

CONTRACT AGREEMENT

THIS AGREEMENT made and entered into by and between **ABB, INC.**, hereinafter called the Contractor, and the **CITY OF GRAND ISLAND, NEBRASKA**, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused contract documents to be prepared and an advertisement calling for bids to be published for *BURDICK STATION GAS TURBINE CONTROL SYSTEM*; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the bids submitted, and has determined the aforesaid Contractor to be the lowest responsive and responsible bidder, and has duly awarded to said Contractor a contract therefore, for the sum or sums named in the Contractor's bid, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself, himself/herself, or themselves, and its, his/her, or their successors, as follows:

ARTICLE I. That the following documents shall comprise the Contract, and shall together be referred to as the "Agreement" or the "Contract Documents";

1. This Contract Agreement.
2. City of Grand Island's Specification for this project.
3. ABB, Inc.'s bid signed and dated October 17, 2018.

In the event of any conflict between the terms of the Contract Documents, the provisions of the document first listed shall prevail.

ARTICLE II. That the Contractor shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the Contract documents as listed in the attached General Specifications, said documents forming the Contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by the City's official award of this Contract to the said Contractor, such award being based on the acceptance by the City of the Contractor's bid;

ARTICLE III. That the City shall pay to the Contractor for the performance of the work embraced in this Contract and the Contractor will accept as full compensation therefore the sum (subject to adjustment as provided by the Contract) of **Seven Hundred Ninety-Nine Thousand Three Hundred Seventy-One and 42/100 Dollars (\$799,371.42)** for all services, materials, and work covered by and included in the Contract award and designated in the foregoing Article II; payments thereof to be made in cash or its equivalent in the manner provided in the General Specifications.

The total cost of the Contract includes:

System Pricing	\$ 504,000.00
*Estimated Taxes	35,280.00
HMI Upgrade/Integration & PCU Upgrade	199,770.00
Power Generation Care Pricing to June 1, 2019	5,288.00
Spare Parts	51,433.10
*Estimated Taxes	<u>3,600.32</u>
	\$ 799,371.42

*Option 1 Contractor

The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

ARTICLE IV. The Contractor hereby agrees to act as agent for the City in purchasing materials and supplies for the City for this project. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but the Contractor shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to the Contractor. Title to all materials and supplies purchased hereunder shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Contractor shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear the Contractor's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the finished product of the BURDICK STATION GAS TURBINE CONTROL SYSTEM.

ARTICLE V. That the Contractor shall start work as soon as possible after the Contract is signed and the required bonds and insurance are approved, and that the Contractor shall deliver the equipment, tools, supplies, and materials F.O.B. Burdick Generating Station, and complete the work on or before **MAY 1, 2019**.

ARTICLE VI. The Contractor agrees to comply with all applicable State fair labor standards in the execution of this Contract as required by Section 73-102, R.R.S. 1943. The Contractor further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this Contract, the Contractor and all subcontractors agree not to discriminate in hiring or any other employment practice on the basis, of race, color, religion, sex, national origin, age or disability. The Contractor agrees to comply with all applicable Local, State and Federal rules and regulations. The Contractor agrees to maintain a drug-free workplace policy and will provide a copy of the policy to the City upon request. Every public contractor and his, her or its subcontractors who are awarded a contract by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

ARTICLE VII. Gratuities and kickbacks: City Code states that it is unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

ARTICLE VIII. FORCE MAJEURE The Contractor shall not be liable for delays in the execution of its obligations due to causes beyond its reasonable control including but not limited to acts of God, acts of the City, fires, strikes, war, insurrection or riot, acts of a civil or military authority. In the event of any such delay, the date of shipment will be extended for a minimum of time equal to the period of the delay.

ARTICLE IX. PATENT INFRINGEMENT The Contractor will, at Contractor's expense, defend any suit which may be brought against the City based on a claim that any Equipment or part furnished under contract constitutes an infringement of any letter patent (provided the Contractor is notified promptly of such suit and copies of all papers therein are promptly delivered to Contractor) and the Contractor agrees to pay all judgments and costs recovered for any reasonable costs or expenses incurred in the defense of any such claim or suits. In case said Equipment or any part is held to constitute infringement and the use of the Equipment or part is enjoined, the Contractor shall, at its own expense, either procure for the City the right to continue using the Equipment or part; or replace with non-infringing Equipment; or modify it so that it becomes non-infringing; or remove the Equipment and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Contractor for patent infringement by the Equipment or any part thereof. This provision shall not apply to any equipment or part which is manufactured by Contractor or third parties, to City's design or specifications. The Contractor assumes no liability for any such infringement and the City agrees to defend any suit against Contractor for alleged infringement arising through the manufacture and sale of Equipment made to City's design or specifications and to indemnify and hold Contractor harmless from any liability arising from any such infringement.

