INSPECTION, REVIEW AND ACCEPTANCE

- 5.A.** Supplier shall maintain an adequate inspection system and perform such inspections as will assure that the Goods and Ancillary Services supplied by Supplier conform to the Contract requirements. LCRA reserves the right to review and approve the adequacy of Supplier's inspection system and demand changes where appropriate to meet the requirements of LCRA. Supplier shall provide all quality control and quality assurance program information requested by LCRA Agent.
 - 5.A.1.** Supplier shall, at its expense, furnish to LCRA certificates of shop inspection as required by laws or regulations, or by the National Board of Fire Underwriters, or by any company insuring the Goods for the benefit of LCRA.
 - 5.A.2.** Supplier shall make all production and shop tests at its expense. LCRA shall have the right to have a representative present at such tests, including those at Supplier's shops, and notice shall be given to LCRA at least two (2) weeks prior to any scheduled test. Supplier shall give LCRA copies of certified test results promptly upon request.
- 5.B.** LCRA shall have reasonable access to the Supplier's shop for inspection purposes with reasonable notice to Supplier and during Supplier's normal business hours. LCRA's inspectors and expeditors shall be admitted at all reasonable times to the shops of Supplier, its subcontractors and suppliers for inspection purposes. LCRA's inspection of the Goods shall not relieve Supplier of its obligation to comply with the terms of the Contract.
- 5.C.** Each Party shall bear its own expenses in performing inspections, except that: (i) LCRA may use Supplier's facilities, ladders and scaffolds to perform inspections of the Goods and Ancillary Services; (ii) Supplier shall pay LCRA's reasonable expenses in re-inspecting the Goods and Ancillary Services which were rejected as non-conforming to the Contract requirements in an earlier inspection.
- 5.D.** Following delivery of the Goods to the Site and completion of Ancillary Services, LCRA shall notify Supplier in writing of LCRA's acceptance, but only after satisfactory completion of any requirements including, but not limited to, inspection and testing as specified in any Contract Documents ("Acceptance"). Acceptance of the Goods or Ancillary Services shall not limit nor diminish Supplier's warranties and standards with respect to the Goods or Ancillary Services. LCRA may reject any Goods or Ancillary Services, or portion thereof, which do not conform to Contract Documents or that fails any required testing. If Goods or Ancillary Services provided by Supplier are not in accordance with the Contract Documents, Supplier shall remedy such nonconforming Goods or Ancillary Services at its own expense and in accordance with the terms of Supplier's warranty.
- 5.E.** LCRA will not pay for Defective Goods or Ancillary Services. Supplier shall repair or replace all Defective Goods and Ancillary Services at its sole expense consistent with the terms of Supplier's warranty.

ty. Supplier shall promptly remove from the Site any Goods or Ancillary Services that do not comply with the requirements of the Contract.

5.F. RESERVED.

ARTICLE 6: SCHEDULE

- 6.A.** Time is a material performance criteria under this Contract. Supplier agrees to perform all obligations as set forth in this Contract. If required by an Order, a specific progress schedule will be developed for each individual task in compliance with the Order. If at any time it appears to Supplier that it may not meet any of the performance schedules or the scheduled completion date as agreed to by the parties under an Order for any reason, including labor disputes, Supplier shall immediately by verbal means (to be confirmed in writing) notify LCRA of the reasons for and the estimated duration of such delay. If requested by LCRA, Supplier shall make every effort to avoid or minimize the delay. Timely performance by Supplier is contingent upon LCRA's timely supplying Supplier with all required technical information and data, including drawing approvals, and all required commercial documentation in correct form. Supplier shall be entitled to a change order under these terms for any delay caused by LCRA, its contractors, successors or assigns. Unless excused under the terms of this Contract, should Supplier fail to deliver the Goods in a timely manner, and upon written request of LCRA, Supplier shall be obligated to pay liquidated damages as specified in Section 21.C Remedies of this Contract as Supplier's sole liability for delays in delivery.
- 6.B.** The Supplier shall be at all times responsible for maintaining the schedule and for keeping an LCRA Agent and the LCRA Representative informed of the schedule progress. Unless otherwise stated in an Order, Supplier shall provide to LCRA regular, written progress reports which shall show actual and projected progress and costs for all activities, finish dates, and actual percent of performance completed.
- 6.C.** Supplier shall notify LCRA Agent within twenty-four (24) hours of the first knowledge that any scheduled date(s) will not be met and shall, within five (5) business days thereafter, submit a detailed program depicting the plans and actions being taken to regain the lost time. The notice shall not limit any other rights or remedies afforded LCRA under this Contract or by law.

ARTICLE 7: PRICING

- 7.A.** This Contract will not obligate any funds, as all funding will be issued under an Order. Under no circumstances should Supplier incur costs in excess of the amount stated in the Order. All monetary amounts will be calculated and based upon U.S. Dollars.
- 7.B.** The prices, as set forth in Exhibit C, may be revised pursuant to the methodology prescribed in Price Revision Methodology of this Contract. Initial and revised prices shall be firm and fixed for the term specified in the Price Revision Methodology. All applicable costs will be included in the prices listed in the Pricing Exhibit, including without limitation any labor, documentation, travel, per diem, testing, materials, software, copies, mileage, computer charges, courier services, long-distance phone calls, electronic media charges, customs, duties, taxes, shipping and delivery costs, subcontractors, management, contingency fees, or fuel surcharge which may be required by Supplier to manufacture and or deliver or provide Goods or Ancillary Services to LCRA.
- 7.C.** Either party may request a price change under the Price Revision Methodology in Exhibit C. LCRA reserves the right to accept or reject any price change request within thirty (30) days after receipt of

the request. If the price change is rejected by LCRA, LCRA shall have the right to remove the Goods and cancel Ancillary Services to which this proposed price change applies, without terminating the Contract. LCRA shall also have the right to terminate the Contract and any Delivery Order without further liability to the Contractor due to a price increase.

ARTICLE 8: PAYMENT

Supplier shall invoice LCRA under the following terms:

- 8.A.** Notwithstanding anything in this Contract to the contrary, all payments to be made by the LCRA hereunder are subject to Chapter 2251 of the Texas Government Code. Payment in full for invoices shall be due within thirty (30) days from date the invoice is received by LCRA. Invoices paid more than thirty (30) days after the invoice is received are subject to a late charge calculated pursuant to Chapter 2251.
- 8.B.** Invoices for payment under this Contract shall be emailed to invoice@lcra.org.
- 8.C.** Invoices shall include:
 - 8.C.1.** Purchase Order Number prominently displayed on each invoice. If no Purchase Order Number, Supplier shall include the name of the LCRA representative who placed the Order.
 - 8.C.2.** Order line number(s).
 - 8.C.3.** Timesheets for Ancillary Services performed on a time and materials basis.
 - 8.C.4.** Receipts for all materials used for Ancillary Services performed on a time and materials basis.
 - 8.C.5.** Itemization of all Deliverables completed and delivered to LCRA.
 - 8.C.6.** Records supporting all reimbursable expenses, including without limitation, for lodging, meals, mileage, airfare and car rentals.
 - 8.C.7.** Ship to location indicated on the Order.
 - 8.C.8.** Unit of measure indicated on the Order.
- 8.D.** Kits/Sets (if applicable) must be shipped complete and invoiced accordingly. Payment terms shall match the terms stated in the Contract.
- 8.E.** Payments may be based on completion of the Services, fulfillment of milestones, or delivery of Deliverables as agreed in the Order. Final payment by LCRA shall not waive any rights and remedies that LCRA has and shall not release Supplier from any duties and obligations set forth in the Contract Documents.
- 8.F.** No invoice shall be considered complete or payable unless all agreed upon documentation is submitted with invoice as applicable, which may include documentation supporting reimbursable and LCRA approved expenses, such as time sheets, transportation, lodging and meal expenses.
- 8.G.** Credit Card Payments. If LCRA places an Order and pays with an LCRA ProCard (credit card), Supplier must generate an itemized receipt and send it to the person at LCRA who placed the Order in lieu of the foregoing invoice requirements.

ARTICLE 9: TAXES

- 9.A.** LCRA is exempt from all Federal Excise Taxes and the Texas Limited Sales and Use Tax under the provisions of Section 151.309 of the Texas Tax Code and LCRA shall be liable for all sales and excise

taxes should the exemptions be disallowed or limited. LCRA shall not be required to pay or reimburse Supplier for taxes based upon Supplier's net worth, capital, net income, or franchise. All invoices submitted by Supplier shall exclude these taxes. The Contract price shall include, and the Supplier shall pay, all other applicable taxes and assessments for unemployment insurance, workers' compensation, social security and disability benefits, and other taxes which are based upon the compensation paid to persons employed by Supplier or its subcontractors for the performance under this Contract.

- 9.B.** Subject to Article 9.A., the Supplier's pricing shall include all applicable foreign, federal, state and local taxes payable with respect to this Contract. LCRA Agent shall provide Supplier with LCRA's direct pay permit or exemption certificate where applicable. Supplier agrees to cooperate in obtaining exemption certificates necessary to claim such exemptions.

ARTICLE 10: SHIPMENT AND DELIVERY

- 10.A.** Supplier shall deliver all Goods F.O.B. Destination with the delivery cost included in the pricing set forth in Exhibit C. Supplier shall coordinate shipment so that Goods arrive at the Site on schedule and during Site receiving hours. Supplier shall provide shipping notices to LCRA Agent prior to shipment of the Goods. LCRA's storeroom at the Site where the Goods are to be delivered shall be notified at least forty-eight (48) hours in advance of the arrival of the Goods, or as otherwise required by the Contract, whichever is greater. Notification to LCRA's storeroom and all shipping notices shall include any special unloading and storage directions and a list of Goods required to unload the Goods. Supplier shall provide a complete bill of materials for each separate shipment. Every part that is not preassembled shall be identified on the bill of materials.
- 10.B.** LCRA reserves the right to refuse shipments that do not contain proper markings, bills of materials, or for which proper shipping notices were not received. The return and redelivery will be at Supplier's sole expense. Any terms and conditions contained in shipping documents with the Goods shall be given no force or effect and shall not be included as part of the Contract Documents.

