



PB

HTS Texas

2251 Picadilly Dr.

Round Rock, Texas 78664

Phone: (512) 251-0030

Fax: (512) 251-0050

TACLA 23269C

MAINTENANCE SERVICE AGREEMENT

Heat Transfer Solutions, Inc. will provide the services, in accordance with the Service Agreement, Terms, Conditions and Schedules, described below for:

City of Boerne (hereinafter referred to as "customer")
P. O. Box 1677
Boerne, TX 78006
Fire Station

☒ **Preventive Maintenance (PM)**

This agreement is for Preventive Maintenance services to be provided for the below Equipment List ("*Equipment Covered*"). Preventive Maintenance coverage can provide early detection of adverse operating conditions in order to avoid costly equipment failures. Upon approval, all parts and labor necessary to repair the equipment will be provided with an additional charge to the Customer. This Preventive Maintenance program is defined in Schedule A ("*Services*").

- 1.2 Maintain a computer based log containing the documentation of the work performed. Copies of all work orders will be forwarded to the Customer at the completion of each service visit.
- 1.3 Provide service during regular business hours. For work performed at other times the Customer agrees to pay the additional overtime charges.
- 1.4 Provide next day service for non-emergency type service calls and 4 hour response for emergency type service for equipment installations in critical areas.
- 1.5 Maintain 24-hour, 7 days a week emergency service hotline for emergency type service calls
- 1.6 Basic hourly rate shall be **\$95.00** with overtime rates charged at 1.5 times the basic rate for work done after 4:30 p.m. and on weekends. Hourly rates will be reviewed on an annual basis.
- 1.7 Term/Automatic Renewal

This Agreement takes effect on **02/01/2016** and will continue until **01/31/2017** ("Original Term"). The Agreement will automatically renew on a year-to-year basis after the Original Term ends unless the Customer or HTS give the other written notice that it does not want to renew. The notice must be delivered at least thirty (30) days before the end of the original term or any of the renewal years. Renewal price adjustments are discussed in the Terms and Conditions.

- 1.8 The total Contract Price for HTS's Services during the 1st Year of the Original Term is **\$5,267.00** (plus applicable sales tax). This payment will be due in four (4) quarterly

Initial _____

installments of **\$1,316.75** upon receipt of HTS invoices (which may be in advance of services rendered). Pricing for subsequent years will be adjusted by an increase of no more than 5% per year. Renewal price adjustments are further discussed in the Terms and Conditions.

* Prices quoted in this proposal are valid for 30 days.

HEAT TRANSFER SOLUTIONS Inc:	CUSTOMER:
By: Josh Nunnelee	By: Bob Vogel
Signature:	Signature:
Title: Account Manager	Title: Facilities Maintenance
Date: 02/01/2016	Date:02/01/2016

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EQUIPMENT LIST

The following is the list of equipment HTS will be providing services on:

Two Daikin Heat Recovery Units

Twenty-Six Daikin VRV Units

Sixteen Piping Modules

Building Automation System (does not include software updates)

TERMS AND CONDITIONS

2. Definitions

- 2.1 **Covered Equipment** means the equipment for which services are to be provided under this agreement. Covered Equipment is defined by the equipment list attached.
- 2.2 **Equipment Failure** means the sudden and accidental failure of moving parts or electronic components that are part of the Covered Equipment and that are necessary for its operation.
- 2.3 **Scheduled Service** includes labor required to perform inspections and preventive maintenance on Covered Equipment as per attached equipment list.
- 2.4 **Scheduled Service Materials** include materials required to perform Scheduled Service on Covered Equipment.
- 2.5 **Repair Labor** includes labor necessary to restore Covered Equipment to working condition following an Equipment Failure and excludes total equipment replacement due to obsolescence or unavailability of parts.
- 2.6 **Repair Materials** includes materials necessary to restore Covered Equipment to working condition following an Equipment Failure and excludes total equipment replacement due to obsolescence or unavailability of parts.

3. Service Coverage

- 3.1 Service coverage includes Scheduled Service plus Scheduled Service Materials as described elsewhere in this Agreement for Covered Equipment. Repair Labor and Repair Materials **are not** included in this Agreement.

