

**CITY OF MIRAMAR  
PROPOSED CITY COMMISSION AGENDA ITEM**

**Meeting Date:** September 17, 2018

**Presenter's Name and Title:** Bernard Buxton-Tetteh, Director of Public Works on behalf of Public Works Department and Alicia Ayum, Director of Procurement, on behalf of Procurement Department

**Temp. Reso. Number:** 6769

**Item Description:** Temp. Reso. No. 6769, APPROVING THE PURCHASE OF CONTROLS UPGRADE AND EXPANSIONS FOR ENERGY MANAGEMENT SYSTEM ("EMS") AT VARIOUS LOCATIONS THROUGHOUT THE CITY FROM TRANE U.S. INC., IN THE AMOUNT OF \$73,020, FOR A TERM OF TWO YEARS, COMMENCING SEPTEMBER 1, 2018; UTILIZING US COMMUNITIES CONTRACT NO. 15-JLP-023 (*Director of Public Works, Bernard Buxton-Tetteh and Director of Procurement, Alicia Ayum*).

Consent ☒ Resolution ☐ Ordinance ☐ Quasi-Judicial ☐ Public Hearing ☐

**Instructions for the Office of the City Clerk:**

**Public Notice** – As required by the Sec. \_\_\_\_ of the City Code and/or Sec. \_\_\_\_, Florida Statutes, public notice for this item was provided as follows: on \_\_\_\_ in a \_\_\_\_ ad in the \_\_\_\_; by the posting the property on \_\_\_\_ and/or by sending mailed notice to property owners within \_\_\_\_ feet of the property on \_\_\_\_ (fill in all that apply)

**Special Voting Requirement** – As required by Sec. \_\_\_\_, of the City Code and/or Sec. \_\_\_\_, Florida Statutes, approval of this item requires a \_\_\_\_ (unanimous, 4/5ths etc.) vote by the City Commission.

**Fiscal Impact:** Yes ☒ No ☐

**REMARKS:** Funds totaling \$73,020 will be expended from Account No. 001-50-501-519-150-606471 entitled "Building Maintenance-Software"; \$21,114 in FY18, \$27,654 in FY19 and \$30,360 in FY 20


**Content:**

- Agenda Item Memo from the City Manager to City Commission
- Resolution TR 6769
- Attachment(s)
  - Attachment 1: US Communities Contract No. 5-JLP-023
  - Attachment 2: Trane Quote



**CITY OF MIRAMAR  
INTEROFFICE MEMORANDUM**

**TO:** Mayor, Vice Mayor, & City Commissioners

**FROM:** Vernon E. Hargray, Interim City Manager 

**BY:** Bernard Buxton-Tetteh, Director of Public Works

**DATE:** September 13, 2018

**RE:** Temp. Reso. No. 6769, approving the purchase of controls upgrade and expansions for the Emergency Management System at various locations throughout the City from Trane, U.S. Inc.

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**RECOMMENDATION:** The Interim City Manager recommends approval of Temp. Reso. No. 6769, approving the purchase of controls upgrade and expansions for the Emergency Management System ("EMS") at various locations throughout the City from Trane U.S. Inc., in the amount of \$73,020, for a term of two years, commencing September 1, 2018; utilizing U.S. Communities Contract No. 15-JLP-023.

**ISSUE:** City Commission approval is required for all expenditures exceeding the \$75,000 per vendor limit. During fiscal year 2018, Public Works has expended \$44,421 with Trane, taking this purchase beyond the \$75,000 limit.

**BACKGROUND:** The City of Miramar Public Works Department is responsible for the maintenance and repair of all City facilities and equipment, including Heating, Ventilation, and Air Conditioning ("HVAC") units.

The City of Miramar EMS enables staff to use data and information to monitor, control, and conserve energy in various City locations. Several locations in the City, including City Hall, are equipped with the EMS software. The EMS software was initially installed as part of City Hall's construction in 2004. There is a need to upgrade and expand the EMS software to maintain and improve energy performance and to also allow for remote access to the system. With an upgraded energy management system, the City will reduce risk and control energy consumption, while improving operational efficiencies.