ARTICLE 11: TITLE AND RISK OF LOSS

- 11.A.** Title and risk of loss of Goods shall pass to LCRA upon delivery and inspection. Supplier warrants that title shall vest in LCRA free and clear of all liens and encumbrances. If the Goods are rejected as non-conforming, title and risk of loss shall remain with Supplier.
- 11.B.** If the Goods require warranty work, title shall remain at all times with LCRA, except that if the Goods are replaced rather than repaired, LCRA's title shall vest in the replacement.
- 11.C.** If the Goods require warranty work at Supplier's facility or any other off Site location, risk of loss shall pass to Supplier upon delivery by LCRA of the Goods to a common carrier. Risk of loss shall pass to LCRA upon delivery to LCRA of the repaired or replaced Goods and the completion of any required inspection, testing and Acceptance (as defined in the Inspection, Review and Acceptance Article).
- 11.D.** It is the responsibility to Supplier to fully insure the Goods up through and including delivery and Acceptance. Use of a carrier does not relieve Supplier of liability.
- 11.E.** Supplier shall bear the expense and risk of loss or damage to its work in progress, completed work, tools, materials, and all other incidents of its Ancillary Services prior to Acceptance. Supplier shall promptly replace or repair any loss or damage to its work at its own expense.

ARTICLE 12: INSURANCE

12.A. Supplier shall maintain or cause to be maintained, for the duration of this Contract and any applicable warranty period, the insurance required by this Article, together with any other type of insurance required by this Contract, with the following requirements:

- 12.A.1.** Policies shall be issued by insurance companies rated A- IX or better, by Best's Insurance Guide and Key Ratings (or, if Best's Insurance Guide and Key Ratings is no longer published, an equivalent rating by another nationally recognized insurance rating agency of similar standing) or other insurance companies of recognized responsibility satisfactory to LCRA, until all obligations of Supplier pursuant to the Contract Documents have been fully discharged, unless otherwise stated herein.
- 12.A.2.** Supplier shall obtain and maintain the insurance coverage specified below on an occurrence-basis, with the exception of Professional Liability insurance which may be on a claims-made basis. If Professional Liability insurance is provided on a claims-made form, then the insurance coverage must continue for a minimum period of two (2) years beyond the expiration or termination of this Contract, and any retroactive date must coincide with or predate the Effective Date.
- 12.A.3.** Supplier shall require any subcontractors to have the required insurance coverage contained herein and shall demand proof of such insurance.
- 12.A.4.** THE COVERAGE SHALL NOT BE CONSTRUED AS ESTABLISHING OR LIMITING SUPPLIER'S LIABILITY.
- 12.A.5.** LCRA shall be listed as an "additional insured" to the extent third party (LCRA is not a third-party) bodily injury (including death) or third party property damage result from the negligent acts or omissions of Supplier or Supplier's Subcontractors on all policies other than the Workers' Compensation and Professional Liability policies.
- 12.A.6.** Supplier for itself and its insurers hereby waives subrogation against LCRA, its directors, officers, employees and agents.
- 12.A.7.** If Supplier fails to meet the requirements of this Article, LCRA may suspend the Contract, withhold payments or terminate the Contract for breach, provided Supplier has been provided notice of said breach and fifteen (15) calendar days or a longer time accepted in writing by LCRA to cure the alleged breach.
- 12.A.8.** All policies will be endorsed to provide that they may not be canceled, not renewed or materially changed without thirty (30) days' prior written notice sent to LCRA.
- 12.A.9.** All policies will be endorsed to specify that they are primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by LCRA (not applicable to Workers' Compensation insurance policies).
- 12.A.10.** All liability policies shall provide cross-liability or severability of interest or a separation of insureds clause.
- 12.A.11.** Supplier shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies.

12.B. Insurance Requirements

	Type of Insurance	Minimum Coverage
12.B.1.	Workers' Compensation	
	Coverage A	statutory
	Coverage B	\$1,000,000 employer's liability

12.B.2. Commercial General Liability

Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
General Aggregate	\$2,000,000

Such policy shall include the following coverages:

a. Products and/or completed operations (Supplier shall continue this coverage for two years after completion of the work);

b. Premises operations, personal and advertising injury.

12.B.3. Automobile Liability (including owned, non-owned, hired or leased vehicles)

Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence

12.B.4. Professional Liability **\$1,000,000 per occurrence and in the aggregate**

12.B.5. Umbrella Insurance

The Supplier shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring the Supplier (or subcontractor) for an amount of not less than two million dollars (\$2,000,000) per occurrence and in the aggregate that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required above.

12.C. Nuclear. LCRA represents and warrants that the goods covered by this agreement shall not be used in or in connection with a nuclear facility or application. If LCRA violates the foregoing representation and warranty, then LCRA agrees to indemnify and hold harmless Supplier and to waive and require its insurers to waive all right of recovery against Supplier for any damage, loss, destruction, injury or death resulting from a "nuclear incident", as that term is defined in the Atomic Energy Act of 1954, as amended, whether or not due to Siemens's negligence.

ARTICLE 13: OWNERSHIP OF DELIVERABLES

13.A. NOT USED.

13.B. NOT USED

13.C. All written data, such as drawings, plans, reports, designs and specifications, prepared by Supplier and provided to LCRA in providing Goods or performing Ancillary Services, are provided to LCRA with LCRA having the right to use, disclose (in conformity with any applicable confidentiality agreement between the Parties), copy and reproduce such items solely for the purposes of operation, maintenance, analysis, testing, cleaning, erection, improvement or modification of LCRA's facilities. Any intellectual property rights owned by Supplier related to any Goods provided under this Contract are licensed to Supplier in accordance with Section 13.E. below and not transferred to LCRA by Supplier under this paragraph.

- 13.D.** The Parties agree that all Deliverables developed and specified to be delivered under any Order and which are paid for by LCRA are considered the sole property of LCRA at all times, even if such Deliverables are incomplete. Notwithstanding the foregoing, any intellectual property embedded in the Deliverables shall be subject to the terms of Section 13.E. below.
- 13.E.** Intellectual property and rights to intellectual property owned by any Party on the Effective Date of this Contract and each applicable Order shall remain the property of that Party, but LCRA shall have a perpetual, royalty free license to use, release, disclose, copy and reproduce such intellectual property contained in any Deliverable for the sole purpose of operation, maintenance, repair, analysis, testing, cleaning, erection, improvement or modification of its facilities.

ARTICLE 14: WARRANTIES AND STANDARDS

- 14.A. Warranty of Title.** Supplier warrants the title to all Goods it delivers to LCRA and that the Goods will be free and clear of all liens, mortgages, security interests or other encumbrances. Unless specifically stated in the Order, all Goods sold and delivered pursuant to this Contract shall be new and shall not be reconditioned, remanufactured, used or previously used, sold or returned products.
- 14.B. Materials and Workmanship.** For a period of five (5) years from shipment of the Goods, Supplier warrants that all Goods, shall free of any and all defects in materials and workmanship and materially conform to the specifications that are attached to, or expressly incorporated by reference into, these terms.
- 14.B.1.** Subject to the provisions of this article, in the event that the Goods do not comply with the warranty, as LCRA's sole and exclusive remedies for any breach of the warranties and at Supplier's option, Supplier shall, at no cost to LCRA, promptly repair or replace such Defective Goods or part thereof, or refund all or part of the purchase price of the item in question, with as little disruption to LCRA's operations as reasonably practicable. Supplier shall be responsible for the total cost of correcting any defects, and unless otherwise agreed to in writing by Supplier, (i) LCRA shall be responsible for any labor required to gain access to the Goods at issue so that Supplier can assess and decide on the remedies, and (ii) LCRA will be responsible for providing Supplier with working access to the Goods at issue, including the removal, disassembly, replacement, or reinstallation of any equipment, materials or structures to the extent necessary to permit Supplier to perform its warranty obligations, or for damage to equipment components or parts resulting in whole or in part from improper maintenance, operation, or misuse, including but not limited to, the costs of materials, labor, any necessary removal, disassembly, shipping, reinstallation and retesting of the installation. The warranty is conditioned upon LCRA giving supplier written notice of observed defects with reasonable promptness within the applicable warranty period.
- 14.B.2.** If LCRA provides written notification to Supplier of Defective Goods and Supplier fails to begin a cure of such defects within a reasonable time after written notice to Supplier containing a time period in which Supplier must remedy the defect and Supplier has not remedied the defect, or if it is impracticable for Supplier to perform the repair or replacement, LCRA may make or cause to be made such repair or replacement subject to conditions in Supplier's warranty and without affecting the validity of the warranty. In the event of such unavailability, LCRA's cost for making the repair or replacement may be deducted from the Contract price or any unpaid portion thereof or Supplier may otherwise issue a credit to LCRA's account, provided that LCRA first provides to Supplier a reasonable estimate of the

cost of such repair or replacement. If the unpaid portion of the Contract price is insufficient to cover such cost. The Limited Warranties are conditioned on (i) LCRA storing, installing, operating and maintaining the Goods in accordance with Supplier's operation manual; (ii) no modifications or alterations being made to the Goods other than by Supplier or its authorized representatives, including LCRA; (iii) using the Goods within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms; (iv) LCRA discontinuing use of the Goods after it has, or should have had, knowledge of any defect in the Goods; (v) LCRA providing prompt written notice of any warranty claims within the warranty period described herein; (vi) at Supplier' discretion, LCRA either removing and shipping the Goods or non-conforming part thereof to Supplier, at LCRA's expense, or LCRA granting Supplier access to the Goods at all reasonable times and locations to assess the warranty claims.

