

## MUTUAL SETTLEMENT AGREEMENT AND RELEASE

This Mutual Settlement Agreement and Release ("Agreement") is entered into by and between Plaintiff, The City of Jacksonville, ("Plaintiff") and Defendants, VRL Architects, Inc. ("VRL"), M.V. Cummings Engineers, Inc. ("MVCE"), including Wayne Kelly, individually, and Trane U.S., Inc. ("Trane") (the above-named parties shall be individually referred to as a "Party" or collectively as the "Parties").

### BACKGROUND

**WHEREAS**, Plaintiff has asserted claims against VRL, MVCE and Trane relating to damages involving an HVAC system that was installed at the Animal Care and Protective Services Facility ("ACPS") located at 2020 Forest Street in Jacksonville, Florida, ("Loss/Claim"). Plaintiff filed a lawsuit in Duval County, Florida styled City of Jacksonville v. VRL Architects, Inc., M.V. Cummings Engineers, Inc. and Trane US, Inc., Case No.: 16-2019-CA-3913, to which Trane filed a counterclaim ("Lawsuit").

**WHEREAS**, in recognition of the Parties' pre-existing relationship and VRL, MVCE and Trane's appreciation of the value thereof, and the Parties' mutual desire to resolve the present controversy so that all can focus their efforts on potentially mutual advantageous future business opportunities, and to avoid the uncertainty and expense of continued litigation, the Parties desire to settle and compromise fully and permanently any and all claims that the Parties have or may have against each other related to the Lawsuit.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

### AGREED TERMS

1. **APPROVAL BY LEGISLATION**: This Agreement will not become effective until the settlement described herein, for the amount specified in paragraph 2 below, and on the terms stated herein, is approved by Ordinance of the Jacksonville City Council.
2. **PAYMENT**: VRL, MVCE and Trane will pay to Plaintiff the sum of Seven Hundred and Fifty Thousand Dollars and zero cents (\$750,000.00), in full and final settlement of the Loss/Claim and Lawsuit, as follows: Fifty Thousand Dollars and zero cents (\$50,000.00) by VRL, Four Hundred and Twenty-Five Thousand Dollars and zero cents (\$425,000.00) by MVCE and Two Hundred and Seventy-Five Thousand Dollars and zero cents (\$275,000.00) by Trane. Payment shall be due thirty (30) days from the date of receipt by VRL, MVCE

and Trane of a fully executed copy of this Agreement and W9 from Plaintiff, following approval of the settlement by the Jacksonville City Council. The settlement funds shall be made payable to the "City of Jacksonville." It is understood and agreed that Trane shall take nothing for its counterclaim.

3. **DISMISSAL OF CLAIMS**: Upon payment to Plaintiff of the amounts specified in Paragraph 2, herein, the Parties will file a Joint Stipulation for Dismissal of the Lawsuit, with Prejudice and an Agreed Order of Dismissal, each Party to bear its own attorneys' fees and costs.
4. **MUTUAL RELEASE**: The Parties, for and in consideration of the mutual promises, covenants, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have remised, released, and by these presents do forever discharge each other, and their respective successors, assigns, predecessors, agents, employees, representatives, attorneys, assigns and insurers, indemnitors, and any other person or entity claiming by or through them, whether named or unnamed from and against any and all past, present or future known and unknown charges, complaints, claims, cross-claims, grievances, liabilities, obligations, promises, agreements, controversies, demands, damages, actions, causes of action (including claims of others), suits, costs (including court costs), rights, losses, debts, penalties, fees, wages, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred), judgments, liens, and punitive damages, of any kind or nature whatsoever, in contract or in tort (all of which are hereafter collectively referred to as "Claims") by reason of, relating to, growing out of, resulting from or in connection with (a) the Loss/Claim; and (b) the Lawsuit; except as expressly set forth herein.

This Agreement resolves any claim for relief that could have been alleged, no matter how characterized, including, without limitation, compensatory damages, damages for breach of contract, bad faith damages, reliance, liquidated damages for humiliation and embarrassment, punitive damages, costs and attorney's fees related to the Loss/Claim and the Lawsuit.