Staff is proposing the installation of Trane EMS, which will consist of a new Tracer Ensemble energy management software platform and connection, within various City

facilities. The Tracer Ensemble is a comprehensive enterprise management system that communicates with buildings through the City's IP network to allow easy connection of multiple systems across the City. The Trane EMS is a BACnet/IP system and the City will be responsible for providing all BACnet/IP network connection points. The facilities to receive the upgrade are as follows:

- City Hall – upgrade the existing building control unit with a Tracer SC
- Police Headquarters – upgrade the JENsyst with a Tracer SC
- Cultural Arts – building control unit will be tied into the Tracer Ensemble
- Vernon E. Hargray Youth Enrichment Center and Fire Station #107 - new Tracer SC along with the Tracer SC will all be tied into the Tracer Ensemble

The scope of services to be provided to the City includes controllers (where required), labor, engineering, project management, and installation of Trane EMS software. Each year of the project shall include an annual preventative maintenance for controls at the Town Center only.

Trane is an awarded vendor under the U.S. Communities Contract. The City will procure services for controls upgrade and expansions for EMS at various locations throughout the City from Trane in an amount of \$73,020. The pricing is consistent with the terms and conditions resulting from the contract between U.S. Communities and Trane. The Procurement Department has reviewed the contract and price quotes and confirmed utilizing the contract to procure services is in the best interest of the City.

The City has previously utilized Trane for repair and maintenance of equipment and Trane has proven to be cost effective and timely in responding to City request for services. In addition, the equipment is considered proprietary and requires specialized technicians. Trane's familiarity with existing equipment will ensure equipment downtime is minimized and City services are not impacted.

The project manager is Aubrey Boyd, Facilities Manager.

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9/12/18

**CITY OF MIRAMAR  
MIRAMAR, FLORIDA**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, APPROVING THE PURCHASE OF CONTROLS UPGRADE AND EXPANSIONS FOR ENERGY MANAGEMENT SYSTEM (“EMS”) AT VARIOUS LOCATIONS THROUGHOUT THE CITY FROM TRANE U.S. INC., IN THE AMOUNT OF \$73,020, FOR A TERM OF TWO YEARS, COMMENCING SEPTEMBER 1, 2018; UTILIZING US COMMUNITIES CONTRACT NO. 15-JLP-023; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miramar Public Works Department is responsible for the maintenance of repair of all City facilities and equipment; and

**WHEREAS**, several locations in the City, including the Town Center Buildings A & W, Police Head Quarters, Cultural Arts Center, Vernon E. Hargray Youth Enrichment Center, Fire Station #107 are equipped with EMS software; and

**WHEREAS**, there is a need to upgrade and expand the City’s EMS system to maintain and improve energy performance; and

**WHEREAS**, with an upgraded energy management system, the City will reduce risk, control energy consumption while improving operational efficiencies; and

**WHEREAS**, the City proposes to install Trane EMS which will consist of a new Tracer Ensemble energy management software platform and connection within various City facilities; and

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8/1/18

9/12/18

**WHEREAS**, the Trane EMS is a BACnet/IP system and the City will be responsible for providing all BACnet/IP network connection points; and

**WHEREAS**, the scope of services to be provided to the City includes controllers (where required), labor, engineering, project management, and installation of Trane EMS software; and

**WHEREAS**, each year of the project shall include an annual preventative maintenance for controls at the Town Center only; and

**WHEREAS**, City Code Section 2-412 provides that the purchase of commodities or services that exceed \$75,000 must be formally approved by the City Commission; and

**WHEREAS**, during fiscal year 2018, Public Works has expended \$44,421 with Trane, taking this purchase beyond the \$75,000 limit; and

**WHEREAS**, Section 2-413 of the City Code provides for purchases made utilizing already competed agreements of other governmental agencies, or cooperative purchases, such as the US Communities Contract No. 15-JLP-023 to be exempt from further competitive bidding requirements; and

**WHEREAS**, the City will utilize the US Communities Contract No. 15-JLP-023 and Trane U.S. Inc. to provide for the purchase of controls upgrade and expansions for EMS at various locations throughout the City; and

**WHEREAS**, the Interim City Manager recommends that the City Commission approve the purchase of controls upgrade and expansions for EMS at various locations

