



COMPANY:	City of Shakopee	Proposal #:	Q02778033
ATTN:		PAGES:	8
FROM:	CDW	DATE:	May 25, 2018
PROJECT:	City of Shakopee UPS replacement		

Executive Summary

Vertiv appreciates the opportunity to provide you with our turnkey solution. This proposal is in response to the City of Shakopee's request to replace an existing UPS in the Data Center Room at the Police Station. Please feel free to contact me with any questions and we look forward to working with you.

Pricing Summary

Equipment (See Exhibit A):

- One (1) Liebert 15kVA EXM UPS
- One (1) Maintenance Bypass Cabinet

Total Cost Equipment Fixed Fee	\$18,595.05
---------------------------------------	--------------------

Installation (See Exhibit B):

- Uninstall existing UPS
- Remove existing UPS from site
- Installation of the equipment listed above

Total Installation Price	\$9,798.62
---------------------------------	-------------------

Total Fixed Fee Price	\$28,393.67
------------------------------	--------------------

Disclosure Statement

The information in this proposal shall not be disclosed outside the Vertiv Co and the customers organizations and shall not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the proposal, provided that if a contract is awarded to Vertiv Co as a result of or in connection with the submission of this proposal, the customer shall have the right to duplicate, use or disclose the information to the extent provided in the contract. This restriction does not limit the right of the customer to use information contained in the proposal if it is obtained from another source without restriction.

Invoicing & Payment Terms

Upon date of shipment of the equipment listed above, CDW will invoice 100% of the Total Fixed Fee Price

Terms: Net 30 days

FOB: First destination.

ACCEPTANCE:

The undersigned end customer accepts Vertiv's proposal, including the Construction Agency Terms and Conditions.

Company Name

By: _____
Signature

Date

Print Name

Title

Address

Exhibit A

Liebert EXM Single Module UPS System each consisting of the following: One (1) 15kVA Nameplate Liebert EXM UPS, model 47SA015BACM2033, with the following features:

- System Input Voltage of 208/120V, 3 Phase, 4 wire plus ground
- System Output Voltage of 208/120V, 3 Phase, 4 wire plus ground
- Fixed Capacity 15kVA UPS System
- 208V Native Output Voltage
- Single Input Configuration
- One (1) IntelliSlot Unity Dual Protocol Card; P/N: IS-UNITY-DP; Monitoring and configuration of Vertiv products and environmental sensors through stand-alone Web UI or integration with Trellis™, Liebert Nform, LIFE™ Services. Supports third-party management systems using SNMP, Modbus or BACnet.
- One (1) IS-RELAY Relay Contact Card(s)
- Transformer-Free Architecture - Efficiency up to 95% in double conversion mode
- Unity Power Factor Rating - Delivers more usable power per kVA
- Load Power Factor Support - Supports loads 0.5 lagging to unity without derating
- Energy Optimization Mode (Eco-Mode)
- 65kAIC Rating - Provides interrupting rating and labeling of 65kA
- Active Power Factor Corrected IGBT Input Converter
- PWM transistorized (IGBT) inverter
- Continuous Duty Static Bypass Switch
- Input Contacts - Dry contacts are available for functions including monitoring external breakers, on-generator signal, and other functions
- Output Contacts - Dry contacts are available for functions including a permissive signal to maintenance bypass SKRU, to trip external breakers, and other functions
- Generator Load Control - Suppresses battery charging reducing power demand by an external signal. Shifts unit from Eco Mode to double conversion (if applicable), and synchronizes the inverter output with the bypass
- Automatic retransfer - Provides return to inverter power after an overload
- DSP based controls - Provides digital control of power conversion and system operation
- Backlit LCD display - Monitors power conversion, UPS operation and utility conditions. Deviations are logged for troubleshooting
- Temperature-Compensated Charging/Battery Load Test
- Top-and-bottom-entry cable access
- Front only service access
- Local Emergency Power Off (EPO)
- LIFE™ Services for the 1st year
- IP 20 enclosure
- Casters and leveling feet
- UL and cUL Listed to UL Standard 1778 4th Edition
- 32 min @ 15 kVA, 1 x Internal String of ENERSYS HX205 -FR Batteries
- 32 min: Run Time at Ordered KVA

One (1) Maintenance Bypass Cabinet(s), model 47MBB32CCOL10A6 with the following features:

- 3 Switching Devices (BIB, MBB, MIB)
- 70 Amp Breaker Trip Rating
- Key Interlock (SKRU)
- Cabinet Mounted Left Attached to Module with connecting cables factory supplied
- 200 MM - 7.9 inches Frame Size
- Front Access service design

System Startup Services

Startup includes one site trip by a LS customer engineer after the UPS has been installed. The site trip includes the following services for one UPS module: non-powered inspection, UPS electrical and operational checkout, full parts and labor for any remedial work required on the UPS or battery cabinets, and customer operation training. Startup also includes remedial onsite labor, parts, and travel for the full one-year warranty period.

