



MEETING DATE: 4/18/05  
ITEM NO. 8

## COUNCIL AGENDA REPORT

DATE: APRIL 1, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

A handwritten signature in black ink, appearing to read "Debra J. Figone".

SUBJECT: EQUIPMENT PURCHASE

ADOPT RESOLUTION AUTHORIZING TOWN MANAGER TO  
EXECUTE AN AGREEMENT WITH THE TRANE COMPANY FOR THE  
PURCHASE OF CIVIC CENTER CHILLER REPLACEMENT IN THE  
AMOUNT OF \$56,677.53 FROM ACCOUNT 6695-84553

### RECOMMENDATION:

Adopt Resolution authoring Town Manager to execute an agreement with The Trane Company for the purchase of Civic Center Chiller Replacement in the amount of \$56,677.53 from Account 6695-84553.

### BACKGROUND:

The adopted Capital Improvement Program designates funding for the Civic Center Chiller and Cooling Tower Replacement and is consistent with the Town's goals to improve public health and safety.

### DISCUSSION:

On November 30, 2004, the Town entered into an agreement with Integrated Engineering Services to provide a comprehensive evaluation and to make specific recommendations for the replacement of the Civic Center Chiller and the outside air ventilation system for the downtown Neighborhood Center.

On January 6, 2005, the Parks and Public Works Department received the final study/report from Integrated Engineering Services. The study addressed the Civic Center facility and possible solutions to replace the existing chiller and cooling tower components.

PREPARED BY:

A handwritten signature in black ink, appearing to read "John E. Curtis".  
JOHN E. CURTIS

Director of Parks and Public Works

Reviewed by: PS Assistant Town Manager OK Town Attorney \_\_\_\_\_ Clerk Administrator  
LA Finance \_\_\_\_\_ Community Development

Revised: 4/1/05 8:12 am

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MAYOR AND TOWN COUNCIL  
SUBJECT: EQUIPMENT PURCHASE  
APRIL 1, 2005

The consultant's recommendation is to replace the existing chiller and cooling tower. The chiller will be purchased utilizing Federal GSA Supply Schedule at a cost savings of \$6,687.69 over open market cost.

However the cooling tower is not part of the Federal GSA Supply Schedule and will be purchased separately and incorporated into the installation scope of work forthcoming to Council for approval.

This project will replace the Civic Center air conditioning chiller cooling tower and repair/upgrade and various air handling equipment. These components comprise the heart of the system used to provide heated, conditioned, and fresh air to the entire Civic Center complex. The existing components are between 20 and 40 years old, well beyond their useful life span and are not energy efficient. In order to address imminent system failure, replacement needs to occur before the onset of summer.

Over the past two years the chiller and cooling tower have failed under the heavy demands required to cool the Civic Center complex. Replacement parts have become scarce to procure and must be special ordered from the manufacturer; therefore, repairing the aging system is not cost effective. The project will bring the HVAC system into efficient working order and will reduce ongoing maintenance and energy costs. Additionally, staff will pursue energy rebates with Pacific Gas and Electric Company throughout the project.

The Civic Center Chiller and Cooling Tower Project is expected to start on July 1, 2005 and be completed by August 15, 2005. The completion date is based on lead time from contractors to order and receive the necessary equipment from the manufacturers. All major components associated with the project are site specific and are manufactured based on building and heating cooling demands.

#### CONCLUSION:

Staff recommends the approval of the agreement with The Trane Co. for the purchase of the Chiller.

#### ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorical Exempt (Section 15301©). A Notice of Exemption will not be filed.

#### FISCAL IMPACT:

The 2004/05 Operating Budget provides for the purchase of the Civic Center Chiller Replacement as part of the internal services fund Account # 6695-84553 and is developed yearly as part of the Operating Budget.

#### Attachment:

Resolution authorizing approval of agreement/proposal/Federal GSA Supply Schedule (Exhibit A)

## **RESOLUTION**

### **RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH THE TRANE COMPANY FOR THE PURCHASE OF THE CIVIC CENTER CHILLER REPLACEMENT IN THE AMOUNT OF \$56,307.77**

**WHEREAS**, The 2004/05 Operating Budget provides for the purchase the Civic Center Chiller Replacement; and

**WHEREAS**, Town Code Section 2.50.130 provides for the purchase of equipment without competitive bidding when the purchase is made through a county or other public agency contract; and

**WHEREAS**, staff recommends the purchase of the Chiller Replacement from The Trane Company based on a price and determined by the Federal General Services Administration; and

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that The Trane Company is declared to be the satisfactory vendor for the purchase of the Chiller Replacement; and

