

AGREEMENT FOR DESIGN, INSTALLATION, OPERATION AND OWNERSHIP OF  
A MICROGRID DEMONSTRATION SYSTEM  
AT THE SANTA ROSA LAGUNA TREATMENT PLANT

This Agreement for Design, Installation, Operation and Ownership of a Microgrid Demonstration System at the Santa Rosa Laguna Treatment Plant (Hereinafter "LTP Microgrid Agreement") is made and entered into by and between Trane U.S. Inc., a Delaware corporation ("Trane") and the City of Santa Rosa, a California municipal corporation (the "City"), as of \_\_\_\_\_, 2017 (the "Effective Date").

RECITALS

A. Trane is the successful recipient of a California Energy Commission (CEC) grant award, Grant Award Number: EPC-15-059 (the "Grant") for the design, installation, testing and operation of a Microgrid Controller and Automation System and a Photovoltaic System in accordance with the scope of work set forth in the Grant (the "Microgrid Project"), a true and correct copy of the Grant, dated as of August 27, 2015, (excluding Exhibit B thereto) is attached hereto as Exhibit A.

B. The Grant identifies the Laguna Treatment Plant (the "LTP"), a regional wastewater treatment plant owned and operated by the City as the site for the Microgrid Project to be located and installed.

C. The City desires to work with Trane for the purpose of facilitating the successful completion of the Microgrid Project at the LTP, with the mutual understanding that the LTP is first and foremost dedicated to providing wastewater treatment services to the City and its subregional partners and upon the terms and conditions set forth in this LTP Microgrid Agreement.

NOW THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged and agreed, the parties hereby agree as follows:

1. Generally

A. Condition Precedent. This Agreement and Trane's obligations hereunder shall be contingent upon receipt of an extension by Trane from the CEC for the completion of the Microgrid Project under the Grant. Trane shall apply and pursue in good faith such extension following the execution of this LTP Microgrid Agreement. In the event Trane is unable to secure an extension satisfactory to Trane in its reasonable discretion (or waive, at its sole discretion, this condition precedent) within one hundred and twenty (120) days following the Effective Date of this LTP Microgrid Agreement, either Party may terminate this Agreement upon written notice to the other Party. Trane shall provide prompt written notice to the City upon receipt of an extension from the CEC, as well as a representation as to whether the extension is satisfactory to Trane pursuant to this Section of the Agreement.

B. License to Access the LTP. The City hereby agrees, subject to all of the terms, conditions and requirements of this LTP Microgrid Agreement, that Trane, its consultants, contractors and agents under the supervision of Trane, shall have a non-exclusive license to access the LTP for purposes of its work on the Microgrid Project in accordance with the Grant including but not limited to, any due diligence, site review, testing or other investigation,

installation, construction and operations work as may be anticipated hereunder, provided, however that (i) access during normal business hours, which for purposes of this LTP Microgrid Agreement shall mean Monday through Friday, 7am to 5pm, will not require prior notice, but will require that Trane and any users of this license check in with the main office upon arrival so that the key personnel for the City at the LTP are aware of their presence, (ii) Trane shall coordinate with the City point of contract (to be determined) any and all physical work to take place at the LTP prior to the commencement of any such work, (iii) the exact location of any installation or construction shall be only as set forth in the design drawings and submittals, which for purposes of this LTP Microgrid Agreement shall mean plans sufficient for City of Santa Rosa Building Department review, for the Microgrid Project as approved by the City in accordance with the terms of this LTP Microgrid Agreement, (iv) there shall be no non-business hours access until and unless Trane has coordinated same ahead of time with the City's point of contact for the Microgrid Project, (v) all access and any work done at the LTP shall at all times be in compliance with any applicable terms of this LTP Microgrid Agreement and all applicable local, state and federal law, and (vi) Trane and any consultants and contractors (including subcontractors) shall be in compliance with the City's insurance coverage requirements prior to access the LTP. Trane, its consultants, contractors and agents shall at all times cooperate fully with City staff at the LTP with respect to this license and shall at no times be allowed to access locations at the LTP that do not relate to ongoing work in connection with the Microgrid Project unless accompanied by City staff. Trane shall provide a written list of any representatives, consultants, contractors and subcontractors needing access to the LTP in conjunction with the Microgrid Project, and shall keep such list updated with the City as necessary throughout the Term of this Agreement.