- **Startup Plus 8x5 is scheduled Monday thru Friday - 8 am to 5 pm**
- One preventive maintenance visit during the first year scheduled Monday thru Friday - 8 am to 5 pm. The PM will include the following services for one UPS module: consult with personnel responsible for the equipment, visually inspect internal sub-assemblies and major components, check all mechanical connections for tightness and heat discolorations, clean any foreign material and dust from internal compartments, check status of all alarm circuits, calibrate equipment to manufacturer's specifications, check the normal operation of the system, check battery transfer/discharge and perform a short duration battery run, perform any required engineering field changes, return unit to operational service with normal load then verify the output.
- MBC/BDC/Wallmount Panel Startup is included

LGS Site Services:

- (0) Site acceptance testing
- (0) Site integration testing
- No Battery Capacity Testing
- No Burn in Testing
- No Load bank rental
- No Infrared Thermal Imaging

Exhibit B

Installation Services:

- Investigative site visit with foreman to verify all existing conditions prior to cutover
- Turn off existing UPS system
- Shut down and disconnect input feed to existing UPS system
- Shutdown and disconnect output feed from UP to existing panelboard
- Remove existing UPS from the customers site.
 - Disassemble the UPS
 - Legally dispose of the UPS
- Coordinate, Receive and rig new UPS system into the Data Center Room at the City of Shakopee's Police Station
- Install and wire new Vertiv eXM 15kVA UPS system
- Install and wire new Vertiv external maintenance bypass cabinet (Side mount of UPS)
- Extend and connect existing 70 Amp UPS input feeder to maintenance bypass input
- Extend and connect existing 70 Amp UPS output feeder to maintenance bypass input
- Electric Permit
- Includes premium time wages for one weekend cutover (Installation Only)

Exclusions:

- Data Center flooring
- Data cabling of any kind
- No commissioning, or load banking of equipment has been included.
- Structural calculations and any subsequent structural work
- Exclude Fire suppression & F.A. Building improvements.
- Communications wiring.
- Existing conditions of buildings systems meet all national and state building code requirements
- Overtime except as noted
- Arc flash hazard analysis and labeling are not included
- Ground fault performance testing and fault current coordination study for overcurrent devices is not included
- Prevailing wages, bond costs and/or special insurance coverages are not included

Customer Responsibilities:

- Provide a single point of contact during the project
- Allow access to all areas of work
- Approve final locations of all equipment

Clarifications/Recommendations

- Data Center will be without power to racks and other loads served by the UPS system during outage
 - Outage will be coordinated with the customer
- This proposal includes premium time wages for one weekend cutover
- Vertiv Co will not do any work without approved permits.
- Vertiv assumes there is proper power at the panel to add the new equipment stated above. It is the responsibility of the owner to approve the location of power source for the new equipment and it is the owner's responsibility to ensure there is proper power at the source.

CONSTRUCTION AGENCY TERMS AND CONDITIONS

These Construction Agency Terms and Conditions ("Agreement") are by and between Liebert Corporation, an Vertiv Co company and an Ohio corporation with a principal place of business at 1050 Dearborn Drive, Columbus, Ohio 43085, acting by and through its following wholly owned subsidiaries: (i) Vertiv Co, Liebert Services, Inc. (f/k/a Liebert Global Services, Inc) (ii) Liebert North America, Inc.; and (iii) Liebert Field Services, Inc. (hereinafter "Construction Agent") and the customer, person, or entity (hereinafter "Owner") to which the attached proposal is addressed, and is effective as of the date Owner issues a purchase order based on the proposal (the "Effective Date"). Construction Agent and Owner may be referred to herein individually as "Party" or collectively as "Parties" as the context requires. These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Construction Agent's scope of work, or invoice from Construction Agent relevant to the work performed, constitute the complete and exclusive statement of the terms of the agreement governing the work performed. Construction Agent's acceptance is expressly conditional on Owner's assent to all of Construction Agent's terms and conditions, including terms and conditions that are different from or additional to the terms and conditions of Owner's purchasing documents, which shall have no force or effect.

