

DESIGN PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20 __, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Trojan Technologies Group ULC, a British Columbia Corporation, whose address of record is 3020 Gore Road, London, ON Canada N5V4T7, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to replace the PLC, controllers and all the equipment needed to bring the UV system up to date; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide the PLC and programming 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 PLC, HMI, ethernet switch, controllers, programming, and training 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 August 31, 2025.

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 \$280,153.69.

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed and quantities of all products, materials and supplies delivered under the Scope of Services and in accordance with the quoted unit/item price. Payment by City to Consultant shall be made within forty-five (45) days of Consultant's presentation of the applicable invoice to the City.

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.

A. Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

B. Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same are proportionally caused by the willful misconduct, negligent acts or omissions in the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

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. Certificates evidencing the 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 Consultant 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 Consultant 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 Consultant from the Department of Industrial Relations. These wage rate determinations are to be posted by the Consultant at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Consultant 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.

23. WARRANTY. Consultant warrants to City that each of the goods supplied to City conforms to its written warranty set forth in its user manual in effect on the date of delivery, or, if there is no express warranty therein, that each of the goods will be free from defects in material and workmanship and will conform to the manufacturer's quoted specifications for twelve (12) months from delivery. Warranties do not extend to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. Consultant warrants that it will perform all Services in accordance with its standard practices and that the Services will be free from defects in workmanship for a period of ninety (90) days from their date of performance. If Consultant breaches this warranty and the City notifies Consultant of such breach within 30 days of the end of the applicable warranty period, Consultant will, at its option, either replace or repair the nonconforming goods, or re-perform any nonconforming Services, or refund the

amounts paid by City to Consultant for the nonconforming goods and/or Services. THIS IS THE EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY. CONSULTANT EXPRESSLY DISCLAIMS ANY REMEDIES OF "COVER" AND ANY WARRANTIES IMPLIED BY LAW, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

All product warranties and guarantees shall only be enforceable if (a) all goods are properly installed, inspected regularly, and are in good working order, pursuant to commercially reasonable standards, (b) all operations are consistent with Consultant's commercially reasonable recommendations, (c) operating conditions at the City site have not materially changed and remain within anticipated specifications, and (d) no reasonably unforeseeable circumstances exist or arise.

24. LIMITATION ON LIABILITY. WITH THE EXCEPTION OF THIRD PARTY CLAIMS RELATING TO PERSONAL INJURY OR DEATH, OR ANY CLAIMS ARISING FROM CONSULTANT'S INTENTIONAL MISCONDUCT, THE TOTAL LIABILITY OF CONSULTANT AND ITS SUBSIDIARIES, AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS TO CITY ARISING OUT OF PERFORMANCE, NONPERFORMANCE, OR OBLIGATIONS IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, DELIVERY, AND/OR USE OF GOODS AND/OR SERVICES IN NO CIRCUMSTANCE INCLUDES ANY LIQUIDATED, PENALTY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, NOR EXCEED THE TOTAL AMOUNT OF COMPENSATION ACTUALLY PAID TO CONSULTANT UNDER THE AGREEMENT.

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: _____
D. Scott McBride
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 1/3/2025
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

CONSULTANT
Trojan Technologies Group ULC

BY: 
(Signature)

Todd Bartlett
(Typed Name)

Its: Director Service Sales
(Title)

BY:
(Signature)

(Typed Name)

Its:
(Title)

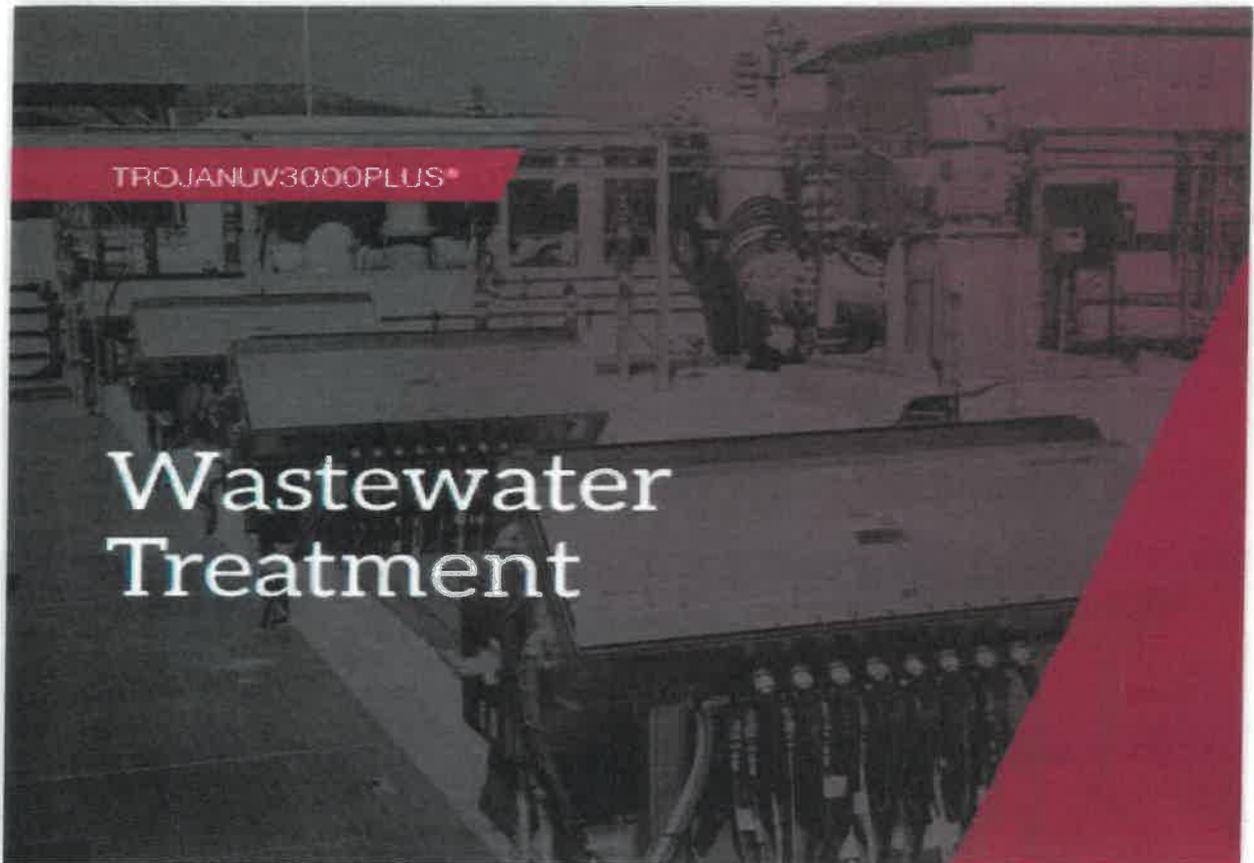
Taxpayer I.D. No. 98-1343341

ADDRESS: 3020 Gore Road
London, ON
N5V 4T7

TELEPHONE: 519-457-3400

FAX: 519-457-3030

E-MAIL:
tbartlett@trojantechnologies.com

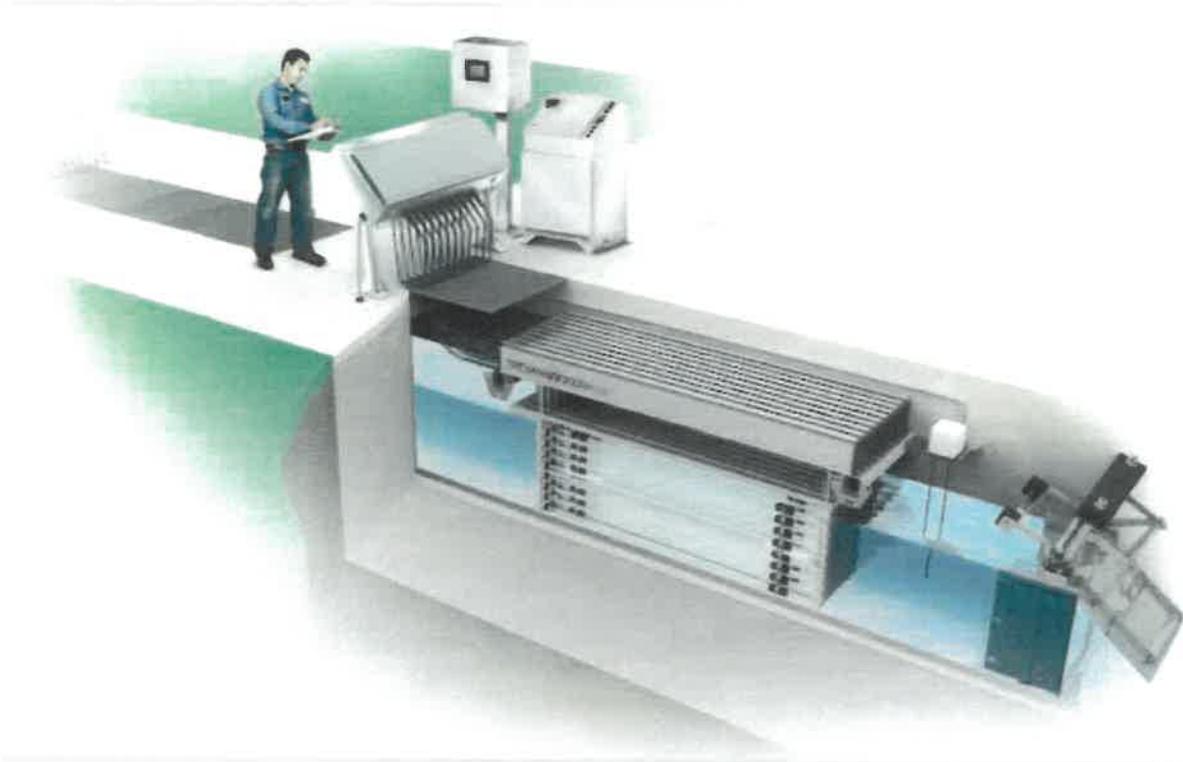


PROPOSAL FOR MERCED, CA

Date: August 29, 2024

Project No: 511461

SF CASE: 212371



The current System Controller Center (SCC) utilize Allen Bradley SLC 500 based hardware for the PLC and associated I/O. The following scope of work will upgrade the SCC to Allen Bradley CompactLogix 5069 based hardware and associated I/O and communications hardware.

The recommended scope of work, equipment and services for the SCC upgrade are described within the enclosed document. This upgrade will replace the 3 SLC processors and replace with 1 single processor controlling all banks and gates.

If you would like to discuss any of the above or enclosed, please feel free to call or email.

Thank you.
Heather Conine
Trojan Technologies
760-648-3289

System Control Center (SCC) Scope of Supply: Parts (SCC)

The UV SCC's shall consist of the components and software as detailed in the table below. Site installation services are costed and described separately.