## 2. Design of the Microgrid System.

A. Trane will be solely responsible for preparing design drawings and submittals for the Microgrid System (the "Design Work"), which shall include three functional areas for the design package: (i) the installation of new selective Catalytic Reduction (SCR) devices into two existing Cummins combined heat and power (CHP) engines along with appropriate supporting equipment and appurtenances; (ii) the installation of approximately 125-kW solar photovoltaic panels to be located in the main parking lot area of the LTP as canopy panels; and (iii) the installation of new electric batteries and supporting controls, including the microgrid controller. Each of the components may also include site preparation, installation of electrical conductors and conduits, installation of associated instrumentation and control conductors and conduit, and associated trades, all as required under the Grant. Trane shall use Brown and Caldwell for the design of the SCR systems and any air permitting requirements, so long as Brown and Caldwell abide by their subcontract with Trane.

B. Trane shall perform engineering and design services, using qualified architects, engineers and other design professionals selected by Trane as reasonably necessary to complete the Design Work (the "Design Team"). During the Design Work process, Trane and the City shall coordinate the design work and cooperate with each other so as to minimize comments or delays. Trane shall provide to City for review hereunder, ninety percent (90%) complete Design Work for the Microgrid Project in accordance with the Project Schedule, attached hereto as Exhibit B and incorporated herein, as may be adjusted from time to time with agreement by the parties. Trane shall provide to the City, as soon as such agreements become available, all agreements that will be required to be executed by the City in connection with the Microgrid Project, including the interconnection agreement with the local utility and the demand response agreement with the California Independent System Operator. The Parties shall cooperate in good faith in the review and execution of such agreements by the City.

Notwithstanding the foregoing, the City shall have the right to prior review and approval of any such agreements, which shall not be unreasonably withheld, conditioned or delayed.

C. Trane agrees to work with Cummins as the manufacturer of the CHP engines on which the two (2) SCR units will be installed to assure that whatever SCR components are utilized for the Microgrid Project are determined by Cummins to be acceptable and not inconsistent with any existing warranty or maintenance plans with the City. Trane understands that the City may need to renegotiate the warranty with Cummins based on change in engine use rotation and run hours, and Trane agrees to provide City with any data or project specifications available to Trane to determine the scope of any proposed changes. The City agrees to undertake such discussions with Cummins in a timely manner and so as not to disrupt the progress of the Design Work or the installation and construction of the Microgrid Project. In the event changes to the warranty are required, such changes shall be at the City's sole cost and expense.

D. All materials, devices, and components incidental to the installation and construction of the Microgrid Project will be of industrial grade as set forth in the Design Work and shall carry the relevant manufacturer's warranties. Notwithstanding anything to the contrary herein, the Parties agree that the major system components and/or incidental components listed in Exhibit C, attached hereto and incorporated herein, are acceptable to the City and no substitution thereof shall be required. In addition, any materials, devices or components specified in the Design Submittal to the extent approved by the City shall be deemed acceptable to the City and no substitution thereof shall be required.

E. At such time as Trane has 90% Design Work for any one of the three major components of the Microgrid System, Trane shall provide as many copies of submittals as the City shall deem necessary (not to exceed five) for the City's review. The City shall have not more than fourteen (14) business days from receipt of the design submittal for 90% design to review and provide any objections, comments or questions regarding the current design submittal. Design submittals shall include: (i) mechanical and electrical drawings, (ii) product description information, (iii) detailed project schedule, (iv) permit package and related documents, and (v) any other documents submitted in connection with the Work. If requested by the City, in an effort to facilitate the City's approval of the 90% design submittal, appropriate members of the Trane Design Team shall be made available to attend a meeting with the City to address any objections, comments or questions. Trane shall assure that the Trane Design Team incorporates changes into the Design Work as necessary to address the City's concerns. The City shall have the right to review all changes to any submittal before providing final approval. The City shall make diligent efforts to review and respond to any such changes towards final approval within three (3) business days.