14.B.3. LCRA must approve any proposed correction or alteration by Supplier of the materials or workmanship, or parts thereof, made at any time or at any location, before such correction or alteration is undertaken. Approval by LCRA shall not relieve Supplier from responsibility for complying with the requirements of the Contract and all applicable codes.

14.B.4. All Corrective Action performed pursuant to a warranty must meet the original requirements of this Contract and each applicable Order. Any materials or workmanship which are repaired or replaced pursuant to this Article shall be warranted for a period of one (1) year from the date of completion and Acceptance of such repair or replacement, or for the remainder of the original warranty period, whichever is longer.

14.B.5. Supplier shall obtain, for the benefit of LCRA, all available warranties from subcontractors, suppliers and vendors of Supplier. Such warranties shall be in addition to the warranties set forth in this Article. If such warranties are in written form, Supplier shall provide LCRA with the original warranties.

14.C. General Standard of Performance. Supplier shall perform all Ancillary Services in a professional manner consistent with the Contract Documents and usual and customary industry standards. Supplier shall correct, without delay and at its own expense, any portion of the Ancillary Services that does not meet the foregoing standard and that is discovered within twelve (12) months from the completion of such service, by re-performing the defective portion of the Ancillary Services to the required standard of performance. Any re-performance or replacement of the Ancillary Services ("Corrective Action") performed pursuant to the provisions of this paragraph shall be supplied on the same terms and conditions as provided for herein for the Ancillary Services. Any Corrective Action (replacement or re-performance) shall be (re)warranted for the remainder of the original warranty period.

14.D. THE WARRANTIES SET FORTH IN THIS SECTION ARE SUPPLIER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY SET FORTH HEREIN. SUPPLIER 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.

14.E. Business Standing Warranty. Supplier warrants, represents and agrees that (i) if it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all neces-

sary corporate power and has received all necessary corporate approvals to execute and deliver the Contract, and the individual executing the Contract on behalf of Supplier has been duly authorized to act for and bind Supplier; or (ii) if it is a partnership, limited partnership or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Contract and perform all its obligations hereunder; and the individual executing this Contract on behalf of Supplier has been duly authorized to act for and bind Supplier.

ARTICLE 15: PUBLIC INFORMATION

LCRA is subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code. Any information submitted to the LCRA by a Supplier shall be available to the public, unless it is clearly marked "CONFIDENTIAL". If another party requests access to information marked confidential, then LCRA shall ask the Supplier if the information may be released. If the release is agreed to, LCRA shall release the information. If the release is denied, the matter shall be referred to the Texas Attorney General's Office where the Supplier shall be responsible for substantiating its confidentiality. The Attorney General's office shall rule on the matter. Pricing information contained in proposals or contracts is not considered confidential under the PIA and will be disclosed without making a request to the Texas Attorney General. If any confidential information is to be exchanged among the Parties, the parties shall execute a separate Confidentiality Agreement.

ARTICLE 16: GENERAL INDEMNITY

16.A. SUPPLIER SHALL INDEMNIFY AND HOLD THE LCRA AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS HARMLESS FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING ATTORNEYS' FEES AND COSTS (JOINTLY "CLAIMS"), INVOLVING THIRD-PARTIES (LCRA IS NOT A THIRD PARTY) RELATING TO:

(1) BODILY INJURY OR DEATH AND THIRD-PARTY PROPERTY DAMAGE TO THE EXTENT RESULTING FROM SUPPLIER'S OR SUPPLIER'S SUBCONTRACTORS' NEGLIGENT PERFORMANCE OR OMISSIONS; OR

(2) CLAIMS BY SUPPLIER'S SUBCONTRACTORS THAT THEY WRONGFULLY HAVE NOT BEEN PAID IN CONNECTION WITH AND GOODS DELEIVERED OR OTHER WORK PERFORMED UNDER AN ORDER ISSUED IN ACCORDANCE WITH THIS CONTRACT

16.B. TO THE EXTENT ALLOWED BY LAW, LCRA AGREES TO INDEMNIFY AND HOLD HARMLESS SUPPLIER, ITS DIRECTORS, OFFICERS AND EMPLOYEES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS AND EXPENSES ARISING FROM THE NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF THE LCRA RELATED TO THIS CONTRACT WHICH CAUSES THE DEATH OF, INJURY TO, OR DAMAGE TO THE PROPERTY OF, ANY PERSON.

16.C. IF THE PARTIES ARE CONCURRENTLY NEGLIGENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THAT PORTION OF NEGLIGENCE ATTRIBUTABLE TO IT AS DETERMINED UNDER THE APPLICABLE PROPORTIONATE RESPONSIBILITY RULES OF THE STATE OF TEXAS.

- 16.D. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO INDEMNIFY THE OTHER FOR THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER.
- 16.E. ALL INDEMNITY PROVISIONS OF THIS CONTACT SHALL BE DEEMED INDEPENDENT COVENANTS AND SHALL SURVIVE COMPLETION OR TERMINATION OF THE CONTRACT OR ANY CLAIMED BREACH THEREOF.

ARTICLE 17: INTELLECTUAL PROPERTY INDEMNITY

- 17.A. IF SUPPLIER IS PROMPTLY PROVIDED NOTICE AND GIVEN AUTHORITY, INFORMATION, AND ASSISTANCE IN A TIMELY MANNER FOR THE DEFENSE OF SAID SUIT OR PROCEEDING, SUPPLIER SHALL, AT ITS OWN EXPENSE, DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST LCRA, ITS DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES THAT ALLEGE THAT: (1) SUPPLIER'S PERFORMANCE OF THIS CONTRACT OR ANY PART THEREOF; (2) LCRA'S ACCEPTANCE OR RECEIPT OF SUPPLIER'S PERFORMANCE; OR (3) LCRA'S USE OF ANY GOODS OR DELIVERABLES CONSTITUTE AN INFRINGEMENT OF EITHER ANY PATENT OR COPYRIGHT OF THE UNITED STATES OR OF ANY TRADEMARK OR TRADE SECRET PROTECTED BY EITHER FEDERAL OR STATE LAW. SUPPLIER SHALL PAY ALL AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING AND SHALL INDEMNIFY AND SAVE LCRA HARMLESS AGAINST LOSSES, EXPENSES (INCLUDING ATTORNEYS' FEES), AND DAMAGES RESULTING FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING OBEDIENCE TO RESULTING DECREES AND TO RESULTING COMPROMISES. SUPPLIER WILL HAVE NO DUTY OR OBLIGATION TO LCRA UNDER THIS ARTICLE 17 TO THE EXTENT THAT THE GOODS ARE (A) SUPPLIED ACCORDING TO LCRA'S DESIGN OR INSTRUCTIONS WHEREIN COMPLIANCE THEREWITH HAS CASUED SUPPLIER TO DEVIATE FROM ITS NORMAL COURSE OF PERFORMANCE; (B) MODIFIED BY LCRA OR ITS SUBCONTRACTORS AFTER DELIVERY; OR (C) COMBINED BY LCRA OR ITS SUBCONTRACTORS WITH DEVICES, METHODS, SYSTEMS OR PROCESSES NOT FURNISHED HEREUNDER AND BY REASON OF SAID DESIGN, INSTRUCTION, MODIFICATION OR COMBINATION, A SUIT IS BROUGHT AGAINST LCRA.
- 17.B. IF, IN ANY SUCH SUIT OR PROCEEDING, A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED, SUPPLIER SHALL MAKE EVERY REASONABLE EFFORT, BY GIVING A SATISFACTORY BOND OR OTHERWISE, TO SECURE THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION. IF, IN ANY SUCH SUIT OR PROCEEDING, THE SUPPLIER'S PERFORMANCE OR ANY PART THEREOF OR THE PROCESS PERFORMED THEREBY IS HELD TO CONSTITUTE AN INFRINGEMENT AND ITS USE BE PERMANENTLY ENJOINED, SUPPLIER SHALL SECURE FOR LCRA A LICENSE AT SUPPLIER'S EXPENSE AUTHORIZING THE CONTINUED USE OF THE ALLEGED INFRINGING PORTION OF THE SUPPLIER'S PERFORMANCE. IF SUPPLIER IS UNABLE TO SECURE SUCH LICENSE WITHIN A REASONABLE TIME, SUPPLIER SHALL, AT ITS OWN EXPENSE AND WITHOUT IMPAIRING PERFORMANCE REQUIREMENTS, EITHER PROVIDE NON-INFRINGING REPLACEMENTS OR MODIFY ITS PERFORMANCE TO ELIMINATE THE INFRINGEMENT IN ADDITION TO INDEMNIFYING AND SAVING LCRA HARMLESS.

- 17.C. ALL INDEMNITY PROVISIONS OF THIS CONTRACT SHALL BE DEEMED INDEPENDENT COVENANTS AND SHALL SURVIVE COMPLETION OR TERMINATION OF THE CONTRACT OR ANY CLAIMED BREACH THEREOF.**
- 17.D. THIS ARTICLE 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 BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.**

ARTICLE 18: INDEMNITY PROCEDURES

Promptly after receipt by any entity entitled to indemnification of notice of the commencement or threatened commencement of any civil, administrative or investigative action or proceeding involving a claim for which the indemnitee seeks indemnification; it shall notify the indemnitor of such claim in writing. Within fifteen (15) days following receipt of written notice from the indemnitee relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due, the indemnitor shall assume control of the defense and settlement of that claim.

ARTICLE 19: LIMITATION OF LIABILITY

Except for liability arising out of, related to, or associated with:

1. Indemnity obligations for Intellectual property infringement,
2. Indemnity for Taxes imposed by operation of law under this Contract;
3. Willful misconduct or fraud;
4. Third-party claims for bodily injury, death, or property damage;
5. Indemnification for violation of applicable laws or regulations;
6. Breach of confidentiality obligations;
7. Liquidated damages;
8. Insurance obligations required of Supplier under this Contract; and
9. Payments made by LCRA to Supplier for work done under the Order

neither Party shall be liable in excess of the value of the Goods stated in each Order, provided, however that the minimum liability shall be two hundred fifty thousand (\$250,000) dollars and the maximum liability shall be seven hundred fifty thousand (\$750,000) dollars for each Order. The foregoing limitation of liability shall apply whether the claim arises in contract, tort (including negligence and strict liability), at law, in equity or otherwise.

