

CITY OF BETHLEHEM
INTER-DEPARTMENTAL CORRESPONDENCE

SUBJECT: Request for Approval by City Council of Contract Award or Contract Price Increase Pursuant to City Ordinance, Article 121.05 (a)

Project or Contract Reference: 2015 Licensed Software Support for SCADA System at Water Treatment Plant and Water Distribution Control and Support Services for Licensed Firmware and Software On An As Needed Basis

TO: City Council, all members, and Council Solicitor

FROM: Edward J. Boscola, Department Head

DATE: January 2, 2015

On behalf of the Administration, pursuant to City Ordinances, Article 121.05, I request City Council's approval of the following recommendation of the referenced contract award or price increase.

- Check Type of Contract or Change:

 The contract is for over \$50,000 and required to be bid under the Third Class City Code. We have advertised the above referenced project and received qualified bids. We recommend award of the contract to the bidder identified and for the reasons stated below.

 The recommendation is for a price increase of 10% or more for an existing contract over \$50,000 that was previously bid and awarded under the Third Class City Code.

 X The contract is for the engagement of professional services. We have received one (1) proposal for professional services in connection with above referenced requirement for professional services. We recommend award of the contract to Emerson Process Management Power & Water Solutions.

- Is the contract appropriation or price increase included in this year's budget? X yes no
2015 Water Fund Operating Budget.

- Identify contract funding sources (general fund, grants, loans, etc.....):

Account #20016-42047 – Water Filtration - Department Contracts
Account #20019-42047 – Water Control – Department Contracts

- The name and address of the recommended Professional Service Provider are:

Emerson Process Management Power & Water Solutions, Inc.
200 Beta Drive
Pittsburgh, PA 15238

- Term of contract or estimated completion date, subject to standard extensions:

The contract shall run from January 1, 2015 to December 31, 2015.

- Description of project or scope of services to be provided:

1. Licensed Software Support for SCADA System at Water Treatment Plant and Water Distribution Control – Provide copies of new releases, upgrades and patches to the SCADA Systems’ proprietary Emerson Open Enterprise and OpenBSI software released during the period covered by this Agreement. Provide assistance in the use and operation of the Licensed Software and/or review and resolution of the Licensed Software problems.
2. Support Services for Licensed Firmware and Software On An As Needed Basis – Services can include on-site installation of all licensed firmware and software releases, upgrades and patches, etc.

- State the actual or estimated price to the City or the proposed Department budget allowance for the initial term; and state payment rate per unit of service if applicable:

1. Licensed Software Support for SCADA System at Water Treatment Plant and Water Distribution Control - \$29,400.00
2. Support Services for Licensed Firmware and Software On An As Needed Basis – Service Engineer – Standard Time - \$149.00 per hour
Expenses – Cost + 10%

- Number of renewal term options and duration of each renewal, if any:

None.

- Maximum dollar value of all renewals provided for beyond the original term as if all renewals were exercised:

\$0.00

- Reasons for recommendation of Administration and Council approval of contract:

- Emerson Process Management and their predecessor firms, Bristol Babcock and Remote Automation Solutions have provided these services annually to the City since 1994 at the Water Treatment Plant and since 2002 at Water Distribution Control.

- Bristol Babcock provided, installed and programmed all hardware and software for the current SCADA systems, including upgrades, at both the Water Treatment Plant and Water Distribution Control.
- The Licensed Software is proprietary to Emerson and only Emerson can provide copies of new releases, upgrades and patches to the SCADA Systems' proprietary Open Enterprise and OpenBSI software released during the period covered by this Agreement.
- Emerson is the most qualified to provide assistance in the use and operation of the Licensed Software and/or review and resolution of the Licensed Software problems as the Licensed Software is proprietary to Emerson.
- Emerson is the most qualified to provide support services for licensed firmware and software on an as needed basis as they initially provided, installed, programmed and upgraded this licensed firmware and software.

Please approve this recommendation by passing the accompanying resolution. A vote of final approval is requested at the first City Council agenda listing of this matter.

By:  Department Head

Copies To: Mayor
Director of Administration
Director of Budget and Finance
Law Bureau
Purchasing Bureau
Controller

Attachment: proposed resolution

RESOLUTION NO. _____

Authorization for Contract or Amendment under Article 121.05(a)

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute a Contract or Amendment and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, with the following named contractor, for the uses and purposes indicated in the supporting Recommendation of Award of Bid or Contract dated January 2, 2015:

1. Name of Contractor: Emerson Process Management Power & Water Solutions, Inc.

2. Project or Contract Reference: 2015 Licensed Software Support for SCADA System at Water Treatment Plant and Water Distribution Control and Support Services for Licensed Firmware and Software On An As Needed Basis

Sponsored by _____

ADOPTED by Council this _____ day of _____, 20____.