F. While Trane and the City understand that other agencies will need to review and approve the Design Work, including but not limited to the CEC to assure compliance with the Grant, Trane and the City hereby agree that the City shall have final approval over the design of the Microgrid Project. The City hereby agrees that it intends to exercise this approval for the sole purpose of assuring that the interface, operation and longevity of the Microgrid Project is consistent with the primary mission of the LTP, and further agrees that it shall not unreasonably withhold its consent to changes requested by third party reviewing agencies, so long as the City has first had the opportunity to advocate directly regarding any concerns or reservations the City may have with respect to any such requested changes.

G. Notwithstanding the foregoing or anything else in this LTP Microgrid Agreement, the City understands that the Microgrid Project is funded solely by the Grant and the matching funds and that no additional budget is available to meet requirements that are not part of the Microgrid Project as outlined in the Grant. Consequently, in the event that the City requires additional work in connection with the Microgrid Project that exceeds the requirements of the Grant (the "Additional Requirements"), Trane will notify the City thereof prior to commencement of construction and installation work at the site with respect to the Microgrid Project and will provide to the City the cost of such Additional Requirements. If the City elects to implement and pay for such Additional Requirements, this Agreement shall be amended to include such Additional Requirements and the cost thereof shall become additional City Matching Funds. Those requirements set forth in Section 2(D) above, shall not be construed as Additional Requirements hereunder. In the event, prior to the commencement of the construction and installation of the Microgrid Project, the City elects not to pay for such Additional Requirements, Trane shall have the option to either proceed with the installation of the Microgrid Project without the City's additional Matching Funds or to terminate the LTP Microgrid Agreement pursuant to Section 8 below.

### 3. Required Permits and Approvals.

A. Trane shall be solely responsible to coordinate, prepare applications for and obtain all necessary approvals and permits for the Microgrid Project, including but not limited to, air quality permits or amendments to the City's current air permits from the Bay Area Air Quality Management District ("BAAQMD"), building permits to be issued by the City's Building Department, approvals from Cal-ISO necessary for function of the Microgrid Project as anticipated under the Grant, and any interconnection to Pacific, Gas & Electric (PG&E), if any is required by PG&E. Trane hereby acknowledges and agrees that coordination with Cal-ISO, BAAQMD and if any with PG&E may require significant effort and time. Notwithstanding the foregoing, the City shall be consulted and shall have the right of approval over any permit or conditions of approval that may affect the LTP. Trane shall be solely responsible for all costs and fees associated with obtaining all necessary permits for the Microgrid Project.

B. Santa Rosa agrees to assist Trane in obtaining necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the Microgrid System, including the submission of applications for interconnection of the Microgrid System with the PG&E, provided that same shall not interfere with the City's interface with the Geysers. To the extent that interconnection to PG&E requires execution of any agreements by the City, the City shall have the right to prior review and approval of same in its reasonable discretion. Trane shall be solely responsible for any additional equipment on Santa Rosa's side of the interconnection point in addition to the equipment provided by Trane under the Grant Agreement, as may be required for the interconnection of the Microgrid System to PG&E and/or the CAL ISO.

C. The City and Trane agree that upon completion of the final design submittals for the Microgrid Project and approval thereof by the City, Trane shall submit a building permit application to the City's Building Department for review of the proposed plans. The City agrees to facilitate the review process towards obtaining a building permit for the Microgrid Project. In the event that the City's Building Department declines review, the City shall have the right, at its sole cost and expense, to seek consultant review for compliance of the Design Work with building code requirements. No work shall be commenced at the LTP until such time as the City has approved the final design drawings and submittals for the Microgrid Project, and Trane shall have obtained the City building permit. Work on the SCR portion of the Microgrid Project shall

be limited to any civil related activity until permit for "BAAQMD" has been issued upon which all other construction related to SCR may commence, provided that any civil or related work activities commenced prior to obtaining the BAAQMD permit for the Microgrid Project shall be done at Trane's sole risk and expense in the event the permit requires modifications of same.

D. Trane shall cause the Work to be performed in compliance with all applicable federal, state and local laws and any design and engineering or other professional services to be performed pursuant to this LTP Microgrid Agreement, and to the extent required shall assure that the Work is performed by licensed personnel.

