

ESCROW INTELLECTUAL PROPERTY AGREEMENT

This Escrow Intellectual Property Agreement (“Escrow Agreement”) is entered into among ORANGE COUNTY SANITATION DISTRICT, a county sanitation district organized and existing under provisions of the County Sanitation District Act, California Health and Safety Code section 4700 et seq. (“SANITATION DISTRICT”), having an address of 10844 Ellis Avenue, Fountain Valley, California 92708; ABB Inc., a Delaware corporation (“CONTRACTOR”), having an address of 3055 Orchard Drive, San Jose, California 95134; and _____ (“ESCROW AGENT”) having a place of business at _____.

This Escrow Agreement is part of the Agreement for the Design, Installation, Implementation, and Maintenance of a Process Control System between the SANITATION DISTRICT and CONTRACTOR (“Prime Agreement”).

RECITALS

1. Concurrent with the execution of this Escrow Agreement, the SANITATION DISTRICT and CONTRACTOR are entering into the Prime Agreement under which CONTRACTOR shall replace the SANITATION DISTRICT’s existing DEC VAX/VMS-based SCADA Platform running the CRISP SCADA software with a modern Windows-based SCADA Platform that will continue to communicate with the existing Modicon PLCs, as more particularly specified in the Prime Agreement.
2. Under the terms of the Prime Agreement, CONTRACTOR shall grant the SANITATION DISTRICT a license to use certain intellectual property and related documentation necessary to operate and maintain the Work performed under the Prime Agreement. The Prime Agreement requires CONTRACTOR and the SANITATION DISTRICT to enter into this Escrow Agreement which provides for CONTRACTOR’s deposit of certain Escrow Materials with ESCROW AGENT and, under certain circumstances, for the release of such Escrow Materials to the SANITATION DISTRICT.
3. The Escrow Agreement procedure is intended to guarantee the SANITATION DISTRICT access to CONTRACTOR’s intellectual property in the event that CONTRACTOR is unable, unwilling, unavailable, or otherwise prevented from performing its obligations under the Prime Agreement, or if CONTRACTOR is in material breach thereof.
4. Capitalized terms used in this Escrow Agreement and not defined herein shall have the same meanings assigned to them in the Prime Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. DEFINITION OF ESCROW MATERIALS.

The Escrow Materials shall enable the SANITATION DISTRICT to fully use and benefit from the Intellectual Property in the event CONTRACTOR is unable or unwilling to perform under the terms of the Prime Agreement. At a minimum, the Escrow Materials shall include the following:

- A. All files and source codes required to build and maintain executable object code of all software and firmware for all SCADA Platform software product lines, including, but not limited to, graphics builders, trending packages, network communications drivers, controller algorithms, controller operating systems, and historian and archive systems. This shall include any and all tools (compilers, make files, debuggers, etc.) required to build or maintain said software whether or not provided by a third party. Files shall be organized, annotated, and saved such that a programmer reasonably skilled in the language used in such materials could maintain and support the software without further assistance or references to other materials.
- B. All hardware configurations, circuit board designs, bills of material, specifications, and current manufactures for all components or devices of the SCADA Platform hardware product-line, including, but not limited to, I/O boards, network/communications boards, backplanes, wiring, hardware specifications, and power supplies. Should any of the Escrow Materials described herein require specialized software/hardware tools to render and manifest the designs, CONTRACTOR shall provide such hardware/software, including any necessary licenses, to the SANITATION DISTRICT as part of this Escrow Agreement. All such materials shall be organized, annotated, and saved in such a manner or format that the material may be readily used by a professional who can build, maintain, and support the hardware without further assistance or references to other materials to effectuate the intent of this Escrow Agreement.
- C. All configuration files, application notes, model numbers, manufactures and custom configuration requirements of any VAR/OEM equipment, and third-party software or hardware devices upon which the SCADA Platform product-line depends, including, but not limited to, routers, network interface modules, operating systems, computers, word processors, spreadsheets, and drafting tools. Material shall be organized, annotated, and saved in such a manner or format that the material may be readily used by a trained professional who can build, maintain, and support the hardware without further assistance or references to other materials to effectuate the intent of this Escrow Agreement.
- D. All tools, devices, software, and hardware required for the repair and reproduction of any Escrow Materials shall be provided such that a reasonably skilled professional can effectively and efficiently effectuate the intent of this Escrow Agreement. CONTRACTOR shall provide a list of these tools and devices and their associated licenses.

- E. The Escrow Materials also include all necessary documents demonstrating that the SANITATION DISTRICT possesses necessary licenses and consent to maintain and operate any equipment, software, or procedures installed by CONTRACTOR or relied upon by the SANITATION DISTRICT. For the term of the Prime Agreement, CONTRACTOR agrees to periodically update the Escrow Materials to reflect upgrades to the SCADA Platform as described in the Escrow Agreement.
- F. All software and software-related features provided as part of the Prime Agreement and described in Section 17440, Performance, Growth, and Licensing.

Such Escrow Materials shall also include any updates to materials made available to the SANITATION DISTRICT pursuant to the Prime Agreement.

2. DEPOSIT.

- A. Within thirty (30) days of the SANITATION DISTRICT's approval of the Prime Agreement, CONTRACTOR shall deliver to ESCROW AGENT a sealed package certified by an authorized officer of CONTRACTOR that contains a complete set of the Escrow Materials, as defined in PARAGRAPH 1 ("DEFINITION OF ESCROW MATERIALS") herein (a "Deposit"). In addition to the foregoing, within thirty (30) days of any updates to the Work of the Prime Agreement, CONTRACTOR shall deliver the updated Escrow Materials (a "Maintenance Deposit") to ESCROW AGENT.
- B. CONTRACTOR shall submit the Escrow Materials to the SANITATION DISTRICT in the prevailing industry standard formats. The Escrow Materials shall be in English.
- C. CONTRACTOR hereby agrees that all deposits of Escrow Materials are irrevocably made and CONTRACTOR shall assert no property right to or into the copy of the Escrow Materials deposited.
- D. CONTRACTOR hereby agrees that this is a divisible contract, performance of each Deposit is discrete and independent, and therefore the obligation to deposit Escrow Materials each time is fully performed upon acceptance of the Deposit by ESCROW AGENT.
- E. CONTRACTOR shall perform Maintenance Deposits for all Escrow Materials such that Escrow Materials are, at all times, current with the Work of the Prime Agreement.
- F. CONTRACTOR shall identify the Maintenance Deposit activity in each Task Order's Work schedule and update the Work schedule as required by the Prime Agreement.

3. **RECEIPT BY ESCROW AGENT.** CONTRACTOR shall furnish to ESCROW AGENT a packing list in triplicate describing each Deposit made hereunder. ESCROW AGENT shall issue a receipt for all Escrow Materials received and forward copies of such receipts and packing lists to both the SANITATION DISTRICT and CONTRACTOR.

4. **STORAGE OF MATERIALS; INSPECTION.** ESCROW AGENT shall establish a receptacle under its control for the purpose of storing the Escrow Materials in safekeeping in an appropriate physical facility. ESCROW AGENT shall allow the SANITATION DISTRICT to

inspect the Escrow Materials to confirm that the Deposit is complete and will compile the Escrow Materials into the same version of the Escrow Materials accepted by the SANITATION DISTRICT. Any such inspection shall be in the presence of an authorized representative of ESCROW AGENT. The SANITATION DISTRICT shall provide CONTRACTOR with ten (10) days' notice of any requested inspection and CONTRACTOR, at its option, shall have the right to attend such inspection. Access to the Escrow Materials shall be permitted to authorized representatives of ESCROW AGENT to the extent necessary for ESCROW AGENT to perform its obligations pursuant to this Escrow Agreement.

