

Date: May 7, 2019

To: Dr. Michael Lubelfeld, Superintendent of Schools
Members of the Board of Education

From: Christopher Wildman, CPA, Chief Financial Officer, and Treasurer
Kevin Liebe, Director of Operations, Facilities, and Transportation

Subject: Approval of the Proposal for the Replacement of the BAS Master Controllers at Red Oak and Indian Trail Elementary Schools

Policy Alignment: Policy 4:60 Purchase and Contract

Strategic Plan Alignment: We practice fiscal responsibility while maintaining an operating fund balance of at least 25%.

Disposition: Action

Executive Summary:

As part of the 5-Year Capital Plan, replacement of the building automation system (BAS) master controllers at Red Oak and Indian Trail Elementary Schools were included for the 2019-20 budget year. Our existing legacy/obsolete Trane BAS master controls will be replaced/upgraded with a new Tracer SC+ web-based BACnet control system. The intuitive online tools provide improved efficiencies, comfort and reduction in energy costs when incorporated with Trane's Intelligent Services and Maintenance Program, which is included in this proposal. The Tracer SC+ also eliminates the need for a dedicated computer and monitor so you can manage system performance whenever and wherever it is convenient.

Through the US Communities purchasing cooperative, Trane Building Services was awarded the contract based upon a public bid through a lead agency (government entity/educational institution), using a competitive solicitation process consistent with applicable procurement laws and regulations. Since Trane Building Services has a contract through US Communities, no further Public Bid is required.

Based on this information, Administration recommends that at the May 7, 2019 Board Meeting, the Board award the contract to Trane Building Services for the Replacement of the BAS Master Controllers at Red Oak (\$45,223) and Indian Trail (\$47,945) Elementary Schools in the amount of \$93,168.00, which was below our budgeted amount in the 5-Year Capital Plan.

Recommendation: Approval

Suggested Motion: May I have a motion to move that the Board award the contract to Trane Building Services for the Replacement of the BAS Master Controllers at Red Oak and Indian Trail Elementary Schools in the amount of \$93,168.00.



Trane Tracer SC+ Controls Proposal



Controls Proposal For:

Kevin Liebe
Director of Operations
North Shore School District 112
1. Indian Trail Elementary
2. Red Oak Elementary
3. Wayne Thomas Elementary
2023 St. Johns
Highland Park, IL 60035 U.S.A.

Local Trane Office:

Trane U.S. Inc.
7100 South Madison
Willowbrook, IL 60527-5505

Local Trane Representative:

Patrick Heneberry
Account Executive
Cell: (630) 930-2551
Office: (630) 734-6149

Proposal ID: 2611204

US Communities #: 30-191240-19-003

US Communities Contract #: USC 15-JLP-023

Date: April 4, 2019





TRANE CONTROLS PROPOSAL

Executive Summary

Trane is pleased to present a solution to help **North Shore School District 112** reach its performance goals and objectives. This proposed project will enhance your operation by helping you to optimize your resources, improve the comfort in your facility, and reduce energy costs.

We appreciate the effort from **North Shore School District 112** to assist in the system analysis and business discussions. Because of your efforts, we were able to develop a proposal that offers solutions to your specific concerns, based on Trane system knowledge and application expertise.

As your partner, Trane is committed to providing controls to achieve a comfortable building environment for the people who occupy the building. For the people who own, manage and maintain the building, Trane is committed to providing reliable building management systems and control products that improve system performance.

Some key features and benefits **North Shore School District 112** should expect from this project are highlighted below.

- Tracer SC+ provides a web-based front end for your facility that can be accessed with most PC's, Tablets and Smart Phones. Tracer SC + eliminates the need for a dedicated computer and monitor so you can manage system performance whenever and wherever it is convenient.
- Tracer SC +'s building management software tool reduces scheduling, reporting and system application chores to simple "point and click" tasks. The intuitive online tools provide improved efficiencies, comfort and reduction in energy costs when incorporated with Trane's Intelligent Services and Maintenance Program included in this proposal.
- BACnet IP, ms/tp, Wireless BACnet and LonTalk capability for future expansion and replacement
- Energy saving opportunities with improved access to the building HVAC schedule
- Energy saving opportunities with Area Control and Unoccupied set point control
- Energy saving opportunities by utilizing Optimal Start/Stop scheduling
- Replacement of legacy/obsolete control system with a new Tracer SC+ web-based BACnet control system.