Owner has contracted with a vendor ("Vendor") to purchase various items of hardware, software and services. In order to fulfill certain terms of Owner's engagement with Vendor as set forth in its Purchase Order to Vendor (the "Purchase Order"), Construction Agent acts as Owner to assist consultants and appropriately licensed professionals in the coordination, design, installation and completion of space which contains Liebert equipment (the "Project"). Owner desires to engage a single source to act as Owner's agent to engage all design professionals, material suppliers and contractors necessary to complete the Project. Owner appoints Construction Agent as its exclusive agent to act as Owner to cause the Project to be constructed in accordance with plans and specifications to be approved by Owner.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Appointment and Acceptance of Agency. Subject to the terms and conditions of the Agreement, the Owner hereby irrevocably designates and appoints the Construction Agent as its exclusive agent and the Construction Agent accepts such appointment, in connection with the "Project". The Project is further described in the Scope of Work in Liebert's proposal and made part of this Agreement. The Construction Agent hereby unconditionally accepts the agency appointment, and undertakes, to act as Owner, to cause the design, installation and completion of the Project, including obtaining all necessary entitlements and permits. The Construction Agent may execute any of its duties and obligations under this Agreement by or through agents, contractors, employees or attorneys-in-fact, and the Construction Agent shall enter into such agreements with architects, engineers and contractors as the Construction Agent deems necessary or desirable for the construction of the Project (collectively, the "Project Agreements"). No such delegation shall limit or reduce in any way the Construction Agent's duties and obligations under this Agreement.

2. Term. The Agreement and the agency created by this Agreement shall commence on the Effective Date, and shall terminate upon the earlier of the completion of punchlist items of the Project, or upon earlier termination in accordance with Section 16 of the Agreement.

3. Scope of Authority of Agent. (a) The Owner hereby expressly authorizes the Construction Agent and the Construction Agent agrees for the benefit of the Owner to take all action necessary or desirable for the performance and satisfaction of any and all of the Owner's obligations under any Project Agreements and to fulfill all of the obligations of the Construction Agent including without limitation: (1) all design and supervisory functions relating to the installation and construction of the Project and, where applicable, start-up and commissioning of the Liebert equipment; (2) negotiating, entering into, performing and enforcing all contracts and arrangements to construct the Project; (3) obtaining the necessary permits, licenses, consents, approvals, entitlements and other authorizations, including without limitation all of the foregoing required for the Project and the occupancy thereof and those required under applicable law, from all governmental authorities in connection with the installation, construction and testing of the Project in accordance with the Project Agreements; (4) paying when due or causing to be paid when due (subject to reimbursement as provided for under this Agreement all expenses related to the completion of the Project; (5) enforcing or causing the enforcement in all material respects of performance by each party to each Construction Document of its respective obligations, warranties and other design, construction and other obligations or pursuing remedies, including litigation in the name of the Owner with respect to the breach of those obligations, in each case, as deemed appropriate by the Construction Agent in its discretion; and (6) using the proceeds of any Builder's Risk insurance maintained with respect to the Project to complete construction of, or rebuild any portion of the Project; (b) The Construction Agent shall have sole management and control over the installation, construction, testing, means, methods, sequences and procedures with respect to the Project; and (c) As between the Owner and the Construction Agent, the Construction Agent shall be responsible for all acts or omissions of each party with whom the Construction Agent contracts with to perform all work necessary to complete the Project.

4. Duties of Construction Agent. The Construction Agent will: (a) following the Construction Commencement Date, cause the Construction to be prosecuted diligently and without interruption (subject to force majeure events) in accordance in all material respects with the Plans and Specifications and all requirements of law and insurance requirements; (b) take reasonable steps to minimize casualties and condemnations, liabilities of Owner, delays, increased costs and the disruption of the construction process; (c) cause the Project to be completed in substantial accordance with the Plans and Specifications and equipped in substantial compliance in all material respects with all requirements of law and insurance requirements; (d) cause Substantial Completion to occur on or prior to the Outside Completion Date, and cause liens or claims for materials supplied or labor or services performed in connection with the construction of the Project, other than pre-existing liens, to be discharged; (e) following Substantial Completion, cause all outstanding punch list items with respect to the construction to be completed in a timely manner, but in no event later than ninety (90) days after the date of Substantial Completion; and (f) at all times during the term of this Agreement, maintain, for the benefit of the Owner, the insurance required to be maintained by Construction Agent as described in Section 14 of the Agreement.

5. Rights to Enter Upon the Property. In order to complete the Project and fulfill its duties under the Agreement, Construction Agent and all third parties with whom it contracts on Owner's behalf shall have all reasonable and necessary access to Owner's property and the facility in which the Project is to be installed. Owner acknowledges that the delivery of equipment may require access to loading docks and similar facilities. Construction Agent and Owner shall review the Owner's property and facility to mutually determine ingress and egress of laborer's, necessary parking and delivery methods.