5. **RECORDS.** ESCROW AGENT agrees to keep complete written records of the activities undertaken and Escrow Materials delivered to ESCROW AGENT pursuant to this Escrow Agreement. During the term of this Escrow Agreement, CONTRACTOR and the SANITATION DISTRICT shall be entitled to inspect the records of ESCROW AGENT with respect to the Escrow Materials at reasonable times, during normal business hours, and upon reasonable notice to ESCROW AGENT.
6. **TERM.** Except as otherwise provided in PARAGRAPH 23 ("SURVIVAL"), this Escrow Agreement shall not terminate upon the termination of the Prime Agreement.
7. **DEFAULT BY CONTRACTOR.** Any of the following events shall constitute events of default by CONTRACTOR which would give the SANITATION DISTRICT the right to receive a single copy of the Escrow Materials from ESCROW AGENT pursuant to PARAGRAPH 8 ("DELIVERY OF ESCROW MATERIALS TO THE SANITATION DISTRICT") hereof:
 - A. CONTRACTOR materially breaches any term of, or fails to meet its obligations under, the Prime Agreement for more than thirty (30) calendar days where such breach negatively affects the operations of the treatment facilities and collection systems.
 - B. CONTRACTOR becomes insolvent or becomes a petitioner or debtor, voluntarily or involuntarily, in any bankruptcy or insolvency proceeding in a U.S. Bankruptcy Court or foreign court; has any receiver appointed for, or makes any assignment for the benefit, of its creditors for a substantial part of CONTRACTOR's assets or business; or enters into any other proceeding for debt relief.
 - C. CONTRACTOR ceases to do business or institutes any proceeding for the liquidation or winding up of its business; dissolution of corporation, joint venture, or partnership; or termination of corporate charter.
 - D. CONTRACTOR ceases to be actively engaged in its usual line of business.
8. **DELIVERY OF ESCROW MATERIALS TO THE SANITATION DISTRICT.** ESCROW AGENT agrees, and is hereby specifically authorized, to provide the Escrow Materials to the SANITATION DISTRICT immediately upon written notice by the SANITATION DISTRICT (a "Default Notice") that one or more of the default events defined in PARAGRAPH 7 ("DEFAULT BY CONTRACTOR") has occurred.
9. **BANKRUPTCY.** CONTRACTOR and the SANITATION DISTRICT acknowledge that this Escrow Agreement is an "agreement supplementary to" the Prime Agreement as provided

in Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"). CONTRACTOR acknowledges that if CONTRACTOR, as a debtor in possession or a trustee in bankruptcy in a case under the Bankruptcy Code, rejects the Prime Agreement or this Escrow Agreement, the SANITATION DISTRICT may elect to retain its rights under the Prime Agreement and this Escrow Agreement as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the SANITATION DISTRICT to CONTRACTOR or the Bankruptcy Trustee, CONTRACTOR or such Bankruptcy Trustee shall not interfere with the rights of the SANITATION DISTRICT as provided in the Prime Agreement and this Escrow Agreement, including the right to obtain the Escrow Materials. CONTRACTOR and the SANITATION DISTRICT agree that this Escrow Agreement stands alone, by itself, and is a divisible contract subject to individual performance of each Deposit.

10. **USE OF ESCROW MATERIALS, CONFIDENTIALITY, LIABILITY FOR DISCLOSURE.** In the event that the SANITATION DISTRICT obtains the Escrow Materials pursuant to the terms hereof, the SANITATION DISTRICT agrees that it will disclose the Escrow Materials only to employees and consultants of the SANITATION DISTRICT who have a need-to-know and need access to the Escrow Materials to perform their duties. The SANITATION DISTRICT may also make a reasonable number of copies of the Escrow Materials for backup and archival purposes. Such Escrow Materials shall be considered Pre-Existing Intellectual Property for the purposes of this Escrow Agreement. The SANITATION DISTRICT agrees not to sell or use the information in the Escrow Materials for any reason other than the purpose stated above and agrees to reasonably handle the Escrow Materials. However, CONTRACTOR agrees that any inadvertent disclosure of Escrow Materials by the SANITATION DISTRICT to unintended persons or parties is not remediable and under no circumstances shall the SANITATION DISTRICT be liable for such inadvertent action or omission.
11. **DELIVERY SITE.** Delivery of the Escrow Materials to the SANITATION DISTRICT or return of the Escrow Materials to CONTRACTOR shall be at the offices of ESCROW AGENT specified above, unless special delivery instructions concerning delivery elsewhere are furnished to ESCROW AGENT by the party authorized hereunder to receive the Escrow Materials.
12. **OBLIGATIONS OF ESCROW AGENT.**
 - A. ESCROW AGENT (a) shall be responsible only for the acceptance, storage, and delivery of the Escrow Materials in accordance with the terms of this Escrow Agreement and for the exercise of due diligence in accordance with the high level of care accorded by fiduciary obligations; (b) shall have no obligation or responsibility to verify or determine that the Escrow Materials deposited with ESCROW AGENT by CONTRACTOR do, in fact, consist of those items which CONTRACTOR is obligated to deliver under this Escrow Agreement; (c) shall bear no responsibility whatsoever to determine the existence, relevance, completeness, currency, or accuracy of the Escrow Materials; and (d) shall be entitled to act in good faith reliance upon any written instruction, instrument, or signature believed in good faith to be genuine and to assume in good faith that any person purporting to give any writing, notice, advice, or written instruction in connection with, or relating to, this Escrow Agreement has been duly authorized to do so.