4. Construction and Completion. Upon obtaining City's final approval of the Design Work and any required permits for the performance of the specific portion of the Work in question, Trane shall have the right to move forward with construction of the Microgrid Project at the LTP in compliance with the City approved design drawings and submittals, all permit and approval conditions as well as local, state and federal law. Trane shall be solely responsible for construction of the Microgrid Project, including appropriate project management and oversight of the construction and installation work (the "Work"), provided, however, that the City shall have the right at all times to inspect the progress and quality of the Work.

A. Trane shall assure that any construction contract for the Work shall require the contractor to (1) indemnify the City for any and all work performed at the LTP, (2) agree to adhere to Trane's safety protocols and to acknowledge and fully comply with Cal-OSHA multi-employer work site safety regulations, which require that the City intervene for purposes of correcting or stopping work as may be determined necessary by City staff at any time during the construction/installation of the Work if an unsafe condition is noticed, (3) supply evidence of insurance as required herein and to assure that its subcontractors carry the coverage required hereunder, and (4) posting of Performance and payment bonds by any construction contractor hired by Trane for the portion of the Work with respect to the Microgrid Project which involved construction or installation activities at the LTP site. The City shall not be responsible for ensuring Trane's nor any Trane contractor or consultant compliance with OSHA regulations.

B. At all times during the construction and installation of the Work, Trane shall coordinate the schedule with the City's designated point of contact. The City shall at all times have a designated point of contact for the Microgrid Project construction and installation, who shall coordinate and designate staging, deliveries, inspections and the Work schedule. The parties agree that at all times during construction (until Completion and acceptance of the Work by the City), the parties shall participate in construction coordination meetings on a not less than bi-weekly basis. Trane shall make the appropriate members of the construction team available to attend (in person or by telephone) including but not limited to key representatives of the general contractor and any subcontractors. The purpose of the coordination meetings will be to provide updates on the status of the Work, identify and coordinate areas of interface with the LTP so as to avoid disruption to the operation of the LTP, review a current three-week "look ahead" schedule provided by Trane and critical path for the Work, identify any access and safety issues, and provide for schedule of inspections by the City for both the Building Department and LTP staff.

C. Trane shall submit a written request for any proposed LTP system outages at least seven (7) business days (Monday through Friday) prior to any outage dates, and same shall be coordinated with LTP staff. The City shall have sole discretion, exercised reasonably, as to the timing and duration of any planned outages at the LTP.

D. Trane shall supervise and direct all Work performed hereunder, and shall be solely responsible for the means, methods, techniques, sequences and procedures employed, consistent with the requirements of this LTP Microgrid Agreement. Trane shall ensure that all persons performing work hereunder are skilled in the tasks assigned to them. Trane shall keep the construction and staging areas reasonably free of materials and accumulation of waste caused by the Work. Upon completion of the Work Trane shall remove from the LTP all waste, tools and equipment introduced by or through Trane.

E. Upon completion of the Work, Trane shall obtain final inspection of the Work by the City's Building Department as well as LTP staff to assure that the Work is done in compliance with the approved design drawings and submittals. Trane hereby agrees that it shall promptly address any areas of noncompliance identified during City's inspections. Upon acceptance of the Work by the City, Trane shall file a notice of completion for same.

F. Trane hereby agrees that all of the Work shall proceed concurrently and that Trane shall use its commercially reasonable efforts to complete the Work in accordance with the Project Schedule, as may be adjusted from time to time by mutual agreement of the parties not to be unreasonably withheld, subject to delays caused by force majeure events, acts or omissions of the City, the local electric utility or any other governmental authority or the CEC. Trane may, in its discretion, re-organize activities, events, or milestones set forth in the Project Schedule from time to time with prior notice to and approval of the City, which shall not be unreasonably withheld, conditioned or delayed.

5. Microgrid System Startup and Testing. Prior to any startup or testing of the Microgrid Project, Trane shall circulate for review and approval a testing procedure and protocol. The protocol shall identify at a minimum the key steps to startup, the key personnel on site during startup and testing which shall include key LTP staff, any testing parameters, and any mechanisms for abort of any startup or test. Startup of the Microgrid Project shall not commence until such time as Trane has received acceptance and approval of all of the Work and all required permits and outside agency approvals are in place.