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throughout the City from Trane U.S. Inc, in the amount of \$73,020, for a term of two years, commencing September 1, 2018; utilizing US Communities Contract No. 15-JLP-023; and

**WHEREAS**, the City Commission deems it to be in the best interest of the citizens and residents of the City of Miramar to approve the purchase of controls upgrade and expansions for EMS at various locations throughout the City from Trane U.S. Inc, in the amount of \$73,020, for a term of two years, commencing September 1, 2018; utilizing US Communities Contract No. 15-JLP-023.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:**

**Section 1:** That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

**Section 2:** That the City Commission approves the purchase of controls upgrade and expansions for EMS at various locations throughout the City Trane U.S. Inc, in the amount of \$73,020, for a term of two years, commencing September 1, 2018; utilizing US Communities Contract No. 15-JLP-023.

**Section 3:** That the appropriate City Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.

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**Section 4:** That this Resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor, Wayne M. Messam

\_\_\_\_\_  
Vice Mayor, Yvette Colbourne

ATTEST:

\_\_\_\_\_  
City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved  
this RESOLUTION as to form:

\_\_\_\_\_  
City Attorney  
Weiss Serota Helfman  
Cole & Bierman, P. L.

**Requested by Administration**

Commissioner Winston F. Barnes  
Commissioner Maxwell B. Chambers  
Vice Mayor Yvette Colbourne  
Commissioner Darline B. Riggs  
Mayor Wayne M. Messam

**Voted**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Barbara P. Canavan, Superintendent of Schools  
102 S. Hickory Avenue, Bel Air, Maryland 21014  
Office: 410-838-7300 • www.hcps.org • fax: 410-893-2478

Purchasing Department  
Bobbie Wilkerson, Supervisor of Purchasing  
410-638-4083, Bobbie.Tolston-Wilkerson@hcps.org

**RFP #15-JLP-023 RENEWAL #1**  
**October 1, 2018 – September 30, 2020**

This contract renewal is made and entered into this 2 <sup>APRIL (BW)</sup> day of March, 2018, by Harford County Public Schools, 102 South Hickory Avenue, Bel Air, Maryland (hereafter referred to as Owner) and Trane, a corporation located at 800 Beaty Street, in the city of Davidson, and State of North Carolina, (hereafter referred to as Contractor).

WHEREAS, Owner and Contractor have entered into an Agreement dated September 29, 2015 (hereafter referred to as the Contract), for the Contractor to provide comprehensive HVAC Products, Installation, Services and Related Products and Services in accordance with RFP #15-JLP-023.

WHEREAS, the original Contract term will expire on September 30, 2018;

THEREFORE, for and in consideration of the mutual promises to each other, as in hereinafter set forth, the parties hereto do mutually agree to renew the Contract as per the conditions set forth in the original Contract, as follows:

1. Owner chooses to offer the first option to renew this contract for two (2) year for the time period from October 1, 2018 through September 30, 2020.
2. Pricing structures and related pricing terms will remain the same as the original terms and conditions.
3. All other terms, conditions and provisions of the Contract remain in effect.
4. There is one additional possible renewal remaining for this Contract.

WHEREAS, the parties hereto desire to set the terms of the renewal to writing;

IN WITNESS WHEREOF, Owner and the Contractor have executed the renewal agreement the day and year written above.

**HARFORD COUNTY PUBLIC SCHOOLS**

By: Bobbie Wilkerson

Signature

Name: Bobbie Wilkerson, CPPO, CPPB

Title: Supervisor of Purchasing

Date: 4/2/2018

**TRANE**

By: Alan L. Fulszon

Signature

Name: ALAN L. FULSZON

Title: VICE PRESIDENT, SALES TRANE

Date: 4/3/18





**August 27, 2018**

City of Miramar  
13900 Pembroke Rd  
Miramar, FL 33025

**Reference: City of Miramar EMS Upgrade and Expansion**  
**US Communities Contract 15-JLP-023 Quote# 40-128345-16-003**

The Energy Management System (EMS) installation consists of a new Tracer Ensemble energy management software platform and connection with the City of Miramar buildings listed below. We will be upgrading the existing Building Control Unit in the Town Center building A & W with a Tracer SC+. We will also be upgrading the JENsyst at the Police Head Quarters with a Tracer SC+. These new Tracer SCs along with the Tracer SCs at the Youth Enrichment Center and Fire Station #107 will all be tied into the Tracer Ensemble. We will also be tying in the Building Control Unit at the Cultural Arts Center to the Tracer Ensemble.

Tracer Ensemble is a comprehensive enterprise building management system. Built on open-standard protocols, Tracer Ensemble communicates with buildings through your IP network to allow easy connection of multiple systems across your enterprise. The Trane EMS is a BACnet/IP system and City of Miramar shall be responsible for providing all BACnet/IP network connection points. The scope includes controllers (where required), labor, engineering, project management, and installation as noted below.

The Tracer System Controller will serve as an interface between the operator and all of the secondary level distributed BAS controllers. Access to the SC and all associated System Points will be available from any PC with access to the LAN. A Free Smart Phone Application is available for "On the Go" access providing immediate response to comfort calls, alarms, or schedule changes. The system may utilize standard control algorithms / capabilities to recognize energy saving options such as: Time of Day Schedule and Occupied/Unoccupied modes. The system has functionality for programming to include, as applicable: Optimal Start/Stop, Morning and Daytime Warm-up, Coastdown, Demand Limiting, Duty Cycling, Run Time, Maintenance Messages, Diagnostics and Alarming, among others.

<b>Scope of Work</b>
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**TRACER ENSAMBLE WEB-BASED FACILITY MANAGEMENT TOOL, INCLUDING:**

- Tie in of Buildings:
  - Town Center Building A & W – New Tracer SC provided in scope below
  - Police Head Quarters – New Tracer SC provided in scope below
  - Cultural Arts – existing Building Control Unit to remain
  - Youth Enrichment Center – Existing Tracer SC
  - Fire Station #107 – Existing Tracer SC
- Multiple Building Scheduling and Control
- Web Browser
- Discovery and Configuration
- Graphical Navigation
- Data Management
- Enterprise Alarm Management
- Enterprise Scheduling
- Data Logs

