

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as "City") and PrivITation Consulting Corp., a California Corporation, whose address of record is 5442 Lafayette Avenue, Fresno, California 93711, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to place the Siemens Automation System at the Civic Center and Central Police Station; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide automation system replacement services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the automation system replacement services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Public Works or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on June 30, 2023.

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an

invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of One Hundred Forty-Two Thousand Two Hundred Dollars (\$142,200.00).

5. METHOD OF PAYMENT. Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. RECORDS. It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. CONSULTANT'S BOOKS AND RECORDS. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. INDEPENDENT CONTRACTOR. It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of

competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement; Consultant shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's

Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects

automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

## 11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public

works” the Vendor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Vendor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Vendor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Vendor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Vendor agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a “public works” as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

13. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

14. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by

Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

15. WAIVER. In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager



ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kimberly C. Mady 9/14/21  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

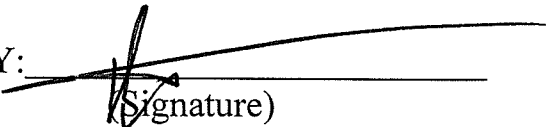
*{Signatures continued on next page}*

CONSULTANT  
PRIVATION CONSULTING CORP.,  
A California Corporation

BY:   
(Signature)

Ranita Brazell  
(Typed Name)

Its: President  
(Title)

BY:   
(Signature)

BRIAN BRAZELL  
(Typed Name)

Its: DIRECTOR OF AUTOMATION  
(Title)

Taxpayer I.D. No. 84-3705811

ADDRESS: 5442 Lafayette Avenue  
Fresno, CA 93711

TELEPHONE: (559) 705-11050

FAX: \_\_\_\_\_

E-MAIL: bbrazell@privation.com



*PrivITation Consulting Corp.*



old world values meet new world innovation

Proposal for:  
City of Merced

Automation Emergency Replacement

Site Location:  
Civic Center  
678 W 18th St  
Merced CA, 95340

Site Contact:  
John Spangler  
678 W 18th St  
Merced CA, 95340

EXHIBIT A

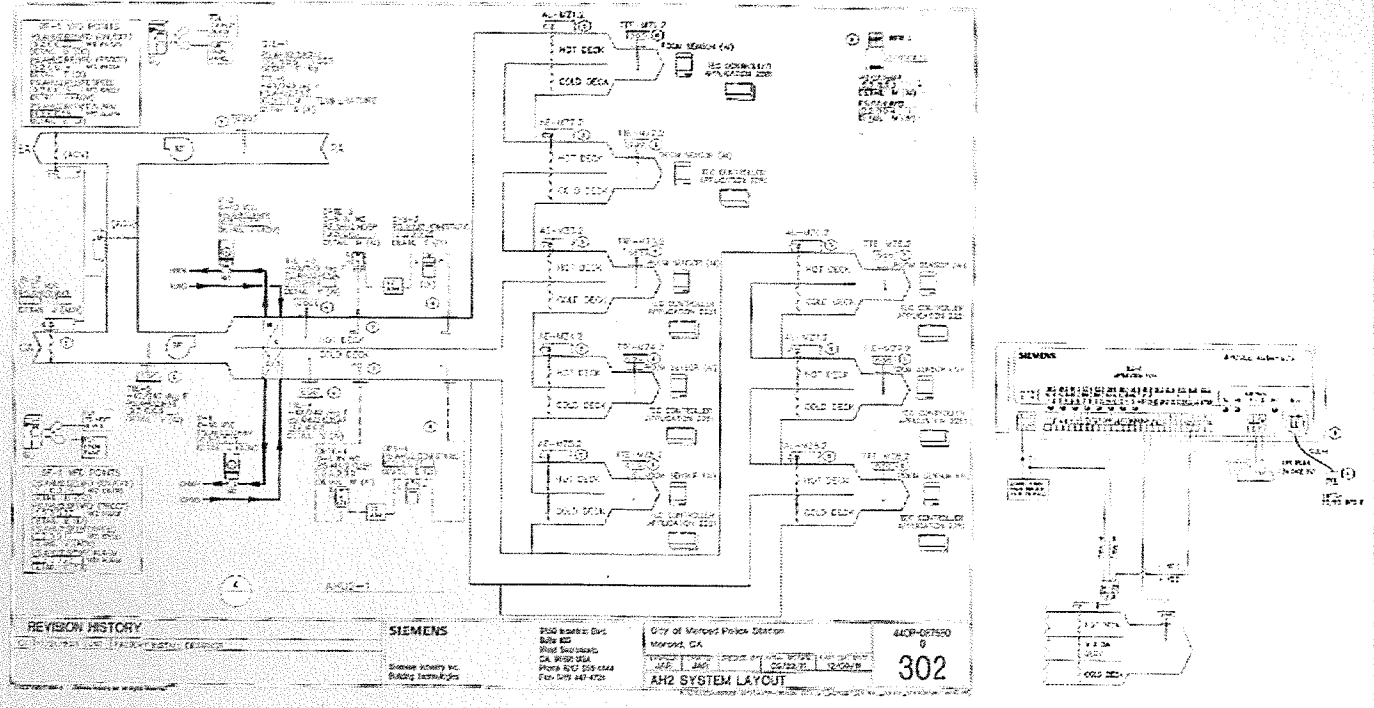
# Summary

The scope of this proposal is to outline a solution to replace the failing Siemens Building Automation System. This system has been getting less reliable by the day and in many places is unable to maintain proper control of the mechanical systems. When the automation systems fail to control the mechanical systems then it forces the City of Merced personnel to manually operate the system which takes them away from their normal duties and does not provide the 24/7 and after hours control necessary for many of the city systems. A new properly engineered automation system built on a secure platform will provide the proper control and reliability needed for the city buildings. We can provide a new automation system that will provide truly automated systems that are secure and require no interface from operators in order to maintain control of the mechanical systems. Proper control of mechanical systems means increased productivity of city personnel and decreased energy costs.

## History

HISTORY

The Siemens system was installed approximately 10 years ago and has now exceeded the functional life span of an automation system. The server software needed for operation only runs on a Microsoft Server software version that is no longer supported by Microsoft or the City of Merced IT dept. Throughout the last 10 years the Siemens controllers have continually failed and been replaced only to fail again shortly. The time is long overdue to replace this system with a new and properly designed and installed automation system.

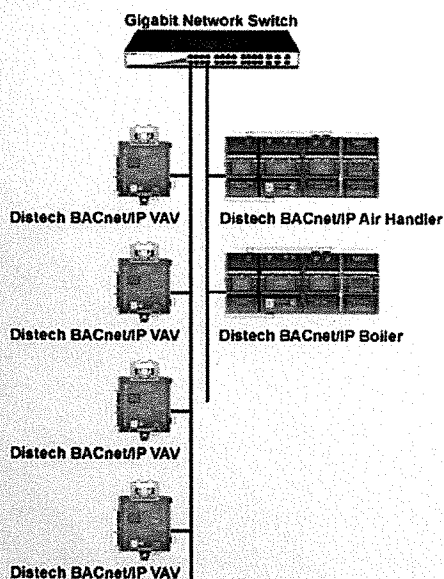


## Solution

PrivITation is proposing a replacement of all Siemens controllers with a Distech Eclipse BACnet/IP flat network automation system. This proposal will eliminate the many problems with the air handlers at the Police Station while reducing energy consumption and increasing occupant comfort. This new system will correct the many problems at the Civic Center with the VAV zones and Council Chambers. The system would be fully web based with no additional software needed for operator interfaces. The system will use an HTML 5 and not JAVA interface with SSL and FIPS 140-2 for secured communications. This cutting-edge technology makes maintenance and operation easier while providing extremely powerful programming and energy management algorithms.

### Police Station and Civic Center:

All Siemens controls within the Police Station and Civic Center will be replaced in this building. The Siemens Terminal Equipment Controllers, Variable Air Volume Controllers will be replaced with Eclipse Advanced Controllers. Each Eclipse controller is a web server with built in graphics, trending, and remote notification. All inputs and outputs will be recommissioned, wires labeled, and drawings as built. All temperature sensors will be replaced and recommissioned. An Outside Air Temp/Humidity will be used to control economizer changeover, and nighttime free cooling. The AHU will be programmed to respond the needs of the zones by resetting Supply Air Temp based on Return Air Temp. Static Pressure will be maintained as appropriate for filter loading. These resets will increase tenant comfort while reducing energy costs. The Boilers and Chillers will be programmed to respond to the needs of the Air Handlers and zones.



**Solution cont.**

This upgrade would replace all Siemens Air Handler Controllers (TECs) with a Distech Eclipse system to provide control, advanced programming, trending, and alarming. This upgrade would provide the necessary reliability, integration ability, local user access, and graphic interface to increase the level of dependability to that of a critical central plant system.

All graphics will be recreated to customer specifications using intuitive navigation to provide an efficient operator experience. This graphic interface will allow complex systems to be viewing simply at a glance for quick monitoring and troubleshooting. Graphics will include:

- Site standard navigation allowing the same navigation experience throughout all graphics levels
- Central Plant graphics that simplify complex mechanical systems into an informative interface.
- Central Plant Dashboards that to provide total control of Plant Operations from a single screen.
- Air Handler graphics and appropriate dashboards
- Air Handler Graphics displaying consolidated zone status (Max Damper Position, Max Temperature Error, Min Temperature Error).
- Zone Graphics for all zone controllers.
- Alarm Summary screens to provide large numbers of alarms to be monitored at a glance
- Trend Summary screens to provide easy trend analysis of points and systems

**Police Station:****Multi-Zone 1**

1 – Distech Eclipse S1000 advanced controller  
Optimal Start Stop and Scheduling – as needed  
Zone Max Damper, Min Error, Max Error Calculations – as available from zones  
Replacement of 5 Terminal Equipment Controllers  
Replacement of all sensors and transducers  
Integration with Supply and Return Fan VFDs  
Alarming with remote notification through Email, SMS

**Solution cont.**

Police Station: \*Completed by EMCOR\*

~~Multi-Zone-2~~

- ~~1 – Distech Eclypse S1000 advanced controller~~
- ~~Optimal Start Stop and Scheduling – as needed~~
- ~~Zone Max Damper, Min Error, Max Error Calculations – as available from zones~~
- ~~Replacement of 8 Terminal Equipment Controllers~~
- ~~Replacement of all sensors and transducers~~
- ~~Integration with Supply and Return Fan VFDs~~
- ~~Alarming with remote notification through Email, SMS~~

AC-1, AC-2

- 2 – Distech Eclypse S1000 advanced controller
- Optimal Start Stop and Scheduling – as needed
- Replacement of all sensors and transducers
- Alarming with remote notification through Email, SMS

Hot Water System

- 1 – Distech Eclypse S1000 advanced controller
- Optimal Start Stop and Scheduling – as needed
- Replacement of all sensors and transducers
- Alarming with remote notification through Email, SMS

Chilled Water System

- Optimal Start Stop and Scheduling – as needed
- Alarming with remote notification through Email, SMS

**Civic Center**

AHU-1, AHU-3

- 1 – Distech Eclypse S1000 advanced controller
- Optimal Start Stop and Scheduling – as needed
- Replacement of all sensors and transducers
- Alarming with remote notification through Email, SMS

AHU-2, Hot Water Plant, Chilled Water Plant

- 1 – Distech Eclypse S1000 advanced controller
- Optimal Start Stop and Scheduling – as needed
- Replacement of all sensors and transducers
- Alarming with remote notification through Email, SMS

Variable Air Volume Boxes

- 45 – Distech Eclypse ECY-VAV advanced controllers
- Replacement of all sensors and transducers
- Alarming with remote notification through Email, SMS

Pricing

**Pricing**

Replacement of all Siemens Building Automation systems in the Civic Center and Police Station.

Design, Program, Install, and Commission new Distech BACnet/IP Automation System.

This will include replacement of all Siemens controls, sensors, transducers, and recommission of all points and programming in the Civic Center and Police Station. VAV box controllers will be replaced and zones rebalanced to verify proper flow.

Police Station Siemens Replacement with Distech Controls and Envysion Graphics  
Eighty-Nine thousand and Eight hundred dollars \$89,000

Civic Center Siemens Replacement with Distech Controls and Envysion Graphics  
One hundred and Thirty-Nine thousand and Five hundred dollars \$139,500

Total Siemens Replacement with Distech Controls and Envysion Graphics  
Two hundred and Twenty-Nine thousand and Three hundred dollars \$229,300

Police Station Siemens Replacement of Multi-Zone 2 recently completed by EMCOR  
Twenty-Four thousand and Four hundred dollars -\$24,400

Phase 1 Siemens Automation Replacement

Civic Center Air Handler-1,2,3, Hot Water, Chilled Water Systems  
**Seventy thousand and Nine hundred dollars \$70,900**

Phase 2 Siemens Automation Replacement

Civic Center Variable Air Volume Boxes -1<sup>st</sup>,2<sup>nd</sup>,3<sup>rd</sup> Floor Systems  
**Seventy-One thousand and Three hundred dollars \$71,300**

Phase 3 Siemens Automation Replacement

Police Station 1<sup>st</sup>,Floor Multi-Zone, Hot Water, Chilled Water Systems  
**Fifty-Six thousand and Four hundred dollars \$69,900**

Total Siemens Automation Replacement after all phases

Police Station and Civic Center  
**Two hundred Four thousand and Nine hundred dollars \$212,100**