QTY	DESCRIPTION	UNIT MODEL NUMBER / COMMENT	UNIT PRICE (List)	EXTENDED PRICE
1	AB 5069 L380 CPU 8MB	5069-L380erm 917531-L380ERM	49,004.76	49,004.76
3	AB 5069 16 CH DIGITAL INPUT (DC)	5069-IB16 917531-IB16	799.00	2,397.00
2	AB 5069 16 CH DIGITAL OUTPUT	5069-OB16 917531-OB16	986.00	1,972.00
2	AB 5069 8 CH ANALOG INPUT	5069-IF8 917531-IF8	2636.00	5,272.00
2	AB 5069 4 CH ANALOG OUTPUT	5069-OF4 917531-OF4	2779.00	5,558.00
1	Gateway/Eip/Modbus 2E/2DB9	unknown	4500.00	4,550.00
1	AB 5069 Term Kit B18 SPG	917531-RTB18SPRING	210.71	210.71
1	AB 5069 Term Kit B64 SPG	917531-RTB64SPG	114.62	114.62
1	AB 5069 End Cap	917531-ECR	110.67	110.67
1	Panelview Plus 7-1500 HMI Upgrade kit. Includes adaptor plate and SD card.	917662-004	15,123.00	15,123.00
1	Cable, ENET CAT 6A Shielded 7'	916229-007	19.30	38.60
1	Cable, ENET CAT 6A Shielded 3'	916229-003	20.50	82.00
1	Cable, 18AWG 1 Pair Shielded	912292	5.03	10.06
1	All new backplate pre wired with new components as described plus applicable breakers, wiring.	900493	8500.00	8500.00
1	PLC Programming, configuration & testing	Programmed and configured to site controls philosophy	95,500.00	95,500.00
	Total Parts Price			\$92,943.42
	Total Parts and Programming Price			\$188,443.42