President of Council

ATTEST:

City Clerk



Emerson Process Management
Power & Water Solutions
200 Beta Drive
Pittsburgh, PA 15238

January 2, 2015

Jeff Andrews
City of Bethlehem
10 East Church Street
Bethlehem, PA 18018

Subject: Licensed Software Support for SCADA System at Bethlehem Water Treatment Plant (WTP) & Water Distribution Center (WDC) - Support Contract Renewal for 2015
Emerson Process Management Power & Water Solutions, Inc.
Offer No. WAM15120136

Dear Mr. Andrews,

Emerson Process Management Power & Water Solutions, Inc. is pleased to submit this offer to the City of Bethlehem for the 2015 Maintenance Support Renewal. The contract will cover the period January 01, 2015 to December 31, 2015 and is subject to attached Scope of work.

Please note that the renewal combines the WTP and WDC support contracts as detailed within this proposal. Emerson is offering a price reduction of 5.5% from last year's offer as a result of our meeting. We listened and trust that this demonstrates that Emerson is willing to work with the City to help alleviate some of the economic issues that we all face.

If you have any questions or require additional information please contact Roger Labrecque at (860) 778-3672.

Sincerely,

Jordan Streussnig | Roger Labrecque

Emerson Process Management
Power & Water Solutions, Inc.

Attachments: Emerson Software Support and Services Contract for City of Bethlehem

SECTION 1 Scope of Work

Reference: Licensed Software Support for SCADA System at Bethlehem Water Treatment Plant (WTP) and Water Distribution Center (WDC)

1. Licensed Software Support Contract for all Emerson software products is included in line with the attached Schedule A. Note: Any and all of Emerson's proprietary software furnished shall be subject to Emerson's applicable standard terms and conditions for license and/or sublicense.
 - a. EMERSON undertakes to provide the Licensed Software Support for the OpenEnterprise & OpenBSI software (hereinafter referred to as "The Software") that is purchased by the Customer at the commencement of this Agreement. A list of The Software Licenses covered by this Agreement is included within "Schedule A" of this document.
 - b. Trained personnel directly employed by EMERSON will perform the Software Support.
 - c. Licensed Software Support is defined as assistance rendered to the Customer's personnel in the use and operation of the Licensed Software and/or review and resolution of the Licensed Software Product Problems, via telephone, email, fax or other electronic services. Please note that offsite simulation services, any system reconfiguration services, onsite installation services, add-on application configurations services, site/application specific solution development &/or problem troubleshooting (on site or offsite) are not included as part of the licenses software support but can be procured as defined under item 5 below.
 - d. EMERSON undertakes to provide to the customer copies of new releases, upgrades and patches to The Software which are released by manufacturer during the period covered by this Agreement. Such software is only licensed for installation on that equipment on which The Software was installed at the commencement of this Agreement. Software upgrades and patches may be transmitted to the Customer via email, on physical media or downloaded from manufacturer's web site, at the discretion of service provider. The Customer is responsible for the installation of all software releases, upgrades and patches supplied under this Agreement.
 - e. Licensed Software Support services are available between 8:00am and 5:00pm EST, Monday through Friday, except on EMERSON Holidays.
2. The conditions of sale as set forth in Section 2 of this offer apply.
3. Price: \$ 29,400.00 (excluding sales tax)
4. Payment terms: Periodic monthly billing in (12) equal amounts of \$2,450.00 (excluding sales tax) per month at the start of each month.
5. Support Services for licensed firmware and software not covered above can be procured on as need basis using the following pricing guidelines. All Terms and Conditions of Sale as noted in this agreement shall apply. Such support services will be during normal working hours as mutually coordinated. Such services can include on-site installation of all firmware and software releases, upgrades and patches etc. on a time and material basis.

Description	Rate
Service Engineer - Standard Time (hour)	\$ 149.00
Expenses	Cost + 10%

SECTION 2

Terms and Conditions of Sale

The terms and conditions for any work performed as a result of this offer shall be exclusively those terms and conditions set forth in this section and as previously agreed upon via Second Amendment to Contract – City of Bethlehem Maintenance for Digital System Services for SCADA System dated May 30, 2013.

Proprietary Information

This offer and any subsequent communications relative to this offer are considered to be proprietary information of Emerson. Accordingly, such proprietary information shall not be published, used, reproduced, transmitted, or disclosed to others outside your organization without prior written consent by Emerson.

Bid Validity

This offer shall remain valid for sixty (60) days from the date of this letter, unless otherwise extended, modified, or withdrawn in writing by Emerson. The return of a purchase order or any other reasonable manner of acceptance communicated to us during such validity period will be sufficient to form an agreement based exclusively on the terms and conditions of this offer.

TERMS AND CONDITIONS OF SALE EMERSON PROCESS MANAGEMENT POWER & WATER SOLUTIONS

These terms and conditions, the attendant quotation or acknowledgment, and all documents incorporated by reference therein, binds seller (i.e. Fisher Controls International LLC, Rosemount Inc., Fisher-Rosemount Systems Inc., or other Emerson Process Management Group Company) hereinafter the Seller, and the buyer, hereinafter Buyer, and constitutes the entire agreement (Agreement) between Buyer and Seller for the provision of services (Services) and/or the sale of goods (Goods) including (except as provided in Section 10) firmware incorporated therein.

1. PRICES: Unless otherwise specified by Seller, Seller's price for the Goods and/or Services shall remain in effect for thirty (30) days after the date of Seller's quotation or acceptance of the order for the Goods/Services, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods and/or provision of Services pursuant to Seller's standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods/Services to Seller's price in effect for the Goods/Services at the time the order is released to final manufacture. Prices for Goods do not cover storing, installing, starting up or maintaining Goods unless expressly stated in Seller's quotation. Notwithstanding the foregoing, the price for Goods/Services sold by Seller, but manufactured by others, shall be Seller's price in effect at the time of shipment to Buyer.

2. DELIVERY, ORDER ACCEPTANCE AND DOCUMENTATION: All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Notwithstanding any provisions to the contrary in this or other documents related to this transaction, and regardless of how price was quoted, whether FOB, FAS, CIF or otherwise, legal title to the Goods and risk of loss thereto shall transfer to Buyer as follows: for sales in which the end destination of the Goods is within the United States, upon delivery to the freight carrier at the shipping point; for sales in which the end destination of the Goods is outside of the United States, immediately after the Goods have passed beyond the territorial limits of the United States. Acceptance of all orders placed by Buyer pursuant to this Agreement shall take place exclusively in Austin, Texas. Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Seller, they shall be provided to Buyer at Seller's price then in effect. Data/documentation marked as confidential or proprietary may not be reproduced or used for any purpose other than the purpose for which it was provided and may not be disclosed to third parties without the prior written permission of Seller.

3. EXCUSE OF PERFORMANCE: Seller shall not be liable for delays in performance or for non-performance due to failure or interruption of computer or telecommunication systems, acts of God, war, riot, fire, terrorism, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond Seller's reasonable control. In the event of such delay, the time for performance or delivery shall be extended by a period of time reasonably necessary to overcome the effect of the delay.

4. TERMINATION AND SUSPENSION BY BUYER: Buyer may terminate or suspend its order for any or all of the Goods/Services covered by the Agreement only upon Seller's written consent or pursuant to Seller's applicable policy or practices covering such termination or suspension.

5. LIMITED WARRANTY: Subject to the limitations contained in Section 6 herein, Seller warrants that the licensed firmware embodied in the Goods will execute the programming instructions provided by Seller, and that the Goods manufactured by Seller will be free from defects in materials or workmanship under normal use and care and Services will be performed by trained personnel using proper equipment and instrumentation for the particular Service provided. The foregoing warranties will apply until the expiration of the applicable warranty period. Goods are warranted for twelve (12) months from the date of initial installation or eighteen (18) months from the date of shipment by Seller, whichever period expires first. Consumables and Services are warranted for a period of 90 days from the date of shipment or completion of the Services. Products purchased by Seller from a third party for resale to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. Buyer agrees that Seller has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If Buyer discovers any warranty defects and notifies Seller thereof in writing during the applicable warranty period, Seller shall, at its option, correct any errors that are found by Seller in the firmware or Services or repair or replace F.O.B. point of manufacture that portion of the Goods or firmware found by Seller to be defective, or refund the purchase price of the defective portion of the Goods/Services. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, misuse, improper installation, modification, repair, use of unauthorized replacement parts, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by Seller. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Goods repaired and parts replaced by Seller during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Seller and can be amended only in a writing signed by Seller. THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES.