Proposed Tracer Summit to Trane Tracer SC+ Architecture

- Trane will renew your aging BAS with new technology by using the Trane System Controller (SC+). This will provided a flexible and economical migration path through our proactive approach to address your legacy/aging Building Automation System. The Trane Team shall provide and install a new web-enabled BACnet Native BAS solution to replace/ upgrade existing Trane Tracer Summit System.

Trane appreciates the opportunity to earn your business. This investment will provide **North Shore School District 112** with the capability to significantly reduce operating costs and improve comfort conditions in your facility.

We look forward to partnering with **North Shore School District 112** for all of your control products and service needs. I will be contacting you soon to discuss the proposal and to schedule the next steps.

WE VALUE THE CONFIDENCE YOU HAVE PLACED IN TRANE AND LOOK FORWARD TO PARTNERING WITH YOU.

Patrick Heneberry
Account Executive, Trane U.S. Inc.



Prepared For:
Kevin Liebe

Date:
April 4, 2019

Job Name:
D112 Tracer SC+ Upgrades

Proposal Number: 2611204

Delivery Terms:
Freight Allowed and Prepaid – F.O.B Factory

Payment Terms:
Net 30

Proposal Expiration Date:
30 Days

Scope of Work

- Provide and install Tracer SC+ web-based BAS System
 - o Replace the existing **Obsolete** BMTX BCU controllers
- Provide and set-up Standard Tracer SC Graphics. 3D floor plan drawings showing VAV locations, space temperature sensor readings and approximate equipment locations.
 - o *Electric AutoCAD or PDF floor plans must be provided to Trane for drawing recreation. Mechanical HVAC drawings must be available for Trane Technician to map space temperature points and HVAC equipment locations. Please provide upon acceptance.*
- Free** Trane Tracer SC+ Operator Training Class at Chicago Willowbrook Location (*to be scheduled*)
- Free** On-Site End User Training.
- Set-up and configuration for remote diagnostics and analytics with Alarm Notification. With owner provided access.
- All work to be performed during normal business hours (7:00am to 4:00pm, M-F, non-holidays)
- All equipment has a 1 year parts and labor warranty from completion (not to exceed 18 months from shipment) unless otherwise noted
- North Shore School District 112** will have access to Trane Chicago's Command Center/Energy Center for Remote BAS Support

Notes/Qualifications/Controls Systems Service Not Included

- All work will be completed by Trane Chicago. Trane will handle any necessary subcontractor coordination.
- Trane can coordinate and complete all jobs while school is in session. Trane will jointly plan these projects with the NSSD112 facilities staff once work starts so that the learning environment is not disrupted. Trane has references for similar jobs and can supply them upon request. Once equipment is ordered each job will take 3-5 weeks to complete.
- Due to the age and condition of the end devices around the building Trane is not responsible for any failure of these components. If failures occur they will be quoted in addition to this proposal.**
 - o **Trane can still communicate with these devices and they can be replaced wirelessly as they fail.**
 - o **Depending on the location of a device/sensor and future goals of the site wireless communication can be provided but a Wireless Coordinator may be necessary depending on the location.**
- Pricing includes above mentioned items only. Customer will be alerted to any additional work/components necessary beyond above scope for approval prior to correcting.
- Documented Point to Point and/or LEED Commissioning Assistance
- Premium Time Labor
- Any network connectivity issues for the site.
- Repair or replacement of any additional equipment being controlled that is found to be defective
- Air and/ or Water Testing and Balancing.
- PC Workstation(s), Laptop(s)
- Trane will not perform any work if working conditions could endanger or put at risk the safety of our employees or subcontractors



Owner Furnished Items

- Network Drops and IP addresses
- If owner elects not to use the Trane provided server then please provide a virtual server with MS Server 2012 and a copy of SQL.
- All PCs that will interface system require one of the following web browsers
 - o Google Chrome
 - o Fire Fox
 - o IE 10 or greater.

Financial Items Not Included

- Applicable sales tax or use tax is excluded
- Permits
- Bid Bond
- Payment and Performance Bond
- Liquidated or Consequential Damages
- Demurrage or Storage Charges
- Participation in OCIOP or CCIP Insurance Programs



Pricing and Acceptance

Kevin Liebe
Director of Operations
North Shore School District 112
2023 St. Johns
Highland Park, IL 60035 U.S.A.

- Sites:
- North Shore School District 112
 1. Indian Trail Elementary
 2. Red Oak Elementary
 3. Wayne Thomas Elementary

Indian Trail Elementary
Total Net Price (*Excluding Sales Tax*).....\$47,945.00

Red Oak Elementary
Total Net Price (*Excluding Sales Tax*).....\$45,223.00

Wayne Thomas Elementary
Total Net Price (*Excluding Sales Tax*).....\$46,143.00

Total Investment:
Total Net Price (*Excluding Sales Tax*).....**\$139,311.00**

Respectfully submitted,

Patrick Heneberry
Account Executive
Trane U.S. Inc.
(630) 930-2551



ACCEPTANCE

This proposal is subject to Customer's acceptance of the attached Trane Terms and Conditions (Installation).

We value the confidence you have placed in Trane and look forward to working with you.

Submitted By: Patrick Heneberry	Cell: (630) 930-2551 Office: (630) 734-3200 Proposal Date: April 4, 2019
CUSTOMER ACCEPTANCE North Shore School District 112	TRANE ACCEPTANCE Trane U.S. Inc.
Authorized Representative	Authorized Representative
Printed Name	Printed Name
Title	Title
Purchase Order	Signature Date
Acceptance Date:	License Number:



TERMS AND CONDITIONS – QUOTED SERVICE

“Company” shall mean Trane U.S. Inc. dba Trane for Company performance in the United States and Trane Canada ULC for Company performance in Canada.

To obtain repair service within the scope of Services as defined, contact your local Trane District office identified on the first page of the Agreement by calling the telephone number stated on that page. That Trane District office is responsible for Trane’s performance of this Agreement. Only Trane authorized personnel may perform service under this Agreement. For Service covered under this Agreement, Trane will be responsible for the cost of transporting a part requiring service.

1. Agreement. These terms and conditions are an integral part of Company’s offer and form the basis of any agreement (the “Agreement”) resulting from Company’s proposal (the “Proposal”) for the services (the “Services”) on equipment listed in the Proposal (the “Covered Equipment”). **COMPANY’S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.**

2. Acceptance. The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer’s order shall be deemed acceptance of the Proposal subject to Company’s terms and conditions. If Customer’s order is expressly conditioned upon the Company’s acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company’s terms and conditions attached or referenced serves as Company’s notice of objection to Customer’s terms and as Company’s counter-offer to provide Services in accordance with the Proposal. If Customer does not reject or object in writing to Company within 10 days, the Company’s counter-offer will be deemed accepted. Customer’s acceptance of the Services by Company will in any event constitute an acceptance by Customer of Company’s terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Services. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer’s obligation to pay for Services rendered by Company to the date of cancellation.

3. Cancellation by Customer Prior to Services; Refund. If Customer cancels this Agreement within (a) thirty (30) days of the date this Agreement was mailed to Customer or (b) twenty (20) days of the date this Agreement was delivered to Customer, if it was delivered at the time of sale, and no Services have been provided by Company under this Agreement, the Agreement will be void and Company will refund to Customer, or credit Customer’s account, the full Service Fee of this Agreement that Customer paid to Company, if any. A ten percent (10%) penalty per month will be added to a refund that is due but is not paid or credited within forty-five (45) days after return of this Agreement to Company. Customer’s right to cancel this Agreement only applies to the original owner of this Agreement and only if no Services have been provided by Company under this Agreement prior to its return to Company.