System Control Center (SCC) Scope of Supply: Site Service

The following site service will be required to complete the inspection, commissioning, and startup of the new SCC.

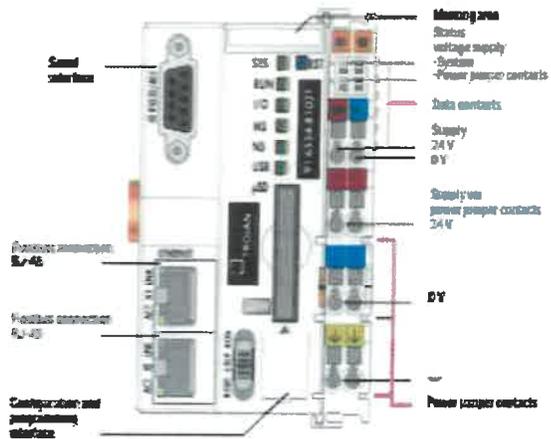
Description	Certified Service Technician	Total Price
Travel	1	950.00
Site Days required	6	8700.00
Total Service Price USD		\$9,650.00

Hydraulic Control Center (HSC) Scope of Supply: Parts (HSC)

The UV HSC's shall consist of the components and software as detailed in the table below. Site installation services are costed and described separately.

QTY	DESCRIPTION	UNIT MODEL NUMBER / COMMENT	UNIT PRICE (List)	EXTENDED PRICE
4	Wago Backplate Upgrade kits		12000.00	48,000.00
1	PLC Programming, configuration & testing	Downloaded and configured to site control philosophy	12,500.00	3,120.00
	Total Parts Price USD			\$51,120.00

916554-8102T
PFC100 Controller; 2 x ETHERNET; RS-232/-485



System Control Center (HSC) Scope of Supply: Site Service

The following site service will be required to complete the inspection, commissioning, and startup of the new HSC hardware.

Description	Certified Service Technician	Total Price
Travel	1	950.00
Site Days required	4	5840.00
Total Service Price USD		\$6,790.00

Project Total (including bond, freight and tax)

Description	Total Price
Performance Bond	\$1,500.00
Freight	\$2,500.00
Project Subtotal	\$260,003.42
Sales Tax 7.75%	\$20,150.27
Project Total:	\$280,153.69

Site Responsibility:

Access to control panels for up to (2) eight-hour days in order to change out hardware and commission.

Trojan Responsibility:

Trojan will be responsible for providing submittal drawing(s) for site approval (or approval as noted).

Trojan technician is responsible for:

1. Installation of panel, and verifying correct installation (power, mounting, configuration, communications) of the new hardware.
2. Verifying correct SCC/PLC operation.
3. Verify SCADA communications (if required).
4. Providing operator training on new hardware as required.

Documentation:

One electronic copy of the following documentation will be supplied by Trojan:

1. Submittal drawings for approval (if required)
2. Final (as approved) submittal drawings.
3. Appropriate corrected sections for the original O&M Manuals.

Shipment terms: Freight PP & Invoice-

Payment Terms: Net 30 days.

Quote validity: December 31, 2024

Delivery to be confirmed at order placement.

SCC Warranty is one (1) year materials.

NOTES:

SITES SCC:



