



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** June 28, 2016
From: Marc Puckett, Assistant Town Manager **Item No:** 4
Subject: PURCHASE OF AIR CONDITIONER FOR APPLE VALLEY GOLF COURSE

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council authorize the Town Manager to approve the purchase of a chiller (air conditioner) from Dean Howard Heat & Air, Inc. in the amount of \$68,180.

SUMMARY:

Pursuant to section 3.12.270(3) of the Municipal Code, on June 21, 2016, the Town Manager exercised his authority to approve the emergency repair of one (1) of the chiller and cooling towers (air conditioner) at the Apple Valley Golf Course (AVGC) in the amount of \$68,180 by Dean Howard Heat & Air, Inc. pursuant to its proposal dated June 13, 2016, to preserve the public's health, safety, and welfare. Section 3.12.270(3) requires that all purchases made pursuant to this section are submitted to Council for ratification at the next regularly scheduled Town Council meeting after the purchase is authorized.

BACKGROUND:

The AVGC is provided with air conditioning through an existing forty (40) ton chiller and cooling tower. The one (1) cooling tower is approximately 40-50 years old, has far exceeded its anticipated life span, and has repeatedly failed several times over the last month. While staff has been able to repair the unit to function at less than 50% efficiency, its repeated failures necessitate immediate replacement, and recommended emergency repair on the basis of the 4-6 week lead time from the manufacturer for the unit, additional transit time, plus an additional 1-2 weeks for the removal and replacement unit to be installed. Initiating the emergency repairs allows staff to ensure the replacement of the chiller and cooling tower is completed as soon as possible to mitigate any potential risks associated with the excessive summer heat demand imposed on the system.

Staff obtained two (2) quotes for the required chiller and cooling tower replacement, as follows:

- Dean Howard Heat & Air, Inc.; Apple Valley, CA \$68,180
- Trane U.S., Inc.; Los Angeles, CA \$100-120,000

Staff reviewed and recommended to the Town Manager that he authorize issuance of a Purchase Order in the amount of \$68,180 to Dean Howard Heat & Air, Inc. on the basis of the urgent need to initiate the repairs given the long-lead time to obtain the parts and supplies, and complete the work.

CONCLUSION:

Staff recommends adoption of the recommended action.

FISCAL IMPACT:

Funds for this emergency repair will be made available from the Apple Valley Golf Course Fund in the amount of \$68,180.

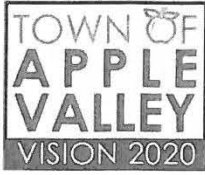
ATTACHMENTS:

1. Municipal Code Section 3.12.270(3)
2. Town of Apple Valley Purchase Order
3. Dean Howard Heat & Air Inc. Estimate
4. February 25, 2016 Proposal from Trane U.S., Inc.

3.12.270 - Exceptions to bidding procedures.

Notwithstanding any provision of this Chapter to the contrary, the formal and informal bidding procedures and requirements may be dispensed with in any of the following instances:

- (1) When the estimated contract amount involved is less than \$5,000.00;
- (2) When the supplies, equipment or services can reasonably be obtained from only one vendor;
- (3) The Town Manager may authorize the purchase of materials, supplies, equipment and services in an emergency situation when it is determined that service impacting the public health, safety or welfare would be interrupted if the normal purchasing procedures were followed. All emergency purchases, which would otherwise require formal bidding procedures, made pursuant to this Subsection shall be submitted to the Town Council for ratification at the next regular Council meeting after the purchase is authorized;
- (4) The Town Council may authorize the execution of contracts for personal services, professional services, consultant services, contractual services, and for other, non-public projects without observing the bidding procedures provided herein where the amount of the contract exceeds the value of \$50,000.00;
- (5) The Town Manager may authorize entering into contracts for personal services, professional services, consultant services, contractual services and for other, non-public projects without observing the bidding procedures provided herein where the amount of the contract does not exceed the value of \$50,000.00 and the contract falls within the guidelines for local preference credit as specified under Section 3.12.290;
- (6) When the contract involves the acquisition of supplies, equipment or services entered into with another governmental entity;
- (7) The Town Council may authorize the execution of a lease or leases for office space for the Town government without observing the bidding procedures provided herein irrespective of the term of the lease or leases or the amount of rent and other charges to be paid by the Town under the lease or leases;
- (8) The Town Manager is authorized to enter into licensing contracts or annual support contracts for previously approved purchases of capital assets where the amount of the contract does not exceed \$50,000.00; provided there exists an amount of money in the fund account against which such contract is to be charged to fully pay for such contract;
- (9) Assistant Town Managers or Directors are authorized to enter into licensing contracts or annual support contracts for previously approved purchases of capital assets where the amount of the contract does not exceed \$10,000.00; provided there exists an amount of money in the fund account against which such contract is to be charged to fully pay for such contract;
- (10) Without further contracting, solicitation, or formal bidding as described in this Chapter, the Town Council may authorize, or may authorize the Town Manager to allow, the Town's Finance Director or the Purchasing Agent to contract for the purchase of supplies, equipment or services with other governmental jurisdictions or public agencies who are making or have made the same such purchases through legal, competitively awarded contracts in effect at the time of the Town's entrance into that same contract (commonly referred to as "piggybacking").



