

RESOLUTION NO. 2021 - 469

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A TERMINATION AND MUTUAL RELEASE AGREEMENT WITH TRANE U.S., INC TO EFFECTIVELY TERMINATE THE AGREEMENT ENTERED INTO UNDER RFP NO: 09-63.

RECITALS

WHEREAS, the County desires to terminate the agreement with Trane U.S., Inc under RFP No: 09-63; Guaranteed Energy Savings Contract, which was authorized by Board Resolution 2011-354 and executed in December 2011; and

WHEREAS, it has been mutually determined by both parties, that continuing the Contract is no longer in the best interest of either party. The County and Trane U.S., Inc have mutually agreed on a final payment from Trane U.S., Inc in the amount of two hundred forty-nine thousand dollars (\$249,000.00) in order to terminate the agreement. This amount is based upon the amounts that Trane would potentially owe to the County in future years based upon the guarantee in place under the Contract; and

WHEREAS, both parties agree that the termination and final payment are in the best interest of both parties; and

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to execute the Termination and Mutual Release Agreement, and accept the final payment from Trane U.S., Inc in the amount of \$249,000.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 2nd day of November, 2021.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: Jeremiah R. Blocker
Jeremiah R. Blocker, Chair

**ATTEST: ST. JOHNS COUNTY, FL
CLERK OF THE CIRCUIT COURT &
COMPTROLLER, Brandon J. Patty**

By: Robin L. Platt
Deputy Clerk

RENDITION DATE NOV 04 2021



TERMINATION AND MUTUAL RELEASE AGREEMENT

This Termination and Mutual Release Agreement (this "Agreement") dated as of September __, 2021 (the "Effective Date"), by and between Trane U.S., Inc. ("Trane"), and St. Johns County, Florida ("Customer") (each of the foregoing, a "Party" and collectively the "Parties").

WITNESSETH

WHEREAS, Trane and Customer are parties to that certain Guaranteed Energy Performance Savings Contract, dated as of December 8, 2011 (the "GESPC").

WHEREAS, the Parties desire to terminate the GESPC and all rights and obligations of the Parties thereunder and to release and forever discharge each other from any obligations or liabilities in connection therewith;

NOW THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

Section 1. Consideration. Within thirty (30) days following the Effective Date of this Agreement or the execution thereof by Customer, whichever is later, Trane shall pay Customer the amount of **Two Hundred Forty-Nine Thousand Dollars (\$249,000.00)** in full and final satisfaction of all claims, obligations or liabilities under the GESPC.

Section 2. Termination. The Parties hereby agree that as of the Effective Date, the GESPC shall be terminated and of no further force and effect (the "Termination Date"). Following the Termination Date, neither Party shall have any further liability or obligation to the other Party whatsoever under or pursuant to the GESPC.

Section 3. Mutual Release. Subject to payment by Trane of the amount set forth in Section 1 above, each Party fully, finally and forever releases and discharges the other Party and their predecessors, successors, assigns, past, present and future affiliates, direct and indirect parents, members, member firms, successors, predecessors, managers, equity interest holders, employees, divisions, agents, attorneys, directors, officers, counsel, accountants and all other representatives ("Releasees") of and from any and all claims, causes of action, lawsuits, liabilities, debts, accounts, dues, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, extents, executions, sums of money, damages, judgments, and demands of any nature whatsoever, in law or in equity, both known and unknown, asserted or not asserted, foreseen or unforeseen ("Claims"), which any Party may have ever had or may presently have against each other Party or any Releasee arising from or under the GESPC.

Section 4. Effectiveness of Releases. The provisions of this Agreement shall be effective immediately upon the execution and delivery of this Agreement by both Parties thereof.

Section 5. Representations. Each Party represents and warrants to the other Party that:

(a) Authorization. The execution, delivery and performance by such Party of this Agreement are within the powers of such Party and have been duly authorized by all necessary action on the part of such Party.

(b) Binding Effect. This Agreement has been duly executed and delivered by such Party and constitutes a valid and binding obligation of such Party, enforceable against such Party in accordance with the terms hereof.

Section 6. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different Parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page by facsimile transmission shall be as effective as delivery of a manually executed counterpart.

Section 7. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the State of Florida, excluding choice of laws principles of the law of such State that would require the application of the laws of the jurisdiction of the laws of a different state.

Section 8. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

Section 9. No Third-Party Beneficiaries. This Agreement is not intended and shall not be construed to confer upon any Person other than the Parties and the Releasees any rights or remedies hereunder.

Section 10. No Admission of Liability. Trane and Customer acknowledge and agree that this Agreement is not intended to be and will not be deemed or construed to be evidence or any admission of negligence, liability, wrongdoing or breach on the part of any Party or person, but rather constitutes a compromise and settlement of existing or potential claims.

Section 11. Amendment. This Agreement may only be amended, modified, superseded or canceled and any of the terms, covenants, representations, warranties or conditions hereof may be waived only by an instrument in writing signed by each of the Parties or, in the case of a waiver, by or on behalf of the Party.

Section 12. Entire Agreement. This Agreement, other agreements and instruments referred to herein and other documents executed or delivered in connection with this Agreement constitute the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof.

Section 13. Illegality. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 14. Waiver of Jury Trial. Each Party waives any right to a trial by a jury in connection with such action, suit or proceeding.

Section 15. Construction. This Agreement has been negotiated by the Parties and their respective legal counsel, and legal or equitable principles that might require the construction of this Agreement or any of its provisions against the Party responsible for drafting this Agreement will not apply in any construction or interpretation of this Agreement.

Section 16. Headings. The headings of Sections and subsections of this Agreement are inserted for convenience only and shall not affect the interpretation hereof.

IN WITNESS WHEREOF, the undersigned have executed, or have caused to be executed, this Agreement on the date first written above.

TRANE U.S., INC.

By: _____
Name:
Title:

ST. JOHNS COUNTY, FLORIDA

By: _____
Name:
Title: