

**REQUEST FOR LEGISLATIVE ACTION**

**Version 6/10/19**

Completed by County Counselor's Office:


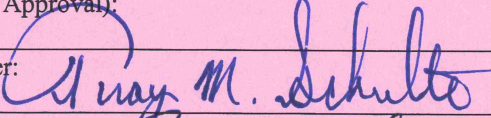
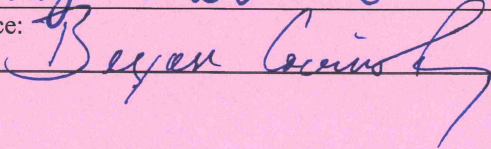
~~Res~~/Ord No.: 5507

Sponsor(s): Dan Tarwater III

Date: May 10, 2021

<p>SUBJECT</p>	<p>Action Requested  <input type="checkbox"/> Resolution  <input checked="" type="checkbox"/> Ordinance</p> <p>Project/Title: Appropriating \$1,611,450 from the CARES Act Fund to cover costs associated with emergency cooling of the Downtown Courthouse associated with improvements to the facility's chilled water system.</p>														
<p>BUDGET INFORMATION  <i>To be completed By Requesting Department and Finance</i></p>	<table border="1"> <tr> <td>Amount authorized by this legislation this fiscal year:</td> <td>\$1,611,450</td> </tr> <tr> <td>Amount previously authorized this fiscal year:</td> <td>\$0</td> </tr> <tr> <td>Total amount authorized after this legislative action:</td> <td>\$1,611,450</td> </tr> <tr> <td>Amount budgeted for this item * (including transfers):</td> <td>\$0</td> </tr> <tr> <td>Source of funding (name of fund) and account code number:</td> <td></td> </tr> <tr> <td>FROM: 040-9999-32810 CARES Act Fund</td> <td>\$1,611,450</td> </tr> <tr> <td>TO: 040-1204-56510 CARES Act Fund – Fac Mgmt Kansas City – Maintenance and Repairs – Buildings</td> <td>\$1,611,450</td> </tr> </table> <p>* If account includes additional funds for other expenses, total budgeted in the account is: \$</p> <p>OTHER FINANCIAL INFORMATION:</p> <p><input type="checkbox"/> No budget impact (no fiscal note required)  <input type="checkbox"/> Term and Supply Contract (funds approved in the annual budget); estimated value and use of contract:  Department: Estimated Use:</p> <p>Prior Year Budget (if applicable):  Prior Year Actual Amount Spent (if applicable):</p>	Amount authorized by this legislation this fiscal year:	\$1,611,450	Amount previously authorized this fiscal year:	\$0	Total amount authorized after this legislative action:	\$1,611,450	Amount budgeted for this item * (including transfers):	\$0	Source of funding (name of fund) and account code number:		FROM: 040-9999-32810 CARES Act Fund	\$1,611,450	TO: 040-1204-56510 CARES Act Fund – Fac Mgmt Kansas City – Maintenance and Repairs – Buildings	\$1,611,450
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<p>PRIOR LEGISLATION</p>	<p>Prior ordinances and (date): Ord. 5502, 5/2/2021  Prior resolutions and (date): Res. 20648, 4/12/2021</p>														
<p>CONTACT INFORMATION</p>	<p>RLA drafted by (name, title, &amp; phone): Brian Gaddie, Director of Public Works, 881.4496</p>														
<p>REQUEST SUMMARY</p>	<p>As stated in Resolution 20648, extreme cold temperatures in late February forced Facilities staff to discharge the chilled water system to prevent components from freezing and rupturing causing serious damage. During the discharge process, it was evident that the system as a whole had degraded substantially since previous inspections. This evidence created a concerning situation that proved the system was not intact and unable to be recharged and placed into operation.</p> <p>In association with immediate and emergency repairs to the Downtown Courthouse chilled water system approved through Resolution 20648, a plan to cool the building has been prepared to allow occupants on certain floors to remain operational. In conjunction with the 16<sup>th</sup> Circuit Court, the County has identified vital areas of the building that must remain in service during the repairs of the chilled water system.</p> <p>After reviewing several possible methodologies, it was determined that the most cost-effective method with the highest chance of success would be to employ air-cooled chillers to serve multiple air handlers placed on the courthouse grounds. These air handlers would then be ducted to windows near existing air handlers in the building, allowing the building air handlers to draw the conditioned air into their return ducts and distribute that</p>														