A. City staff at the LTP shall at all times during start up, testing and operation of the Microgrid System have the right to immediately cease operations of the Microgrid System if City staff determines, in its sole and absolute discretion, that doing so is necessary for the function of the LTP, whether due to the operation of the Microgrid Project or for any other reason. Trane shall provide advance written notice and a proposed schedule of the Microgrid Project startup and testing. City staff shall be present during startup and testing of the Microgrid Project.

B. Trane shall be solely responsible for any and all required or necessary maintenance of the Microgrid System following completion of the Work, through testing up to and until the end of the Term, as herein described.

C. Trane shall provide training on each of the main components of the Microgrid System as well as the operation of the System as a whole to City staff at no cost or charge. Such training shall be scheduled at reasonable times with the City at the LTP and shall be geared towards the City's independent operation of the Microgrid System to include written manuals and materials and any interface with the LTP and programming associated with the operation of the Microgrid System. Trane shall provide follow up or additional training at the City's reasonable request, provided, however, that the cost of any such additional training shall be borne by the City.

6. Liability; Indemnity and Insurance.

A. Trane shall bear all costs of design, construction, testing and operation up to the transfer of the Microgrid System to the City, with the sole exception of City's contribution. City hereby agrees to contribute a total amount of \$750,000, subject to adjustment pursuant to Section 2.G. hereof (the "City Matching Funds"). The City Matching Funds shall be payable by the City to Trane fifty percent (50%) upon delivery of two BAAQMD approved SCRs to the LTP, and the other fifty percent (50%) at commencement of the programming and start up. Once the SCR for which the City paid the City Matching Funds is installed and operational, Trane will provide all of the documents necessary to transfer title of the SCR to the City along with any warranty from the manufacturer.

B. Subject to the provisions of Section 6(E) below, Trane shall be liable for and shall indemnify the City, its officers, agents, employees, successors and assigns, from and against any and all actions, claims, lawsuits, administrative proceedings, arbitration proceedings, regulatory proceedings, damages, disabilities, liabilities and expenses, including all cost of litigation incurred in the defense of claims as to which this indemnity applies and including any claims or liability asserted pursuant to California Labor Code Section 1720 et. seq. to the extent caused by or arising out of Trane's negligent acts or omissions, or willful misconduct in connection with Trane's design, installation or construction of the Microgrid Project. but excluding liability due to the negligence or willful misconduct of the City, its employees, agents or contractors.

C. If there is an obligation to indemnify, Trane's duty to defend the City exists, regardless of whether it is ultimately determined that there is not a duty to indemnify. Where it is ultimately determined that the events or circumstances giving rise to the obligation to indemnify were the result of the negligence or willful misconduct of the City, its employees, agents or subcontractors, there shall be an apportionment of the defense costs based on the relative fault of the parties following final resolution of any claim. Trane shall have the right to select legal counsel at the expense of Trane, subject to the City's approval, which shall not be unreasonably withheld.

D. Subject to Section 6.E below, this indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to Trane or its agents under any workers' compensation acts, disability benefits acts, or other employee benefit acts.

E. LIMITATION OF LIABILITY. IN NO EVENT WILL TRANE OR THE CITY BE LIABLE TO THE OTHER OR ANY OF ITS AFFILIATES OR ANY OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, AGENT, CUSTOMERS OR REPRESENTATIVES UNDER THIS AGREEMENT OR OTHERWISE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, WHETHER ANY ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, AND TORT OR OTHERWISE, UNDER NO CIRCUMSTANCES SHALL TRANE'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FIVE MILLION DOLLARS (\$5,000,000).

F. Each of Trane and the City shall maintain in full force and effect all of the insurance coverage or equivalent insurance coverage to that described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated and made part of this LTP Microgrid Agreement by this reference.

G. Maintenance of the insurance coverage required herein is a material element of this LTP Microgrid Agreement. Failure by Trane or the City to (i) maintain or renew coverage, (ii) provide notice of any changes, modifications, or reductions in coverage, (iii) with respect to Trane, assure that all of its contractors and consultants have the required insurance, or (iv) provide evidence of renewal, may be treated by the other party as a material breach of this Agreement, whereas the non-defaulting party shall be entitled to all rights and remedies in accordance with Section 8. Notwithstanding the foregoing, any failure by a party to maintain required insurance coverage shall not excuse or alleviate such party from any of its other duties or obligations under this Agreement.