ARTICLE X. LIMITATION OF LIABILITY The liability of the Contractor, its agents, directors, officers, subcontractors, suppliers, for all claims, actions, judgments, expenses related to or resulting from any loss or damage arising out of performance or non-performance of obligations in connection with this Agreement shall in no case exceed an amount of three (3) million dollars. In no event shall Contractor be liable for loss of profit and for any indirect, special, incidental or consequential damages of any nature or kind including but not limited to delays, loss of revenue, loss of use, loss of data, loss of production, costs of capital or costs of replacement power, even if Contractor has been advised of the possibility of such damages.

ARTICLE XI. RIGHT OF THE CONTRACTOR TO TERMINATE The Contractor may terminate this contract for cause upon five (5) business days advance written notice to the City, if the City fails to pay the Contractor any undisputed payment required hereunder which failure continues for thirty (30) days after notice of such failure to the City.

ARTICLE XII APPLICABLE LAW This Agreement and any order or contract placed hereunder shall be interpreted according to the laws of the State of Nebraska.

ARTICLE XIII USE OF TECHNICAL DOCUMENTS All plans, drawings, technical specifications, documents, software, microfilm, data, or proprietary information relating to the Equipment sold, distributed or manufactured hereunder shall be treated in confidence by the City, who shall ensure the confidentiality thereof. They remain Contractor's exclusive property and may be neither copied nor reproduced nor communicated to a third party in any way whatever nor used for manufacture of the Equipment, or parts thereof. They may be used only for operation and maintenance of the Equipment, under terms and conditions specified by the Contractor.

WARRANTY The Contractor warrants that during the warranty period hereinafter defined the Equipment sold shall be free from defects in material and workmanship and shall be of the kind and quality designated or described in the specifications.

If within eighteen (18) months from the date of notification of readiness of shipment or twelve (12) months from date of first use by City or the end user, whichever date occurs first, the Equipment does not meet the warranties specified above, the Contractor agrees to correct any defect, at its option, either by repairing any defective parts, or by making available Ex Works, repaired or replacement parts, provided the City notifies the Contractor promptly of any such defects.

The cost of removal of the defective Equipment from its related system, site and/or ancillary equipment, and the cost of its reinstallation in such system, site and/or ancillary equipment, including all transportation costs to and from Contractor's plant or repair shop, shall be borne exclusively by the City. The City shall not return or dispose of any Equipment or part thereof with respect to which it intends to make a claim under the foregoing warranty, without the Contractor's express prior written authorization.

Where Contractor supplies Services, Contractor warrants that it shall re-perform Services which are found to have been performed other than in a professional manner and in accordance with sound, generally accepted and professional practices in effect at the time of performance, provided Contractor receives written notification of the defect within thirty (30) days from date of such performance.

Any repair, replacement or re-performance pursuant to the foregoing warranties pursuant hereto shall not renew or extend the warranties. The foregoing warranties shall be void to any deficiency or defect resulting from, the Equipment being improperly installed or cared for, operated under abnormal conditions or contrary to specifications or instructions of Contractor, normal wear and tear, modifications or alterations made by City or a third party without Contractor's consent.

THE EXPRESS WARRANTIES SET FORTH IN THIS ARTICLE ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY. THE CITY'S EXCLUSIVE REMEDIES AND THE CONTRACTOR'S ONLY OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH DEFECTIVE EQUIPMENT OR SERVICES OR BOTH, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THOSE STATED HEREIN.

ABB, INC.

By Rudolf Pifline Date 11-21-18

Title VP PURCHASE SERVICES By Ahmed Refaat
TITLE: LBO Controller

CITY OF GRAND ISLAND, NEBRASKA

By Roger H. Steele Date Dec. 24, 2018
Mayor

Attest: RaDae Edwards
City Clerk

The Contract is in due form according to law and hereby approved.

Stacey R. Dankof Date 12/21/18
Attorney for the City