- B. In the event that ESCROW AGENT is, for any reason, uncertain of its obligation to deliver the Escrow Materials to the SANITATION DISTRICT pursuant to PARAGRAPH 8 (“DELIVERY OF ESCROW MATERIALS TO THE SANITATION DISTRICT”), it shall deliver such materials and it shall initiate an arbitration pursuant to PARAGRAPH 13 (“ARBITRATION”) to resolve such uncertainty. In the event the arbitrator determines that the Escrow Materials should not have been delivered to the SANITATION DISTRICT, the SANITATION DISTRICT shall return the original Escrow Materials to ESCROW AGENT and certify in writing that it has destroyed any copies of such Escrow Materials. Except as expressly provided in this Escrow Agreement, ESCROW AGENT agrees that it will not divulge, disclose, or otherwise make available to third parties whatsoever or make any use whatsoever of the Escrow Materials or any information deposited with it by CONTRACTOR in connection with this Escrow Agreement without the express prior written consent of CONTRACTOR.
13. **ARBITRATION.** Subsequent to ESCROW AGENT’s delivery of the Escrow Materials to the SANITATION DISTRICT pursuant to PARAGRAPH 8 (“DELIVERY OF ESCROW MATERIALS TO THE SANITATION DISTRICT”), if any dispute arises concerning the delivery of the Escrow Materials to the SANITATION DISTRICT by ESCROW AGENT, such dispute shall be settled by arbitration before a single arbitrator selected in accordance with the rules of the American Arbitration Association. Such arbitration shall take place in Orange County, California, within thirty (30) days following the SANITATION DISTRICT’s delivery of a Default Notice to ESCROW AGENT pursuant to PARAGRAPH 8 (“DELIVERY OF ESCROW MATERIALS TO THE SANITATION DISTRICT”), in accordance with the then-prevailing rules of the American Arbitration Association. The arbitrator shall be instructed to render his or her award in writing within fifteen (15) days after the end of the hearing and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. CONTRACTOR and the SANITATION DISTRICT shall share the cost of the arbitrator and fees equally. However, CONTRACTOR and the SANITATION DISTRICT shall bear their own respective attorneys’ and experts’ fees related to the arbitration.
14. **SUCCESSION OF INTEREST.** This Escrow Agreement is binding on all of CONTRACTOR’s successors-in-interest and all benefits of this agreement inure to the SANITATION DISTRICT.
15. **COMPENSATION.** All costs and expenses for establishing and maintaining the escrow, including, but not limited to, ESCROW AGENT’s compensation and expenses shall be shared equally between the SANITATION DISTRICT and CONTRACTOR. In the event ESCROW AGENT is required to perform any additional or extraordinary services as a result of being escrow holder, including intervention in any litigation or proceeding, ESCROW AGENT shall receive, upon prior written approval of the parties responsible for payment of ESCROW AGENT’s expenses, reasonable compensation for such services and be reimbursed for such reasonable costs incurred, including reasonable attorneys’ fees.
16. **DISCHARGE OF ESCROW AGENT.** ESCROW AGENT may resign and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation to CONTRACTOR and the SANITATION DISTRICT specifying a date when such resignation shall take effect, which date shall be at least sixty (60) days after the date of receipt of

such notice. Prior to the effective date of such resignation, with the prior written consent of the SANITATION DISTRICT, which shall not be unreasonably withheld, CONTRACTOR shall arrange for the services of a new escrow agent and CONTRACTOR and the SANITATION DISTRICT agree to execute and deliver another escrow agreement with such new escrow agent having substantially the same terms as this Escrow Agreement. Upon CONTRACTOR notifying ESCROW AGENT of the name and address of the new escrow agent, ESCROW AGENT agrees to forward the Escrow Materials to such new escrow agent provided that ESCROW AGENT has received payment for its fees and costs pursuant to PARAGRAPH 15 ("COMPENSATION").