7. Hazardous Materials. Trane shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Premises by Trane, its employees, subcontractors, agents, or other parties acting on behalf of Trane. In the event that Trane becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Premises, Trane shall inform the City by notice as soon as practicable, and shall immediately cease work so as to avoid the any release or further disruption. Notwithstanding anything to the contrary herein, but excepting any negligent act or omission, or willful misconduct by Trane, its employees, agents, or contractors, upon the discovery of any Hazardous Materials hereunder, Trane shall not be responsible for, and the City shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by Trane on the Premises resulting from Trane's performance of the Work hereunder.

8. Transfer of Ownership. Trane shall complete the Microgrid Project, design, construction, installation, testing and operation within the Term set forth in the Grant, as may be amended, supplemented or modified from time to time, provided that Trane shall notify the City of any extension or material change in terms of the Grant. Within thirty (30) days prior to the expiration of the Term, Trane shall provide the City with all warranty and other information for all component parts of the Microgrid System, as well as draft title documents for a full and complete transfer of ownership of the Microgrid System to the City, and the City shall review and provide comments to same. Upon expiration of the Term, it is the intent and understanding of the parties that Trane shall transfer, convey and assign any and all rights and interests in and to the Microgrid System to the City free of any cost, charge or expense, except for payment by the City of the City Matching Funds, as amended pursuant to Section 2.G, including but not limited to all warranty, all plans and specification (subject to Trane's rights to intellectual property as herein provided), and any other rights Trane may have to convey in connection with the Microgrid System, including the right to operate the Microgrid System and any revenue, credits, or other derivatives generated therefrom. Prior to the expiration of the Term, Trane shall deliver to Santa Rosa a copy of the final record drawings for the Work and all operation and maintenance manuals with respect to the Work. The Microgrid Project shall be transferred to the City "AS-IS", "WHERE-IS" with no warranties or guaranties of any kind by Trane, express or implied. Trane shall use its commercially reasonable efforts to assign to the City any remaining and applicable third party manufacturers warranties relating to the Work which were originally provided in connection with the equipment and materials incorporated into the Work and are available to, and assignable by, Trane.



## 9. TERM.

A. This Agreement shall commence on the Effective Date and shall continue for a period co-terminus with the Grant Agreement, which is currently [March 30, 2018], unless sooner terminated pursuant to this Agreement. This Agreement may be renewed upon mutual written agreement between the Parties. The initial term and each renewal term, if any, are collectively referred herein as the "Term."

B. Termination Prior to commencement of the Work. Subject to the terms and conditions of the Grant, Trane shall have the right to terminate this LTP Microgrid Agreement without liability prior to commencement of the installation Work at the site. In the event of termination of this Agreement by Trane, neither party shall bear any cost or expense of the other party, except for any amounts payable by the City with respect to the SCR subject to the City Matching Funds so long as Trane completes the Work with respect to such SCR.

C. Termination For Material Breach of the LTP Microgrid Agreement. Either party may terminate this LTP Microgrid Agreement in the event of a material breach under this LTP Microgrid Agreement where such breach continues uncured for thirty (30) days following written Notice thereof from other party, provided that if the relevant breach cannot be reasonably remedied within such thirty (30) days and the party receiving notice works diligently to remedy such breach, the such party shall have such longer period as may be reasonably required to remedy the relevant breach. In the event of termination for material breach of the LTP Microgrid Agreement, either party may be liable to other party for the actual costs incurred by the non-breaching party prior to said termination and have all rights and remedies available in law or equity.

## 10. Responsibilities for Delays.

A. Responsibility for Delays. The City and Trane agree to use their commercially reasonable efforts to abide by the Project Schedule. If Trane is delayed in the commencement or completion of any part of the Work due the negligence or intentional misconduct, including the failure by the City to abide by the terms and conditions of this Agreement by the City or any of its officers, agents or employees, then Trane will notify the City in writing of the existence, extent of, and reason(s) for such delay(s) and City will use its commercially reasonable efforts to remedy any issues identified by Trane. In the event, after notice and an opportunity to remedy the issue as stated above, it is determined that Trane was delayed by any of the causes set forth in the previous sentence, Trane shall be entitled to the reasonable, incremental and documented out of pocket costs actually incurred by Trane for furnishing the Work to the extent caused by such delays.