**BE IT FURTHER RESOLVED** that the Town Manager is hereby authorized and directed to execute an agreement (Attached as Exhibit A) for the purchase of the Chiller Replacement on behalf of the Town in the amount of \$56,677.53.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the        of       , 2005, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:        MAYOR OF THE TOWN OF LOS GATOS/  
                      LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**AGREEMENT BETWEEN THE TOWN OF LOS GATOS AND  
THE TRANE COMPANY  
FOR THE PURCHASE OF THE  
CIVIC CENTER CHILLER REPLACEMENT**

**THIS AGREEMENT** is made and entered into in the **Town of Los Gatos**, County of Santa Clara, State of California, by and between the TOWN OF LOS GATOS, a municipal corporation [hereinafter Town], and **The Trane Company** [hereinafter Vendor], as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**RECITALS**

(A) A quotation was sought by the Town for the purchase of an Air Ventilation System Chiller Replacement Unit, and Vendor was found to be a responsible supplier of this equipment as determined using purchasing provisions outlined in the Federal GSA Supply Schedule

(B) Vendor represents that it is a qualified and competent supplier of the equipment to be purchased under this Agreement.

**IT IS AGREED AS FOLLOWS:**

1. Supplies and Terms. Vendor hereby agrees to deliver to the Town of Los Gatos Civic Center at 110 East Main Street, Los Gatos, CA 95030 the items and materials described in (Exhibit A) hereto, which is fully incorporated herein by this reference. The terms and conditions are as follows:

- (a) Price. Town shall pay Vendor the amounts defined in (Exhibit A), F.O.B., and which include sales tax and delivery charges. Payment shall be net 30 days from delivery.
- (b) Delivery. The delivery of the items and materials shall be no later than June 17, 2005. Delivery shall be made between 8:00 a.m. and 3:30 p.m. on weekdays that are not Town holidays.
- (c) The items and materials described hereto are acquired by the Town subject to the terms and conditions stated in the Federal GSA supply schedule (outlined as detailed identity of the schedule), a copy of which is attached hereto as (Exhibit A) and incorporated herein in full by this reference.

2. Time of the Essence. Prompt delivery of the items and materials is essential to this Agreement.

3. Equal Employment Opportunity. Vendor warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations regarding equal employment opportunity. Vendor shall not discriminate in the employment of any person because of race, color, national origin, ancestry, mental or physical disability, medical condition, marital status, sex, age, or sexual preference, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

4. Notices. All notices to be given with respect to this Agreement shall be addressed as follows:

To Town:  
Town of Los Gatos  
Parks and Public Works Department  
41 Miles Avenue  
Los Gatos, CA 95030

To Vendor:  
The Trane Company  
310 Soquel Way  
Sunnyvale CA 94085-4101

5. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of the Agreement.

6. Modifications. No modification, waiver, termination, or amendment to this Agreement is effective unless made in writing signed by the Town and the Vendor.

7. Severability. If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

8. Entire Agreement. This Agreement including (Exhibits A) hereto, sets forth the entire understanding between the parties.

IN WITNESS WHEREOF, the Town and the Vendor have executed this Agreement on the date above written.

Town of Los Gatos, by:

Vendor: The Trane Company

\_\_\_\_\_  
Debra J. Figone, Town Manager

\_\_\_\_\_  
Signature

Recommend by:

\_\_\_\_\_  
John E. Curtis  
Director of Parks and Public Works

\_\_\_\_\_  
Print Name

Approved as to form:

Attest:

Town of Los Gatos, Los Gatos, California

\_\_\_\_\_  
Orry P. Korb, Town Attorney

\_\_\_\_\_  
Marlyn Rasmussen, Clerk Administrator

**TRANE**

**GSA FEDERAL SUPPLY  
SCHEDULE PROPOSAL  
CONTRACT NUMBER: GS-07F-0248K**

*Trane  
A Division of American Standard Inc.*

**Prepared For:**

Bruce Smith @ Town of Los Gatos  
(408) 761-4545 cl

**Date:** March 25, 2005**Proposal Number:** X1-39444-1**Job Name:**

City of Los Gatos - Bruce Smith

**Engineer:**

Innovative

**Delivery Terms:**

Freight Allowed and Prepaid - F.O.B. Factory

**Payment Terms:**

Net 30 Days

Trane is pleased to provide the enclosed proposal for your review and approval. This proposal is compliant with Trane's GSA Federal Supply Schedule (FSS) contract, GS-07F-0248K, (<http://www.gsaweblink.com/trane/>) and all its associated terms, conditions and negotiated pricing. In the event of a discrepancy between this proposal and the FSS contract, the FSS contract terms and conditions shall govern and take precedence. All applicable taxes will be added unless Trane is provided with the appropriate tax exemption certificates. This proposal will expire 30 days from the date of issue if an order is not placed.

