



Trane Turnkey Proposal – WCPA HVAC Upgrade Phase 2 Rev.2



Turnkey Proposal For:

Fran Eide
Project Manager
City of Olympia
P O Box 1967
Olympia, WA 98507

Local Trane Office:

Trane U.S. Inc. dba Trane
2333 158th Court NE
BELLEVUE, WA 98008

Local Trane Representative:

Jim Kershner
Account Manager
Cell: (425) 766-0825
Office: (425) 643-4310

Proposal ID: 2163352

US Communities

Quote Number: 15-418598-16-009

Co-op Contract Number: USC 15-JLP-023

Date: March 7, 2017





Prepared For:

Fran Eide

Date:

March 7, 2017

Job Name:

WCPA HVAC Upgrade Phase 2

Proposal Number:

2163352

Delivery Terms:

Freight Allowed and Prepaid – F.O.B Factory

Payment Terms:

Net 30

State Contractor License Number:

TRANE**934RE

Proposal Expiration Date:

30 Days

Scope of Work

“Scope of Work” and notations within are based on the following negotiated scope of work with Fran Eide and the City of Olympia facilities staff, the scope and equipment details contained in the bid set drawings for this project dated 9/20/2016, the site survey performed on 9/27/2016, Addendum #1 dated 10/6/2016, Addendum #2 dated 10/18/2016, and Addendum #3 dated 3/1/2017.

Turnkey Installation of HVAC Equipment

Seattle Trane is pleased to offer you this proposal for “Phase 2” of the HVAC upgrades for the Washington Center for the Performing Arts, located at 512 Washington Street SE, Olympia WA 98501. This work to be performed starting in late June of 2017, with a completion date of September 15, 2017.

This proposal includes:

Engineering Services

- Submittal Review
- RFI Response
- Project Kickoff
- Site Observations during construction, Mechanical only, Electrical as additional services per authorizing change in work scope
- Review of TAB Pre-read and TAB Final for airflow and noise
- Complete CAD record drawings from contractor markups to include Mechanical and Electrical
- Commissioning services

Mechanical Installation

Base Scope:

- RETURN FANS:
 - Purchase and install Hunt Air Fan walls as called out in the mechanical schedule on M0.0.
 - Fan walls will be provided in sections to be field assembled per manufacturer’s shop drawings. Panel wall will be full height to the lid of the tunnel with closure panels extending from the top of the fan modules to the lid. All joints/seams will be sealed to prevent leakage.
 - Remove and dispose of RAF-1 fan and attenuator.
- 2) AHU-1:
 - Provide and install [1] new 3-way chilled water control valve. Re-use existing actuator.
 - Clean inside of cabinet.
 - Clean cooling coil.
 - Provide and install MERV-8 filters for TAB.



- Purchase and install (1) 50hp inverter duty motor with VFD and integral disconnect to replace existing in AHU-1.
- 3) AHU-2:
 - Clean inside of cabinets.
 - Clean heat recovery and cooling coils.
 - Provide and install MERV-8 filters for TAB.
 - Provide and install [1] new 3-way control valve on chilled water piping. Existing actuator to be re-used.
 - Provide and install [1] new 3-way control valve on heat recovery piping. Existing actuator to be re-used.
 - Replace existing condenser water 3-way control valve. Existing actuator to be re-used.
 - Provide and install a new 48" high X 84" wide motorized low leakage (4 CFM/SF at 1" SP) relief damper. Damper will be connected to existing plenum.
 - Will provide a sheet metal enclosure around the perimeter of the damper.
 - Install [1] new 3 HP motor and replace fan bearings.
- 4) AHU-3:
 - Clean inside of cabinets.
 - Clean heat recovery and cooling coils.
 - Provide and install MERV-8 filters for TAB.
 - Install [1] new 3 HP motor and replace fan bearings.
- 5) Insulation as required for piping and VAV-1-7 relocation
- 6) Replace and Install New Access Doors as shown on drawings
- 7) As-built drawings
- 8) One-year parts & labor warranty
- 9) Filing of L&I Affidavits & Intents for prevailing wage rates

Electrical Installation

- Provide electrical installation and demo per drawing specifications and Addendum #1 E- Sheet drawing E1.0, and Addendum #3 E- Sheet drawing E1.0.
- Electrical permit
- Filing of L&I Affidavits & Intents for prevailing wage rates

Controls systems and equipment

- Controls scope of project consists of control system design engineering, software programming, front-end displays/graphics, AutoCAD drawing documentation, field engineering, controls wiring, testing, start-up, system check-out, and installation for the following:
 - Removal of the remaining pneumatic control system panel, components, and wiring (per drawing M0.2 Control Demolition – Addendum #3).
 - Provide and install new controller, actuator (existing valve bodies remain) and duct temperature sensor for 24 VAV's
 - Provide and install new controller, actuator (existing valve bodies remain) and duct temperature sensor for 3 fan terminal units
 - Provide and install new controller, actuator (existing valve bodies remain) and duct temperature sensor for 3 VAVs located above the cat walk
 - Provide controls interface RFM -1 and RFM-2 fan wall modules
 - Disconnect existing controls from the AHU-1 VFD and reconnect to new VFD when installed
 - Disconnect existing controls from the AHU-2 & 3 units and reconnect when mechanical scope is complete
 - Provide DDC control for existing 4 unit heaters (stage area)
 - Revise the existing control sequence to meet the new sequences in Addendum #1 and Addendum #3