6. Duties of Owner. Owner shall: (a) provide to Construction Agent all available plans of the facility in which the Project will be situated, including but not limited to as-builts, electrical schematics, ceiling, lighting, mechanical, plumbing and floor plans, which shall be reasonably accurate; (b) execute any permit, insurance and similar applications prepared by Construction Agent necessary or reasonably desirable for the design, installation and completion of the Project; (c) appoint a representative with authority to make decisions ("Owner's Representative") on behalf of Owner and communicate with the Construction Agent during the term of the Agreement as needed to facilitate and reasonably assist with the design, installation and completion of the Project; (d) appoint a representative to accompany Construction Agent upon Substantial Completion of the Project to prepare a punchlist in accordance with Section 14; (e) obtain and maintain during the term of the Agreement the Builder's Risk policy set forth in Section 14; (f) maintain harmony on the site of the Project if there are other contractors performing construction, and actively resolve all difficulties and disputes in order that the completion of the Project not be hindered or delayed; (g) provide information as to all site access restrictions which may impact the Project, including but not limited to the necessity of Construction Agent's agents, contractors' and subcontractors' employees to be subject criminal background testing, drug testing, escort and security clearance; (h) to obtain or provide information, data, decisions and approvals within three (3) business days of request, unless Owner and Construction Agent agree on a longer response time; and (i) Refrain from interfering with or directing the design professionals and contractors engaged to complete the Project, except in the presence of a representative of the Construction Agent.

7. Compensation and Reimbursement of Construction Agent. The compensation to and reimbursement of the Construction Agent shall be set forth in the Purchase Order. Construction Agent's compensation and reimbursement shall be collected by Vendor and paid to Construction Agent; provided, however, that notwithstanding the terms of the Purchase Order with Vendor, Owner shall be responsible for the direct reimbursement to Construction Agent of all expenses which Construction Agent incurs with third parties in complying with its obligations under the Agreement whether or not the Purchase Order is cancelled by Owner or Vendor or other expenses not addressed in the terms of the Purchase Order, such as the Construction Agent's provision of insurance at Owner's expense as set forth in Section 14. Any such reimbursement must be paid no later than thirty (30) days after Construction Agent's rendering of a detailed invoice to Owner. Notwithstanding the arrangement for the payment of the compensation and reimbursement of the Construction Agent in any other agreement, no term, provision or condition of a Purchase Order, accompanying acceptance documentation, or other agreement shall have any effect or alter or amend the terms of this Agreement unless expressly referred to herein. All payments reserved under this Agreement which are not paid when due shall bear interest at the rate of 2% per month until paid. If Construction Agent pursues collection of any unpaid sum, Owner shall be liable for the reasonable expense of collection. Any current or future tax or governmental charge (or increase in same) affecting Construction Agent's costs or which Construction Agent is otherwise required to pay or collect in connection with the Project, shall be for Owner's account and shall be added to the price or billed to Owner separately, at Construction Agent's election.

8. Consent of Lessor. If the facility is leased, Construction Agent's obligations under this Agreement are conditioned upon the Owner obtaining its Landlord's consent to the Project if legally required. Owner shall involve Construction Agent in communications with the Landlord. Owner acknowledges that the initial partial payment of the construction fee is based upon expenses that Construction Agent will incur on Owner's behalf which are necessary to obtain the Landlord's consent, and shall not be refundable if Landlord's consent is denied, conditioned unreasonably in Owner and Construction Agent's judgment, or if Landlord is non-responsive to the request for consent. If consent from the Landlord is not given unconditionally or subject to conditions acceptable to Owner and Construction Agent within seventy-five (75) days after Owner initiates its written request, this Agreement shall terminate and Owner and Construction Agent

shall have no further obligation to the other. Owner and Contractor may extend the time period for Landlord consent by mutual written agreement, but neither shall have the obligation to the other to agree to a request for extension.

9. Plans and Specifications. Owner will cooperate with Construction Agent's efforts to create Plans and Specifications for the Project. Plans and Specifications are Project Agreements consisting of drawings to illustrate the construction of the Project and specifications of the materials which are to be incorporated into the Project. Owner will provide all floor plans, electrical schematics, plumbing and mechanical installation drawings, as-built plans and the like of the facility which are in its possession. The level of detail in the Plans and Specifications shall be typical for the issuance of a building permit in the jurisdiction of the Project, although Construction Agent's duties do not include obtaining such a permit. Construction Agent shall contract with such design professional(s) that it deems necessary and prudent to prepare the Plans and Specifications. Construction Agent shall submit proposed Plans and Specifications to Owner for Owner's approval as detailed in the Scope of Work. Owner shall not unreasonably withhold, condition or delay its consent. In the event that Owner shall not consent to the proposed Plans and Specifications within thirty (30) days after their receipt, this Agreement shall terminate and Owner and Construction Agent shall have no further obligation to the other arising thereafter. Owner acknowledges that it shall be responsible for all the expenses incurred by Construction Agent to meet its obligations under the Agreement, notwithstanding the termination of this Agreement.