**Tag Data - Water Cooled Helical Rotary Chillers (Simplex) (Qty: 1)**

Item	Tag(s)	Qty	Description	Model Number
A1	CH-1	1	RTHB Series R(TM) CenTraVac	RTHB150

**Product Data - Water Cooled Helical Rotary Chillers (Simplex)****Item: A1 Qty: 1 Tag(s): CH-1**

Water-Cooled Series R(TM) CenTraVac(TM)  
Factory Assigned  
150 Nominal Tons  
Startup Allowance  
Standard Cooling  
UL/CUL Listing  
Factory Insulation  
Field Inst Sound Attenuator (Fld)  
Standard Length Shells  
3 Pass Evaporator  
L.H. Evaporator Connection  
150 psi Evaporator Water Pressure  
Internally Enhanced Evaporator Tubes  
2 Pass Condenser  
R.H. Condenser Connection  
150 psi Condenser Water Pressure  
Internally Enhanced Tubes  
398 Max RLA Unit  
Unit Mounted YDelta Starter MRLA 398  
Standard Electrical Termination  
200 Volt/60 Hertz/3 Phase  
121 kW Motor  
Under/Over Voltage Protection  
Options Module  
Summit Communications - Interface to Summit BAS System  
CWR - Outdoor Air Sensor (Fld)  
150 psi NEMA 1 Flow Switch x 2 (Fld)  
1st Year Labor Warranty Whole Unit  
1st Year Refrigerant Warranty

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CWR - Outdoor Air Sensor (Fld)  
 150 psi NEMA 1 Flow Switch x 2 (Fld)  
 1st Year Labor Warranty Whole Unit  
 1st Year Refrigerant Warranty

**Performance Data - Water Cooled Helical Rotary Chillers (Simplex)**

Tags	CH-1
Capacity (tons)	155.00
Unit power (kW)	109.00
Evap entering temp (F)	54.00
Evap leaving temp (F)	44.00
Evap flow rate (gpm)	371.00
Evap pressure drop (ft H <sub>2</sub> O)	19.00
Evap fouling factor (hr-sq ft-deg F/Btu)	0.00010
Cond entering temp (F)	85.00
Cond leaving temp (F)	94.60
Cond flow rate (gpm)	465.00
Cond pressure drop (ft H <sub>2</sub> O)	18.00
Cond fouling factor (hr-sq ft-deg F/Btu)	0.00025
Selection RLA (A)	347.00
Motor LRA (A)	1846.00
Efficiency (kW/ton)	0.700
NPLV (kW/ton)	0.510

**Excluded from the Proposal**

- Hazardous Material identification
- Abatement and/or removal
- Installation
- External Isolation
- External Controls

Total Net Price (Excluding Sales Tax) ..... **\$ 47,876 + tax**

**Add's:**

Total Net Price (Excluding Sales Tax) 2-5 Yr. Compressor Warranty..... \$ 1,318  
 Total Net Price (Excluding Sales Tax) 2-5 Yr. Labor Warranty..... \$ 3,164

Sincerely,

**Steve Johnson - Trane**

310 Soquel Way  
 Sunnyvale, CA 94085-4101  
 Phone: (408)481-3624  
 Fax: (408)481-3666

**ACCEPTANCE**

We hereby accept the foregoing proposal on the stated terms and conditions.

COMPANY \_\_\_\_\_ BY \_\_\_\_\_  
 PURCHASE ORDER \_\_\_\_\_ Type or Print \_\_\_\_\_  
 DATE \_\_\_\_\_ TITLE \_\_\_\_\_

FLD = Furnished by Trane / Installed by Others

Trane Equipment Proposal

City of Los Gatos - Bruce Smith

March 25, 2005

**See Attached Trane Terms & Conditions**

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**Trane Equipment Proposal**

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**PURCHASE ORDER TERMS AND CONDITIONS**