- Provide eight hours of customer training
- Provide support for TAB and commissioning
- Filing of L&I Affidavits & Intents for prevailing wage rates
- One year parts & labor warranty

Test and Balance

- Perform post retrofit sound measurements
- Perform post retrofit air/water balance

Proposal Notes/ Clarifications

- All work to be performed during normal business hours (8am to 5pm, M-F, non-holidays)
- Equipment Order Release and Services rendered are dependent on receipt of PO/Subcontract, Trane Finance project credit approval and approved submittals.
- Trane will not perform any work if working conditions could endanger or put at risk the safety of our employees or subcontractors
- Retainage to be withheld per RCW 60.28.011 1(a)

Project Specific Exclusions

- Warranty on existing system design
- Structural design and remedy (if warranted through structural review)
- Repair of any pre-existing control or mechanical deficiency
- Hole cutting, patching, painting, roofing, or architectural screening, unless specifically included in proposal

General Exclusions

- All painting, prime coating and cleaning of materials or equipment
- Smoke detection / Fire life Safety controls installation or interface, unless specifically included in proposal
- Receiving, unloading, storing, handling and setting in place all equipment and materials provided by others, unless noted otherwise
- All access doors
- **Asbestos and Hazardous Materials.** Trane's proposal expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials. Customer shall be exclusively responsible for any claims, including the payment thereof, arising out of or relating to any Hazardous Materials



Pricing and Acceptance

Customer:
City of Olympia
P O Box 1967
Olympia, WA 98507

Site Address:
Washington Center Performing Arts
512 Washington St
Olympia, WA 98501

Price

Total Net Price Base Bid (Excluding Sales Tax).....	\$722,421.00
<input type="checkbox"/> Add-Alt #1: Install Flow Rings on Existing VAV Terminal Units.....	\$ 14,804.00
<input type="checkbox"/> Add-Alt #2: Install Duct Heater and Controls for Lobby VAV 1-7.....	\$ 30,646.00
<input type="checkbox"/> Add-Alt #3: Provide Lobby Office Area Heat Pump DDC Controls.....	\$ 10,111.00
<input type="checkbox"/> Add-Alt #4: Provide Lobby Ticket Office Control of Entry Heat.....	\$ 7,431.00
<input type="checkbox"/> Add-Alt #5: Pre-Construction Validation of DDC Functionality.....	\$ 9,640.00
<input type="checkbox"/> Add-Alt #6: Install De-stratification Fans.....	\$ 71,954.00

Financial items not included

- Applicable sales tax or use tax is excluded
- Bid Bond
- Liquidated or Consequential Damages
- Demurrage or Storage Charges
- Participation in OCIP or CCIP Insurance Programs

Respectfully submitted,

Jim Kershner
Account Manager
Trane U.S. Inc. dba Trane
(425) 643-4310



ACCEPTANCE

This agreement is subject to Customer's acceptance of the attached Trane Terms and Conditions – Commercial Installation.

CITY OF OLYMPIA

By: _____
Steven R. Hall, City Manager
P.O. Box 1967
Olympia WA 98507-1967
Date of Signature: _____

APPROVED AS TO LEGAL FORM:

Mark Barber
City Attorney

I certify that I am authorized to execute this contract on behalf of the Contractor.

Trane U.S. Inc. ;
[Enter Name of Contractor's Company]

By: *[Signature]*
(Signature)

Robert J Colombe
(Name of Person Signing)

General Sales Manager
(Title of Person Signing)

2333 158th Court NE

Bellevue WA 98008
(Address)

425 586 1648

(Phone)
Date of Signature: 08 MARCH 2017



TERMS AND CONDITIONS – COMMERCIAL INSTALLATION

“Company” shall mean Trane U.S. Inc. dba Trane.

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 Providing 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 Provided, 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 Provided 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 Provided 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 Provided 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 Provided is warranted to have been properly performed (the "Limited Warranty"). Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **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 Provide 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. **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 Providing 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.

26. Additional Provisions:

- A. As regards paragraph 20, the following additional insurance provisions should be added:
 - 1. The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
 - 2. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.
 - 3. Notice of Cancellation. The Contractor shall provide the City with written notice of any policy cancellation, within two (2) business days of their receipt of such notice.
 - 4. Failure to Maintain Insurance. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.
- B. Compliance with Laws: Contractor shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

A 5% retainage in accordance with RCW 60.28.011 shall be withheld from each monthly contractor payment. Said retainage shall be paid to Trane when the following occurs:

- A. Receipt of Intent to Pay Prevailing Wages
- B. Receipt of Affidavit of Wages Paid
- C. Final acceptance of the project by the City of Olympia
- D. Final approval of the Department of Revenue and the Department of Labor & Industries



The approval of the Department of Revenue and Labor & Industries normally takes place at least 45 days following Final Acceptance by Olympia.

C. General Provisions:

1. **Entire Agreement.** This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.
2. **Modification.** No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.
3. **Full Force and Effect; Severability.** Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.
4. **Attorney Fees.** In the event either of the Parties defaults on the performance of any term of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and expenses to be paid by the other Party.
5. **Governing Law.** This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.
6. **Authority.** Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Contractor or the City.
7. **Notices.** Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.
8. **Performance.** Time is of the essence in performance of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement.
9. **Counterparts.** This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.
10. **Jurisdiction and Venue.** All lawsuits or other legal actions whatsoever with regard to this agreement shall be brought in Thurston County, Washington, Superior Court.

1-26.251-10(0316)
Supersedes 1-26.251-10(0614)