TOWN OF APPLE VALLEY
 14955 DALE EVANS PARKWAY
 APPLE VALLEY, CA 92307

DATE
6/20/2016

PO NUMBER
1516-000051

VENDOR: 012720
 DEAN HOWARD HEAT & AIR INC.
 13182 PARAISO RD
 APPLE VALLEY, CA 92308

SHIP TO: TOWN OF APPLE VALLEY
 ATTN: FACILITIES
 14955 DALE EVANS PKWY
 APPLE VALLEY, CA 92307

FOB Point:
 Terms: Net 30 Days
Req Del Date:
Contract No:
Special Inst:

Req. No: 000674
Dept: FACILITIES
Contact: RUDSELL, CHRISTINA

Quantity	Unit	Description	Unit Price	Ext. Price
		Purchase/installation of a chiller for the golf course.		68,180.00

BILL TO: TOWN OF APPLE VALLEY ACCOUNTS PAYABLE 14955 DALE EVANS PARKWAY APPLE VALLEY, CA 92307	SUBTOTAL	68,180.00
	TAX	0.00
	FREIGHT	0.00
	TOTAL	68,180.00

Account Number	Amount	Account Number	Amount
E 5710-7716-7655-0000	68,180.00		

Finance Manager

DEPARTMENT COPY (TO RETAIN)

Dean Howard Heat & Air Inc.

Estimate

13182 Paraiso Road
 Apple Valley, CA 92308
 (760)949-8225 cell (760)559-8100
 License #442666 B,C-20
 fax(760)949-8221

DATE	ESTIMATE NO.
6/13/2016	2187

NAME / ADDRESS
Town of Apple Valley/attn. Tom Mc Keon 14955 Dale Evans Parkway Apple Valley, Ca. 92307 tom-403-5687 golf course chiller repl.

PROJECT

DESCRIPTION	TOTAL
HEATING AND AIR CONDITIONING AS FOLLOWS:	0.00
WE WILL DECOMMISSION AND REMOVE FROM PREMISES THE EXISTING 40 TON CHILLER, AMCOT COOLING TOWER, SUPPLY AND RETURN CHILLED WATER AND CONDENSER WATER PIPING AND THE HIGH VOLTAGE COONDUIT AND WIRING.	0.00
1. FORM AND POUR A 6 INCH CONCRETE MOUNTING PLATFORM AS NEEDED TO PROPERLY SECURE THE NEW 40 TON AIR COOLED CHILLER	0.00
2.SET AND SECURE THE NEW 40 TON AIR COOLED CHILLER AND RUN NEW SUPPLY AND RETURN CHILLED INSULATED WATER LINES AND TIE INTO THE EXISTING CHILLED WATER PIPING IN THE MECHANICAL ROOM.	0.00
3. RUN NEW CONDUIT AND WIRING FOR BOTH THE HIGH VOLTAGE AND CONTROL VOLTAGE WIRING FROM THE MECHANICAL ROOM TO THE NEW 40 TON CHILLER	0.00
4. START UP THE NEW 40 TON CHILLER AND OBSERVE OPERATION FOR A MINIMUM OF SIX HOURS AND RECORD PRESSURES, TEMPERATURES, VOLTAGES, AND AMPERAGE DRAWS WITH THE MANUFACTURERS PERSONEL.	0.00
5. WARRANTEES AS FOLLOWS: ONE YEAR LABOR FOR ALL WORKMANSHIP AND PARTS REPLACEMENT BY THE CONTRACTOR. ONE YEAR REPLACEMENT OF ANY DEFECTIVE PARTS BY THE MANUFACTURER OF THE EQUIPMENT.	0.00
AMOUNT FOR ALL LABOR, EQUIPMENT, MATERIALS AND TAXES--\$58,780.00	58,780.00
(LABOR AT STANDARD WAGES. PREVAILING WAGES DISCLOSED BELOW)	0.00
EXCLUSIONS- ANY WORK NOT LISTED ABOVE	0.00
FURTHER RECOMMENDATIONS- INSPECT THE OPERATING CONDITION OF THE EXISTING HEATING HOT WATER BOILER AND THE EXISTING CHILLED WATER AND HEATING HOT WATER FAN COIL UNITS AND ASSOCIATED CONTROLS	0.00
OPTION TO PAY PREVAILING WAGES ON THIS JOB WILL ADD \$9,400.00 TO BID PRICE	0.00
Thank you for your business.	
TOTAL	\$58,780.00

SIGNATURE _____

+ 9400
 68180.00

5710-7716-7655
~~9300~~



TRANE®

17760 Rowland Street
Industry, CA 91748

Tel : (626) 913-7913
Fax: (626) 913-7923
Email: Kyle.kriete@trane.com

February 25, 2016

Apple Valley Golf Course

15200 Rancherias Road
Apple Valley, CA 92307

Chiller Replacement Budgetary

Thank you for the opportunity to present this proposal to install a new air cooled chiller for your central cooling system. Trane will provide excellent value to Apple Valley Golf Course and exceed your expectations through teamwork, innovation, and commitment to customer satisfaction. Our promise is a long-term commitment to you. The entire organization stands behind this proposal, and I consider myself personally accountable for all commitments made in it to you.

I will be contacting you soon to discuss the following proposal and to schedule the next steps.

Thank you for your active consideration of Trane.

A handwritten signature in black ink, appearing to read 'Kyle Kriete'.

Kyle Kriete
Direct Sales Account Manager- Commercial Market
Trane U.S. Incorporated

Base Bid Air Cooled Chiller- General Equipment Specifications:

Quantity	Description	Model Number
1	40ton Air Cooled Chiller One year parts and labor warranty on entire unit	CGAM040

Air Cooled Chiller Specification: 40 ton nominal capacity, 230V 3Phase, high efficiency performance, UL listed, AHRI certified, high ambient selection, evaporator flow rate 90gpm, IPLV/NPLV 13.6, Unit input 43.8kW

Project Scope Of Work:

1.1 General Work Scope Items and Project Management

- Coordinate onsite meeting with customer to review project.
- Provide project management for entire duration of the project.
- Perform engineering services as outlined in section 1.2 prior to ordering equipment/commencing installation.

1.2 Project Scope Of Work- Cooling Tower Replacement

- Provide labor to meet with the City to submit, conduct site meeting with city inspectors, and assist in attainment of a mechanical permit.
- Remove and salvage existing cooling tower and chiller.
- Provide and install the selected air cooled chiller.
- Furnish new concrete pad to place the chiller and fencing.
- Set and install new air cooled chiller.
- Rework existing chilled water piping to accommodate the new chiller.
- Rework existing electrical to accommodate the new chiller.
- Prepare the fluid cooler to be crane lifted off the roof.
- Provide crane and rigging service to remove the existing cooling tower. Provide the crane and rigging service to set the new equipment on the roof including the new perimeter base rail for the new fluid cooler. The crane can be set on the street.
- Utilize existing electrical service for the new equipment. Trane assumes the existing electrical can handle the new chiller.
- Reuse existing chilled water pumps.
- Install (2) new analog thermometers (1) for chilled water supply and (1) for chilled water return. Provide and install two temperature sensor wells.
- Set flow rate of the closed circuit cooling tower at the roof for the manufacturers specifications.