- 1) **Acceptance and Terms and Conditions.** The purchase of goods ("Products") hereunder is conditioned upon the terms and conditions of this purchase order ("PO"). These terms and conditions shall apply and are incorporated into every subsequent purchase order from Supplier until superceded by later terms and conditions issued by Purchaser. No other terms or conditions including, without limitation, Supplier's standard printed terms and conditions, on Supplier's proposal, order acknowledgment, invoice or otherwise, will have any application to this PO or any transactions occurring pursuant hereto, unless specifically accepted in writing by Purchaser. Supplier shall comply with this PO and the terms and conditions set forth herein unless Supplier takes written exception within three business days of receipt of this PO.
- 2) **Purchaser's Commitment.** Unless otherwise specifically agreed to in writing by Purchaser, Supplier shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Purchaser's order. It is Supplier's sole responsibility to comply in all respects with the PO by causing timely shipment of the proper quantity of Products and Purchaser shall have no liability with respect thereto. Supplier shall be solely responsible for managing its own inventory with respect to Products purchased and sold hereunder.
- 3) **Pricing and Other Charges.**
  - (a) Prices for Products covered under this PO are in U.S. dollars and are not subject to increase for the duration of the PO. No charges or price increases of any kind shall be allowed unless specifically agreed to by Purchaser in writing.
  - (b) Supplier warrants that it is selling at the lowest or most favorable prices that it offers to purchasers for Products of the same or similar quality to that herein.
  - (c) This Subsection 3 (c) and subsection 3 (d) shall only take effect if, Purchaser is required to purchase a minimum requirements of Products pursuant to this PO. Subject to the subsection (d) below regarding internet transactions, if during the duration of this PO, Purchaser receives a bona fide offer from another supplier to supply any one or more Products (the "Offered Products") at a price below that in effect for the Products purchased hereunder and Purchaser presents reasonable evidence to Supplier then Supplier shall meet such price for the Offered Products for the duration of this PO or if Supplier fails to meet such price, then Purchaser, shall have the right to purchase the Offered Products from the other supplier, as well as the right, but not the obligation, to terminate this PO without liability other than to pay for Products ordered by Purchaser prior to termination that are subsequently delivered by Supplier in accordance with this PO.
  - (d) If Purchaser anticipates purchasing Products through Internet web based auctions or other Internet web trading platforms, Purchaser shall provide Supplier a written invitation at least five (5) business days prior to the applicable Internet transaction to participate in the transaction. If Purchaser has provided Supplier with such invitation, Purchaser is free to accept any on-line offer that it receives during the on-line transaction regardless of whether such on-line offer is made by Supplier. There is no limit to the number of times that Buyer may exercise its rights under subsection 3 (c) and this subsection 3 (d) during the duration of this PO.
  - (e) Any applicable sales, use or Federal excise taxes shall be shown separately on the invoice.
- 4) **Termination for Convenience.** In addition to any rights under this PO, Purchaser reserves the right to cancel all or any part of this PO for Purchaser's convenience by written notice to Supplier. Upon such termination for convenience, Purchaser shall not incur any further cost or liability to Supplier except for Products delivered previously pursuant to the terms of this PO.
- 5) **Termination for Cause.** Should Supplier (i) (a) become insolvent, (b) become unable to pay its debts as they mature, (c) make a general assignment for the benefit of creditors, (d) come under a suspension of payments, (e) have a receiver appointed for the whole or any substantial part of its assets or (f) become in any way the subject of a bankruptcy petition, (ii) have a change in ownership or management such that a competitor of Purchaser gains an ownership or controlling interest in Supplier, and/or (iii) materially default in the performance of any provision of this PO, Purchaser may in its discretion terminate this PO for a "cause" by giving Supplier thirty days prior written notice thereof. In the event Supplier, within the thirty days following said notice from Purchaser, shall correct the cause giving rise to the notice to the satisfaction of Purchaser, in its sole discretion, the cause of termination shall be deemed void and this PO shall continue in effect. In the event Purchaser terminates this PO pursuant to this Section 5, Purchaser shall have all rights and remedies available under law and equity.
- 6) **Inspections.** Purchaser shall have the right to reject any nonconforming Products and Supplier shall assume title and risk of loss of all nonconforming Product and shall promptly reimburse Purchaser for all costs incurred by Purchaser as a result of such rejection of nonconforming Products. Payment for Products delivered or inspection by Purchaser shall not constitute acceptance of the Products and shall not relieve Supplier of its warranty or other obligations hereunder.
- 7) **Warranties.** Supplier warrants that all Products supplied to Purchaser under this PO (i) free of any claim of any nature by any third person and that Supplier shall convey clear title to Products to Purchaser, (ii) of merchantable quality free from all defects in design, workmanship and materials, and shall be fit for the particular purposes for which they are purchased, (iii) in compliance with all applicable laws, rules and regulations, and (iv) manufactured and provided in strict accordance with the specifications, designs, drawings, or other requirements including performance specifications approved by Purchaser. The warranties set forth in this Section 7 shall extend for a time period equal to timeframe extended by Purchaser to its customers for units in which the Products are used ("Purchaser's Units"). If the Products are not used in Purchaser's Units, the minimum warranty period shall be twelve (12) months from Purchaser's receipt of conforming Products or such greater period of time specified on the face of this PO. The warranties contained in this Section are in addition to and are not to be construed as restricting or limiting any warranties or remedies of Purchaser, express or implied, which are provided by this PO or law. Any attempt by Supplier to limit, disclaim or restrict any such warranties or remedies of Purchaser, in any manner whatsoever shall be null, void, and ineffective. Inspection, test, acceptance, or use of the Products in Purchaser's Units shall not affect the Supplier's obligation under this warranty, and shall survive such inspection, test, acceptance, and use. Upon notice from Purchaser that a good supplied hereunder failed within the warranty timeframe, in addition to any rights or remedies Purchaser may have under this PO or law, Supplier shall reimburse Purchaser for all direct or indirect costs incurred by Purchaser as result of such failure including all repair and replacement costs and Supplier shall replace such defective good at no cost to Purchaser. Warranty failures shall be returned to Supplier at Supplier's expense and at Purchaser's discretion. This provision shall survive termination or expiration of this PO.
- 8) **Supplier Changes.** Supplier shall not make any changes in the specifications, physical composition of, or processes used to manufacture the Products hereunder without Purchaser's prior written consent.
- 9) **Assignment.** Unless Purchaser has provided prior written consent, any partial or complete assignment by Supplier of right(s) or delegation of obligation(s), including subcontracting, shall be void. Notwithstanding any permitted assignment, such assignment shall not relieve Supplier of its obligations and liabilities hereunder.
- 10) **Compliance with Laws.** Supplier represents and warrants that the Products comply with all applicable laws, rules and regulations.
- 11) **Confidentiality.** Supplier will keep all Purchaser information confidential. This provision shall survive termination or expiration of this PO.
- 12) **Delivery and Delays.** Specific requirements regarding delivery, packaging of Products shall be detailed in this PO. Delivery is not complete until Products have been actually received and accepted by Purchaser as set forth herein. Except for delays caused by Purchaser or a Force Majeure (as defined herein), TIME IS OF THE ESSENCE WITH RESPECT TO DELIVERY UNDER THIS PO. If, for any reason, Supplier anticipates difficulty in complying with a required delivery date or meeting any other requirements in this PO, Supplier shall immediately notify Purchaser. If Supplier does not comply with Purchaser's delivery requirements, in addition to such other rights and remedies it may have, Purchaser may, in its sole discretion, (i) require delivery by the fastest way to meet the delivery dates in the PO at the sole expense of Supplier, (ii) submit a revised PO or (iii) terminate this PO without liability to Supplier. Supplier shall be liable to Purchaser for all reasonable costs incurred by Purchaser. This provision shall survive termination or expiration of this PO.
- 13) **Indemnification.** Supplier shall indemnify, defend and hold Purchaser, and its officers, directors, employees and agents (collectively the "Indemnitees") harmless from and against any and all damages, claims, losses, expenses, costs, obligations, liabilities, including without limiting the generality of the foregoing, liabilities for attorney's fees suffered directly or indirectly by an Indemnitee by reason of, or arising out of (i) any breach of any representation or warranty made by Supplier pursuant to this PO, (ii) any failure by Supplier to perform or fulfill any of its covenants or

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Trane Equipment Proposal

City of Los Gatos - Bruce Smith

March 25, 2005

- agreements set forth in this PO or (iii) any litigation, proceeding or claim by any third party relating in any way to the obligations of Supplier under this PO. Supplier shall not consummate any settlement without an Indemnitee's prior written consent. Supplier's covenants of indemnity herein will continue in full force and effect notwithstanding the termination or expiration of this PO. In any claim against an Indemnitee by an employee of Supplier or any subcontractor or anyone directly or indirectly employed by any of them or anyone whose acts they may be liable, the indemnification obligations set forth in this Section shall not be limited in any way by or for Supplier or any subcontractor under any applicable worker's compensation act, disability or other employee benefit act. This provision shall survive termination or expiration of this PO.
- 14) **Patents.** Supplier warrants that all Products sold hereunder do not infringe any patents or intellectual property rights of any third party.
- 15) **Use of Name; Advertising.** Supplier shall not use Purchaser's name, logo, trademark or any other proprietary information for any purpose whatsoever, including but not limited to any advertising, without the express prior written approval of Purchaser.
- 16) **Liens.** Supplier shall pay for all labor, services, materials, equipment, parts, and other expenses incurred by it in connection with meeting Supplier's obligations under the this PO, and shall indemnify and defend and hold Purchaser harmless against all claims and liens arising out of Supplier's unpaid accounts. This provision shall survive termination or expiration of this PO.
- 17) **Ethical Business Conduct.** Purchaser is committed to a policy of fair, honest and ethical business practices and conduct, and to full compliance with all applicable laws and government regulations, and Supplier hereby agrees to and accepts the foregoing policy as a governing principle of this PO.
- 18) **Freight Terms.** Unless otherwise specified on the PO, freight terms shall be F.O.B. jobsite.
- 19) **Certifications.** From time to time, at Purchaser's request, Supplier shall provide certificates to Purchaser relating to any applicable legal requirements, in each case in form and substance satisfactory to Purchaser.
- 20) **Foreign Purchases.** Supplier agrees that Purchaser will not be a party to the importation of the Products, that the transaction(s) represented by this PO will be consummated subsequent to importation, and that Supplier will neither cause nor permit Purchaser's name to be shown as "importer of record" on any customs declaration and that Supplier will comply with all applicable laws, rules and regulations governing foreign purchases and importation.
- 21) **Invoices.** All invoices or receiving documentation must contain the following information: Control number, PO number, good or item number, description of each good or item, sizes, quantities, and unit prices and any other information as requested by Purchaser.
- 22) **Force Majeure.** Delay or non-performance of any obligation herein shall be excused if the cause of the delay is beyond the control of the party seeking to be excused from performance and could not have been avoided or overcome. The non-performing party will notify the other party as soon as possible and will use its best efforts to remedy the non-performance. Supplier's ability to sell the Products at a more advantageous price shall not constitute a Force Majeure.
- 23) **Purchaser's Property.** All tools, gauges, dies, fixtures, and patterns furnished by Purchaser, or which Purchaser specifically authorizes Supplier to acquire for work on this order, shall be the property of Purchaser. They shall be listed and maintained in suitable condition to do the work by and at the expense of the Supplier, and returned to Purchaser at any time upon request, F.O.B. Supplier's plant. Supplier shall maintain adequate insurance on the above and furnish a certificate of insurance to Purchaser if Purchaser so requests.
- 24) **Set-Off.** Purchaser shall have the right at all times to set off any amount owing from Supplier to Purchaser, any component of Purchaser or any of its affiliated companies against any amount payable at any time by Purchaser in connection with this PO.
- 25) **Insurance.** Supplier shall provide and maintain insurance with the following limits: (i) Worker's compensation insurance in accordance with the requirements of the applicable laws; (ii) Employer's Liability insurance required by applicable laws; (iii) A Comprehensive General Liability policy with a single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury and property damages; (iv) Automobile insurance for owned or hired vehicles covering bodily injury, including death and/or property damage with a single limit of \$500,000 each occurrence and aggregate of \$1,000,000; and (v) Umbrella Coverage. Supplier shall provide coverage for any legal liability, which may exceed the underlying limits of insurance coverages required herein pursuant to a Comprehensive Excess Indemnity policy (commonly referred to as an "Umbrella" policy) with aggregate limits of \$5,000,000. All insurance required to be carried by Supplier shall be with a reputable and properly licensed company. Supplier shall deliver certificates evidencing such coverage to Purchaser.
- 26) **Good Faith Dispute Resolution.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this PO promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this PO.
- 27) **Quality Improvement.** Supplier agrees to participate in Purchaser's quality initiatives, as reasonably requested by Purchaser, and to devote sufficient resources thereto.
- 28) **Purchaser's Changes.** Purchaser shall have the right to make request changes of any kind to this PO. If such requested change causes a material increase or decrease in Supplier's costs required to perform Purchaser's requested change, Supplier shall immediately notify Purchaser in writing and an agreed upon equitable adjustment shall be made and this PO modified accordingly. Supplier shall not implement such change request until such time as resolution of any adjustment occurs.
- 29) **Waiver.** The terms of this PO cannot be rescinded, modified or waived except in writing, signed by an authorized representative of the party to be charged.
- 30) **Governing Law.** This PO shall be construed and enforced according the laws of the State of excluding its "choice of law" or "conflict of law" rules.
- 31) **Entire Agreement.** This PO sets forth the entire and only agreement between the parties regarding the subject matter and supersedes any and all prior or contemporaneous agreements, understandings, or proposals whether written or oral, between the parties.
- 32) **Equal Employment Opportunity.** Purchaser 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. Pursuant to Executive Order 11246, Contractors agree to include the Equal Employment Opportunity Clauses by reference in every contract, agreement and purchase order entered into with subcontractors or suppliers as required by 41 C.F.R. 60-1.4(d). The provisions of 41 C.F.R. 60-1.4 are fully incorporated herein.
- 33) **Payment Terms.** Payment terms shall be Net 60 days from date of invoice with individual shipment billing by location.

City of Los Gatos - Bruce Smith  
 Unit Dimensions - Water Cooled Helical Rotary Chillers (Simplex)  
 Item: A1 Qty: 1 Tag(s): CH-1

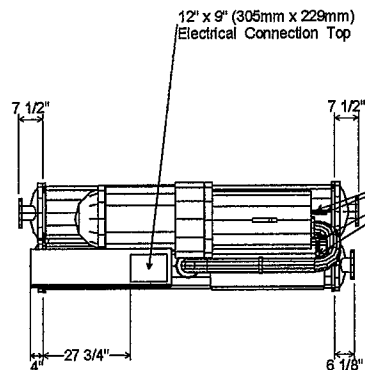
March 25, 2005

Starter Panel Connection	Selection RLA	Lug Size L1-L3 (Each Phase)
Main Lugs Only	000 - 480	(2) #6 - 500 MCM
Main Circuit Breaker Or Non - Fused Disconnect Switch	000 - 197	(1) #6 - 350 MCM
	198 - 480	(2) 3/0 - 500 MCM

	Inchs	
Condenser Water Connection Size	4	NPS Pipe Size
Evaporator Water Connection Size	4	NPS Pipe Size

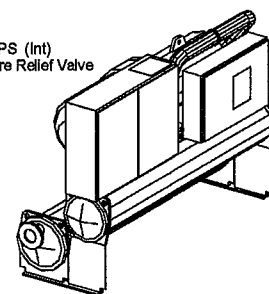
# NOTES:

1. Dimensional Tolerance +/- 1/4" (6.35 mm)
2. Evaporator Entering Is The Top Connection And Evaporator Leaving Is The Bottom Connection.
3. Condenser Entering Is The Bottom Connection And Condenser Leaving Is The Top Connection.

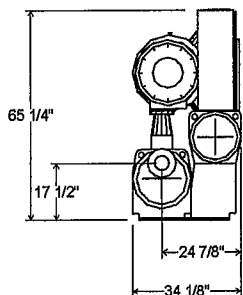


PLAN VIEW

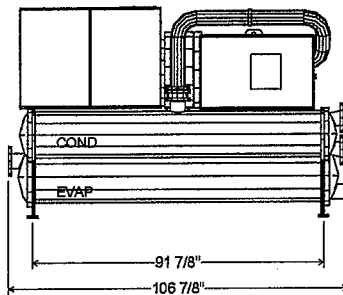
3/4" NPS (Int) Pressure Relief Valve



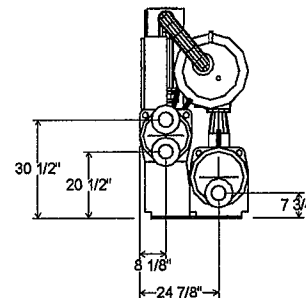
ISOMETRIC VIEW



LEFT END VIEW



FRONT VIEW



RIGHT END VIEW

FLD = Furnished by Trane / Installed by Others

Trane Equipment Proposal

City of Los Gatos - Bruce Smith

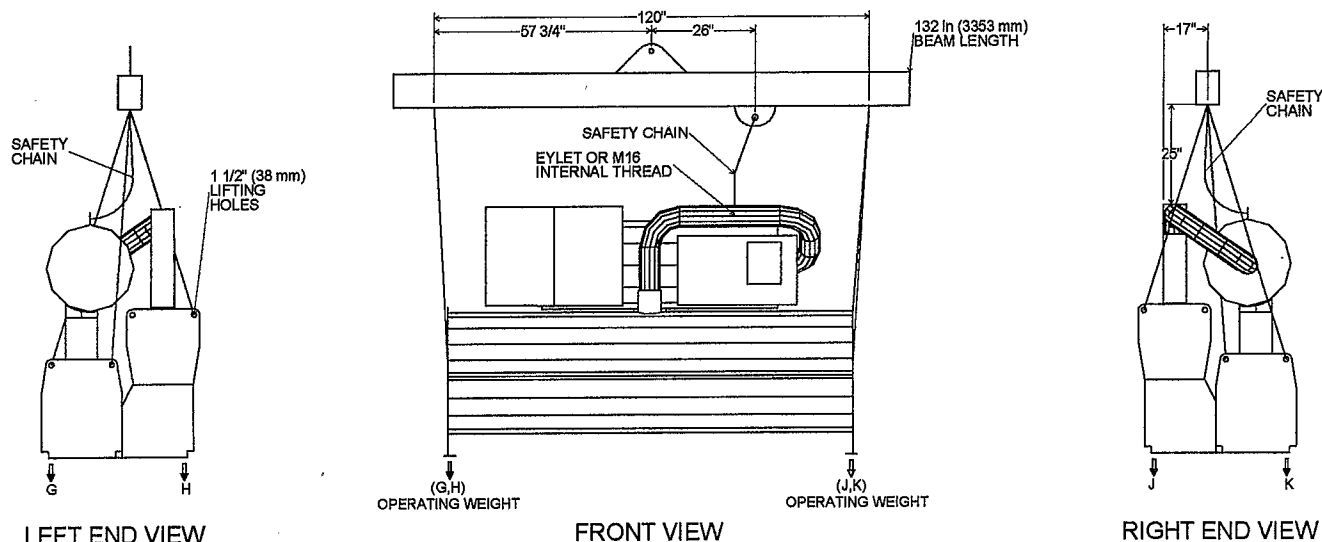
Weight, Clearance & Rigging Diagram - Water Cooled Helical Rotary Chillers (Simplex)