	<p>air through the building. Key areas are served by 31 existing air handlers distributed on floors between the 3<sup>rd</sup>- and eighth-floor mezzanines. The air handling equipment and the associated components will be secured behind fencing to protect the equipment and the public alike.</p> <p>It is the request of the Public Works Department that funds be transferred from the CARES Act Fund to address the temporary cooling of the Downtown Courthouse. The funding requested has been derived from known costs, provided by Johnson Controls International, required to provide the most cost-effective and successful method in cooling the facility during repairs to the chilled water system.</p> <p>The proposed work will be completed under the terms and conditions set forth by Johnson Controls' Sourcewell contract #030817-JHN. This contract is required over the County's Term and Supply contract due to the amount and type of rental equipment necessary. The County's existing GSA contract with Johnson Controls does not contain the necessary terms to complete the required work.</p> <p>The initial installation of necessary equipment and the first installment of rental fees is expected not to exceed a cost of \$1,368,472. Removal of all equipment and work required to return the facility to its previous condition and the appropriate performance and payment bonding are included in the initial fees. Additional rental fees and insurance, based on 3-week periods, will be incurred at a rate of \$178,130 and \$16,655, respectively. The off-site cooling system will be required to be functional during the chilled water system repairs, which is expected to be 8 weeks in duration. The initial installation fees and one additional 3-week cycle of rental and two 3-week cycles of insurance have been requested within this Resolution. Incidentals incurred to existing County Facilities Management operating accounts have also been requested in the amount of \$31,538. Total funds requested for transfer is not to exceed \$1,611,450.</p> <p>This Ordinance has been prepared to amend Ordinance 5502, approved on 5/3/2021. Cares Act funds have been approved for use and will replace the request for General Funds previously appropriated in Ordinance 5502.</p>	
CLEARANCE	<input type="checkbox"/> Tax Clearance Completed (Purchasing & Department) <input type="checkbox"/> Business License Verified (Purchasing & Department) <input type="checkbox"/> Chapter 6 Compliance - Affirmative Action/Prevailing Wage (County Auditor's Office)	
COMPLIANCE	<input type="checkbox"/> MBE Goals <input type="checkbox"/> WBE Goals <input type="checkbox"/> VBE Goals	
ATTACHMENTS	Rand and JCI Work Plan and Quotes	
REVIEW	Department Director: 	Date: <b>5-4-2021</b>
	Finance (Budget Approval): <i>If applicable</i>	Date:
	Division Manager: 	Date: <b>5-6-2021</b>
	County Counselor's Office: 	Date: <b>5/6/2021</b>

Fiscal Information (to be verified by Budget Office in Finance Department)

- This expenditure was included in the annual budget.
- Funds for this were encumbered from the \_\_\_\_\_ Fund in \_\_\_\_\_.



There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.

Funds sufficient for this expenditure will be/were appropriated by Ordinance #

Funds sufficient for this transfer are available from the source indicated below.

Account Number:	Account Title:	Amount Not to Exceed:
040-9999-32810	CARES Act Fund	\$1,611,450

This award is made on a need basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases will, of necessity, be determined as each using agency places its order.

This legislative action does not impact the County financially and does not require Finance/Budget approval.