10. Scheduling – Commencement of Construction. After Owner has approved the Plans and Specifications, the parties shall agree upon a date for the commencement of construction (the "Construction Commencement Date"), and a date by which the Project should be substantially complete (the "Outside Completion Date"). The Outside Completion Date shall be reasonably estimated to be one hundred and forty percent (140%) of the expected construction period for the Project, recognizing that the use of proprietary materials and equipment for a specialized electronic environment may be subject to delays. The Parties will memorialize the Outside Completion Date by a writing which may be in the form of any countersigned document or the exchange of electronic mail. To the extent that any act of Owner or force majeure may delay the progress of construction, the Outside Completion Date will be extended on a commensurate basis.

11. Substantial Completion. Substantial Completion is defined as the stage in the progress of the Project where the Project is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project for its intended use. Substantial Completion will include the installation and initial operability of all Liebert equipment. Substantial Completion shall not include the obtaining of a certificate of occupancy, temporary certificate of occupancy or equivalent, as Owner acknowledges the Scope of Work does not involve construction of a scale to require such certificates. Dependent upon the Scope of Work, Substantial Completion may be conclusively determined by the certification of the Project's Architect. If the Scope of Work does not indicate a Project Architect or specifically reference that responsibility for the Project Architect, then the reasonable determination of the Construction Agent or its representative after a walk-through with the Owner's representative shall conclusively determine Substantial Completion. Punchlist items are items which are incomplete or uncorrected at the time of Substantial Completion. The Construction Agent, or its representative, and Owner's Representative shall inspect the Project at the time that a walkthrough is conducted to determine Substantial Completion, and jointly prepare a list of incomplete and uncorrected items which shall be the punchlist if the Project has reached Substantial Completion. This inspection must occur within fifteen (15) days of Construction Agent's request. Thereafter, the Construction Agent shall cause the punchlist items to be completed and corrected with reasonable diligence. Completion of the punchlist items does not adversely affect any warranty and performance rights of Owner as a purchaser of Liebert equipment, which is subject to a separate limited warranty. Risk of loss and legal title to equipment shall pass upon delivery to the first destination.

12. Limited Warranties. Construction Agent warrants that the materials used to construct the Project shall be new and free from material defect, and that the Project shall be constructed in a good and workmanlike manner, and shall be in substantial conformance with the Contract Documents (the "Warranty"). THE FOREGOING IS THE SOLE AND EXCLUSIVE WARRANTY TO OWNER BY CONSTRUCTION AGENT FOR SERVICES AND MATERIALS FURNISHED UNDER THE AGREEMENT. EXCEPT AS SET FORTH IN THE WARRANTY, ALL SERVICES AND MATERIALS ARE FURNISHED AS-IS, WHERE IS, WITH NO WARRANTY WHATSOEVER. ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE), ARE DISCLAIMED TO THE FULL EXTENT PERMITTED BY LAW. The Warranty shall be in effect until the later of (i) the ninetieth (90th) day after the date of Substantial Completion, or (ii) the sixtieth (60th) day after the completion of the last item on the punchlist ("Warranty Period"). In order to make a claim against the Warranty, Owner must give notice in writing in reasonable detail to Construction Agent which must be received by Construction Agent prior to the expiration of the Warranty Period. No suit, complaint or other legal proceeding may be filed to enforce the Warranty later than one (1) year after the expiration of the Warranty Period. The Warranty is exclusive of any rights of warranty which may be conveyed as to Liebert equipment pursuant to Owner's purchase order and accompanying acceptance documentation with Vendor. Any warranty contained in any purchase order and accompanying acceptance documentation between Owner and Vendor or Construction Agent, in either's capacity as a seller of equipment, has no application to the services described herein. Owner acknowledges that notwithstanding any identity of interest between the seller of equipment to be installed in the Project and the Construction Agent, the Warranty and Limitation of Liability provisions of the Agreement shall exclusively govern as to the services which are the subject of this Agreement.

13. Assignment of Project Agreements. Upon the expiration of the Warranty, the Construction Agent shall assign all of its rights in the Project Agreements to Owner. This assignment shall in no way derogate, diminish or amend Owner's rights under the Warranty against the Construction Agent which may arise prior to the date of assignment.

14. Insurance. The Construction Agent or Owner, as specified below, shall maintain or cause others to maintain in full force and effect at all times during the term of the Agreement, the following insurance policies with responsible insurance companies authorized to do business in the state in which the Project is located (if so required by law or regulation). (a) Owner Provision of Project Asset All Risk Insurance. Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the state where the Project is located, property insurance written on a builders risk "all risk" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising the total value of the Project on a replacement cost basis. Any deductible will be for the account of Owner. This insurance shall include the interests of the Owner, Construction Agent, and all contractors on the Project as their interests may appear. Owner shall waive all rights of subrogation against Construction Agent and its contractors and shall cause its insurer to waive all rights of subrogation against Construction Agent and its contractors. Such insurance shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings, debris removal including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation. If the insurance policies purchased as required above do not allow the insured to waive rights of recovery against others prior to loss, Owner shall cause them to be endorsed with a waiver of subrogation as required above; (b) Construction Agent Provision of Project Asset All Risk Insurance. If the Owner does not intend to purchase such property insurance, Construction Agent may maintain or cause others to maintain or provide for such coverage at Owner's sole expense. (c) Commercial General Liability. Construction Agent shall provide the following coverage: (1) Commercial general liability insurance (CGL) with a limit of \$2,000,000 each occurrence and in the aggregate; (2) CGL insurance shall be written on an occurrence form and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract); (3) Owner shall be included as additional insured to the extent of Construction Agent's negligence with respect to liability arising out of the work specified in this contract. Additional insured coverage as required in this subparagraph shall apply as primary insurance to the extent of Construction Agent's negligence; (d) Workers' Compensation/Employers Liability. Construction Agent shall maintain workers compensation and employers liability insurance as statutorily required; (e) Automobile liability. Construction Agent shall provide for the following coverage: (1) Construction Agent shall maintain business auto liability insurance with a limit of \$2,000,000 each accident; (2) Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos); (f) Other Conditions: (1) Construction Agent shall cause each contractor engaged by Construction Agent to purchase and maintain insurance of the type specified above in Sections (e) and (f). When requested Construction Agent or contractor shall furnish copies of certificates of insurance evidencing coverage for each contractor to Owner; (2) Prior to commencing the work, and thereafter upon renewal, Construction Agent shall furnish Owner with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above; and (3) Construction Agent may (i) use any combination of primary and excess insurance coverage to satisfy total limits requirements hereunder and (ii) self-insure any or all of its insurance obligations hereunder.

15. Casualty/Condemnation. (a) Casualty provisions. (1) If a casualty shall occur prior to Substantial Completion which damages the Project or impacts the ability of the Construction Agent to complete the Project, the Owner shall pursue a claim under its Builder's Risk policy, Fire and Extended policy, or any other insurance coverage it may have which may provide proceeds to effect a repair and restoration of the Project or other areas of Owner's facility which may be necessary to be restored for the completion of the Project. Construction Agent's performance and the Outside Completion Date shall be tolled until the necessary restoration work is completed. Owner and Construction Agent shall confer as to the scope of work for the restoration and reasonably agree as to the extent to which the Construction Agent's general contractor should perform some or all of the restoration work, the extent to which some or all of the construction work should be performed by another contractor contemporaneously erecting improvements which must be restored in order for construction on the Project to recommence, and the appropriate increase of the Compensation and Reimbursement of the Construction Agent to perform additional services. Owner acknowledges that the pricing of Liebert equipment is governed by the terms of its Purchase Order and acceptance documentation with Vendor, and that according to those terms the pricing of Liebert equipment and delivery time may change due to the delay caused by the casualty; (2) If an uninsured casualty shall occur prior to Substantial Completion which damages the Project or impacts the ability of the Construction Agent to complete the Project, the Owner shall elect in writing within twenty (20) business days after the date of the casualty to either terminate the Agreement or restore the Project or other areas of Owner's facility which may be necessary to be restored for the completion of the Project. If the Owner elects to so restore, Construction Agent's performance and the Outside Completion Date shall be tolled until the necessary restoration work is completed. Owner and Construction Agent shall confer as to the scope of work for the restoration and reasonably agree as to the extent to which the Construction Agent's general contractor should perform some or all of the restoration work, the extent to which some or all of the construction work should be performed by another contractor contemporaneously erecting improvements which must be restored in order for construction on the Project to recommence, and the appropriate increase of the Compensation and Reimbursement of the Construction Agent to perform additional services. Owner acknowledges that the pricing of Liebert equipment is governed by the terms of its Purchase Order and acceptance documentation with Vendor, and that according to those terms the pricing of Liebert equipment and delivery time may change due to the delay caused by the casualty. (b)

Condemnation provisions. (1) If a condemnation of Owner's property makes the completion of the Project impossible, unfeasible or uneconomic, the Agreement may be terminated by the Owner or the Construction Agent upon ten (10) days prior written notice to the other; (2) If a condemnation of Owner's property does not make the completion of the Project impossible, unfeasible or uneconomic, Construction Agent's performance and the Outside Completion Date shall be tolled until the condition created by the taking which results in a delay in the construction of the Project is resolved. If the taking creates a condition which shall require restoration work to permit the completion of the Project, Owner and Construction Agent shall confer as to the scope of work for the required construction and reasonably agree as to the extent to which the Construction Agent's general contractor should perform some or all of the restoration work and the extent to which some or all of the construction work should be performed by another contractor contemporaneously erecting improvements which must be restored in order for construction on the Project to recommence, and the appropriate increase of the Compensation and Reimbursement of the Construction Agent to perform additional services. Owner acknowledges that the pricing of Liebert equipment is governed by the terms of its Purchase Order and acceptance documentation with Vendor, and that according to those terms the pricing of Liebert equipment and delivery time may change due to the delay caused by the taking.

16. Default. (a) Construction Agency Events of Default. If any one or more of the following events (each a "Construction Agency Event of Default") shall occur and be continuing: (1) the Construction Agent fails to apply necessary funds paid by, or on behalf of, the Owner to the Construction Agent for the construction of the Project; (2) subject to force majeure events, the Construction Commencement Date with respect to the Project shall fail to occur for any reason on or prior to the Outside Completion Date; (3) the Construction Agent shall fail to observe or perform any term, covenant or condition of this Agreement (except those specified in clauses (a) through (d) above), and such failure shall remain uncured for a period of thirty (30) days after notice thereof to the Construction Agent; provided, however, no Construction Agency Event of Default shall be deemed to occur if such failure or breach cannot reasonably be cured within such period, so long as the Construction Agent shall have promptly commenced the cure thereof and continues to act with diligence to cure such failure or breach and such failure or breach is cured within 180 days after notice thereof to the Construction Agent; then, in any such event, the Owner may, in addition to the other rights and remedies provided for in this Article, immediately terminate this Agreement by giving the Construction Agent written notice of such termination, and upon the giving of such notice, this Agreement shall terminate and all obligations of the Owner under this Agreement with respect to the Project arising thereafter shall cease. (b) Owner Events of Default. If any one or more of the following events (each an "Owner Event of Default") shall occur and be continuing: (1) Owner shall fail to make any payment or reimbursement required to be made by Owner to the Construction Agent within thirty (30) days after it is due; (2) Owner shall fail to comply with the terms of Section 6 of the Agreement and such failure shall remain uncured for a period of thirty (30) days after notice thereof to the Owner; provided, however, no Owner Event of Default shall be deemed to occur if such failure or breach cannot reasonably be cured within such period, so long as the Construction Agent shall have promptly commenced the cure thereof and continues to act with diligence to cure such failure or breach and such failure or breach is cured within 180 days after notice thereof to the Owner; (3) Owner shall file a petition for bankruptcy, reorganization, enter into an assignment for benefit of creditors, become subject to a receivership, or any other like insolvency proceeding, whether judicial or non-judicial. If an involuntary petition of bankruptcy is filed against Owner, it shall be an Owner Event of Default if the involuntary petition is not dismissed within thirty (30) days after its filing; or (4) Owner shall be in breach of its obligation under the purchase order and accompanying acceptance documentation with Vendor; then, in any such event, the Construction Agent may, in addition to all other rights and remedies it may have in law and equity, immediately terminate this Agreement by giving the Owner written notice of such termination, and upon the giving of such notice, this Agreement shall terminate and all obligations of the Construction Agent under this Agreement with respect to the Project arising thereafter shall cease.

17. Damages. The termination of this Agreement pursuant to this Section shall in no event relieve the Construction Agent or the Owner of its liability and obligations arising prior to termination, all of which shall survive any such termination.

18. Remedies; Remedies Cumulative. (a) If an Event of Default shall have occurred and be continuing, the non-defaulting party shall have all rights and remedies available under this Agreement, which shall be cumulative. (b) No failure to exercise and no delay in exercising, by either party, any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

19. Limitation of Liability. SUBJECT TO THE TERMS OF SECTION 20, NEITHER PARTY SHALL BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF THE PARTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT SHALL CONSTRUCTION AGENT'S LIABILITY EXCEED THE COMPENSATION AND REIMBURSEMENT OF THE CONSTRUCTION AGENT. THE PARTIES AGREE THAT NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

20. Indemnification. The provisions of Section 20 are not subject to the limitation of liability provision in the second sentence of Section 19. Owner shall indemnify, defend and hold Construction Agent harmless from and against any claim, damage, cost, expense and suit (including reasonable attorney fees) arising out of (i) the presence of any Hazardous Materials (as defined hereafter) on or about the Project; (ii) property damage, bodily injury or death sustained by Construction Agent, its employees, agents and contractors caused by the act or omission of Owners, its employees, contractors, agents or invitees; and/or (iii) any claim by Vendor against Construction Agent solely to the extent that Vendor's claim is based upon a claim by Owner against Vendor in any way related to the Agreement. Construction Agent shall indemnify, defend and hold Owner harmless from and against any claim, damage, cost, expense and suit (including reasonable attorney fees) arising out of property damage, bodily injury or death sustained by Owner, its employees, agents, contractors and invitees caused by the act or omission of Construction Agent, its employees, agents and contractors. The indemnity provision of the parties shall be limited to the lesser of \$500,000.00 or three (3) times the amount specified as the initial sum of compensation to and reimbursement of the Construction Agent as specified in Section 7.

21. Site Conditions and Use Restrictions. (a) Construction Agent and its agents, employees, contractors, subcontractors and material suppliers shall have no obligation for the existence, mitigation and reporting, whether to Owner or any governmental authority of the following conditions: (1) The presence of hazardous materials, hazardous waste, toxic substances or the like as they may be defined by federal, state or local law, regulation or code ("Hazardous Materials"); (2) Non-compliance with the Americans with Disability Act; or (3) Non-compliance with building, zoning and safety regulations. (b) Owner must notify Construction Agent of any location of Hazardous Materials in or about the area of the Project prior to the commencement of work. If any Hazardous Material is discovered or uncovered during the term of the Agreement, Owner shall be responsible for its mitigation in accordance with good engineering practices and applicable law. Construction Agent shall immediately halt all services until the Hazardous Materials are mitigated. The Outside Completion Date shall be tolled until the Hazardous Materials are mitigated. Owner shall provide evidence of the mitigation to Construction Agent in reasonable detail prior to Construction Agent's recommencement of work. (c) If Construction Agent discovers a violation of any safety related code or regulation in or about the Project during the term of the agreement, it will notify Owner. Construction Agent may, at its sole discretion, suspend services until the violation is corrected. If services are suspended, the Outside Completion Date shall be tolled until the violation is corrected.

22. Change Orders. Owner may request changes in the Project consisting of additions, deletions or other revisions. Any change orders, and the price and completion time requirements shall only be accepted upon mutual written agreement by Owner and Construction Agent.

23. Notice. All notices, requests and demands given or made upon the parties to this Agreement shall be in writing and shall be deemed given when delivered personally to the person named below, or upon delivery to a party via nationally recognized overnight courier, addressed to the parties as follows: To Construction Agent: Liebert Corporation, 610 Executive Campus Drive, Westerville, Ohio 43082, Attention: Matt Dixon and to Liebert Corporation, 610 Executive Campus Drive, Westerville, Ohio 43082, Attn: Legal Department. To Owner: As listed next to Owner's signature block.

24. Governing Law. This Agreement has been made in and shall be governed, interpreted and enforced by the laws of the State of Ohio. Construction Agent and Owner hereby irrevocably submit to the personal and subject matter jurisdiction of any State of Ohio or federal court sitting in Franklin County, Ohio in any action or proceeding arising out of or relating to this Agreement. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued.

25. Miscellaneous. Neither party shall be liable for failure to fulfill its obligations hereunder if such failure is due to storm, flood, or other Acts of God, fire, war, rebellion, scarcity of labor or materials, acts of civil or military authority, U.S. Government restrictions or embargoes or other events beyond the reasonable control of a party. This Agreement, including any exhibits or other documents referenced herein, constitutes the final and complete Agreement between the parties with respect to the subject matter herein and supersedes all prior or contemporaneous agreements, understandings, negotiations, discussions, offers and acceptances with respect to the subject matter herein. This Agreement may be modified or amended only by a writing signed by the authorized employees of both parties. The Parties are Independent Contractors as to each other. Neither Party owes the other any obligation other than as expressly set forth in this Agreement. This Agreement is commercial in nature made between Parties of equal bargaining position, and neither Party stands in a fiduciary relationship to the other. In the interpretation of this Agreement there shall be no presumption against the drafter, as the Parties acknowledge it was jointly drafted and reviewed by counsel. In the event that any provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be illegal or unenforceable in any respect, the remaining terms and conditions of this Agreement shall be interpreted and enforced as though the illegal or unenforceable provision was not contained herein, unless such enforcement would yield a clearly inequitable result. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, estates, successors and permitted assigns, provided Owner shall not assign this Agreement without Construction Agent's prior written consent, which shall not be unreasonably withheld.