## TOWN CENTER BUILDING A & W

### TRACER SC WEB ENABLED SYSTEM CONTROLLER

Upgrade of BCU-1

BMTB BAS Bridge for communication with (99) existing VAV Box controllers

Communication with RTHD Trane Chiller

Communication with (8) MP581s

Communication with (3) MP503s

Communication with (1) ZN521

Time of Day Schedule Control

AHU Trends capability

Local & Remote Alarms Set-up

Web-based mobile access available

## POLICE HEAD QUARTERS

### TRACER SC WEB ENABLED SYSTEM CONTROLLER

Upgrade of (1) JENsys

Communication with (8) existing MP581s

Communication with (4) MP503s

Communication with (5) Expansion Modules

Communication with (62) VAVs

Communication with (2) Trane Chillers

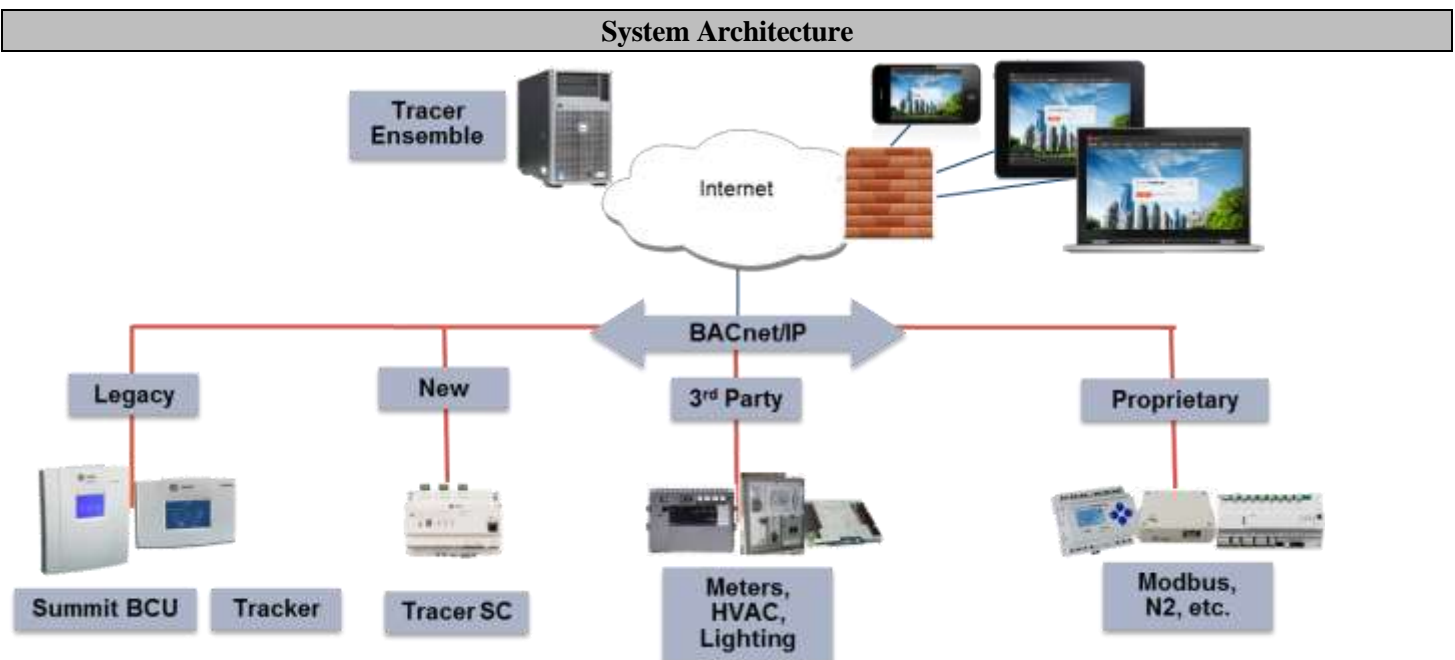
Communication with (1) RTU

Time of Day Schedule Control

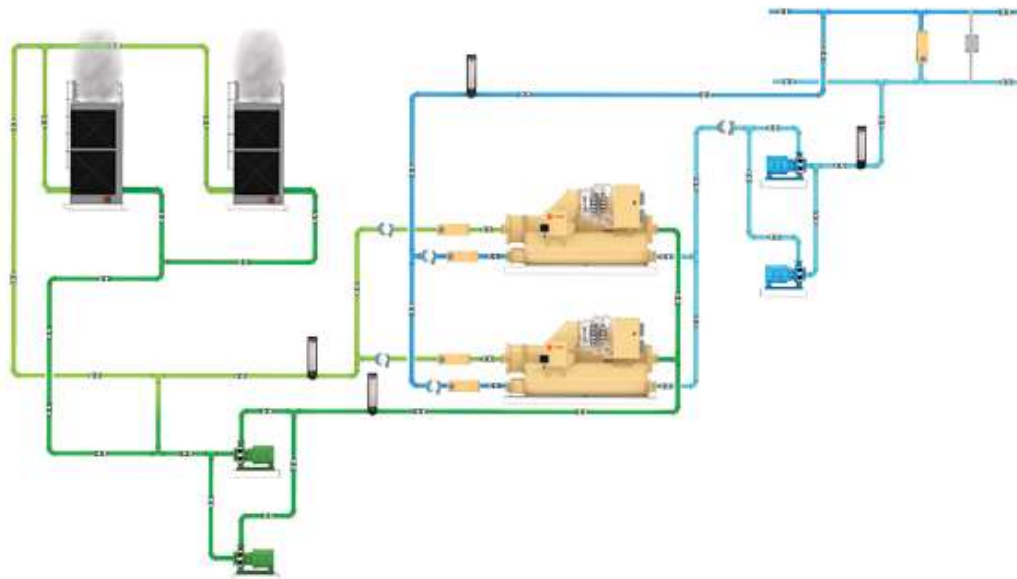
AHU Trends capability

Local & Remote Alarms Set-up

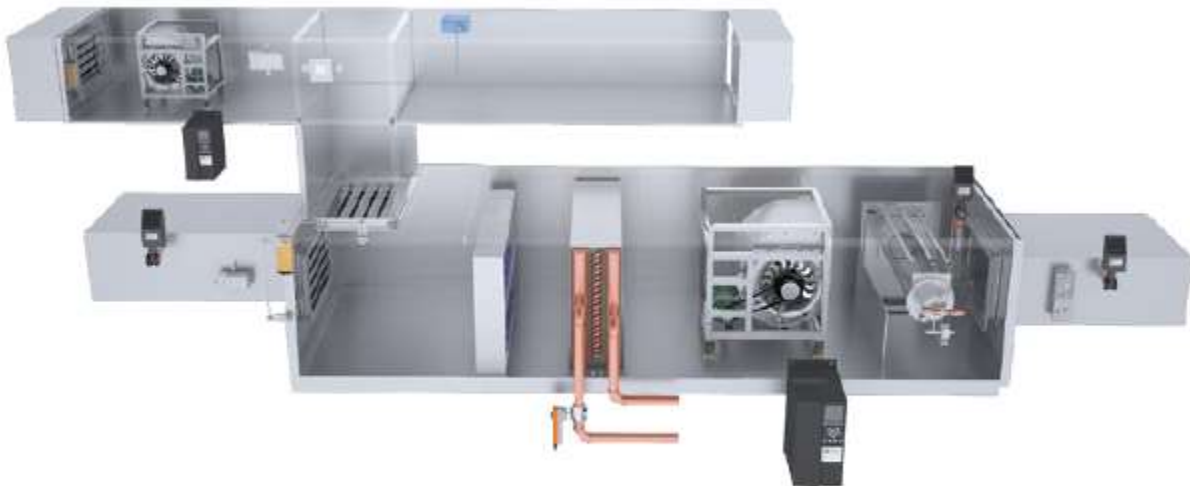
Web-based mobile access available



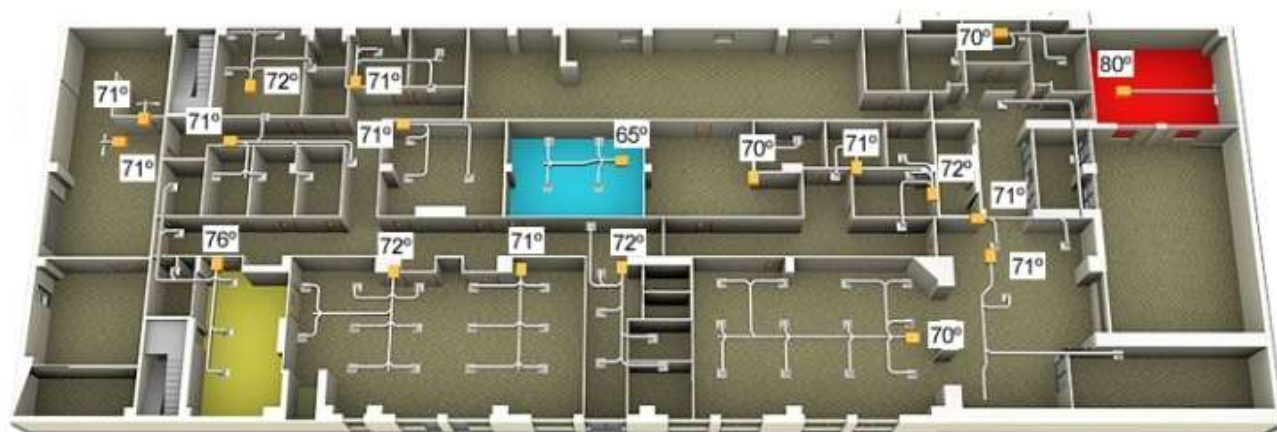
## Example Graphics:



Hydronics Flow (Chilled Water)



Flow Equipment



## **TOTAL PROJECT INCLUSIONS**

### ➤ **LABOR INCLUDING:**

- Engineering
- Installation
- Low voltage wiring
- Custom color graphic displays, reports and alarm sequences
- Startup & checkout
- One year warranty

### ➤ **PRICE ASSUMES:**

- Existing BAS Submittal from January 2006 – Buildings A & W
- All end devices (sensors, actuators, valves, dampers, Fire/Smoke Dampers, fans) are in working order. Any inoperative end devices will be documented and presented to City of Miramar for corrective action.
- Plenum rated cable where concealed and allowed by code
- 1/2" Minimum size conduit in exposed areas
- Excavation, Backfill and Underground Conduit by others
- Standard production & delivery cycles
- All work to be performed during normal working hours
- **System shall reside on Customer provided Network**
- **Owner must provide static IP Address and access to the internet**