PLAINTIFF agrees that it is its sole and exclusive obligation to satisfy all costs, liabilities, liens, taxes, expenses, fees, debts and/or rights of subrogation, whether now known or unknown, arising out of or relating to any measures taken or to be taken by Plaintiff to repair, resolve and/or otherwise remedy or remediate in any way any actual or alleged damage to the HVAC system that was installed at the ACPS, and/or to the building itself, or any of its appurtenances, incurred by or on behalf of Plaintiff in connection with the

Loss/Claim and the Lawsuit out of the proceeds of this settlement.

5. **NO ADMISSION OF LIABILITY**: It is understood and agreed by the Parties that this Agreement is entered into as a compromise of a disputed claim, and is not intended to, nor shall it be construed as, an admission of any negligence, breach of contract, culpability, liability, wrongdoing, or breach on the part of any Party or person of any kind whatsoever by any of the Parties.
6. **FUTURE KNOWLEDGE**: The Parties, and Wayne Kelly, acknowledge and agree that if facts hereafter are discovered or become known that are different from, or in addition to, those now known, or which any of them believes to be true, in respect to the claims, losses, liabilities, obligations, suits, contracts, agreements, promises, demands and damages released by this Agreement, that the mutual releases contained herein shall be and remain in effect in all respects as a complete, general release as to the matters released herein, notwithstanding any such different or additional facts.
7. **COMPLETE SETTLEMENT**: It is further understood and agreed that this Agreement constitutes a full, final and complete compromise, settlement and satisfaction of all claims, which relate in any manner whatsoever to the Loss/Claim and the Lawsuit.
8. **COVENANT NOT TO SUE**: The Parties, and Wayne Kelly, covenant and agree not to file a complaint, demand for arbitration, regulatory claim, or any other action with any governmental authority, regulatory agency, or self-regulatory organization related to the Loss/Claim and/or the Lawsuit, except to enforce this Agreement.
9. **NON-DISPARAGEMENT**: The Parties covenant and agree not to make, or induce, or cause another person or entity to make (including by the exercise or control of such other person or entity by contract or otherwise) any communication of any form to anyone that denigrates, disparages, criticizes, defames, or is derogatory of the other Party or any of its respective agents, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, predecessors, successors, heirs, assigns, or other representatives and servants with respect to or in any way relating to the conduct of a Party on or prior to the date hereof, dealings between the Parties on or prior to the date hereof, or the services or products of a Party performed or delivered on or prior to the date hereof; nor shall a Party, or its agents, make any statement or comment that could reasonably be expected to affect adversely the business reputation or conduct of the business of the other Party. The provisions of this Section 9 shall not prevent any of the Parties from responding to legal process under

compulsion of law. Moreover, the provisions of this Section 9 only apply to conduct, dealings, services, products, comments, or statements that directly and solely relate to the Loss/Claim or the Lawsuit.

10. **REPRESENTATIONS AND WARRANTIES**: The Parties each represent and warrant the following:

- a. The person executing this Agreement on their behalf is authorized to do so;
- b. The Parties each have an interest in and ownership of the claims being released sufficient to grant the releases of those claims contemplated hereby, and that they have not assigned, or in any conveyed, transferred or encumbered all or any portion of the Claims discharged by this Agreement, and that they have the exclusive right, capacity and authority to execute this Agreement;
- c. This Agreement is executed without duress, and without reliance upon any statement, inducement, or representation of any of the Parties or their respective representatives concerning the nature and extent of any damages or injuries and/or legal liability therefore;
- d. The payment described in Section 2 is a fair and reasonable settlement and fully and finally resolves all disagreements and matters relating to the Loss/Claim and the Lawsuit;
- e. The Parties have each received the advice of their own attorneys with respect to the matters set forth in this Agreement, that they have completely read and fully understood all the terms and conditions in this Agreement, and fully agree to each and every provision thereof, and hereby acknowledges receipt of a copy hereof.

11. **ENFORCEMENT OF SETTLEMENT**: If any Party is required to enforce the terms of this Agreement in a court of law, the prevailing Party shall be entitled to an award of the costs of said action, including reasonable attorney fees. The Parties agree that such “reasonable attorney fees” shall not be based upon an hourly rate in excess of \$400.00.

12. **AMENDMENTS**: This Agreement may be modified or amended only in writing signed by all Parties to be bound. A waiver by either Party of any provision of this Agreement shall not waive any other provision of this Agreement.

13. **ENTIRE AGREEMENT**: This Agreement constitutes the entire understanding

among the Parties hereto with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect thereto. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party, except as specifically set forth in this Agreement. All prior discussions and negotiations with respect to the settlement have been and are merged and integrated into, and are superseded by, this Agreement.

14. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
15. **SEVERABILITY:** Except for and subject to the requirements of Section 1 above, in the event of any provision of this Agreement shall be held to be void, voidable or unenforceable in a particular instance and such provision does not affect the basis of the bargain of the Parties hereunder, such provision shall be severed in such instance and the remaining portions hereof shall remain in full force and effect. Furthermore, in lieu of such severed provision, there shall be added automatically in any such instance as part of this Agreement, a provision as similar to the severed provision as may be possible and be legal, binding and enforceable.
16. **GOVERNING LAW AND CHOICE OF FORUM:** This Agreement shall be construed and controlled by the laws of the State of Florida as construed and applied by courts having jurisdiction therein. In the event that any conflict of law or choice of law principle would otherwise in anyway cause the laws of another state to apply to any issue, such conflict of law or choice of law principle shall not apply.
17. **WAIVER OF JURY TRIAL:** EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT:

(I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER; (II) IT UNDERSTANDS AND HAS

CONSIDERED THE IMPLICATIONS OF WAIVING ITS RIGHT TO A JURY TRIAL, AND (III) IT MAKES SUCH WAIVER OF ITS RIGHT TO A JURY TRIAL VOLUNTARILY.

18. **EXECUTION IN COUNTERPARTS**: This Agreement may be executed by any of the Parties by signing any one of the multiple copies of this Agreement. Any copy of this Agreement, when signed by any of the Parties, shall be deemed an original. All of the signed copies shall together constitute one Agreement. A facsimile copy and/or email /scan/Adobe PDF of any Party's signature shall be deemed as legally binding as an original signature
19. **PARAGRAPH HEADINGS, INTERPRETATION**: Paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No provision of this Settlement Agreement is to be interpreted for or against any Party because that Party or its legal representative drafted such provision.

*[signatures on following pages]*

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**SIGNATURES:**

**FOR CITY OF JACKSONVILLE:**

I, \_\_\_\_\_, on behalf of the City of Jacksonville, have read, understood and agree to all the terms and conditions of the foregoing Agreement and my signature below is an attestation and acknowledgement of same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this \_\_\_ day  
of \_\_\_\_\_, 2022.

By: \_\_\_\_\_

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

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

**FOR VRL ARCHITECTS, INC.:**

I, \_\_\_\_\_, on behalf of VRL Architects, Inc., have read, understood and agree to all the terms and conditions of the foregoing Agreement and my signature below is an attestation and acknowledgement of same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this \_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_

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

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

**FOR M.V. CUMMINGS ENGINEERS, INC.  
AND WAYNE KELLY, INDIVIDUALLY:**

I, \_\_\_\_\_, on behalf of myself and M.V. Cummings, Engineers, Inc., have read, understood and agree to all the terms and conditions of the foregoing Agreement and my signature below is an attestation and acknowledgement of same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this \_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_

Wayne Kelly, individually, and for  
M.V. Cummings Engineers, Inc.

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

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

**FOR TRANE U.S., INC.:**



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I, \_\_\_\_\_, on behalf of Trane U.S., Inc., have read, understood and agree to all the terms and conditions of the foregoing Agreement and my signature below is an attestation and acknowledgement of same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and seal this \_\_\_ day  
of \_\_\_\_\_, 2021.

By: \_\_\_\_\_

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

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