B. Compliance with Grant. The City represents and warrants that it has reviewed the Grant and agrees to comply with the terms and conditions thereof as such terms and conditions may apply to the City, and further subject to the terms and conditions of this LTP Microgrid Agreement.

C. Provision of Information/Concealed or Unknown Underground Conditions. Trane requested that the City provide certain information available to the City with respect to the LTP. The City represents and warrants that it delivered to Trane all information and materials requested by Trane to the extent known and available to City, provided that the City shall have the duty to investigate (the "Diligence Documentation"). In the event Trane encounters

unknown, concealed or unforeseen underground conditions in the performance of its Work, Trane shall be entitled to the reasonable, incremental and documented out of pocket costs actually incurred by Trane for furnishing the Work to the extent resulting from the concealed or unknown underground conditions, provided that upon discovery of any such conditions, Trane shall first inform the City of same in writing and the City shall have the option of remedying any issue at the City's sole cost and expense.

#### 11. Miscellaneous.

A. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed given: (a) when delivered in person; (b) the next business day after deposit with a commercial overnight delivery service for next day delivery; or (c) upon receipt if sent by United States mail, postage prepaid, registered or certified mail, return receipt requested. All notices shall be addressed to the recipient party at the following addresses or other address a party may designate in writing from time to time:

[Addresses for notices be inserted here]

B. Independent Contractor. Trane shall at all times be and remain an independent contractor and not an agent of Santa Rosa for any purpose whatsoever and shall have no authority to create or assume any obligation, express or implied, in the name of or on behalf of Santa Rosa or to bind Santa Rosa in any manner whatsoever.

C. Subcontractors. Trane may from time to time retain third party subcontractors and suppliers in connection with the Work provided hereunder.

D. Authorized Representatives. Each party shall designate one or more representatives authorized to act on behalf of the designating party. If a party designates more than one authorized representative, it shall specify the nature of the communications for which each representative is authorized to act on the designating party's behalf.

E. Entire Agreement; Amendment. With the sole exception of the Nondisclosure Agreement entered into by and between Trane and the City as of February 23, 2016, which shall continue to apply to the parties hereunder except where the terms of such Nondisclosure Agreement are in conflict or interfere with the terms, conditions and requirements of this LTP Microgrid Agreement, this LTP Microgrid Agreement including the Exhibits hereto, represents the entire and integrated agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. No amendment, modification or waiver in respect of this Agreement will be effective unless in writing and executed by both parties. In the event of any conflict between the Nondisclosure Agreement and this LTP Microgrid Agreement, the terms and conditions of this LTP Microgrid Agreement shall control and prevail.

F. Assignment. Neither party shall assign or delegate its rights or obligations under this Agreement without the written consent of the other party. In determining whether to consent to any assignment, each party shall be entitled to consider the experience, reputation and creditworthiness of the proposed assignee or other transferee. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

G. No Waiver. No failure on the part of either party to exercise or enforce any term hereof or any right hereunder shall operate as a waiver, release or relinquishment of any right or power conferred under this Agreement.

H. Force Majeure. Neither the City nor Trane shall be considered to be in default hereunder when a failure of performance is due to an Event of Force Majeure. An "Event of Force Majeure" shall mean any cause or event beyond the control of the parties. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; 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 any governmental authority or utility or the inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals, in each case if not caused by the fault of the affected party. If Trane or City 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 the other party and obligations shall be suspended during the pendency of the Event of Force Majeure.

I. Survival. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination (including, without limitation, any representations or warranties).

J. Governing Law; Venue. This Agreement shall be governed by, interpreted and enforced in accordance with, the laws of the State of California, and any action in connection with this Agreement shall be filed and heard in Sonoma County, California.

K. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

L. Ownership of Designs. All drawings, specifications, calculations, data, notes and other materials and documents, including electronic data furnished by Trane to Santa Rosa under this Agreement ("Work Product") are the instruments of service of Trane and Trane will retain all common law, statutory and other reserved rights, including copyrights. No license to the Work Product is hereby granted to Santa Rosa in connection with this Agreement or Trane's performance hereunder.

M. Intellectual Property. No license in the Work Product is granted pursuant to this Agreement. Any intellectual property rights (including, without limitation, any patents, inventions and any copyrights), including all data collected (with the exception of data collected at the LTP regarding electrical costs savings at the LTP as a result of the operation of the Microgrid Project), processed or administered by Trane in connection with the Work, the Grant or otherwise, shall remain the property of Trane and shall not be transferred to Santa Rosa under this Agreement or otherwise. Santa Rosa agrees to abide by all terms and conditions relating to intellectual property, rights to data, patents and inventions set forth in Article 12 of the Grant Agreement.

IN WITNESS WHEREOF, in consideration for the mutual promises set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned have executed this Agreement by their duly authorized representatives as of the date first written above.

TRANE U.S. INC.,  
a Delaware corporation

CITY OF SANTA ROSA

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

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

Daniel Galvin,  
Chair of the Board of Public Utilities

Name:

By:

City Attorney's Office

By:

Name:

Title:

Attachments:

Exhibit A – CEC Grant

Exhibit B – Project Schedule

Exhibit C – List of Equipment

Title:

APPROVED AS TO FORM:

## INSURANCE REQUIREMENTS

- 1. Trane's Liability Insurance.** Trane shall purchase and maintain without interruption, from the commencement of the Work and throughout the Term of the LTP Microgrid Agreement, the following policies with the following minimum limits, through a company or companies rated A VIII or better by A.M. Best Company:

### **COVERAGES**

Workers' Compensation,  
Employers' Liability Insurance  
Comprehensive General Liability\*  
Comprehensive Automobile Liability

### **LIMITS OF LIABILITY**

statutory  
\$1,000,000  
\$5,000,000 CSL, per occurrence and in the aggregate  
\$2,000,000 CSL, per occurrence and in the aggregate

\* This limit may be satisfied, at Trane's option, by primary or excess liability insurance or any combination of primary and/or excess liability insurance.

- 2. Installation Floater.** Trane shall maintain from the commencement of the Work and through the commissioning date of the Microgrid Project, installation floater insurance coverage insuring physical loss or damage to materials, equipment, machinery and supplies designated for use in the construction or performance of the Work at the LTP, offsite or while in transit to the site prior to the transfer of the risk of loss thereof to the City pursuant to Section 3 below.
- 3. Risk of Loss.** Risk of loss to the materials and equipment comprising the Work shall pass to City in the course of construction upon incorporation of the Work into the Premises.
- 4. Customer's Liability and Property Insurance.** (a) The City shall be responsible for purchasing and maintaining Commercial General Liability Insurance of the type and amount the City deems necessary and appropriate.

(b) The City shall purchase and maintain property insurance for the installation work in progress for the City's owned property and for all materials, equipment, machinery and supplies constituting the Work following the transfer of the risk of loss to such material, equipment, machinery and supplies to the City under Section 3 above, on a replacement cost basis from an insurer reasonably acceptable to Trane. Such property insurance shall include the interests of the City, Trane, and its subcontractors (at whatever tier) as additional insureds as their interests may appear. The property insurance purchased by the City shall be on an all-risk policy form. The City, for itself and its insurance carriers, hereby waives all rights of subrogation against Trane and any of its subcontractors, agents, employees, and officers with respect to property insurance and any other insurance coverages maintained by the City.

- 5. The City's Loss of Use/Business Interruption Insurance.** The City may purchase and maintain insurance to protect against loss of use of the City's property or business interruption due to fire or other commonly insured hazards, however such fire or hazards may be caused. The City acknowledges that Trane is not required to purchase or maintain such insurance against the loss of use of the City property or business interruption.
- 6. Evidence of Insurance.** The City and Trane shall furnish to the other certificate(s) of insurance prior to commencement of performance of any Work, evidencing the coverages and limits required to be maintained under this LTP Microgrid Agreement. The certificate(s) shall name the other party as an "additional insured" to the extent of the indemnity obligation assumed by the insured party under this Agreement. Each party shall provide prompt written notice to the other party in the event any insurance policy required hereunder is cancelled, terminated or allowed to expire.