## JACKSON COUNTY Facilities Management Division

Jackson County Courthouse  
415 East 12th Street, Third Floor Mezzanine  
Kansas City, Missouri 64106  
jacksongov.org

(816) 881-3258  
Fax: (816) 881-3583

### MEMORANDUM

To: Hon. Frank White, Jr., Jackson County Executive

From: Brian Gaddie, PE, Director of Public Works

Date: 4/28/2021

Mr. County Executive,

This memorandum has been prepared as an amendment to the emergency procurement procedures executed on 4/19/2021 to provide temporary cooling to the Downtown Courthouse during the remediation efforts to repair the chilled water system within the building. As you are aware, the chilled water system within the courthouse is currently being improved.

During these repair efforts, a plan to provide offsite cooling has been developed and will supply air condition to a large portion of the facility. We have been working closely with Johnson Controls in the development of this plan which will deliver cold air to the majority of Circuit Court spaces within the Courthouse.

It is expected that the duration of work will coincide with the completion of the chilled water line repairs and the initial install cost of the services requested is expected not to exceed \$1,368,472. The fees proposed include the set up and removal of all equipment, rental fees for 6 weeks, equipment insurance for 6 weeks, testing and balancing the equipment for optimal performance and all other associated work. Should additional rental and insurance fees be required due to extraneous circumstances, they would be accrued at rates of \$178,130 and \$16,655, respectively.

Given the information above, it is my recommendation that we treat the current situation as an emergency and procure the necessary services as such. I would be happy to discuss at your convenience, if required.

Professionally,

A handwritten signature in black ink, appearing to read "B. Gaddie", with a long horizontal stroke extending to the right.

Brian Gaddie, PE  
Director of Public Works

Approved by:

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Hon. Frank White, Jr., Jackson County Executive

*Frank White, Jr., County Executive*



## Courthouse Temp Cooling

Kansas City Service Branch  
9850 Legler Road  
Lenexa, KS 66219  
Phone: 816-783-3443

**TO:** Jackson County  
Attn: Rick Gerla

**Date:** April 22, 2021  
**Project:** Courthouse Temp Cooling

**This Proposal is in accordance with the Johnson Controls Sourcewell contract #030817-JHN**

Rick,

Per our recent meetings and conversations, please find the following preliminary estimate to provide temporary cooling at the downtown Jackson County Courthouse facility at 415 E 12<sup>th</sup> St., Kansas City, MO.

After reviewing several possible methodologies with input from the County, it was determined that the most cost-effective method with the highest chance of success would be to employ air-cooled chillers to serve multiple air handlers placed on the courthouse grounds. These air handlers would then be ducted to windows near existing air handlers in the building, allowing the building air handlers to draw the conditioned air into their return ducts and distribute that air through the building. Key areas are served by 31 existing air handlers distributed on floors between the 3<sup>rd</sup>- and eighth-floor mezzanines. Based on the information provided by the County, these 31 AHUs are designed to distribute approximately 142,000 cfm of air under design conditions. The intent of the solution proposed below is to provide this approximate volume of conditioned air from air handlers on the ground, cooled by chilled water produced by two 527T chillers.

**Scope and performance clarifications:**

1. JCI to provide and install equipment to generate:
  - a. Approximately 142,000 cfm of airflow
  - b. Approximately 1,054 tons of mechanical cooling
2. This is not a turnkey replacement of existing HVAC infrastructure. While we have made great efforts to present a viable method to cool key areas of the building, this is not a fully engineered solution and the outcome and level of success cannot be guaranteed.
  - a. The 415 E 12th street facility has constraints and unknowns inherent to implementing supplemental cooling in a facility that was not designed to accommodate it.
  - b. At minimum, space temperature, humidity, pressure/air balance and sound may be inconsistent and vary.

**Temporary Cooling, Floors 3-8M**

1. Provide materials and labor to supply power from the 480V and 208V switchgear in the basement of the Courthouse to temporary chillers and air-handlers described below
2. Two (2) 527T chillers on trailers to be positioned in NW and NE corners of South parking lot (E/W orientation)
3. Four (4) 28k cfm AHUs
  - a. One in the loading dock near the SW corner of the building (N/S orientation)
  - b. One in the paved area near the SE corner of the building, near the "smokers area" awning (E/W orientation)
  - c. One in the grass near the NW corner of the building (orientation TBD)
  - d. One in the grass near the NE corner of the building (orientation TBD)
4. Two (2) 20k cfm AHUs in the grass on the North end of the building
  - a. One near the NW corner (near the 28k machine, orientation TBD)
  - b. One near the NE corner (near the 28k machine, orientation TBD)
5. Timber or similar to level units on uneven surfaces
  - a. Any soil/sod/sprinkler repair after equipment removed, by others
6. Provide 6' chain link construction fencing around all equipment, hoses and cable on grade, driven posts, with barbed wire
7. Pull chilled water hose and electrical cords on west side of building up and over parapet wall (3M) to feed air handlers on NW corner of building without blocking west entrance
  - a. Secure hoses/cables without damage to public-facing walls, remove/replace fence section(s) as needed
8. Pull chilled water hose and electrical cords on east side of building to feed air handlers on NE corner of building
  - a. Hoses/cables on ground around east side, arched over east entry, remove/replace fence section(s) as needed
9. Remove window panes as needed and install weather resistant supports/connections to secure duct carrying conditioned air into building air handler areas
  - a. Secure ductwork via window supports to withstand mild to moderate winds and reduce probability of damage to duct or exterior/interior walls/windows
10. Install lightweight, weather resistant fabric ductwork from air handlers on grade to window entry points
  - a. Add supports to transition over parapet roof to reduce airflow restrictions
  - b. Add approximately six (6) return air ducts from lower floors back to air handlers to relieve building pressure and reduce outside air load
11. Prepare existing air handlers in building to receive conditioned air via common return or by exposing ducted return
12. Provide system startup (temporary chillers and temporary air handling units provided)
  - a. Initial startup only - equipment to run continuously unless system outage
13. Provide daily (8h/day x M-F) walkthroughs with equipment checks and minor service (materials not included)
14. Shutdown/remove all temporary equipment and associated duct, hose, cable, at end of rental period
15. Replace window panes, including new glass and seals if needed due to potential breakage during removal



**Pricing:**

First rental month (3 weeks, starting from equipment arrival date),  
including total setup and teardown:

\$1,368,472.00

Each additional rental month (3 weeks) with service walks:

\$178,130.00

**Optional add:**

Rental equipment protection RPP (per each 3 wk rental month):

\$16,655.00

**This Proposal is in accordance with the Johnson Controls Sourcewell contract #030817-JHN**

**Notes and exclusions:**

1. In the event of conflict with proposal terms and conditions, Sourcewell contract terms and conditions will prevail.
2. Any setup/teardown work generating considerable noise that may interfere with building operations to be done after hours at customer direction. Work plans to be communicated to customer approximately five days (no less than 48h) in advance for review.
3. The County is responsible for security of equipment and any damage incurred (rental protection options available at additional cost). We highly recommend 24/7 security on-site to protect equipment, which is not included in this proposal.
  - a. Rental Protection Plan (RPP), is not insurance, it is to offset possible damages or theft that may occur during the rental. The cost of this plan is 12% of the rental. To opt out of this plan a certificate of insurance can be provided. RPP covers repairs and replacements up to the first \$75,000. The customer would be responsible for all rental charges, cost of rental protection, 10% of repairs/replacement up to \$1000. Any damage over \$75,000, Johnson Controls will work with the customer and their insurance company. The rental contract must be paid in full for an RPP claim to be approved. For additional information and limitations please refer to the RPP Terms and Conditions.
4. In the event of rental equipment failure, local service teams will respond within 8 hours. If the problem cannot be resolved, replacement equipment will be ordered within 24 hours.
5. Repair of sod/soil/sprinklers/underground utilities/parking surfaces by others.
6. Panes of glass that are removed may be replaced with new glass. Any risk of minor differences in appearance or function as compared to existing glass is assumed by customer.
7. Approximately 3-4 weeks for full implementation, bringing up various areas as we're able along the way.
8. Building and/or street permits are included in this quote.
9. Note that rental month is 3 weeks starting upon equipment arrival on site, partial months can be billed weekly as 3 day week.
10. Performance/payment bonds are included in this quote.
11. All taxes excluded.



**This proposal with attached T's & C's and alternates listed below are hereby accepted and Johnson Controls is authorized to proceed with work; subject, however to credit approval by Johnson Controls, Inc., Milwaukee, Wisconsin.**

**This proposal is valid until: 30 days**

Jackson County

Johnson Controls, Inc.

**Name:** \_\_\_\_\_

**Name:** Mark Hess \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** Account Executive \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PO:** \_\_\_\_\_

\_\_\_\_\_

**Standard Terms and Conditions – U.S.A.****References to “products”, “equipment” or “services” herein shall mean those to be furnished by Seller as identified on the applicable Seller Quotation**

(1) **AGREEMENT AND LIMITATIONS.** Buyer accepts these Standard Terms and Conditions by signing and returning Seller's Quotation, by sending a purchase order in response to the Quotation, or Buyer's instructions to Seller to begin work, including shipment of product or performance of services. Upon Buyer's acceptance, Seller's Quotation and the related terms and conditions referred to in the Quotation shall constitute the entire agreement relating to the products, equipment and services covered by the Quotation (the "Agreement"). No terms, conditions or warranties other than those identified in the Quotation and no agreement or understanding, oral or written, in any way purporting to modify such terms and conditions whether contained in Buyer's purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller's authorized representative. Buyer is hereby notified of Seller's express rejection of any terms inconsistent with these Standard Terms and Conditions or to any other terms proposed by Buyer in accepting Seller's Quotation. Neither Seller's subsequent lack of objection to any such terms, nor the delivery of the products or services, shall constitute an agreement by Seller to any such terms.

(2) **TERMINATION OR MODIFICATION.** If either party materially breaches this agreement, the other party may notify the breaching party in writing, setting out the breach, and the breaching party will have 60 days following such notice to remedy the breach. If the breaching party fails to remedy the breach during that period, the other party may by written notice terminate the Agreement. These Standard Terms and Conditions may be modified or rescinded only by a writing signed by authorized representatives of both Seller and Buyer. Accepted orders may be cancelled or modified by Buyer only with Seller's express written consent. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of such cancellation or modification, plus a reasonable profit.

(3) **PRICE, SHIPMENT, AND PAYMENT.** Prices on accepted orders are firm for a period of 90 days from date of acceptance. Price and delivery is F.O.B. point of manufacture, unless otherwise provided. Unless otherwise agreed to in writing by Seller, all payments are due net thirty (30) days from the date of invoice. Seller may, at its sole option, have the right to make any delivery under this Agreement payable on a cash or payment guarantee before-shipment basis. In the case of export sales, unless otherwise agreed to in writing by Seller, all payments are to be made by means of a confirmed irrevocable letter of credit.

(4) **TAXES.** All prices exclude state and local use, sales or similar taxes. Such taxes, if applicable, will appear as separate items on the invoice unless Buyer provides a tax exemption certificate that is acceptable to taxing authorities.

(5) **DELIVERY.** The delivery date(s) provided by Seller for the product and equipment is only an estimate and is based upon prompt receipt of all necessary information from Buyer. The delivery date(s) is subject to and shall be extended by delays caused by strikes, fires, accidents, shortages of labor or materials, embargoes, or delays in transportation, compliance with government agency or official requests, or any other similar or dissimilar cause beyond the reasonable control of Seller. FAILURE TO DELIVER WITHIN THE TIME ESTIMATED SHALL NOT BE A MATERIAL BREACH OF CONTRACT ON SELLER'S PART. If Buyer causes Seller to delay shipment or completion of the product or equipment, Seller shall be entitled to any and all extra cost and expenses resulting from such delay.

(6) **LIMITED WARRANTY.** Seller warrants that the product and equipment furnished by Seller under the Agreement will be of good quality and that the services provided by Seller will be provided in a good and workmanlike manner. If Seller installs or furnishes product or equipment under the Agreement, and such product or equipment, or any part thereof, is covered by a manufacturer's warranty, Seller will transfer the benefits of that manufacturer's warranty to Buyer. This limited warranty does not cover failures caused in whole or in part by (i) improper installation or maintenance performed by anyone other than Seller; (ii) improper use or application; (iii) corrosion; (iv) normal deterioration; (v) operation beyond rated capacity; (vi) the use of replacement parts or lubricants which do not meet or exceed Seller's specifications, or (vii) if Seller's serial numbers or warranty date decals have been removed or altered. To qualify for warranty consideration for products or equipment, at the earlier of the Buyer's discovery of the defect or the time at which the Buyer should have discovered the defect; Buyer must immediately notify Seller in writing for instructions on warranty procedures. Seller's sole obligation for defective services shall be to repair or to replace defective parts or to properly redo defective services. All replaced equipment becomes Seller's property. **THIS WARRANTY IS EXCLUSIVE AND IS PROVIDED IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED.**

(7) **INDEMNIFICATION, REMEDIES AND LIMITATIONS OF LIABILITY.** In addition to Paragraph 8 below regarding patents, Buyer agrees that Seller shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of Seller. In the event Buyer claims Seller has breached any of its obligations, whether of warranty or otherwise, Seller may request the return of the goods and tender to Buyer the purchase price theretofore paid by Buyer, and in such event, Seller shall have no further obligation under the Agreement except to refund such purchase price upon redelivery of the goods. If Seller so requests the return of the goods, the goods shall be redelivered to Seller in accordance with Seller's instructions and at Seller's expense. The remedies contained in these Standard Terms and Conditions shall constitute the sole recourse of Buyer against Seller for breach of any of Seller's obligations under the Agreement, whether of warranty or otherwise. **In no event shall Seller be liable for special, indirect, incidental, or consequential damages, including loss of anticipated profit, or other economic loss, or for any damages arising in tort, whether by reason**

and all claims, suits, actions or proceeds ("Claims") against such parties based upon the infringement or alleged infringement, or violation or alleged violation, of (a) any United States patent and (b) any copyright, trademark, trade secret or other proprietary right of a third party which is enforceable in the United States, as a result of Buyer's use of the product or equipment within the United States, provided that: (i) Buyer gives Seller prompt written notice of any such Claim, (ii) Buyer gives Seller full authority to defend or settle any such Claim, and (iii) Buyer gives Seller proper and full information and assistance, at Seller's expense (except for Buyer's employees' time) to defend or settle any such Claim. **THE FOREGOING IS IN LIEU OF ANY WARRANTIES OF NON-INFRINGEMENT, WHICH ARE HEREBY DISCLAIMED.** The foregoing obligation of Seller does not apply with respect to products or equipment or portions or components thereof (a) not supplied by Seller, (b) made in whole or in part in accordance with Buyer or owner specifications, (c) which are modified after shipment by Seller, if the alleged infringement related to such modification, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Buyer continues allegedly infringing activity after being notified thereof and/or after being informed of modifications that would have avoided the alleged infringement without significant loss of performance or functionality, or (f) where Buyer's use of the product or equipment is incident to an infringement not resulting primarily from the product or equipment; Buyer will indemnify Seller and its officers, directors, agents, and employees from all damages, settlements, attorneys' fees and expenses related to a claim of infringement, misappropriation, defamation, violation of rights of publicity or privacy excluded from Seller's indemnity obligation herein.