NEITHER PARTY, NOR SUPPLIER'S SUBSUPPLIERS, SHALL BE LIABLE, WHETHER IN CONTRACT, WARRANTY, FAILURE OF A REMEDY TO ACHIEVE ITS INTENDED OR ESSENTIAL PURPOSES, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE, SAVINGS OR

PROFIT, OR FOR COSTS OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INDIRECT, SPECIAL, LIQUIDATED (EXCEPT AS EXPRESSLY STATED IN THIS CONTRACT), PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE INCURRED BY LCRA, ITS SUCCESSORS OR ASSIGNS OR ITS CUSTOMERS.

The Parties must bring any cause of action arising under the Contract within two (2) years from the time the cause of action accrues.

ARTICLE 20: FAILURE TO ACT

The failure of either Party at any one or more times to insist upon strict performance of the conditions and terms of this Contract shall not be construed as a waiver of the right to demand strict compliance.

ARTICLE 21: REMEDIES

21.A. RESERVED.

21.B. In any action to enforce any portion of this Contract or related Order the prevailing party shall be entitled to its reasonable attorney's fees and costs as authorized under Texas law. LCRA shall have the right to set off any amounts owed it by Supplier under this Contract and deduct those sums from amounts which LCRA may owe Supplier under this Contract.

21.C. Liquidated Damages. Supplier understands and agrees that the timely delivery of the Goods and Ancillary Services is a material component of this Contract. The Parties have agreed to liquidate the amount of damages resulting from Supplier's delay; the Parties agree that such damages which might be incurred by LCRA as a result of Supplier's delay in performance are difficult to ascertain. The Parties agree that if LCRA has been impacted by a significant project delay due to Supplier's late Delivery, for each day of delay LCRA will assess liquidated damages at the daily rate of one half of one per cent (0.5%) of the price of the unit giving rise to such delay, up to a cap of five per cent (5%) of the price of that unit. A grace period shall apply as follows: Liquidated damages for delay begin accumulating on the first calendar day following the 20th day beyond the agreed upon delivery date. Supplier commits to pay and LCRA agrees to accept such sum as liquidated damages and not as a penalty in the event of late performance. These liquidated damages are a fair and reasonable estimate of the damages to LCRA. Such amount shall be deducted by the LCRA from any payment due Supplier.

ARTICLE 22: FORCE MAJEURE

22.A. The nonperformance or delayed performance by Supplier or LCRA of any obligation under the Contract shall be excused if such nonperformance or delay is caused by an event beyond the control of the affected Party ("Force Majeure"), except to the extent that the affected Party knew of or should reasonably have been able to foresee such an event and failed to take measures to avoid the event. Items beyond the control of the Parties may include, but are not limited to: acts of war, acts of a public enemy, acts of domestic or foreign terrorism, natural disasters (including hurricanes, tornadoes and floods), strikes, epidemics or quarantine restrictions, riot or sabotage, and acts of civil or military authority having jurisdiction. Routine weather in the vicinity of the Site shall not be considered a Force Majeure event unless so stated in an Order.

- 22.B.** Upon occurrence of a Force Majeure event, the affected party shall notify the other party, in writing, of the reason for such delay, the estimated duration of the delay and the steps which can be taken to minimize the delay. No Force Majeure event shall exist until such writing is received by the unaffected party. Once a Force Majeure event occurs the date for performance of the Services shall be extended for a period equal to the time lost by reason of the delay, provided Supplier or LCRA has taken steps to proceed with the performance of the Contract and has made written notification of such delay and of any Corrective Action taken. Should the effects of a Force Majeure event last for an aggregate of six (6) months or longer, either party may terminate any Order issued under the Contract.
- 22.C.** The following delays shall not be deemed Force Majeure or constitute excusable delays in performance by Supplier. The following shall not constitute a reason for extending the date for performance of the Services:
- 22.C.1.** Delays by subcontractors or by suppliers for reasons other than Force Majeure;
 - 22.C.2.** Delays in approval of documentation because of inadequate performance or unrealistic approval schedules;
 - 22.C.3.** Delays caused by Supplier's lack of sufficient personnel with the necessary skills; or
 - 22.C.4.** Delays caused by Services in hazardous environments.

ARTICLE 23: TERMINATION FOR CONVENIENCE

- 23.A.** LCRA shall have the right to terminate this Contract or any Order placed under it for its convenience at any time. After receipt of the notice of termination, the Supplier shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
- 23.A.1.** Stop all ongoing work;
 - 23.A.2.** Place no further subcontracts or orders for work under this Contract;
 - 23.A.3.** Terminate all subcontracts;
 - 23.A.4.** Cancel all orders with suppliers, as applicable; and
 - 23.A.5.** Take any action that is necessary to protect and preserve all property related to this Contract or terminated Order that is in the possession of the Supplier.
- 23.B.** Upon termination for convenience, Supplier will comply with instructions in the notice of termination regarding delivery to LCRA of all Deliverables in progress and all completed Deliverables.
- 23.C.** In the event of a termination under this Article, LCRA shall pay for portions of Goods and Ancillary Services completed and accepted by LCRA and materials purchased. LCRA shall also be responsible for actual, documented costs and expenses incurred by Supplier in cancelling orders and obligations incurred related to the Goods terminated. LCRA shall not be liable in connection with any termination under this Article for indirect, special, incidental, consequential or punitive damages, including without limitation loss of anticipated future sales of Goods or Ancillary Services, anticipated profits, administrative costs or overhead on anticipated work. Final payment shall be made upon the Parties' agreement of the amount of the final invoice and LCRA's Acceptance of any Goods or Ancillary Services.

ARTICLE 24: TERMINATION FOR CAUSE

- 24.A.** The occurrence of any one or more of the following events will constitute an event of default:
- 24.A.1.** Supplier's persistent failure to fulfill the Contract in accordance with the Contract Documents (including, but not limited to, failure to supply sufficiently skilled workers, suitable materials or equipment, or to adhere to project schedules as adjusted from time to time by the Parties);
 - 24.A.2.** Supplier's disregard of applicable laws or regulations;
 - 24.A.3.** Supplier's disregard of the authority of an LCRA Agent;
 - 24.A.4.** Supplier's violation in any material way of any provisions of the Contract Documents;
 - 24.A.5.** Failure of Supplier to pay subcontractors and/or material suppliers when due, unless Supplier has a bona fide dispute with said subcontractors related to this Contract; or
 - 24.A.6.** Supplier's violation of the Ethics Requirements contained herein.
- 24.B.** If one or more of the events identified above occur, the LCRA must provide written notice to Supplier and give Supplier fifteen (15) calendar days or such longer period as LCRA approves in writing to cure the alleged default or provide a Corrective Action Request to Supplier.
- 24.C.** If Supplier fails to initiate such Corrective Action or submit an acceptable plan within the timeframe required for a response to a Corrective Action Request, or fails to follow through on completion of the plan, LCRA may take any or all of the following actions without affecting the Contract price or schedule:
- 24.C.1.** LCRA Agent may direct Supplier to cease performance on all or part of the Contract until satisfactory Corrective Action has been taken;
 - 24.C.2.** LCRA may have others take Corrective Action necessary to achieve compliance with the Contract. LCRA may deduct the cost of such Corrective Action by others from any moneys due to Supplier. Corrective Action by others shall be taken when, in the judgment of LCRA, the noncompliance threatens safety, unreasonably interferes with or delays the work of others, or otherwise creates a situation the resolution of which cannot be delayed without adversely impacting quality, cost, or timely completion;
 - 24.C.3.** LCRA may seek any of the Remedies set forth further in this Contract; and/or
 - 24.C.4.** LCRA may Terminate for Cause as provided herein.
- 24.D.** If this Contract has been so terminated by LCRA, the termination remedies are limited to the cost of cover as per section (C) of this article or to an agreed upon termination fee schedule.
- 24.E.** In such a circumstance, LCRA shall notify Supplier in writing of the termination, with copies of the notice to LCRA's Site personnel.
- 24.F.** If it is ever determined that LCRA wrongfully terminated Supplier for Cause, the termination shall be converted to a termination for convenience.
- 24.G.** Except in the case of a bona fide payment dispute between the parties, Supplier reserves the right to suspend or terminate performance under an Order or to terminate this Contract due to late payment or nonpayment after giving LCRA reasonable written notice and a fifteen (15) business day opportunity to cure.

ARTICLE 25: SUSPENSION

- 25.A.** LCRA may, at any time and at its sole option, suspend all or any portions of the Supplier's performance under this Contract by providing ten (10) calendar days written notice to the Supplier. Upon receipt of any such notice, Supplier shall:
- 25.A.1.** Immediately discontinue performance of the Contract on the date and to the extent specified in the notice;
 - 25.A.2.** Place no further orders with subcontractors or suppliers with respect to the suspended portion of the performance, other than to the extent necessary to protect any portion of the performance already completed;
 - 25.A.3.** Promptly make every reasonable effort to obtain suspension, upon terms satisfactory to LCRA, of all orders, subcontracts and rental agreements to the extent that they relate to performance suspended by the notice;
 - 25.A.4.** Continue to protect and maintain the portion of the performance already completed, unless otherwise specifically stated in the notice; and
 - 25.A.5.** Continue to perform Supplier's obligations for the portions of the Contract not suspended.
- 25.B.** LCRA shall reimburse Supplier for the actual, demonstrable costs incurred due to the suspension, including storage, maintenance and protection of any portion of Supplier's performance that has not been delivered to LCRA, subject to approval by LCRA.
- 25.C.** Upon receipt of notice to restart the suspended portion of the performance, Supplier shall as soon as reasonably practicable resume the suspended performance to the extent required in the notice. Within fourteen (14) calendar days after receipt of notice to restart the performance, the Supplier shall submit a revised schedule for approval by LCRA. If, as a result of any suspension, the cost to Supplier of subsequent performance or the time required to do so is changed, a claim for an adjustment in the Contract price may be made. Any claim on the part of Supplier for change in price or extension of time shall be made in accordance with this Contract.
- 25.D.** If amounts set forth above cannot be negotiated then LCRA may terminate this Contract with no further liability to Supplier except such liability as arises under section (B) above or payments due to Supplier.
- 25.E. Suspension of Work and Limitation of Liability.** LCRA RESERVES THE RIGHT TO SUSPEND ALL OR ANY PORTION OF THE WORK BEING PERFORMED IN VIOLATION OF ANY SAFETY OR ENVIRONMENTAL REQUIREMENTS OF THE CONTRACT. LCRA SHALL NOT BE LIABLE IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE AND STRICT LIABILITY), WARRANTY OR UNDER ANY OTHER LEGAL THEORY FOR JUDGMENTS, DAMAGES, COSTS OR EXPENSES OF ANY KIND RELATED TO ANY SUCH SUSPENSION OR STOPPAGE OF WORK, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS OR REVENUES.

