

**Lexington-Fayette Urban County Government
and Harshaw Trane
Police Headquarters RFP #1-2012**

Harshaw Trane – Articles of Agreement

ARTICLE 1 - THE SERVICES AND COMPENSATION

Section 1.01. (Intentionally Blank)

Section 1.02. Construction Procedures and Changes to Services. Harshaw Trane shall supervise and direct the Services using its best skill and attention. Harshaw Trane shall have exclusive control over construction means, methods, techniques, sequences and procedures.

Section 1.03. Payment Terms. LFUCG shall pay Harshaw Trane or cause Harshaw Trane to be paid for the Services as follows: There are no costs associated with Phases A and B as long as funds are available for Phase C. In the event there are insufficient funds for Phase C, Harshaw Trane will bill LFUCG for Phases A and B per GSA schedule (Exhibit D). Phase C will be progress billed on a monthly basis as construction work is completed.

Section 1.04. Substantial Completion and Final Completion.

(a) **Completion Progress.** Harshaw Trane shall, as often as requested by LFUCG, furnish such information, evidence and substantiation as LFUCG may require with respect to the extent and value of current progress and the nature and extent of all obligations incurred by Harshaw Trane in connection with the Work and all payments made by Harshaw Trane or account thereof.

(b) **Substantial Completion.** When Harshaw Trane considers that the Services, or a portion thereof, are substantially complete, Harshaw Trane will submit to LFUCG a proposed “punchlist” listing items of the Services to be completed prior to final completion. LFUCG and Harshaw Trane shall inspect the Services (or portion thereof) to determine if the same is substantially complete. (Substantial Completion is defined as the stage in the progress of the Services (or designated portion thereof) when the Services are sufficiently complete so that LFUCG can occupy or utilize the Services for its intended use.) LFUCG and Harshaw Trane shall add to the punchlist any item of work that has not been completed. When the Services (or designated portion thereof) are substantially complete, LFUCG and Harshaw Trane shall execute a Certificate of Substantial Completion in the form of Exhibit C.1, setting forth the date of Substantial Completion and shall state the date by which Harshaw Trane shall complete the items of work included on the punchlist.

(c) **Final Completion.** Upon LFUCG’s receipt of written notice from Harshaw Trane that the installation work included in the Services is ready for final inspection and acceptance, the LFUCG and Harshaw Trane shall inspect the installation work and determine whether the same has been performed in accordance with this Agreement. If the LFUCG consider the installation work to have been performed in accordance with this Agreement, LFUCG shall issue a Certificate of Final Completion and Acceptance, substantially in the form attached hereto as Exhibit C.2, to be executed by an authorized representative of LFUCG. In the event Harshaw Trane presents a Certificate of Final Completion and Acceptance to LFUCG for execution and, within fourteen calendar days from the date noted in the Certificate as the date of such presentation, LFUCG fails to deliver an executed original of the Certificate to Harshaw Trane and does not provide to Harshaw Trane written objections to issuance of the Certificate, providing specific facts as to why the Services have not been finally completed, the Date of Final Completion shall be the date noted in the Certificate as the date the Certificate was submitted to LFUCG.

Section 1.05. Delays. If Harshaw Trane is delayed in the commencement or completion of any part of the Services due to events beyond Harshaw Trane’s control (including, but not limited to, fire, flood, labor disputes, unusual delays in deliveries, unavoidable casualties, abnormal adverse weather, and acts of God), or due to LFUCG action(s) or failure to perform its obligations under this Agreement or to cooperate with Harshaw Trane in the timely performance of the Services, then Harshaw Trane will notify LFUCG in writing of the existence, extent of, and reason(s) for such delay(s). Harshaw Trane and LFUCG shall extend the contract time for such reasonable time and/or amount as they shall agree.

Section 1.06. Equipment Location and Access. LFUCG shall provide, without charge, a mutually satisfactory location or locations for the performance of the installation work, including sufficient areas for staging, mobilization, and storage. LFUCG shall provide access to the Premises for Harshaw Trane and its contractors or subcontractors during regular business hours, or such other hours as may be requested by Harshaw Trane and acceptable to LFUCG, to install, adjust, inspect, and correct the installation work. Harshaw Trane's access to correct any emergency condition shall not be restricted by LFUCG.

Section 1.07. Utilities During Construction. At no cost to Harshaw Trane, LFUCG shall provide and pay for water, heat, and utilities consumed by Harshaw Trane during performance of the Services hereunder. Harshaw Trane shall install and pay the cost of any temporary facilities not already in existence, which will be required during construction for accessing such water, heat, and utilities.

Section 1.08. Operation of Existing System(s) During Construction. Upon the commencement of construction, Harshaw Trane shall make provisions to maintain the operation of the existing facility system(s) until the renovation is complete. This may include minor maintenance and adjustment to the system to maintain a reasonable building environment (65-80 F). Harshaw Trane does not assume the responsibility for catastrophic failures or major maintenance procedures during the construction period.

Section 1.09. Concealed or Unknown Conditions. In the performance of the installation work, if Harshaw Trane encounters conditions at the Premises that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on the drawings or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the installation work, Harshaw Trane shall notify LFUCG of such conditions as promptly as practicable, prior to significantly disturbing the same. If such conditions differ materially and cause an increase in Harshaw Trane's cost of, or time required for, performance of any part of the Services, Harshaw Trane shall be entitled to, and LFUCG shall consent by Change Order to, an equitable adjustment in the Contract Price, Contract Time, or both.

Section 1.10. Damage to Equipment; Casualty or Condemnation of Premises. If any significant item of equipment is irreparably damaged by LFUCG, its employees, agents or invitees, or is destroyed or stolen, and if LFUCG fails to repair or replace said item within a reasonable period of time, Harshaw Trane may terminate this Agreement by delivery of a written notice to LFUCG, whereupon both parties shall have no further liability to each other, subject to LFUCG's obligation to pay to Harshaw Trane for all parts of the Services and material furnished to the date of termination, including any specially manufactured or non-stock items, whether in production or delivered. Any such termination shall not be considered any Event of Default on the part of either party.

Section 1.11. Changes to the Services. LFUCG, by written Change Order, may request that Harshaw Trane perform work in addition to the Services. Harshaw Trane shall be obligated to perform such additional work only pursuant to a Change Order agreed to and executed by LFUCG and Harshaw Trane. The Change Order shall reflect the parties' agreement with respect to the scope of the additional work, the amount of any adjustment in the Contract Price, and the extent of any adjustment in the contract time.

ARTICLE 2 - LFUCG'S OBLIGATIONS

Section 2.01. Representations and Warranties of LFUCG. LFUCG hereby warrants and represents to Harshaw Trane that:

(a) LFUCG has no knowledge of any facts or circumstances that, but for the passage of time, would materially, adversely affect either party's ability to perform its respective obligations hereunder and, if LFUCG is a governmental entity or instrumentality thereof, LFUCG has complied with all laws and regulations relative to bidding or procurement.

Section 2.02. LFUCG Default. Each of the following events or conditions shall constitute a default by LFUCG and shall give Harshaw Trane the right to, without an election of remedies: (a) proceed pursuant to Section 6.01; and/or (b) terminate this Agreement by delivery of written notice declaring termination, upon which event LFUCG shall be liable to Harshaw Trane for all Services furnished to date, including any specially manufactured or non-stock items, whether in production or delivered, and any damages sustained by Harshaw Trane, including anticipatory profits:

(a) Any failure by LFUCG to pay or cause to be paid amounts due Harshaw Trane more than thirty (30) days after the date of the invoice unless otherwise indicated in Section 1.04 thereof;

(b) Any representation or warranty furnished by LFUCG in this Agreement is false or misleading in any material respect when made;

(c) Any failure by LFUCG to perform or comply with any material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for ten (10) days after written notice to LFUCG demanding that such failure be cured or, if cure cannot be effected in such ten (10) days, LFUCG fails to promptly begin to cure and diligently proceed to completion thereof.

Section 2.03. On-Going Maintenance. LFUCG shall:

(a) Reimburse Harshaw Trane for repairs not included within the services of this Agreement, replacements, and/or emergency calls occasioned to the extent not caused by the negligence of Harshaw Trane. Such reimbursement shall be at current regular and/or overtime/holiday rates (depending upon when service is performed) for labor, and current price levels for materials unless otherwise agreed and may, at Harshaw Trane's option, be subject to a separate written agreement prior to its undertaking such work;

(b) Notify Harshaw Trane of any unusual performance of equipment included in this Agreement;

(c) During the Term of this Agreement, permit only Harshaw Trane personnel to repair, adjust or program equipment, systems, and/or controls covered by this Agreement or affecting equipment, systems, and/or controls covered by this Agreement, except in the event of an emergency, in which event LFUCG shall notify Harshaw Trane of the existence of the emergency no later than within twenty-four (24) hours of the commencement of the emergency condition;

(d) Be responsible for any damage caused by operating the equipment contrary to Harshaw Trane's recommendations as stated in the operating manuals and instructions;

(e) Be responsible for any failure caused by misuse, negligence, unauthorized alteration of equipment, fire, flood, accident, hurricane, earthquake, theft, sabotage, or other calamity or malicious act;

(f) Be responsible for any repairs or renovation due to normal deterioration, rust, corrosion, or erosion of non-moving equipment components (i.e. cooling tower fill, drain pans, etc.).

ARTICLE 3 - INSURANCE

Section 3.01. Harshaw Trane's Liability Insurance. Harshaw Trane shall purchase from and maintain, without interruption from the commencement of the Services until the date of final payment, a commonly available commercial general liability policy of insurance through a company or companies rated A- or above by A.M. Best Company, providing coverages for workers' compensation insurance, comprehensive automobile insurance and commercial general liability insurance. The minimum insurance limits of liability shall be \$1,000,000 bodily injury and property damage.

Section 3.02. Evidence of Insurance. Certificates of insurance acceptable to the LFUCG shall be provided prior to commencement of performance of any Services. Such certificates shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the other party.

ARTICLE 4 - HAZARDOUS MATERIALS

Section 4.01. Asbestos And Hazardous Materials. Harshaw Trane's Services and other work in connection with this Agreement expressly excludes any work connected or associated with Hazardous Materials. Hazardous Material means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, urea formaldehyde, foam insulation, asbestos, asbestos-containing materials ("ACM's"), polychlorinated biphenyl ("PCB"), or any other substances, the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or ownership of which is restricted, prohibited, regulated, or penalized by any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and

Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as the laws have been and may be amended and supplemented.

Should Harshaw Trane become aware of or suspect the presence of Hazardous Materials, Harshaw Trane shall have the right to immediately stop work in the affected area and shall notify LFUCG. LFUCG will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Harshaw Trane shall be required to resume performance of the Services in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless; if the area has not been or cannot be rendered harmless within 30 days of discovery of the Hazardous Material, Harshaw Trane may terminate this Agreement and LFUCG shall be liable to Harshaw Trane for the Services completed to date of termination and anticipatory profits. LFUCG shall compensate Harshaw Trane for any additional costs incurred by Harshaw Trane as a result of work stoppage, including demobilization and remobilization. Under no circumstances shall Harshaw Trane be obligated to transport or handle Hazardous Material, to provide any notices to any governmental authority or agency, or to inspect or examine the Premises for the presence of Hazardous Materials. In addition to any other indemnity obligation of LFUCG to Harshaw Trane, LFUCG will indemnify, defend, and hold harmless Harshaw Trane, its officers, directors, beneficiaries, shareholders, partners, agents, and employees (collectively referred to as "Harshaw Trane" for purposes of this Article 4) from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release or disposal of Hazardous Materials that occurs while Harshaw Trane is performing in connection with this Agreement or the Maintenance Agreement, or from LFUCG's failure to provide all information, make all submissions, and take all steps required by all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect.

ARTICLE 5 - INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 5.01. Indemnification. To the maximum extent permitted by law, Harshaw Trane and LFUCG shall indemnify and hold each other harmless from any and all actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to tangible physical property of the other, to the extent arising out of or resulting from the negligence of their respective employees or other authorized agents in connection with the Premises. However, neither party shall indemnify the other against actions, costs, expenses, damages and liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault hereunder, then any obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions, which occurred prior to expiration or termination. Notwithstanding any provision to the contrary, Harshaw Trane shall not be liable to LFUCG for any special, incidental, consequential or punitive damages.

ARTICLE 6 – WARRANTY

Section 6.01. Workmanship and Equipment Warranty. Harshaw Trane warrants that, for a period of one year from the date of Substantial Completion (the "Warranty Period"), the installation work shall be free from defects in material and workmanship. Equipment and/or parts that are not manufactured by Harshaw Trane are not warranted by Harshaw Trane and have such warranties as may be extended by the respective manufacturer. If such defect in the installation work is discovered within the Warranty Period, Harshaw Trane will correct the defect. No liability whatever shall attach to Harshaw Trane until said Services have been paid for in full and then said liability shall be limited to Harshaw Trane's cost to correct the defective work. Harshaw Trane's warranties expressly exclude any remedy for damage or defect caused by corrosion, erosion, or deterioration, abuse, modifications or repairs not performed by Harshaw Trane, improper operation, or normal wear and tear under normal usage. Harshaw Trane shall not be obligated to pay for the cost of lost refrigerant.

HARSHAW TRANE DISCLAIMS ALL WARRANTIES AND MAKES NO REPRESENTATIONS REGARDING THE YEAR 2000 COMPLIANCE OF PRODUCTS MANUFACTURED BY A THIRD PARTY AND/OR THAT MAY HAVE BEEN SOLD WITH OR ARE USED IN CONJUNCTION WITH PRODUCTS MANUFACTURED BY TRANE.