6. LIMITATION OF REMEDY AND LIABILITY: SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE AND COSTS INCURRED INCLUDING WITHOUT LIMITATION FOR CAPITAL, FUEL AND POWER, AND CLAIMS OF BUYER'S CUSTOMERS.

7. PATENTS: Subject to the limitations contained in Section 6, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Seller constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that only the Goods manufactured by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at its sole option and expense, provide a commercially reasonable alternative, including, but not limited to, procuring for Buyer the right to continue using the Goods, replacing them with a non-infringing product or modifying them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, if infringement is based upon the use of Goods in connection with goods not manufactured by Seller or in a manner for which the Goods were not designed by the Seller or if the Goods were not designed by the Seller or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.

8. TAXES: Any tax or governmental charge payable by the Seller because of the manufacture, sale or delivery of the Goods, or provision of Services, may at Seller's option be added to the price herein specified. The foregoing shall not apply to taxes based upon Seller's net income.

9. TERMS OF PAYMENT: Unless otherwise agreed by Seller, and subject to the approval of Seller's Credit Department, terms are F.O.B. shipping point, net 30 days from date of Seller's invoice in U.S. currency, except for applicable milestone payments or export shipments for which Seller may require other arrangements. Freight charges may include shipping and handling charges, and Buyer shall pay all such charges. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate to be determined by Seller which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is received. Seller shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorneys' fees.

10. SOFTWARE AND FIRMWARE: Notwithstanding any other provision herein to the contrary, Seller or applicable third party owner shall retain all rights of ownership and title in its respective firmware and software, including all copyrights relating to such firmware and software and all copies of such firmware and software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, royalty free license to use firmware and software, and copies of firmware and software, incorporated into the Goods only in conjunction with such Goods and only at the Buyer's plant site where the Goods are first used. Buyer's use of certain firmware (as specified by Seller) and all other software shall be governed exclusively by Seller's and/or third party owner's applicable license terms.

11. BUYER SUPPLIED DATA: To the extent that Seller has relied upon any data or information supplied by Buyer to Seller ("Data") in the selection or design of the Goods and/or provision of the Services and the preparation of Seller's quotation, and the Data is inadequate or inaccurate, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

12. EXPORT/IMPORT: Buyer agrees to comply with all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which items may be supplied.

GENERAL PROVISIONS: (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (e) The Agreement is formed and shall be construed, performed and enforced under the laws of the State of Missouri. However, Buyer and Seller agree that the proper venue for all actions arising under the Agreement shall be only in the USA and in the State where the Goods involved in such actions were manufactured. (f) UNLESS OTHERWISE SPECIFICALLY PROVIDED IN SELLER'S QUOTATION, GOODS AND SERVICES HEREUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Buyer (i) accepts Goods and Services in accordance with the restriction set forth in the immediately preceding sentence, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability. (g) The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. (h) If any provision of the Agreement is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Agreement (i) Seller specifically objects to the application of any Federal Acquisition Regulation ("FAR") or other governmental procurement provision or clause to the Agreement. (j) The rights, remedies and protections afforded to Seller under this Agreement, including but not limited to indemnification of Seller, limitation of remedy and liability and limited warranty shall extend to Seller and to its affiliates, subsidiaries or related companies performing or supplying work, services or products under this Agreement or any agreement into which it is incorporated by reference. (k) Seller does not agree to: (i) indemnify Buyer; or (ii) name Buyer as an additional insured.

