



WE MAKE BUILDINGS WORK BETTER FOR LIFE.™



Trane U.S. Inc.  
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December 10, 2015

Clemson City Hall  
1250 Clemson Blvd.  
Clemson, SC 29631

**Attention:** Andy Blondeau  
Assistant City Administrator

**Project Name:** Clemson City Hall Retrofit JCI controls

The Trane US Inc proposes to install a Tracer SC Concierge automated DDC system for the HVAC equipment serving the Clemson City Hall in Clemson, SC per the November 4<sup>th</sup> specification and as defined below. We will provide all necessary labor and materials to engineer, program, install, checkout, test, and warranty the Tracer SC Concierge system and provide training for the system operators.

Addenda Received; None

Scope to include the following;

**Tracer Concierge SC system**

- Provide, install and wire 1 Tracer SC interface panel for communication between all Trane DDC controllers and to serve as the web based operator interface. The system will be accessible by authorized users from Tablet computer furnished as part of this project, or any PC on the owners LAN using standard web browsing software.
- Provide Tracer SC Ethernet communication boards for building LAN connection with the system.
- Provide custom graphics of each piece of controlled/supervised equipment and systems, loaded onto the Tracer SC panel at the facility. All inputs, outputs and setpoints will be displayed on the graphics for ease of operation.

**Air Handling Units (Qty. 4)**

- Custom programming of the DDC controller, factory furnished and installed, for control and monitoring of each unit per the provided sequence of operation.
- Reuse existing sensors and end devices and with wiring to new DDC controller.

**Bypass VAV Boxes (Qty. 4)**

- Reuse existing bypass damper and operator with wiring to new DDC controller.

**VAV Boxes (Qty. 23)**

- Reuse existing JCI VMA 1620 VAV box controllers and zone sensors. Route existing communication wiring to new Tracer SC Bridge communication interface.

**General Exhaust Fan (Qty. 1)**

- Reuse existing status current relay for status.
- Reuse existing fan contactor for start stop control.

**General notes and inclusions:**

- All concealed low voltage wiring to be plenum cable, all other to be in conduit.
- All necessary labor for engineering, supervision, installation, programming, graphics, checkout, tuning, graphics and operator training.
- All necessary custom programming for control and supervision of equipment as specified.
- All work to be performed between 7:00am and 5:00pm Monday through Friday.
- 8 complete sets of submittals.
- Asbuilt documentation and complete system manuals.
- On site training of owner's representatives.
- First year parts and labor warranty.

**Not included in this proposal:**

- Any repairs to the existing AHU's condensing units, VAV boxes, heaters, sensors. If existing equipment is found to be defective or in need of service Trane will provide detailed change order request to the City of Clemson.
- Bonds.
- Davis-bacon wages, certified payroll or payroll reporting.
- Testing or demonstration with a test and balance and/or commissioning agent.
- Duct smoke detectors, their installation or wiring other than unit shutdown.
- Utility meters (electric, water or gas) or their integration into the Tracer SC system.
- PC's, the Tracer SC system is web-based and is accessible from any PC with internet access.
- Installation or wiring of controls not supplied by Trane unless stated above.
- Phone line or LAN wiring for the SC interface panel (LAN access required for warranty period).

**Total Price:.....\$ 34,700**

**Voluntary Add Alternate**

Trane proposes in enhanced BMS system to be installed with potential participation from Duke Energy under the Smart Saver Customer Rebate Incentive. Under the Incentive Program, Trane would provide the required application for the City of Clemson to submit to Duke Energy. Under this option, Trane offers an enhanced BMS that includes:

- Capping the bypass duct.
- Installing VFD's on all (4) AHU's.
- Upgrading the (4) AHU's sequence of operation to true VAV with critical zone static pressure reset.
- Repurposing (4) motorized bypass dampers as a motorized outside air dampers. The dampers would close when the building is not occupied.
- Implementing demand control ventilation (DCV) and using return air CO2 sensing. The motorized outside damper would modulate between a minimum outside air damper position and DCV minimum position.
- Morning warm up and daytime warmup would utilize the heat pump mode of operation with full airflow.

This alternate requires submission to Duke Energy. Duke requires 4-6 weeks to evaluate an respond with an incentive amount to be rebated to the City of Clemson. No purchase orders or work can start until Duke has reviewed and issued the incentive amount.

**Total Add Price:**.....\$ 55,450

**Total Smartsaver Incentive** .....\$To Be Determined USD

I appreciate the opportunity to earn your business, and look forward to helping you with all of your service needs. Please contact me if you have any questions or concerns.