THE WARRANTY AND LIABILITY SET FORTH IN THIS SECTION 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 USE OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL TRANE OR HARSHAW TRANE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

ARTICLE 7 - GENERAL PROVISIONS

Section 7.01. Dispute Resolution. Except for claims of nonpayment of sums due pursuant to Section 1.04 or the enforcement of any mechanics' or other lien rights, any dispute, controversy or claim (hereinafter collectively referred to as "Dispute") arising out of or relating to this Agreement or any breach or alleged breach hereof, upon the request of either party, first shall be submitted to mediation. Said mediation shall commence no later than 30 days after submission of the Dispute and shall be conducted at the locality where the Premises are situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation, the Dispute may be submitted by either party for settlement by arbitration no later than 60 days after the first mediation session. The arbitration shall occur at the locality where the Premises are situated, unless otherwise agreed, and shall be conducted in conformance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Any award rendered shall be final and conclusive and a judgment thereon may be entered in the highest court of a forum, state or federal, having jurisdiction. Except to the extent that this Agreement expressly permits a party to suspend performance, pending final resolution of a Dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement. The expenses of any mediation or arbitration shall be borne equally by the parties thereto, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel.

Section 7.02. Assignment. LFUCG may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of Harshaw Trane. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of LFUCG's successors and assigns.

Section 7.03. Applicable Law and Jurisdiction. This Agreement is made and shall be interpreted and enforced in accordance with the laws of the state in which the Services are to be performed. LFUCG hereby submits to the personal jurisdiction of the courts of the state in which the Services are to be performed and to being sued in such jurisdiction.

Section 7.04. Complete Agreement. This Agreement and the Exhibits attached hereto, together with any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both parties regarding the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto.

Section 7.05. Conditions Beyond Harshaw Trane's Control. Notwithstanding any other terms of this Agreement, both parties hereto expressly understand and agree that Harshaw Trane shall not be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to any extent to an event of Force Majeure. The term "Force Majeure" shall mean any cause beyond the control Harshaw Trane and which by the exercise of due diligence Harshaw Trane could not reasonably have been expected to avoid and which it has been unable to overcome. Without limiting the foregoing, the following are examples of acts of "Force Majeure": acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, labor disputes, labor or material shortages, or 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 the fault of Harshaw Trane. If Harshaw Trane is rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure it shall give prompt written notice of such fact to LFUCG. Upon the occurrence of any such event as aforesaid, Harshaw Trane may delay performance or, at its option, renegotiate prices, terms and conditions with the LFUCG. If Harshaw Trane and LFUCG are unable to agree on such revisions, upon agreement of the parties, the issues shall be submitted first to mediation. Each party may pursue such rights and remedies available to each of them, whether at law or in equity.

Section 7.06. Signatures In Counterpart. 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 facsimile copy hereof shall suffice as an original.

Section 7.07. Severability. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, which shall be valid and enforceable to the fullest extent permitted by law.

EXHIBIT C.1
Certificate of Substantial Completion

Lexington-Fayette Urban County Government
Police Headquarters RFP #1-2012
Harshaw Trane Project #:

The Services performed pursuant to the Turnkey Agreement (“Agreement”), by and between Harshaw Trane (“Trane”), and Lexington-Fayette Urban County Government (“Customer”), dated as of _____, have been inspected by Customer, are determined to be substantially complete, and Customer accepts the same in accordance with the terms of the Agreement.

The Date of Substantial Completion is:

If applicable, a punch list of items to be completed are attached along with the date such items are to be completed.

The Warranty Period, pursuant to Article 6 of the Agreement, commences as of the date of Substantial Completion or the earlier dates stated below with respect to the following corresponding equipment or work:

Services: Description of Equipment or Work	Warranty Commencement Date

Harshaw Trane

Lexington-Fayette Urban County Gov’t

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT C.2
Certificate of Final Completion

Certificate of Final Completion and Acceptance

Lexington-Fayette Urban County Government (LFUCG)

Police Headquarters RFP #1-2012

Harshaw Trane Project #:

Final Completion Date:

The Services performed pursuant to the Turnkey Agreement (“Agreement”), by and between Harshaw Trane (“Trane”) and Lexington-Fayette Urban County Government (“Customer”), dated as of _____, have been inspected by the undersigned Customer and are determined to be finally complete.

The Date of Final Completion and Acceptance is hereby established as the earlier of (i) the date Customer executes this Certificate, as noted below, or (ii) fourteen (14) calendar days after the date noted above as the date this Certificate is submitted to Customer.

Harshaw Trane

Lexington-Fayette Urban County Gov’t

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____