EMERSON PROCESS MANAGEMENT POWER & WATER SOLUTIONS SOFTWARE LICENSE AGREEMENT

License TO USE: The term LICENSEE includes an authorized user who accepts and agrees to be bound by the terms of this Agreement. Emerson Process Management, Power & Water Solutions, ("EMERSON"), grants LICENSEE a nonexclusive, nontransferable license to utilize one copy of all fully paid up licensed Software provided to LICENSEE (unless multiple copies or concurrent or simultaneous use rights are elsewhere authorized) for the intended purpose and LICENSEE's internal use in the equipment in which it is initially installed. "Software" as used herein shall mean any software program, firmware, or flash ROM licensed by EMERSON including, but not limited to, the EMERSON operating system software, application software, machine readable media on which the Software is contained, documentation, and/or written materials accompanying the Software. IF LICENSEE TRANSFERS POSSESSION OF ANY COPY OR MODIFICATION OF THE SOFTWARE OR RELATED MATERIALS TO ANOTHER PARTY, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS LICENSE, THIS LICENSE IS AUTOMATICALLY TERMINATED. The license fee for the EMERSON Software is included in the contract price. If concurrent or simultaneous usage licenses are furnished, LICENSEE may not at any one time exceed the maximum number of licenses purchased under this Agreement. LICENSEE shall not alone or with assistance of others reverse compile, reverse engineer or in any other manner attempt to decipher in whole or in part the logic or coherence of any Software licensed hereunder. Except as specifically provided herein, no license, express or implied, is granted under any intellectual property directly or indirectly owned by EMERSON. Furthermore, no license (except the license specifically granted herein) or any license in third party software furnished under this Agreement, shall be implied in law, implied in equity, or exist under the doctrine of patent exhaustion. LICENSEE may make one backup copy of such Software for evaluation, installation and maintenance of the equipment in which the Software is installed. LICENSEE must reproduce and include the copyright notice on any copy or modification of the Software. LICENSEE recognizes that third party software furnished by EMERSON may be subject to a separate license agreement and/or registration requirements and limitations on copying and use and LICENSEE agrees to be bound by the terms of any third party license agreement(s) accompanying such software.

TITLE: All title and ownership of the Software and any derivative works including, without limitation, the copyright to such Software, shall remain exclusively with EMERSON or its licensors. LICENSEE'S right to use the same is at all times subject to the terms and conditions of this Agreement. EMERSON may, from time to time, revise or update the Software and/or related materials and, in so doing, incurs no obligation to furnish such revisions or updates to LICENSEE.

TERMINATION: LICENSEE may terminate this license at any time by destroying the Software and the related materials together with all copies and modifications in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if LICENSEE fails to comply with any term or condition of this Agreement. LICENSEE agrees upon such termination to destroy the Software and the related materials together with all copies and modifications in any form.

WARRANTY: a) Software provided directly to End User: Unless otherwise agreed in writing by the parties, EMERSON warrants that the Software provided hereunder will be free from errors which materially affect its utility. The warranty period shall expire 12 months from the date of completion of installation or 18 months from the date of delivery, whichever occurs first. Unless stated otherwise herein, third party software shall be warranted and remedied on a pass through basis in the same manner and for the same period and extent provided by the original software manufacturer. This Software warranty does not apply to any application software or set of instructions composed by LICENSEE; provided however, that this warranty will extend to any application software composed by EMERSON in accordance with LICENSEE'S instructions, but only to the extent of such instructions.

b) Software provided through Intermediate Parties: Unless otherwise agreed in writing by the parties, EMERSON warrants that the Software provided hereunder will be free from errors which materially affect its utility. The warranty period shall expire 12 months from the date of completion of installation or 18 months from the date of delivery to the Intermediate Party, whichever occurs first. Unless stated otherwise herein, third party software shall be warranted and remedied on a pass through basis in the same manner and for the same period and extent provided by the original software manufacturer. This Software warranty does not apply to any application software or set of instructions composed by LICENSEE; provided however, that this warranty will extend to any application software composed by EMERSON in accordance with LICENSEE'S instructions, but only to the extent of such instructions.

YEAR 2000 WARRANTY: EMERSON warrants that the Software provided hereunder will be Year 2000 Compliant. "Year 2000 Compliant" shall mean the Software will be capable of managing and manipulating data involving dates, including single century formulas and multi-century formulas, and not generate incorrect values or invalid results involving such dates. LICENSEE acknowledges that this Year 2000 warranty shall not apply: i) to any software that is not date sensitive; ii) to any software not furnished under this Agreement; iii) to software provided by LICENSEE or others which may interface or operate in conjunction with EMERSON furnished Software/equipment, regardless of whether such other software/equipment is itself Year 2000 compliant; and iv) to the EMERSON furnished Software in the event any software/equipment not furnished by EMERSON under this Agreement prevents the EMERSON furnished Software from performing any function specified in the above definition of "Year 2000 Compliant".

Remedies: In the case of a nonconformity in this warranty and if EMERSON is notified in writing of such nonconformity during the applicable warranty period, it shall be remedied, upon return to EMERSON, by correction in the medium originally supplied, or provision of a procedure to correct material errors. If such remedies are impracticable, EMERSON may refund the purchase price for the nonconforming Software. Any warranty specified herein is conditioned upon: a) proper handling, installation and maintenance; b) not having been subjected to accident, alteration, abuse or misuse; and c) LICENSEE providing necessary access and assistance for EMERSON to fulfill its warranty obligations.