(9) **GOVERNING LAW.** The formation and performance of the Agreement shall be governed by the laws of the State of Wisconsin, U.S.A. Any action for breach of the Agreement or any covenant or warranty must be commenced within one year after the cause of action has accrued unless such provision is not permitted by applicable law.

(10) **DISPUTE RESOLUTION.** Seller shall have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be submitted to a court of law or arbitrated. The venue for any such arbitration shall be in Milwaukee, Wisconsin. The arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction. In the event the matter is submitted to a court, Seller and Buyer hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury in any such litigation.

(11) **SOFTWARE LICENSE.** To the extent software is provided by Seller under the Agreement, Buyer agrees that such software may only be used in accordance with the terms and conditions of the software license agreement that accompanies the software. Buyer agrees not to directly or indirectly decompile, disassemble, reverse engineer or otherwise derive the source code for the software. If Buyer is a U.S. Government agency, Buyer acknowledges that the software licensed under the Agreement is a commercial item that has been developed at private expense and not under a Government contract. The Government's rights relating to the software are limited to those rights applicable to Buyer's as set forth herein and is binding on Government users in accordance with Federal Acquisition Regulation 48 C.F.R. Section 12.212 for non-defense agencies and/or Defense FAR Supplement 48 C.F.R. Section 227.7202-1 for defense agencies.

**(12) MISCELLANEOUS**

(a) **CHANGES OF CONSTRUCTION AND DESIGN:** Seller reserves the right to change or revise the construction and design of the products or equipment purchased by Buyer, without liability or obligation to incorporate such changes to products or equipment ordered by Buyer unless specifically agreed upon in writing reasonably in advance of the delivery date for such products or equipment. Buyer agrees to bear the expense of meeting any changes or modifications in local code requirements which become effective after Seller has accepted Buyer's order.

(b) **CHARACTER OF PRODUCT AND SECURITY INTEREST:** The goods delivered by Seller under the terms of the Agreement shall remain personal property and retain its character as such no matter in what manner affixed or attached to any structure or property. Buyer grants Seller a security interest in said goods, any replacement parts and any proceeds thereof until all sums due Seller have been paid to it in cash. This security interest shall secure all indebtedness or obligations of whatsoever nature now or hereafter owing Buyer to Seller. Buyer shall pay all expenses of any nature whatsoever incurred by Seller in connection with said security interest.

(c) **INSURANCE:** Buyer agrees to insure the goods delivered under the Agreement in an amount at least equal to the purchase price against loss or damage from fire, wind, water or other causes. The insurance policies are to be made payable to Seller and Buyer in accordance with their respective interests, and when issued are to be delivered to Seller and held by it. Failure to take out and maintain such insurance shall entitle Seller to declare the entire purchase price to be immediately due and payable and shall also entitle Seller to recover possession of said goods.

(d) **INSTALLATION:** If installation by the Seller is included within the Seller's Quotation, Buyer shall Provide all of the following at its own expense and at all times pertinent to the installation: i) free, dry, and reasonable access to Buyer's premises; and ii) proper foundations, lighting, power, water and storage facilities reasonably required.

(e) **COMPLIANCE WITH LAWS:** Seller's obligations are subject to the export administration and control laws and regulations of the United States. Buyer shall comply fully with such laws and regulation in the export, resale or disposition of purchased



**of strict liability, negligence, or otherwise, regardless of whether Seller has been apprised of the possibility of such.**

**(8) PATENTS.** Seller shall indemnify, defend, or at its option settle, and hold Buyer and directors, officers, employees, agents, subsidiaries, affiliates, subcontractors and assignees, harmless from and against any

products or equipment. Quotations or proposals made, and any orders accepted by Seller from a Buyer outside the United States are with the understanding that the ultimate destination of the products or equipment is the country indicated therein. Diversion of the products or equipment to any other destination contrary to the United States is prohibited. Accordingly, if the foregoing understanding is incorrect, or if Buyer intends to divert the products or equipment to any other destination, Buyer shall immediately inform Seller of the correct ultimate destination.