Sincerely,

Doug Wadas  
Account Manager  
Cell: 864-979-8003

**This agreement is subject to Customer's acceptance of the attached Trane Terms and Conditions – Quoted Service.**

<b>CUSTOMER ACCEPTANCE</b>
_____
Authorized Representative
_____
Printed Name
Title _____
Purchase Order _____
Acceptance Date _____
Trane License Number:

**TERMS AND CONDITIONS – QUOTED SERVICE**

“Company” shall mean Trane U.S. Inc. for Company performance in the United States and Trane Canada ULC for Company performance in Canada.

To obtain repair service within the scope of Services as defined, contact your local Trane District office identified on the first page of the Agreement by calling the telephone number stated on that page. That Trane District office is responsible for Trane’s performance of this Agreement. Only Trane authorized personnel may perform service under this Agreement. For Service covered under this Agreement, Trane will be responsible for the cost of transporting a part requiring service.

**1. 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 services (the “Services”) on equipment listed in the Proposal (the “Covered Equipment”). **COMPANY’S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.**

**2. Acceptance.** 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 the 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 Services in accordance with the Proposal. If Customer does not reject or object in writing to Company within 10 days, the Company’s counter-offer will be deemed accepted. Customer’s acceptance of the Services by Company will in any event constitute an acceptance by Customer of Company’s terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Services. 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 Services rendered by Company to the date of cancellation.

**3. Cancellation by Customer Prior to Services; Refund.** If Customer cancels this Agreement within (a) thirty (30) days of the date this Agreement was mailed to Customer or (b) twenty (20) days of the date this Agreement was delivered to Customer, if it was delivered at the time of sale, and no Services have been provided by Company under this Agreement, the Agreement will be void and Company will refund to Customer, or credit Customer’s account, the full Service Fee of this Agreement that Customer paid to Company, if any. A ten percent (10%) penalty per month will be added to a refund that is due but is not paid or credited within forty-five (45) days after return of this Agreement to Company. Customer’s right to cancel this Agreement only applies to the original owner of this Agreement and only if no Services have been provided by Company under this Agreement prior to its return to Company.

**4. Cancellation by Company.** This Agreement may be cancelled by Company for any reason or no reason, upon written notice from Company to Customer no later than 30 days prior to performance of any Services hereunder and Company will refund to Customer, or credit Customer’s account, that part of the Service Fee attributable to Services not performed by Company. Customer shall remain liable for and shall pay to Company all amounts due for Services provided by Company and not yet paid.

**5. Services Fees and Taxes.** Fees for the Services (the “Service Fee(s)”) shall be as set forth in the Proposal and are based on performance during regular business hours. Fees for outside Company’s regular business hours and any after-hours services shall be billed separately according to the then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fee, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys’ fees) incurred by Company in attempting to collect amounts due.

**6. Payment.** Payment is due upon receipt of Company’s invoice. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 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 or otherwise enforcing these terms and conditions.

**7. Customer 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; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with 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 the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead)

**8. Performance.** Company shall perform the Services in accordance with industry standards generally applicable in the state or province where the Services are performed under similar circumstances as of the time Company performs the Services. Company 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. Company may refuse to perform any Services or work where working conditions could endanger property or put at risk the safety of people. Parts used for any repairs made will be those selected by Company as suitable for the repair and may be parts not manufactured by Company. Customer must reimburse Trane for services, repairs, and/or replacements performed by Trane at Customer’s request beyond the scope of Services or otherwise excluded under this Agreement. The reimbursement shall be at the then prevailing applicable regular, overtime, or holiday rates for labor/labour and prices for materials. Prior to Trane performing the additional services, repairs, and/or replacements, Customer may request a separate written quote stating the work to be performed and the price to be paid by Customer for the work.

**9. Customer Obligations.** Customer shall: (a) provide Company reasonable and safe access to the Covered Equipment and areas where Company is to work; and (b) unless otherwise agreed by Customer and Company, at Customer’s expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA, state, or provincial industrial safety regulations or any other applicable industrial safety standards or guidelines.

**10. Exclusions.** Unless expressly included in the Proposal, the Services do not include, and Company shall not be responsible for or liable to the Customer for, any claims, losses, damages or expenses suffered by the Customer in any way connected with, relating to or arising from any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;
- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement (“Pre-Existing Conditions”) including, without limitation, damages, losses, or expenses involving a Pre-Existing

Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould, bacteria, microbial growth, fungi or other contaminants or airborne biological agents; and

(e) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included with the Proposal.

**11. Limited Warranty.** Company warrants that: (a) the material manufactured by Company and provided to the Customer in performance of the Services is free from defects in material and manufacture for a period of 12 months from the earlier of the date of equipment start-up or replacement and (b) the labor/labour portion of the Services is warranted to have been properly performed for a period of 90 days from date of completion (the "Limited Warranty"). Company obligations of equipment start-up, if any are stated in the Proposal, are coterminous with the Limited Warranty period. Defects must be reported to Company within the Limited Warranty period. Company's obligation under the Limited Warranty is limited to repairing or replacing the defective part at its option and to correcting any improperly performed labor/labour. No liability whatsoever shall attach to Company until the Services have been paid for in full. Exclusions from this Limited Warranty include claims, losses, damages, and expenses in any way connected with, related to, or arising from failure or malfunction of equipment due to the following: wear and tear; end of life failure; corrosion; erosion; deterioration; Customer's failure to follow the Company-provided maintenance plan; unauthorized or improper maintenance; unauthorized or improper parts or material; 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 or lost product. Some components of Company equipment may be warranted directly from the component supplier, in which case this Limited Warranty shall not apply to those components and any warranty of such components shall be the warranty given by the component supplier. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. 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 REMEDIES SET FORTH IN THIS LIMITED WARRANTY ARE THE SOLE AND EXCLUSIVE REMEDIES FOR WARRANTY CLAIMS PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, LIABILITIES, CONDITIONS AND REMEDIES, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE), EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, ENDORSEMENTS OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, DURABILITY AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE OR REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. COMPANY EXPRESSLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS. 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.**

**12. Indemnity.** To the maximum extent permitted by law, Company and Customer shall indemnify 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 personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or 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 or third parties. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify and hold harmless will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination of this Agreement.

**13. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS, OR LIABILITY TO THIRD PARTIES), OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AND AGGREGATE LIABILITY OF THE COMPANY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS CONNECTED WITH, RELATED TO OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY OR FACTS, SHALL NOT EXCEED THE COMPENSATION RECEIVED BY COMPANY UNDER THIS AGREEMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES (WHETHER DIRECT OR INDIRECT) RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING IN CONNECTION WITH PROVIDING THE ENERGY AND BUILDING PERFORMANCE SERVICES: INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; CUSTOMER'S NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; GAPS IN DATA COLLECTED; AND UNAUTHORIZED ACCESS TO CUSTOMER'S DATA OR COMMUNICATIONS NETWORK.

**14. Asbestos and Hazardous Materials.** The Services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). 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 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 any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance of the Services only when the affected area has been rendered harmless.

**15. Insurance.** Company agrees to maintain the following insurance during the term of the contract 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 or its insurer waive its right of subrogation

**16. 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 ten (10) days notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the

foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor 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.

**17. 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 Services are 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 Services are 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 premises are owned and/or operated by any agency of the United States Federal Government, determination of any substantive issue of law shall be according to the United States 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 Services. 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, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their 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. No modifications, additions or changes may be made to this Agreement except in a writing signed by Company. No failure or delay by the Company in enforcing any right or exercising any remedy under this Agreement shall be deemed to be a waiver by the Company of any right or remedy.

**18. Equal Employment Opportunity/Affirmative Action Clause.** Company is a United States 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; and 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.

**19. U.S. Government Contracts.**

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 / Purchase Order 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 Services are in connection with a U.S. government contract, Customer agrees and hereby 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 contractor's 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 Services that are the subject of this offer or agreement, other than the Proposal or this Agreement.

**20. Limited Waiver of Sovereign Immunity.** If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-10.48 (1114)  
Supersedes 1-10.48 (0614)

# Safety



## Trane's Safety Standard

Trane is committed to providing a safe work environment for all employees and to preventing accidents in its business operations. To accomplish our objectives Trane has instituted safety programs, procedures and training that incorporate a progressive approach to injury prevention.

## Proven Safety Success

Trane's safety culture in North America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

## Trane Injury Rates v. Industry Competitors

Since 2003 the US Bureau of Labor Statistics records reflect Trane's Total Recordable Rate (TRIR) and Days away from work (DAFW) rate have been significantly lower than HVAC repair and maintenance contractors and Specialty Trade contractors (construction). Trane's safety culture in America is unparalleled in the building services industry and has demonstrated proven results via continuous reduction of injury rates.

Trane's incident (OSHA) rates are consistently 50-70% below the industry average. This outstanding safety achievement is the end result of the rigorous team oriented approach to our safety program that creates accountability and empowerment in all employees and management and fuels our institutional safety culture. This is the key to our continual improvement.

## Safety Tools, Training & Expertise

Trane's service and contracting technicians are not only among the most skilled in the industry they are also extensively trained in safe work procedures. Our technicians receive safety training, equipment, tools, procedures, and management support to identify jobsite hazards and take appropriate measures to prevent personal injuries. The resources available to Trane technicians include:

- Safety Training – 20 hrs per year, including classroom and web-based platforms.
  - Topics include, but are not limited to, Lockout/Tagout, Confined Space Entry, Hazard Communication, Respiratory Protection, Hearing Conservation, Excavations, Scaffolding, Rigging, Powered Industrial Truck operation, Ladders, Vehicle Safety, Fire Protection, PPE, Emergency Response, First Aid / CPR.
- Electrical Safety – NFPA 70E compliant – electrical PPE; flame-resistant clothing; training.
- Fall Protection – full complement of fall arrest and fall restraint equipment for each technician.
- Ergonomics – custom-designed for HVAC field technicians, includes training, material handling equipment and procedures.

## Safety Tools, Training & Expertise (continued)

- Smith System Safe Driving Program – Trane's safety Managers are certified instructors; safety Managers train technicians; 1-800 "How's My Driving?" stickers are located on the back of service vehicles.
- USDOT compliance – technicians scheduled within Material of Trade and Hours of Service limits and are fully qualified under Department of Transportation rules for driving commercial motor vehicles with GVWR >10,000 and 26,000 lbs.
- Refrigerant Management – Service technicians are trained to manage refrigerant in accordance with U.S. EPA rules using a sophisticated electronic tracking system developed by Trane.
- Empowerment - Technicians are empowered with full management support to address safety hazards as they see fit. If ever in doubt about how to do a job or task safely, the technician is required to ask a qualified person for assistance before proceeding with work.

## Management Leadership and Commitment

Accident prevention is a primary responsibility of management at Trane. Trane's safety culture is based on the following management principles:

- Leadership at the local level manages the local organization's safety performance.
- Management is financially accountable for safety performance.
- Local management is actively engaged in risk reduction activities and training and manages safety performance outcomes.
- Management clearly communicates to all Trane employees their safety expectations and strongly enforces compliance with those expectations.
- Employees are held accountable when they fail to meet safety expectations.

Local management and supervisory personnel at the local level are responsible for implementation of the following safety program elements:

- The Safety Management System developed by Trane – developed in accordance with OHSAS 18001.
- Audits and Inspections – Supervisors, Middle and Upper Managers must conduct field inspections. Corporate Safety conducts detailed compliance and management systems audits.
- Company safety compliance programs – ensure that they are fully implemented.
- Safety and environmental performance – tracked using a Balanced Scorecard with leading and lagging indicators and metrics.
- Subcontractor Qualification – implement this process to promote safety and safety plan compliance on multi-employer job sites.
- Six Sigma and Lean – use these productivity tools to enhance safety on job sites.
- Drug and Alcohol Policy – mandatory DOT required for-cause and post-accident testing after recordable injuries and property damage.
- Motor Vehicle Records Search – annual checking of driving records of employees driving company vehicles.

## Jobsite Safety Equals Customer Value

At Trane safety is part of our culture for every employee. What this means to our customers is fewer job site accidents and the delays and liability concerns that come along with them. What this means to our staff is greater confidence in the practices and procedures they use on the job and the pride that comes from working for one of the premier service organizations in the world. Tighter safety standards and fewer accidents can also lead to better on-time project completion and higher quality results.

When you use Trane Building Services to install, maintain or upgrade your building systems you will take full advantage of our superior safety program, low incident rates and subcontractor safety management procedures. These help you manage project risk more effectively than you could using multiple contractors or even a single prime contractor with a less impressive safety record.



MSS Solutions, LLC  
PO Box 32607  
1001 Tuckaseegee Road  
Charlotte, NC 28208  
General Office Tel. 704/372-4344  
Fax 704/372-7939

# PROPOSAL

To: Clemson City Hall  
1250 Tiger Blvd. # 1  
Clemson, SC 29631

Date: December 9, 2015

Attn: Andy Blondeau

Project: Clemson City Hall Controls

**We propose to furnish the materials and/or perform the work described below for the net price of** Forty-One Thousand Five Hundred Fifty-Six Dollars and 00/100--

Dollars (\$ 41,556.00 )

***For the above price this proposal includes:***

Materials, Engineering, Programming, Checkout and Certification for the following:

- 1 - Web Enabled Network Controller – Honeywell WEB-600
  - a. Includes Graphics, Schedules, Alarms, Trending Ability
  - b. Web Accessible from any web-browser without the need for special software
  - c. This will replace the existing Johnson Controls NAE controller
  - d. *This is an Open JACE that can be programmed by many different companies in town and does NOT lock the owner into one company to work on their controls.***
  
- 4 - Air Handler Controllers
  - a. Replace existing Johnson Controls FEC controllers with Honeywell Spyder controllers
  - b. Perform programming and Commissioning
  - c. Perform Air Side Test & Balance
  
- 23 - VAV Box Controllers
  - a. Replace existing Johnson Controls VMAs with new Honeywell Spyder VAV Box Controllers.
  - b. Install New Space Sensors
  - c. Perform Programming and Commissioning
  - d. Perform Test & Balance on all Existing VAV Boxes (23 Total)

No control wiring is included for the above scope of work. Field mounting of all controls.

**This proposal is limited to that shown on the existing Johnson Controls drawings**

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***This proposal does not include:***

- Installation of Valves and Air Dampers
- Any New Wiring – Existing wiring to be re-used
- Any material not called for on the Mechanical drawings or outlined in the above scope of work.
- Power wiring.

(IMPORTANT: This proposal incorporates by reference the terms and conditions on the following page hereof.)

This proposal is hereby accepted and MSS Solutions, LLC (MSS) is authorized to proceed with the work; subject, however to credit approval by MSS.

This proposal valid until

Thirty Days

\_\_\_\_\_  
Purchaser -(Company Name)

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

MSS Solutions, LLC.

Scot Pierce

\_\_\_\_\_  
Signature

Name: Scot Pierce  
Title: HVAC Service Sales

## TERMS AND CONDITIONS

By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions:

**SCOPE OF WORK.** This proposal is based upon the use of straight time labor only. Plastering, patching and painting are excluded. "In-Line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by MSS, shall be distributed and installed by others under MSS's supervision but at no additional cost to MSS. Purchaser agrees to provide MSS with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. MSS agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge MSS for any costs or expenses without MSS's written consent.

Unless specifically noted in the statement of the scope of work or services undertaken by MSS under this agreement, MSS's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment Hazards or dangerous substances, to include but not be limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by MSS shall not operate to compel MSS to perform any work relating to Hazards without MSS's express written consent.

**INVOICING & PAYMENTS.** MSS may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Purchaser shall pay MSS within 30 days of the date of the invoice. Waivers of lien will be furnished upon request, as the work progresses, to the extent payments are received. If MSS's invoice is not paid within 30 days of its issuance, it is delinquent.

**MATERIALS.** If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of MSS, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability MSS shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefor.

**LIABILITY.** MSS shall not be liable for any special, indirect or consequential damages arising in any manner from the equipment or material furnished or the work performed pursuant to this agreement.

**TAXES.** The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. Purchaser shall pay, in addition to the stated price, all taxes not legally required to be paid by MSS or, alternatively, shall provide MSS with acceptable tax exemption certificates. MSS shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work.

**WARRANTY.** MSS warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from delivery of said equipment, or if installed by MSS, for a period of one (1) year from installation. MSS warrants that for equipment furnished and/or installed but not manufactured by MSS, MSS will extend the same warranty terms and conditions that MSS receives from the manufacturer of said equipment. For equipment installed by MSS, if Purchaser provides written notice to MSS of any such defect within thirty (30) days after the appearance or discovery of such defect, MSS shall, at its option, repair or replace the defective equipment. For equipment not installed by MSS, if Purchaser returns the defective equipment to MSS within thirty (30) days after appearance or discovery of such defect, MSS shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for equipment not installed by MSS shall be borne by Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

**COMPLIANCE WITH LAWS.** MSS shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.

**DISPUTES.** All disputes involving more than \$10,000 shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall recover all legal costs and attorney's fees incurred as a result. Nothing here shall limit any rights under construction lien laws.

**INSURANCE.** Insurance coverage in excess of MSS's standard limits will be furnished when requested and required. No credit will be given or premium paid by MSS for insurance afforded by others,

**DELAYS.** MSS shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond MSS's control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner, or other Contractors or delays caused by suppliers or subcontractors of MSS, etc.

**INDEMNITY.** The Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorneys' fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part, by the negligent act or omission of the Indemnifying Party.

**OCCUPATIONAL SAFETY AND HEALTH.** The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project or project site.

**ENTIRE AGREEMENT.** This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.

**CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon MSS unless accepted by MSS in writing.