LIMITATIONS OF REMEDIES: The warranties set forth above are exclusive and in lieu of all other warranties whether statutory, express or implied (including all warranties of merchantability and fitness for purpose and all warranties arising from course of dealing or usage of trade). The remedies set forth, for the time and in the manner provided above, shall be LICENSEE'S exclusive remedies for failure of EMERSON to meet its warranty obligations, whether based in contract, in tort (including negligence or strict liability), or otherwise. IN NO EVENT WILL EMERSON BE LIABLE TO LICENSEE FOR ANY DAMAGES ARISING OUT OF ANY CAUSES WHATSOEVER (WHETHER SUCH CAUSES BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, PATENT INFRINGEMENT, OR OTHERWISE), INCLUDING ANY damage to or loss of property or equipment; loss of profits or revenue; loss of use of LICENSEE'S property, equipment or power system; increased costs of any kind, including but not limited to cost of operation and maintenance, capital cost, fuel cost and cost of purchased or replacement power; or claims of customers of licensee, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH SOFTWARE EVEN IF EMERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR OF ANY CLAIM BY ANY OTHER PARTY.

GOVERNING LAW: This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, U.S.A., excluding both its rules or laws regarding choice or conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods.

EXPORT RESTRICTIONS: Licensee shall comply fully with all laws, regulations, decrees and orders of the United States of America that restrict or prohibit the exportation (or reexportation) of technical data and/or the direct product of it to other countries, including, without limitation, the U.S. Export Administration Regulations.

U.S. GOVERNMENT RIGHTS: The Software and related materials are provided with "RESTRICTED RIGHTS." Use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in the Federal Acquisition Regulations and its Supplements.

GENERAL: LICENSEE may not sublicense, assign, or transfer the license or the Software and related materials without the prior written consent of EMERSON. Any attempt otherwise to sublicense, assign or transfer any of the rights, duties, or obligations hereunder without such consent is void. EMERSON'S licensors shall be a third party beneficiary to this Agreement to the extent permitted by applicable law.

UNLESS OTHERWISE AGREED, THE SOFTWARE IS NOT FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS. LICENSEE accepts the Software with the foregoing understanding and agrees to indemnify and hold harmless EMERSON and its licensors from any claims, losses, suits, judgments and damages, including incidental damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations based on negligence or strict liability.

Should LICENSEE have any question concerning this Agreement, please contact LICENSEE'S EMERSON representative or sales office.

LICENSEE ACKNOWLEDGES THAT LICENSEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS. LICENSEE FURTHER AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN EMERSON AND LICENSEE AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN EMERSON AND LICENSEE RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. LICENSEE AGREES THAT EMERSON MAY AUDIT LICENSEE'S FACILITY TO CONFIRM COMPLIANCE WITH THE FOREGOING PROVISIONS.

200 Beta Drive
Pittsburgh, PA 15238
www.ovationusers.com



EMERSON
Process Management

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Revision 6 02/06/07

Schedule "A"

City of Bethlehem WTP

WTP Quantity	Description	Price
1.00	OpenEnterprise Server (Realtime and Historical w/RDI Drivers)	\$ 3,794.80
1.00	Software Redundancy (adder to single server)	\$ 3,172.37
1.00	OE Report Suite	\$ 1,644.36
3.00	OpenEnterprise Workstation Key	\$ 2,134.31
4.00	ControlWave Designer with ACCOL III	\$ 2,617.45
5.00	OpenBSI Network Edition	\$ 1,290.07
	Total Price	\$ 14,653.38

City of Bethlehem WDC

Quantity	Description	Price
1.00	OpenEnterprise Server (Realtime and Historical w/RDI Drivers)	\$ 3,794.80
1.00	Software Redundancy (adder to single server)	\$ 3,172.37
1.00	OE Report Suite	\$ 1,644.36
1.00	5 Concurrent Terminal Services Server License	\$ 2,371.45
2.00	OpenEnterprise Workstation Key	\$ 1,422.87
2.00	ControlWave Designer with ACCOL III	\$ 1,308.73
4.00	OpenBSI Network Edition	\$ 1,032.06
	Total Price	\$ 14,746.64