4. Cancellation by Company. This Agreement may be cancelled by Company for any reason or no reason, upon written notice from Company to Customer no later than 30 days prior to performance of any Services hereunder and Company will refund to Customer, or credit Customer’s account, that part of the Service Fee attributable to Services not performed by Company. Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid.

5. Services Fees and Taxes. Fees for the Services (the “Service Fee(s)”) shall be as set forth in the Proposal and are based on performance during regular business hours. Fees for outside Company’s regular business hours and any after-hours services shall be billed separately according to the then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fee, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys’ fees) incurred by Company in attempting to collect amounts due.

6. Payment. Payment is due upon receipt of Company’s invoice. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys’ fees) incurred by Company in attempting to collect amounts due or otherwise enforcing these terms and conditions.

7. Customer Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when; or (2) any general assignment for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead)

8. Performance. Company shall perform the Services in accordance with industry standards generally applicable in the state or province where the Services are performed under similar circumstances as of the time Company performs the Services. Company is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company. Company may refuse to perform any Services or work where working conditions could endanger property or put at risk the safety of people. Parts used for any repairs made will be those selected by Company as suitable for the repair and may be parts not manufactured by Company. Customer must reimburse Trane for services, repairs, and/or replacements performed by Trane at Customer’s request beyond the scope of Services or otherwise excluded under this Agreement. The reimbursement shall be at the then prevailing applicable regular, overtime, or holiday rates for labor/labour and prices for materials. Prior to Trane performing the additional services, repairs, and/or replacements, Customer may request a separate written quote stating the work to be performed and the price to be paid by Customer for the work.

9. Customer Obligations. Customer shall: (a) provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; and (b) unless otherwise agreed by Customer and Company, at Customer’s expense and before the Services begin,



Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA, state, or provincial industrial safety regulations or any other applicable industrial safety standards or guidelines.

10. Exclusions. Unless expressly included in the Proposal, the Services do not include, and Company shall not be responsible for or liable to the Customer for, any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;
- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement ("Pre-Existing Conditions") including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould, bacteria, microbial growth, fungi or other contaminants or airborne biological agents; and
- (e) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included with the Proposal.

11. Limited Warranty. Company warrants that: (a) the material manufactured by Company and provided to the Customer in performance of the Services is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement and (b) the labor/labour portion of the Services is warranted to have been properly performed for a period of 90 days from date of completion (the "Limited Warranty"). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any improperly performed labor/labour. No liability whatsoever shall attach to Company until the Services have been paid for in full. Exclusions from this Limited Warranty include claims, losses, damages, and expenses in any way connected with, related to, or arising from failure or malfunction of equipment due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; unauthorized or improper parts or material; refrigerant not supplied by Trane; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Some components of Company equipment may be warranted directly from the component supplier, in which case this Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by the component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. Equipment, material and/or parts that are not manufactured by Company are not warranted by Company and have such warranties as may be extended by the respective manufacturer.

THE REMEDIES SET FORTH IN THIS LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, DURABILITY AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE OR REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. COMPANY EXPRESSLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS. THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. Indemnity. To the maximum extent permitted by law, Company and Customer shall indemnify and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party or third parties. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify and hold harmless will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.

13. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY UNDER THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.



14. Asbestos and Hazardous Materials. The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance of the Services only when the affected area has been rendered harmless.

15. Insurance. Company agrees to maintain the following insurance during the term of the contract with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company or its insurer waive its right of subrogation

16. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

17. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Services are performed without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the premises are owned and/or operated by any agency of the United States Federal Government, determination of any substantive issue of law shall be according to the United States Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the Services. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. No modifications, additions or changes may be made to this Agreement except in a writing signed by Company. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.

18. Equal Employment Opportunity/Affirmative Action Clause. Company is a United States federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250; and Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

19. U.S. Government Contracts.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement / Purchase Order are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business. **The following provision applies only to indirect sales by Company to the US Government.** As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Services are in connection with a U.S. government contract, Customer agrees and hereby certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to contractor's Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written



authorization and approval from Company prior to providing any government official any information about Company's performance of the Services that are the subject of this offer or agreement, other than the Proposal or this Agreement.

20. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-10.48 (1114)
Supersedes 1-10.48 (0614)