ARTICLE 26: DISPUTE RESOLUTION

Any dispute, controversy or claim arising out of or relating to this Contract, or the breach hereof, must be referred to upper management of the parties for good faith discussion and resolution prior to invoking any other dispute resolution method authorized under this Contract. Pending resolution of any such dispute, Supplier must continue to perform its obligations under this Contract and LCRA must continue to make payment to Supplier for any undisputed items. The Parties agree that in the event of a dispute concerning the performance or non-performance of any obligations flowing from or as a result of this Contract and prior to the initiation of any litigation, the Parties will voluntarily submit the dispute to mediation before a mediator selected by the Parties as though it were referred through the operation of the Texas Alternative Dispute Resolution Procedures

Act, Title 7, Chapter 154, Texas Civil Practices and Remedies Code. The provisions of Section 154.073 of the foregoing code will apply to any mediation conducted hereunder. Supplier shall proceed diligently with performance of the Contract, pending final resolution of any request for relief, claim, appeal, or action arising under the Contract. During a dispute, LCRA has the right to use any deliverables, work product, material or equipment provided by Supplier under this Contract until the dispute is settled through a predefined court process.

ARTICLE 27: GOVERNING LAWS, REGULATIONS AND STANDARDS

- 27.A.** This Contract shall be governed, interpreted and enforced under the laws of the State of Texas, without regard to its conflict of law principles. In the event of litigation between the Parties arising out of or related to this Contract, venue for such litigation shall be in a court of competent jurisdiction in Travis County, Texas.
- 27.B.** Supplier shall be aware of and shall comply with all federal, state and local laws, ordinances, codes (including applicable professional codes) and regulations applicable to performance of this Contract, including standards and codes of technical societies that have been adopted by law or regulation or compliance with which is required in the Contract Documents. If any of the work fails to comply with such laws, ordinances, codes and regulations, Supplier shall bear any expense arising from that failure, including the costs to bring the work into compliance. A change in law or engineering standard occurring after the effective Date of this Contract which impacts performance under this Contract shall result in a Change Order adjusting price and schedule to accommodate such change.

Without limiting the generality of the foregoing, during the performance of the Contract, Supplier agrees to comply with all applicable regulations of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor as they may apply to Equal Employment Opportunity. Supplier will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor pursuant thereto, and will permit access to its books, records and accounts by the cognizant agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

- 27.C.** Supplier is solely responsible to ensure that its employees and those of its subcontractors and Suppliers, who are not citizens of the United States, hold all documentation required under U.S. immigration law to lawfully work in the United States. **SUPPLIER SHALL INDEMNIFY AND HOLD HARMLESS, LCRA, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY EXPENSE (INCLUDING ATTORNEYS' FEES, COURT COSTS AND EXPERT WITNESS FEES), LOSS, FINE, SANCTION, PENALTY, LAWSUIT, JUDGMENT OR OTHER PROCEEDING ARISING IN CONNECTION WITH THE VIOLATION OR ALLEGED VIOLATION OF THIS OBLIGATION.**

ARTICLE 28: LICENSES AND PERMITS

- 28.A.** Supplier shall obtain all permits and licenses required to be obtained by Supplier in its name only by any regulatory authority for the provision of any portion of the Goods or Ancillary Services, except that LCRA shall obtain permits and licenses for all structures which are to become a permanent part of any defined Site under this Contract. Before providing Goods or Ancillary Services, Supplier shall submit to LCRA a copy of all permits and licenses required by any such regulatory authority.

- 28.B. SUPPLIER SHALL INDEMNIFY AND HOLD LCRA, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL COSTS OR EXPENSES ARISING OUT OF THE FAILURE OF SUPPLIER TO OBTAIN SUCH PERMITS AND LICENSES.**
- 28.C.** Supplier shall ensure that its employees and its subcontractors and their employees are all properly trained, qualified, and licensed (if applicable) to perform their respective portions of the work.
- 28.D. Export Control.** LCRA acknowledges that Supplier is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the goods provided under this agreement, including any export license requirements. LCRA agrees that such goods shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Supplier of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. **TO THE EXTENT ALLOWED BY TEXAS LAW, LCRA AGREES TO INDEMNIFY AND HOLD SUPPLIER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.**

ARTICLE 29: SUPPLIER DIVERSITY

LCRA encourages the development of mutually beneficial business relationships with Small and Diverse Businesses and is committed to increasing their opportunities.

- 29.A.** Supplier shall read, understand and carry out the Lower Colorado River Authority's Small and Diverse Supplier Program Summary located at the following website: <http://www.lcra.org/about/business-opportunities-with-lcra/pages/default.aspx>. Supplier acknowledges that LCRA reserves the right to change any of its web based guidelines, terms and conditions at any time and with or without notice to the Supplier. It is the responsibility of Supplier to ensure the continued compliance with all LCRA web based guidelines, terms and conditions which are incorporated by reference as if set forth fully herein.
- 29.B.** During the performance of a contract, if opportunities to subcontract with Small and/or Diverse Businesses develop, LCRA expects Suppliers to actively and affirmatively solicit Small and/or Diverse Businesses and notify the LCRA Agent.

ARTICLE 30: INDEPENDENT CONTRACTOR

- 30.A.** Supplier shall perform in all respects as an independent contractor and not as an employee, partner, joint venturer or agent of the LCRA. Supplier's performance shall be subject to the LCRA's review, approval and acceptance as provided in the Contract Documents, but the detailed manner and method of performance shall be under the control of Supplier. Supplier shall be solely responsible for hiring, supervising and paying its employees, subcontractors and Suppliers. Supplier shall be solely responsible for payment of all (i) compensation, including any employment benefits, to its employees, (ii) taxes, including withholding for federal income tax purposes, employment and unemployment taxes, and (iii) such other expenses as may be owed to Supplier's employees. However, because Supplier's performance may be associated in the minds of the public with LCRA, Supplier shall ensure that all work by its employees, subcontractors and agents are performed in an orderly,

responsible and courteous manner. SUPPLIER AGREES TO INDEMNIFY AND HOLD HARMLESS THE LCRA INDEMNITEES FROM ANY LIABILITIES AWARDED TO SUPPLIER PERSONNEL OR ANY TAXING AUTHORITY BASED UPON A CLAIM THAT SUPPLIER PERSONNEL ARE EMPLOYEES OF LCRA.

- 30.B.** Upon prior notification to and written approval of LCRA, Supplier may hire subcontractors to perform work hereunder. Supplier shall be responsible to LCRA for the performance of all such subcontractors. The LCRA reserves the right, in its sole discretion, to reject the employment by Supplier of any subcontractor to which LCRA has an objection. Supplier, however, shall not be required to contract with any subcontractor to which it has an objection. LCRA shall require any and all such subcontractors to sign contracts with Supplier that bind the subcontractors to perform their subcontracts in accordance with the applicable requirements of the Contract Documents. Upon the request of LCRA, Supplier shall furnish LCRA with copies of such subcontracts. In addition, Supplier agrees that it is Supplier's responsibility to ensure that such subcontractors make all appropriate tax payments or tax withholding in relation to subcontractor's employees providing work to LCRA through Supplier under this Contract. Supplier represents that it and its subcontractors have skills necessary to perform the work contemplated in this Contract and any related Orders and are fully trained to perform the tasks required by this Contract and that they need no training by the LCRA.
- 30.C.** Supplier and its subcontractors providing Goods and Ancillary Services under this Contract are each responsible for appropriately classifying employees and independent contractors as required by the Texas Unemployment Compensation Act and may be subject to penalties from the Texas Workforce Commission for misclassification.

ARTICLE 31: EMPLOYEE AND SUBCONTRACTOR CONDUCT

- 31.A. Weapons.** Firearms and other weapons are strictly prohibited at all locations owned or otherwise controlled by LCRA.
- 31.B. Intoxicants, Drugs, and Tobacco Products.** Supplier shall not at any time allow personnel for whom it is responsible to possess, consume or use intoxicants or illegal drugs at any such location. In addition, the use of all tobacco products is banned at all times in all areas where LCRA work is performed, including:
- 31.B.1.** All LCRA properties, which includes LCRA easements or properties leased by LCRA;
 - 31.B.2.** All enclosed areas, such as entryways, restrooms, meeting rooms, lunchrooms and offices;
 - 31.B.3.** Locations of all LCRA-sponsored meetings and events on or off company premises;
 - 31.B.4.** All LCRA outdoor locations, including eating areas and parking lots;
 - 31.B.5.** All vehicles owned, leased or rented by LCRA;
 - 31.B.6.** All employee- and contractor-owned vehicles when parked on LCRA property or when used in the course of work while another person is in the vehicle; and
 - 31.B.7.** All LCRA work sites, which may include areas where LCRA is invited to complete work for a customer or contractor (e.g., a substation owned by an LCRA customer).
- 31.C. Employee and Subcontractor Conduct.** Supplier shall ensure that its employees, subcontractors and their employees avoid (1) excessive noise, (2) exceeding speed limits, and (3) reckless driving. If Supplier must enter or cross private property in the performance of this Contract, Supplier shall obtain permission from the property owner before entering.

31.D. Removal from Site. Supplier shall promptly remove from the Site any of its or its subcontractor's employees who:

- 31.D.1.** Are in possession of a firearm or weapon;
- 31.D.2.** Are or appear to be under the influence of an intoxicant or illegal drug;
- 31.D.3.** Use tobacco products in a banned location;
- 31.D.4.** Are otherwise unsafe to themselves or others; or
- 31.D.5.** Are otherwise disorderly.

ARTICLE 32: RESERVED

ARTICLE 33: SAFETY REQUIREMENTS

33.A. General. Supplier shall perform this Contract in a safe manner consistent with worker and public health and shall comply with and enforce all applicable laws, rules, regulations and industry practices applicable to worker safety and health, including the Occupational Safety and Health Act. LCRA shall identify to Supplier any safety-related LCRA Representative(s). Supplier will ensure that all subcontractors (including delivery persons) comply with all safety instructions provided by LCRA's personnel at the Site.

33.A.1. In the event that the Supplier's personnel or subcontractors are performing work on Site and unaccompanied by LCRA personnel, the Supplier shall also adhere to the requirements in the Mandatory Health and Safety Conditions Exhibit.

33.B. Training and Qualifications. All on Site workers shall be properly trained and qualified to perform work under the Contract, and shall have received the necessary certifications and other credentials necessary to perform work as required.

33.C. Scope of Health and Safety Requirements. Supplier will manage its subcontractors on Site and will be accountable for its subcontractors' performance with respect to health and safety.

33.C.1. Supplier shall ensure that all hazards and protective measures associated with the work being performed on Site are properly communicated to all personnel working under Supplier on Site. Supplier is responsible for providing an interpreter if necessary to ensure its communications are understood by all such workers.

33.D. Communications with LCRA. The applicable LCRA Representative shall be the point of communication for all safety and health issues arising under this Contract. Supplier shall communicate with the applicable LCRA Representative in the event of any of the following conditions:

33.D.1. Supplier shall inform the applicable LCRA Representative twenty-four (24) hours prior to any activity that could adversely affect LCRA operations or the work of another contractor. Examples of these "activities" include but are not limited to welding, painting, fire protection, system maintenance/repair and any activity impacting emergency systems/egress routes. The applicable LCRA Representative will take necessary steps to inform any parties potentially impacted by the activities.

33.D.2. Supplier shall immediately inform the applicable LCRA Representative of all federal, state and local safety inspections, citations and penalties associated with the Contract.

- 33.D.3.** Supplier shall immediately notify the applicable LCRA Representative by verbal, person to person communication, in the event of any incident that results in a death, serious bodily injury or serious property damage related to any aspect of the project. Minor incidents and near-misses must be promptly communicated to the applicable LCRA Representative.
- 33.D.4.** Supplier shall investigate all incidents resulting in personal injury or illness, property damage, or near-misses to determine the root causes and shall take appropriate action to eliminate such causes. A copy of the final investigation report shall be promptly submitted to the applicable LCRA Representative.
- 33.E. Coordination with Other Officials.** Supplier is fully responsible for coordinating with the proper authorities for moving heavy equipment, location of underground utilities, erecting barricades, traffic control and other safety measures, unless otherwise specified.
- 33.F. Communications with Media Restricted.** In the event of an accident or other condition on site, Supplier shall not communicate with the media or any other entity without the expressed consent of the LCRA.
- 33.G.** SUPPLIER SHALL PROVIDE ALL TOOLS AND EQUIPMENT ASSOCIATED WITH WORKER SAFETY AND HEALTH NEEDED TO FULFILL THE CONTRACT, INCLUDING WITHOUT LIMITATION AIR MONITORING EQUIPMENT, CONFINED SPACE EQUIPMENT, PERSONAL PROTECTIVE EQUIPMENT, WARNINGS, BARRICADES AND LOCK OUT/TAG OUT EQUIPMENT.

ARTICLE 34: ENVIRONMENTAL REQUIREMENTS

- 34.A. Environmental.** Supplier is solely responsible for all costs incurred by LCRA for any spills or leaks of any hazardous material brought onto the Site by Supplier and caused by Supplier or its subcontractors or consultants during performance of, or in connection with the Contract. Without limiting the foregoing sentence, Supplier shall be responsible for all costs incurred to contain, remediate and restore the site of the spill according to applicable state and federal laws and regulations, and if on LCRA's property, according to LCRA's requirements (even if such requirements exceed state and federal laws and regulations).
- 34.B.** LCRA shall be responsible for all spill or leak-related notifications required by federal, state or local law or regulation. Supplier shall immediately notify LCRA, including the applicable LCRA Representative and, if identified to Supplier, the Site supervisor and the individual responsible for environmental compliance, with the nature and location of the spill. Supplier shall provide a written report to LCRA identifying the substance, quantity released, location of the spill and perform clean up and remediation activities. If the spill occurs off the LCRA's property, then the Supplier shall also notify the LCRA of any agencies notified and the representatives of the agencies contacted. The report shall be a narrative that summarizes on-scene activity and remediation efforts. If long-term remediation will be required, it shall be noted in the report. The initial report shall be provided to LCRA within 24 hours after the incident. Follow-up reports shall be provided to LCRA weekly until remediation efforts have been completed and the spill has been properly remediated.
- 34.C.** **SUPPLIER SHALL INDEMNIFY AND HOLD LCRA, ITS DIRECTORS, OFFICERS, AND EMPLOYEES HARMLESS FROM ANY AND ALL LOSSES, DAMAGES, EXPENSES COSTS AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, REMEDIATION COSTS, FINES, PENALTIES, COURT COSTS AND ATTORNEYS' FEES RESULTING FROM SPILLS, RELEASES, IMPROPER HANDLING AND/OR DISPOSAL OF HAZARDOUS WASTES BROUGHT ONTO THE SITE BY SUPPLIER, ITS SUBCONTRACTORS AND/OR ITS CONSULTANTS.**

- 34.D. Surplus Material.** Unless otherwise directed through written instructions issued by LCRA, Supplier shall promptly remove all excess surplus material from the Site. Final payment for performance of the Contract shall not be due and payable until such materials are removed from the Site. If surplus materials are not removed from the Site within thirty (30) days of completion of the work, LCRA may dispose of the materials and offset the cost associated with disposal against the unpaid balance of the Contract price.

ARTICLE 35: ON-SITE ACTIVITIES

- 35.A.** This Article shall only apply if Supplier has any personnel delivering Goods or performing Ancillary Services at an LCRA Site, under this Contract.
- 35.B.** Supplier shall have an English-speaking authorized representative at the Site to whom the LCRA Representatives may give instructions at all times when Ancillary Services are being performed. The authorized representative of Supplier shall be identified to LCRA in writing.
- 35.C.** Supplier shall have competent supervision at the Site at all times to direct and observe the Ancillary Services to be performed. Supplier will investigate and take appropriate action with respect to any personnel problems brought to its attention by LCRA's Agent.
- 35.D.** Supplier shall confine all of its operations and personnel to those areas of the Site to which LCRA authorizes access.
- 35.E.** Supplier shall cooperate with LCRA and others working at or near the Site. Supplier shall promptly report to LCRA Agent any defects in the work of others which impacts on Supplier's obligations hereunder. Failure to report such defects constitutes acceptance of the conditions by Supplier.
- 35.F.** Supplier shall keep all of its work areas free from trash and debris, and keep its work areas "broom clean" on a continuous basis.
- 35.G.** Supplier shall secure and protect its own materials, tools of its trade, and equipment, including any LCRA Equipment, whether provided by LCRA under the Contract or borrowed from LCRA.

ARTICLE 36: USE OF LCRA EQUIPMENT

- 36.A.** LCRA has no obligation to lend LCRA's tools, vehicles, materials or equipment (collectively "LCRA Equipment") to Supplier and may decline to do so at any time in its sole discretion.
- 36.B.** If Supplier utilizes LCRA Equipment, it is conclusively presumed Supplier agrees to the following terms and conditions, regardless as to whether such authorization is granted by LCRA:
- 36.B.1.** The LCRA Equipment is provided AS IS, with no representations or warranties;
 - 36.B.2.** Supplier assumes full responsibility for the protection of the LCRA Equipment;
 - 36.B.3.** Supplier agrees to return the LCRA Equipment to LCRA in the same condition as when it was borrowed, or, if repairs are necessary, to cause such repairs to be performed promptly at Supplier's sole expense before the LCRA Equipment is returned to LCRA. LCRA may deduct or offset any costs associated with repairing any damage to the LCRA Equipment from any payment owed to the Supplier hereunder;
 - 36.B.4.** Supplier releases and discharges LCRA, its directors, officers, and employees from all liability for any loss or damage arising from, related to, or resulting from any use of the LCRA Equipment by any individuals, other than LCRA employees; and

- 36.B.5.** SUPPLIER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LCRA, ITS DIRECTORS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, CAUSES OF ACTION, PROCEEDINGS, JUDGMENTS, DAMAGES, COSTS, EXPENSES, AND LIABILITIES (INCLUDING REASONABLE ATTORNEYS FEES AND COSTS) ARISING OUT, RELATED TO, OR RESULTING FROM ANY USE OF THE LCRA EQUIPMENT BY ANY INDIVIDUALS, OTHER THAN LCRA EMPLOYEES.