### **Not included:**

- Existing control conduits, junction boxes, control enclosures, control wiring, and power wiring may be utilized where possible.
- Permits
- Equipment shut downs, where required shall be coordinated with facilities.
- Any removed parts or devices are to be returned to facilities.
- Test and Balance.
- Controllers, End Devices, or any Controls not specifically mentioned in the above scope
- Provision and/or wiring of any end devices (sensors, actuators, valves, dampers, fans, etc.)
- Provision and /or wiring of any control dampers
- Provision and /or wiring of Fire and/or Smoke dampers, actuators, end-switches, and/or indicating lights
- AHU Fire Alarm Shutdown – by others
- Smoke detectors and/or associated smoke detector wiring
- Provision, installation, wiring, startup and/or BACNet integration of Variable Frequency Drives

- Work, material, and/or labor associated with integrating other existing pieces of equipment into the Trane BAS, or integrating devices from the Trane BAS into any 3<sup>rd</sup> party BAS (if applicable)
- Any control end devices, fans, dampers, relays or control components that are to be reused and found inoperable or malfunctioning shall be the responsibility of the Owner to repair, including parts and labor
- Fire stats and/or freeze stats
- LAN Network connection to Building Controllers
- Any scope of work not specifically outlined above
- All work is to be done during normal business working hours except as noted above. Any after hour work will require City of Miramar's approval.

### Town Center Controls Tracer Pro and Intelligent Services

Included in this proposal is two years of Town Center Controls Tracer Pro. South Florida Trane's Building Automation System (BAS) and Intelligent Services (IS) program is designed to transform data into energy strategies, create a sustainable environment and improve productivity through the life cycle of the building. Intelligent Services strives to deliver the following: Identify opportunities to reduce energy consumption, reduce system downtime, provide risk mitigation, provide supplemental support for building maintenance staff, and provide ongoing recommendations that speak to your business results.

**Tracer Pro and Intelligent Services will begin at the completion of this project and continue for two years from the start date.**

### Project Pricing

**Total Project Price:**

**\$73,020.00**

Thank you for giving Trane this opportunity. If you have questions or require additional information, please feel free to contact me.

Sincerely,

Nicole Albarano  
*Energy Services and Controls*

**This proposal is subject to Customer's acceptance of US Communities Contract 15-JLP-023 terms and conditions.**

**Contract terms allow PO's to be sent directly to this vendor and must reference the vendor's contract number. For example, Per US Communities Contract #15-JLP-023.**

#### TERMS AND CONDITIONS – COMMERCIAL INSTALLATION

"Company" shall mean Trane Canada ULC for Work performed in Canada, and Trane U.S. Inc. for Work performed in the United States.

**1. Acceptance; 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 commercial goods and/or services described (the "Work"). **COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.** 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 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 Work in accordance with the Proposal and the Company terms and conditions. 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 the Work by Company will in any event constitute an acceptance by Customer of Company's 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. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. 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 makes 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. Customer grants to Company the right to remotely connect (via phone modem, internet or other agreed upon means) to Customer's building automation system (BAS) and/or HVAC equipment to view, extract, or otherwise collect and retain data from the BAS, HVAC equipment, or other building systems, and to diagnose and remotely make repairs at Customer's request.

**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, to the fullest extent permitted by law, 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: (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 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 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 Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead)

**16. Indemnity.** To the fullest extent permitted by law, 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, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the entire amount paid to Company by Customer under this Agreement.**

**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. Limited Warranty.** Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") commercial equipment manufactured and installed by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Limited Warranty"). **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized 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 therefor) and, if said equipment was installed pursuant hereto, labor/labour associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Company within the Warranty Period. Exclusions from this Limited Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; 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. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty 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. Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **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. COMPANY MAKES 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 but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

**21. Commencement of Statutory Limitation Period.** Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Company or its subcontractors physically performed work on the project site.

**22. 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, 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 Work is 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 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.

**23. 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 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.

#### **24. 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.

**25. 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.

1-26.251-10(0315)  
Supersedes 1-26.251-10(0614)