Exclusions- The following items are excluded from this proposal:

- Water balancing.
- Temporary cooling.
- Structural Modifications. I.E.- Modifications to the building structure.
- Eye wash station.
- Existing equipment & system deficiencies.
- Title 24 Compliance Measures (if required).
- Permit & Plan Check Fees.

BASE PRICING INCLUDING APPLICABLE TAXES \$100,000 - \$120,000*

Notes:

1. Warranty on parts and labor for Scope Of Service- Installation in this proposal is 12 months from installation completion unless otherwise stated in work scope herein. Manufacturers warranty applies to the products identified herein.

It is agreed that Trane U.S. Inc. will supply materials and services specifically listed herein. Any work in addition to that described in this proposal will be performed only with written authorization at the extra charge quoted. The proposed price does not include the replacement of any part/item or labor not specifically listed in the following proposal. This proposal is subject to acceptance within 30 days from date of issuance- Trane reserves the right to withdraw the following quotation at any time. Note attached Trane terms and conditions.

If you should have any questions in regard to this matter, please feel free to call on me at (626) 800-8964; or kyle.kriete@trane.com.

Respectfully submitted,



Kyle Kriete
 Direct Sales Account Manager- Commercial Market
 Trane U.S. Incorporated
 CA Contractor License # 561796

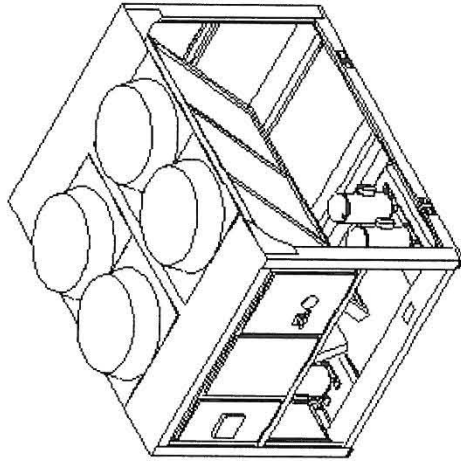
SUBMITTED BY: Robert Huebner		Proposal Date: February 25, 2016	
_____		License Number: 561796	
Account Manager			
CUSTOMER ACCEPTANCE		TRANE ACCEPTANCE	
_____		Trane U.S. Inc.	
Authorized Representative		_____	
_____		Authorized Representative	
Printed Name _____		_____	
Title _____		Title _____	
Purchase Order _____		_____	
Acceptance Date _____		Signature Date _____	

INLET/OUTLET WATER
CONNECTION SIZE

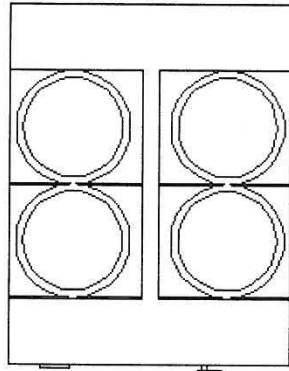
3" (80mm)

BRAZE PLATE
WATER VOLUME/STORAGE

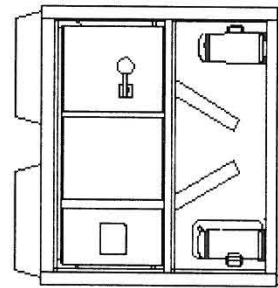
2.4 GAL (9.1 LITERS)



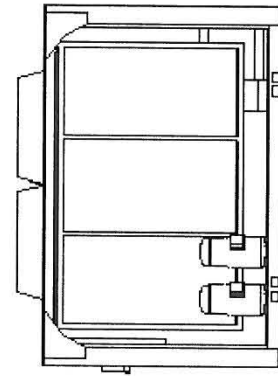
ISOMETRIC VIEW



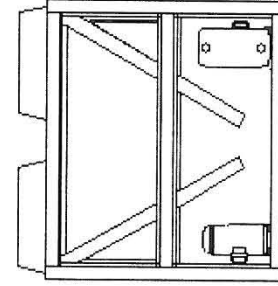
TOP VIEW



FRONT VIEW



RIGHT SIDE VIEW



BACK VIEW

Standard Contract Terms and Conditions are attached as part of this proposal.

TERMS AND CONDITIONS - INSTALLATION

"Company" shall mean Trane U.S. Inc. dba Southern California Trane

- 1. Acceptance.** 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 work described (the "Work"). 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's order is an acceptance of the Proposal, without the addition of any other terms and conditions of sale or any other modification, this document shall be treated solely as an acknowledgment of such order. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with these 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 Work in accordance with scope and terms and conditions of the Proposal. If Customer does not reject or object in writing to Company within 10 days, Company's counter-offer will be deemed accepted. Customer's acceptance of goods and/or Work by Company will in any event constitute an acceptance by Customer of these terms and conditions. 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 Work rendered by Company to the date of cancellation.
- 2. Pricing and Taxes.** Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer's tax exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Following acceptance without addition of any other terms and condition of sale or any other modification by Customer the prices stated are firm provided that notification of release for immediate production and shipment is received at the factory not later than 3 months from order receipt. If such release is received later than 3 months from order receipt date, prices will be increased a straight 1% (not compounded) for each one-month period (or part thereof) beyond the 3 month firm price period up to the date of receipt of such release. If such release is not received within 6 months after date of order receipt, the prices are subject to renegotiation, or at Company's option, the order will be cancelled. Any delay in shipment caused by Customer's actions will subject prices to increase equal to the percentage increase in list prices during that period of delay and Company may charge Customer with incurred storage fees.
- 3. Exclusions from Work.** Company's obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.
- 4. Performance.** Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer's expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.
- 5. Payment.** Customer shall pay Company's invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 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 and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer maTrane payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.
- 6. Time for Completion.** Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so.
- 7. Access.** Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site' owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company's access to correct any emergency condition shall not be restricted.
- 8. Completion.** Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company's representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer's failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.
- 9. Permits and Governmental Fees.** Company shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.
- 10. Utilities During Construction.** Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.
- 11. Concealed or Unknown Conditions.** In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.
- 12. Pre-Existing Conditions.** Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi. Company also 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.
- 13. Asbestos and Hazardous Materials.** Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. 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 exclusively 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 and shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.
- 14. 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 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work 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; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour 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.

15. Customer's 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 declaring termination, upon which event Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead): (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or if Trane the benefit of any statute for bankrupt or insolvent debtors, 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 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.

16. Indemnity. Company and Customer shall indemnify, defend 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 tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other 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. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

17. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS), OR PUNITIVE DAMAGES WHETHER CLAIMED UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR FACTS. NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS.

18. Patent Indemnity. Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

19. Warranty. Company warrants that for a period of 12 months from the date of substantial completion (a) the equipment manufactured by Company and furnished hereunder is free from defects in material and manufacture; and (b) the labor/labour furnished is warranted to have been properly performed (the "Warranty"). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Warranty period. Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that Customer can utilize the Work for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty period, Company will correct the defect or furnish replacement equipment (or, at its option, parts thereof) and, if said equipment was installed pursuant hereto, labor associated with the replacement of parts or equipment not conforming to this Warranty. Defects must be reported to Company within the Warranty period. Exclusions from this Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant or lost product. Additional terms and conditions of warranty coverage are applicable for refrigeration equipment. Some components of Company equipment may be warranted directly from the component supplier, in which event this Company Warranty shall not apply to those components but shall be pursuant to the warranty given by such component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. 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 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 AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE, UNLESS EXPRESSLY WARRANTED IN WRITING FOR CERTAIN HUSSMANN BRANDED EQUIPMENT, COMPANY MATRANE NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED REGARDING PREVENTION BY THE WORK, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. COMPANY SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE WORK OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.**

20. Insurance. Company agrees to maintain the following insurance while the Work is being performed 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 subject to Company's manuscript additional insured endorsement. In no event does Company waive right of subrogation.

21. 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 Work is performed. 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 Work is performed. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the 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 subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. 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, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's 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.

22. Equal Employment Opportunity/Affirmative Action Clause. Company is a 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 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.

23. U.S. Government Work. 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 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 Work is in connection with a U.S. Government contract, Customer 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 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 work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

1-26.251-10(0610)
Supersedes 1-26.251-10(1209)