17. **MODIFICATION.** These escrow instructions are irrevocable except as they may be revoked or modified by joint written consent of the SANITATION DISTRICT, CONTRACTOR, and ESCROW AGENT.
18. **GOVERNING LAW; VENUE.** This Escrow Agreement shall be construed, governed, and interpreted in accordance with the laws of the United States, State of California, and Orange County without any regard to the conflict-of-laws principles. CONTRACTOR hereby consents to said jurisdiction and venue in Orange County.
19. **NOTICES.** All notices required by this Escrow Agreement shall be sufficiently given:
 - A. upon delivery, if given in person with a signed receipt;
 - B. upon acknowledgment of receipt of electronic transmission, if given by facsimile transmission; or
 - C. five days after deposit in the mail in accordance with the provisions hereof, if given by registered or certified mail (air mail if international), postage prepaid, return receipt requested. All such notices shall be addressed as follows:

If to the SANITATION DISTRICT:

Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708-7018

Attention: Contracts Administration

And

Project Manager,
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708-7018

Attention: Donald Cutler

With a Copy To:

Bradley R. Hogin, Esq.
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200

Costa Mesa, CA 92626

If to CONTRACTOR:

ABB Inc.
3055 Orchard Drive
San Jose, CA 95134

If to ESCROW AGENT:

or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this PARAGRAPH 19 ("NOTICES").

- 20. **SEVERABILITY.** In the event that any provision of this Escrow Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court or arbitration decision, such unenforceability or invalidity shall not render this Escrow Agreement unenforceable or invalid as a whole and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.
- 21. **WAIVER.** The failure of any party hereto to require performance by another party of any provision hereof shall not affect the full right to require such performance at any time thereafter nor shall the waiver by any party of a breach of any provision hereof by any other party be taken or held to be a waiver of the provision itself.
- 22. **COUNTERPARTS.** This Escrow Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- 23. **SURVIVAL.** The following provisions shall survive any (a) termination of this Escrow Agreement or (b) partial termination of this Escrow Agreement with respect to a portion of the Escrow Materials delivered pursuant to PARAGRAPH 8 ("DELIVERY OF ESCROW MATERIALS TO THE SANITATION DISTRICT"); PARAGRAPH 10 ("USE OF ESCROW MATERIALS, CONFIDENTIALITY, LIABILITY FOR DISCLOSURE"), PARAGRAPH 13 ("ARBITRATION"), PARAGRAPH 14 ("SUCCESSION OF INTEREST"), PARAGRAPH 18 ("GOVERNING LAW; VENUE"), PARAGRAPH 19 ("NOTICES"), PARAGRAPH 20 ("SEVERABILITY"), PARAGRAPH 21 ("WAIVER"), PARAGRAPH 22 ("COUNTERPARTS"), and PARAGRAPH 24 ("ENTIRE AGREEMENT").
- 24. **ENTIRE AGREEMENT.** This Escrow Agreement, together with any schedule hereto and the Prime Agreement, constitute the entire agreement between the parties with respect to the subject matter hereof. This Escrow Agreement supersedes all oral, written, or other communications concerning the subject matter of this Escrow Agreement and shall not be altered, amended, or modified except in a writing signed by the duly authorized officers of each party hereto.

25. **PRIORITY OF DOCUMENTS.** For the purposes of resolving inconsistencies and ambiguities of this document and the Prime Agreement, the document highest in precedence per the Prime Agreement shall control.

[Intentionally left blank. Signatures follow on next page.]

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IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as of the last date and year hereinafter written.

ORANGE COUNTY SANITATION DISTRICT

ABB INC.

By: _____
John B. Withers, Chair of the Board

By: _____

Printed Name: _____

Date: _____

Date: _____

ATTEST

ESCROW AGENT

By: _____
Kelly A. Lore, Clerk of the Board

By: _____

Printed Name: _____

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____
Bradley R. Hogin, General Counsel

Date: _____