March 25, 2005

Item: A1 Qty: 1 Tag(s): CH-1

FLD = Furnished by Trane / Installed by Others

Trane Equipment Proposal



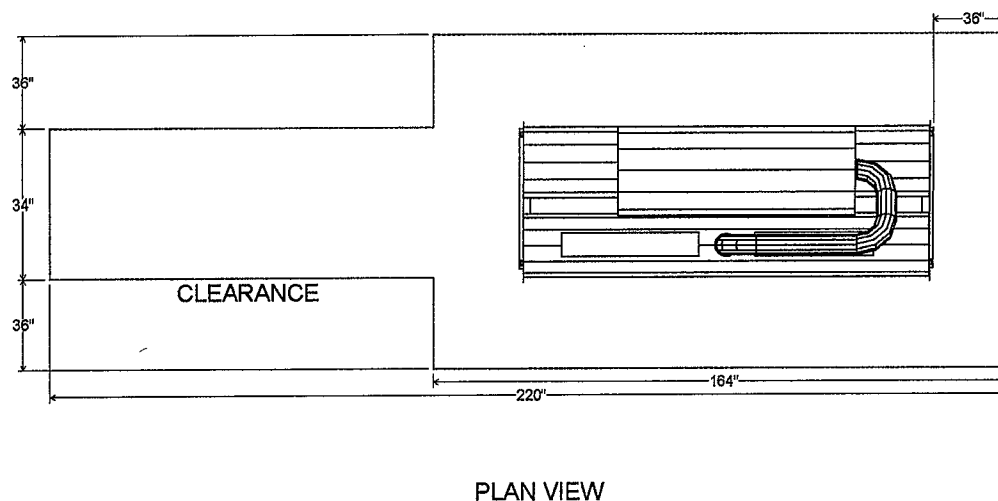
# NOTES:

1. DO NOT USE CABLES (CHAINS OR SLINGS) EXCEPT AS SHOWN. OTHER LIFTING ARRANGEMENTS MAY CAUSE EQUIPMENT DAMAGE OR SERIOUS PERSONAL INJURY.
2. EACH OF THE CABLES (CHAINS OR SLINGS) USED TO LIFT UNIT MUST BE CAPABLE OF SUPPORTING THE ENTIRE WEIGHT OF THE UNIT.
3. LIFTING CABLES (CHAINS OR SLINGS) MAY NOT BE THE SAME LENGTH. ADJUST AS NECESSARY FOR EVEN LEVEL LIFT.
4. ADJUST AS NECESSARY USING SINGLE POINT LIFT. TO PREVENT UNIT FROM ROLLING, ATTACH CABLE (CHAIN OR SLING) WITHOUT ANY TENSION AS SHOWN.
5. DO NOT USE FORKLIFT UNIT TO MOVE OR LIFT.
6. IF UNIT IS DISASSEMBLED, SEE SERVICE BULLETIN RTHB-SB-8 FOR LIFTING AND RIGGING OF COMPONENTS.

# NOTE:

ALLOW 22 In CLEARANCE ABOVE THE STARTER ELECTRICAL CONNECTION DOOR.

UNIT SIZE	LIFTING WEIGHT lb	G lb	H lb	J lb	K lb	OPERATING WEIGHT WITH WATER				
						TOTAL lb	G lb	H lb	J lb	K lb
150 STD	5375	1522	1176	1291	1387	5716	1596	1272	1387	1461



To Town:  
Town of Los Gatos  
Parks and Public Works Department  
41 Miles Avenue  
Los Gatos, CA 9503021

To Vendor:  
Municipal Maintenance Equipment  
2360 Harvard Street  
Sacramento, CA 95815  
ATT: Bob Egli

5. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of the Agreement.

6. Modifications. No modification, waiver, termination, or amendment to this Agreement is effective unless made in writing signed by the Town and the Vendor.

7. Severability. If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

8. Entire Agreement. This Agreement sets forth the entire understanding between the parties.

Contractor shall supply equipment per Town's Request for Proposal Dated December 2, 2004 referenced in Exhibit A.

IN WITNESS WHEREOF, the Town and the Vendor have executed this Agreement on the date above written.

Town of Los Gatos, by:

\_\_\_\_\_  
Debra J. Figone, Town Manager

Municipal Maintenance Equipment

\_\_\_\_\_  
Signature

Recommend by:

\_\_\_\_\_  
John E. Curtis  
Director of Parks and Public Works

\_\_\_\_\_  
Frank Wheeler III, Vice President  
Print Name

Approved as to form:

\_\_\_\_\_  
Orry P. Korb, Town Attorney

Attest:  
Town of Los Gatos, Los Gatos, California

\_\_\_\_\_  
Marlyn Rasmussen, Clerk Administrator