ARTICLE 37: WORK FOR FAYETTE POWER PROJECT AND LCRA AFFILIATES

- 37.A.** This paragraph only applies if Supplier's performance is to be provided at or for the Fayette Power Project (FPP). LCRA is the Project Manager for FPP, portions of which LCRA owns with Austin Energy, the municipally owned utility of the City of Austin, Texas. With respect to any performance to be provided under this Contract at or for FPP, all warranties and indemnities under this Contract shall extend both to LCRA, its Board of Directors, officers, agents and employees, and to Austin Energy and its council members, directors, officers, agents and employees, as their respective interests may appear. In addition, the protections afforded by the additional insured requirement, waiver of subrogation and limitations of liability shall extend both to LCRA, its Board of Directors, officers, agents and employees, and to Austin Energy and its council members, directors, officers, agents and employees, as their respective interests may appear.
- 37.B.** This paragraph only applies if Supplier's performance is to be provided in connection with an LCRA Affiliate. LCRA operates both electrical generation and transmission assets for LCRA Affiliates under service contracts between LCRA and those Affiliates. With respect to any performance to be provided under this Contract in connection with LCRA Affiliates, all warranties and indemnities under this Contract shall extend both to LCRA, its Board of Directors, officers, agents and employees, and to the applicable Affiliate, its Board of Directors, officers, agents and employees. In addition, the protections afforded by the additional insured requirement waiver of subrogation and limitations of liability shall extend both to LCRA, its Board of Directors, officers and employees, and to the Affiliate, its Board of Directors, officers, agents, and employees.

ARTICLE 38: SECURITY AT LCRA JOB SITE

Supplier must provide a list of its employees and its subcontractor's employees to the LCRA Representative prior to commencing work at any LCRA Site. An employee will only be allowed on an LCRA Site if the employee is able to show photo identification and their name is on the list. Any addition or deletion must be provided to the LCRA Representative. LCRA may conduct a background check on any person entering an LCRA Site, and LCRA reserves the right to deny entry to an LCRA Site based on the findings of such check. Supplier will comply with any additional security requirements described in the SOW.

ARTICLE 39: ETHICS REQUIREMENTS

- 39.A.** Supplier shall not, either before or after contract award, give or offer to give any personal benefit to any LCRA employee in connection with this Contract. This prohibition includes any gift, entertainment, compensation, employment, subcontract, property, favor, or service to an LCRA employee, or a member of an employee's family, in order to obtain a favorable treatment by LCRA or for the employee's having exercised his or her authority as an LCRA employee or for performing his or her LCRA duties in favor of another. Supplier shall not offer or agree to give any type of personal benefit to an LCRA employee in exchange for a decision, opinion, recommendation, vote, or other exercise of discretion by an LCRA employee.

39.B. Supplier must comply with Ch. 176, Texas Local Government Code at all times.

ARTICLE 40: RIGHT TO AUDIT

LCRA shall have the right to audit all books and records (including the supporting or underlying documents and materials), in whatever form they may be kept, whether written, electronic or other, relating or pertaining to this Contract (collectively "Records"), kept by or subject to the control of the Supplier, including, but not limited to those kept by the Supplier, its employees, agents, assigns, successors and subcontractors. The Supplier shall maintain, and shall require its subcontractors to maintain, such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least two (2) years following the completion of the last Order completed under this Contract, including any and all extensions thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to LCRA during normal business hours at the Supplier's office or place of business. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location which is convenient for LCRA.

ARTICLE 41: FINANCIAL OBLIGATIONS

41.A. Supplier hereby certifies that it has the financial ability to perform this Contract and all the Orders executed hereunder to final completion and that it shall notify LCRA if it appears that: Supplier ceases to have the financial ability to perform this Contract or any Order hereunder, if the Supplier's liabilities exceed its assets, or if it is generally unable to pay its debts. Upon notice thereof, LCRA reserves the right to require a letter of credit or other financial guarantee acceptable to LCRA.

ARTICLE 42: LIENS

- 42.A.** Supplier shall not file or permit to be filed any lien with respect to the Goods or Ancillary Services and hereby expressly waives any right to file or cause to be filed a lien. Supplier, in its subcontracts, shall require all subcontractors to expressly waive the right to file any liens against LCRA's property, and, if requested, provide LCRA with copies of such waivers.
- 42.B.** In the event any claim is asserted or any lien filed against LCRA or its property, further payment shall not become due under the Contract until the claim is satisfied or the lien released without cost to LCRA. If Supplier fails to settle any claim or secure the release of any lien, LCRA may take whatever steps it deems necessary to settle the claim or release the lien, including bonding off the lien. LCRA may deduct its costs and expenses for settling any claim or securing the release of any lien filed by Supplier or its subcontractors from any money due or to become due to Supplier under the Contract. If final payment has been made, Supplier shall reimburse to LCRA its costs to settle any claim or secure the release of any lien arising out of the Contract.

ARTICLE 43: BANKRUPTCY

Subject to the rights of any trustee in bankruptcy and to applicable law, in the event that either Party becomes or is declared insolvent or bankrupt, is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, such Party agrees to furnish notification to the other within five working days by registered

mail. Then the other Party may, by giving written notice thereof to the other Party, terminate this Contract as of a date specified in such notice of termination.

ARTICLE 44: PUBLICITY

Supplier shall not directly or indirectly publish, approve or issue any advertising, sales promotion, press release or public statement relating to this Contract or any other work performed by Supplier for LCRA wherein LCRA's name, trade name, trademark and/or logo is expressly mentioned or language is used from which LCRA's identity may, in LCRA's responsible judgment, be inferred or implied (a "Prohibited Publication"), without the prior written approval of LCRA, which approval may be withheld in LCRA's absolute discretion.

If during the term of this Contract, Supplier makes any Prohibited Publication available to third parties without first obtaining LCRA's written approval, the Parties agree that LCRA shall suffer irreparable harm from such disclosure and LCRA may, at its sole discretion, immediately elect to (a) issue at Supplier's sole expense, or have Supplier issue with LCRA Agent's prior approval, a retraction or correction of such Prohibited Publication, (b) obtain an injunction to prevent Supplier from issuing additional Prohibited Publications, or (c) pursue other legal or equitable remedies against Supplier that may be available to LCRA to redress the breach of this Article.

ARTICLE 45: APPROVAL

Contracts with the LCRA that exceed \$2,000,000 (either initially or through a Change Order) must be approved by the LCRA Board of Directors before they become effective. Consulting contracts that exceed \$50,000 (either initially or through a Change Order) must be approved by the LCRA Board of Directors before they become effective. Change Orders to contracts must be approved by the LCRA Board of Directors if they exceed \$2,000,000 (\$50,000 for consulting contracts), either separately or in the aggregate. Change Orders must be executed by the LCRA Agent.

Contracts in excess of \$14,999 involving the Fayette Power Project or the Smithville Railcar Facility must be reviewed and approved by the FPP Management Committee prior to becoming effective. Change Orders to contracts must be approved by the FPP Management Committee if they exceed \$14,999, either separately or in the aggregate. Change Orders must be executed by the LCRA Agent.

Contracts must be approved by the respective entities with sufficient lead time for Supplier to provide the Goods according to the requested Schedule(s). Delivery dates shall be adjusted to accommodate any delay in approval by LCRA or others.

ARTICLE 46: ADDITIONAL PROVISIONS

- 46.A. Order of Precedence.** In the event a conflict or inconsistency exists between the Contract Documents, such conflict or inconsistency shall be resolved in favor of the higher-ranking document. Any Amendments or Change Orders shall rank higher than the documents they revise or change and shall have the same precedence classification as the original document.

No terms and conditions submitted by Supplier in connection with any proposal or proposed Order will be considered part of the Contract Documents unless expressly accepted in writing by the LCRA Agent. If accepted by LCRA, the proposed terms and conditions are limited in effect to the proposal with which they were submitted.

- 46.B. Contract Not Exclusive.** The Contract is not exclusive. LCRA has the right to hire others to provide the same or similar work.
- 46.C. Severability.** If any term or provision of this Contract is held illegal or unenforceable by a court of competent jurisdiction, all other terms in this Contract will remain in full force and effect and the illegal or unenforceable provision shall be deemed stricken. In the event the stricken provision materially affects the rights, obligations or duties of either party, LCRA and Supplier shall substitute a provision by mutual agreement that preserves the original intent of the parties as closely as possible under applicable law.
- 46.D. Assignment.** Except for an assignment by Supplier to any U.S. affiliate of Supplier, Supplier may not assign this Contract or any portion thereof without the express written consent of LCRA. Any permitted assignee must notify the LCRA in writing that it accepts the assignment on the same terms and conditions contained in this Contract. No permitted assignment shall limit Supplier's responsibility for performance of this Contract. Attempted assignment or delegation of this Contract, including obligations under it, without the written consent of LCRA shall be void, and not merely voidable.
- 46.E. Third Party Beneficiaries.** All persons who are not parties to this Contract, but who are entitled to indemnification under it, to the protection of the additional insured and waiver of subrogation requirements, and to the limitation of liability provisions, are third party beneficiaries of this Contract. Otherwise, there are no third party beneficiaries to this Contract and the provisions of this Contract shall not create any legal or equitable right, remedy or claim enforceable by any person, firm or organization other than the Parties and their permitted successors and permitted assignees.
- 46.F. English Language.** All Deliverables and Ancillary Services shall be provided in the English language, all measurements shall be in the English linear measure and statistical weights systems, and all monetary amounts will be calculated and based upon U.S. Dollars.
- 46.G. Web Based Procedure.** To the extent possible, Orders shall be processed in any appropriate web-based and electronic manner. The parties agree that the web-based Orders shall be processed as if they were received in writing and shall be legally binding to the same extent as a written Order.
- 46.H. Integration.** The Contract Documents contain the entire and integrated agreement between Supplier and LCRA as to their subject matter and supersedes all prior negotiations, correspondence, understandings, representations and agreements, written or oral, related to it. Notwithstanding the foregoing, this Contract shall have no application to any Order issued prior to the Effective Date of this Contract; any such Order shall continue to be governed by the Contract under which it was issued.
- 46.I. Interpretation and Reliance.** While this Contract form was initiated by LCRA, Supplier had the opportunity to take exception to and seek clarification of it. Thus, this Contract is the product of negotiations between the Parties. No presumption will apply in favor of any Party in the interpretation of this Contract or in resolution of any ambiguity of any provision.
- 46.J. LCRA Customer Usage.** RESERVED.

ARTICLE 47: SURVIVAL

Termination or expiration of this Contract shall not relieve, reduce, or impair any rights or obligations of a party which expressly or by implication survive termination or expiration of this Contract. Without limiting the generality of the foregoing, the following Articles shall survive the termination or expiration of this Contract: Goods to be Provided; Title and Risk of Loss; Insurance; Ownership of Deliverables; Warranties and Standards; General Indemnity; Intellectual Property Indemnity; Indemnity Procedures; Limitation of Liability; Failure to Act; Remedies; Termination for Convenience; Termination for Cause; Dispute Resolution; Governing Laws, Regulations and Standards; Licenses and Permits; Site Inspection; Safety Requirements; Environmental Requirements; On-Site Activities; Work for Fayette Power Project and LCRA Affiliates; Ethics Requirements; Right to Audit; Publicity; and Third Party Beneficiaries.

EXHIBIT A: TECHNICAL SPECIFICATIONS

REFER TO LCRA TECHNICAL SPECIFICATIONS FOR 72.5, 145 AND 345KV POWER CIRCUIT BREAKERS DATED OCTOBER 12TH, 2015. DOCUMENT NUMBERS 7000.1-1 AND 7003.1-1

EXHIBIT B: SCOPE OF SUPPLY



Scope of Supply for HV Circuit Breakers

Contract No. TBD

1. Representatives:

Subject Matter Expert (LCRA)	Pete Zepeda Engineer 512-578-4498 pete.zepeda@lcra.org
LCRA Agent	Matt Januski Sr. Category Manager 512-356-6446 mjanuski@lcra.org
Supplier (Siemens Rep)	Fapco, LLC Frank Panebianco Sales Representative 830-237-9092 frank@fapcollc.com

2. Description of Materials

The general scope of this long term contract is for the supply of circuit breakers and related products which may include, but is not limited to: 145kV and 345kV Circuit Breakers. All products provided shall meet the requirements of LCRA and conform to the agreed upon specifications.

3. Packaging, Shipping and Labeling Requirements

Deliveries that do not conform to these specifications will be refused and returned to Supplier for proper loading:

❖ **Packaging and Shipping**

- Shipping method may vary according to the product purchased and the LCRA required date
- Packaging will be according to manufacturer's requirements for each item in order to safely deliver the shipments to LCRA locations or our required destination

❖ **Labeling**

A) Bill of Materials (if applicable)

- B) Manufacturer's name
- C) Item description
- D) Catalog number
- E) LCRA's name
- F) LCRA' contract number
- G) LCRA's purchase order number
- H) LCRA's equipment number (provided by LCRA on PO)
- I) Destination

4. Purchase Order and ProCard

Delivery of goods shall be based on Supplier's receipt of a Purchase Order or ProCard Order ("as-needed basis"), which is considered a release under the contractual terms and conditions. Supplier will be required to provide quoted materials, identified in writing in sufficient quantities to adequately support LCRA's requirements. Suppliers will be asked to inventory, at their location, certain items in sufficient quantities to adequately support LCRA requirements. LCRA reserves the right to add additional items to be ordered on an as needed basis.

5. Location, Delivery and Delivery Hours:

- Delivery Location of Products will be listed on individual Purchase Orders
- Delivery Hours shall be 8:00am – 3:00pm Monday through Friday unless otherwise specified
- Delivery of Wrong Item(s) - If the Supplier delivers the wrong item(s), the Supplier shall issue a credit or cancel billing within 24 hours of return.
- Defective Delivered Items- There shall be no charge, or restocking charge, for any item that is delivered defective and sent back to the Supplier

6. Returns/Restocking

Circuit Breakers are not returnable/restockable as they are customized specifically for LCRA requirements. Orders may be cancelled or returned subject to a fee to be agreed on case by case basis.

7. Training, Technical Capabilities and Support

Supplier will provide two (2) days of on-site power circuit breaker training at no charge to LCRA. Factory supervision and training will be provided at no charge for three (3) circuit breakers.

Technical oversight/supervision can consist of the following:

Securing of the unit to the foundation

Bushing installation (if required)

Pole unit evacuation and gas filling (if required)

Connecting inter-phase control circuit wiring (if required)

Connecting current transformer secondary wiring from pole units to the control cabinet (if required)

Completing electrical tests (including contact resistance and timing)

Completing operational and functional checkout of equipment

Supplier will provide a Technical Field Representative only. Additional labor, equipment, and material requirements are the purchaser's responsibility.

Supplier agrees to make available to LCRA, technical personnel as required to assist in and areas of technical support and information as required by LCRA at no cost.

All training must be scheduled by December 31, 2017.

[SUPPLIER]:

By: _____

Authorized Signature

Printed Name: _____

Title: _____

Date: _____

LCRA:

By: _____

Authorized Signature

Printed Name: _____

Title: _____

Date: _____

EXHIBIT C: PRICING AND PRICE REVISION METHODOLOGY

Item #	Type	Price
1	72.5kV, 1200A BREAKER, 40kA	\$36,981.00
2	145kV, 3000A BREAKER, 40kA	\$49,498.00
3	145kV, 3000A BREAKER, 63kA	\$75,855.00
4	145kV, 4000A BREAKER, 40kA	\$90,310.00
5	145kV, 4000A BREAKER, 63kA	\$90,310.00
6	345kV, 3000A BREAKER, 50kA	\$201,958.00
7	345kV, 3000A BREAKER, 63kA	\$201,958.00
8	345kV, 4000A BREAKER, 50kA	\$201,958.00
9	345kV, 4000A BREAKER, 63kA	\$201,958.00
10	345kV, 5000A BREAKER, 50kA	\$208,959.00
11	345kV, 5000A BREAKER, 63kA	\$208,959.00

High Voltage Circuit Breaker Price Revisions

Prices are firm until December 31, 2017. For additional years, prices will remain firm provided that materials prices do not vary by more than 3%. Price revisions are capped at 4% per year and may be calculated based on www.bls.gov (for Porcelain bushings WPU 11710252 and for eSteel-AMM & Carbon Steel-AMM), www.lme.uk.co (for Copper & Aluminum), or as the Parties otherwise agree, using the following percentages of materials:

Copper 9 % of price

Steel 23 % of price

Aluminum 29 % of price

Bushings 10 % of price

Should Seller provide Buyer with reasonable information to indicate the inefficacy of the indices or that the 4% cap is commercially unreasonable in light of current circumstances, LCRA and Siemens shall mutually agree on a different price calculation base, cap or price increase.

EXHIBIT D: MANDATORY HEALTH AND SAFETY CONDITIONS

- EXH. D.1: Safety Orientation.** Prior to the commencement of work and arrival at the Site, Supplier shall arrange, along with the LCRA designated site contact, safety orientation for itself, its employees and subcontractors. This orientation may include, but shall not be limited to: (i) the Emergency Preparedness Plan; (ii) review of LCRA's safety policies; (iii) lock out/tag out procedures; (iv) confined space entry permits; (v) hot work permits; (vi) waste product disposal (LCRA maintains Material Safety Data Sheets for all material on site); (vii) Hazardous Communication Act/Emergency Response Act; (viii) LCRA's prohibition of tobacco products, firearms, intoxicants, and illegal drugs; (ix) plant entry procedures; and (x) designated parking areas. If any workers fail to attend and complete the safety orientation, Supplier shall designate an employee (e.g., site superintendent) to provide the orientation before those workers shall be allowed to begin work. All safety orientations shall be documented and maintained for inspection. Safety orientation is only required once unless otherwise needed, or the Order changes.
- EXH. D.2: Warnings and Barricades.** Supplier shall furnish, erect and maintain warning notices, signs, signals, lights, protective guards, enclosures, platforms and other devices as necessary to adequately protect all personnel on Site; including but not limited to employees, subcontractors, other suppliers, LCRA workers and the public.
- EXH. D.3: Personal Protective Equipment (PPE) and Safety Equipment.** Supplier shall ensure that all employees, agents and subcontractors (including employees and agents of subcontractors) are equipped with appropriate footwear (safety toe, rubber boots, etc.) with a defined heel, appropriate eyewear (i.e., safety glasses with side shields, goggles, hoods, etc.), hard hats (RED NOT ALLOWED), respiratory protection, lanyards, monitoring equipment, rescue equipment, fire extinguishers, safety belts and harnesses, and such other health and safety related apparel as may be specified and/or required by statute, regulation, rule, ordinance, or jobsite conditions. Such equipment shall be furnished by Supplier at Supplier's expense.
- EXH. D.4: Confined Space Entry.** If Supplier performs work in a Confined Space, Supplier will perform confined space entries in strict accordance with OSHA 1910.146 Confined Space Standard. All Supplier entries will be performed under the guidelines of the Supplier's confined space program, which should include but not be limited to, all required personnel training, confined space monitoring and evaluation, entry tag system or any personnel protective equipment required by confined space conditions. All entries will be coordinated with the LCRA Representative or control room to assure proper isolation and/or de-energizing of the confined space is performed.
- EXH. D.5: Facility Equipment Clearance and Lock Out Procedures.** Facility Equipment Clearance and Lock Out Procedures shall be followed, if applicable. Clearances shall be acquired by Supplier and LCRA personnel when required prior to performing work on any equipment. Supplier shall be responsible for providing company locks. Supplier's locks shall be clearly identified and shall have a tag for employee to print name.
- EXH. D.6: Safety Meetings.** Supplier shall ensure that all hazards and protective measures associated with the work being performed on Site are properly communicated to all personnel on Site. Supplier shall conduct regular health and safety meetings. A copy of the minutes of such meetings shall be submitted to LCRA, upon request. Supplier is responsible for providing an interpreter if necessary to ensure its communications are understood by all workers.