4. Warranty

- 4.1 HTS warrants that its service will be provided in a good and workmanlike manner. HTS warrants that for equipment furnished and/or installed but not manufactured by HTS, HTS will extend to Customer the same warranty terms and conditions which HTS received from the manufacturer of said equipment. For equipment installed by HTS, if, within a year of installation, Customer provides written notice to HTS of defect within thirty (30) days after the defect's appearance or date the defect should have reasonably been discovered, HTS shall, at its option, repair or replace the defective equipment. All transportation charges incurred in connection with the warranty for equipment shall be borne by Customer. These warranties do not extend to any equipment which has been repaired by anyone other than HTS, abused, altered or misused, or which has not been properly and reasonably maintained. To obtain assistance under this limited warranty, please contact Heat Transfer Solutions, 3350 Yale Street, Houston, TX 77018; (832) 328-1010. **HTS DISCLAIMS ALL OTHER WARRANTIES ON ANY EQUIPMENT FURNISHED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

5. Scope of Service

- 5.1 HTS is a provider of services under this Agreement and shall not be considered a merchant or vendor of goods. If HTS installs or furnishes a piece of equipment under this

Initial _____

Agreement and that equipment is covered by a warranty from the manufacturer, HTS will transfer the benefits of that warranty to the Customer if this Agreement terminated before the equipment manufacturer's warranty expires.

6. Customer Obligations and Commitments to HTS

- 6.1 The Customer warrants that, to the best of Customer's knowledge, that all Covered Equipment is in good working condition and that the Customer has given HTS all information of which Customer is aware concerning the condition of the Covered Equipment.
- 6.2 The Customer agrees that, during the term of this Agreement, the Customer will:
 - 6.2.1 Operate the Covered Equipment according to the manufacturer's recommendations;
 - 6.2.2 Provide an adequate environment for Covered Equipment as recommended by the manufacturer or as recommended by HTS, including adequate space, electrical power, air conditioning, and humidity control;
 - 6.2.3 Notify HTS immediately of any equipment malfunction, breakdown, or other condition affecting the operation of the Covered Equipment;
 - 6.2.4 Allow HTS to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that HTS can perform the services required under this Agreement.
- 6.3 The Customer acknowledges that its failure to meet these obligations will relieve HTS of any responsibility for any equipment breakdown, or any necessary repair or replacement, of any equipment.
- 6.4 **TERMS AND PROVISIONS OF CHARGE ACCOUNT AGREEMENT**
- 6.5 **PAYMENT:** The Applicant shall pay to the Creditor the amount of all sales drafts and all other charges in respect of which the credit has been used together with interest thereon all or any portion of the foregoing herein called "indebtedness") within the time period on the creditor's invoice at the time of the sale.
- 6.6 **INTEREST:** The Applicant shall pay interest to the Creditor on the indebtedness at the annual percentage rate of 12% plus any and all collection fees required if turned over to a collection agency on accounts outstanding 30 days or more.
- 6.7 **APPLICATION OF PAYMENT:** Payments to reduce indebtedness shall be applied by the Creditor in the following order: interest charges; service fees; previously billed purchases; current purchases.

7. Changes to Customer Equipment

- 7.1 Subject to the potential void of warranties extended by HTS in Paragraph 4.1, above, the Customer retains the right to make changes or alterations to its Equipment. If, in HTS' opinion, such changes or alterations substantially affect HTS' services or obligations, HTS shall have the right to make appropriate changes to the scope or to the price of this Agreement or to both.

8. Access

- 8.1 The Customer will give HTS full access to all equipment that is either Covered Equipment or associated with it when HTS requests such access. If access cannot be provided,

Initial _____

HTS' obligation under this Agreement will be suspended until such access to the equipment is provided. Matters affecting HTS' access to the equipment may include, but are not limited to, the removal, replacement, repair, refinishing, restoration, reconstruction, or other remedial actions taken by the Customer with respect to equipment or to the Customer's facility. Suspension of HTS' duties for this reason will not cancel or suspend any of the Customer's obligations under this Agreement.

9. Exclusions

9.1 HTS' services under this Agreement do not include:

- 9.1.1 Supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as ribbons, bulbs, paper;
- 9.1.2 Calls resulting from lack of operator level preventive maintenance, site-related problems, or operator error;
- 9.1.3 Service calls due to failures resulting from acts of God, abuse or misuse of equipment, or alterations, modifications, or repairs to equipment not performed or provided by HTS;
- 9.1.4 The furnishing of materials and supplies for painting or refinishing equipment;
- 9.1.5 Electrical work to the Customer's facility necessary because of equipment;
- 9.1.6 Service call resulting from attachments made to Covered Equipment or other equipment not covered by this Agreement;
- 9.1.7 The repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slats/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
- 9.1.8 Service call resulting from the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather that is beyond what is prevented by HTS' normal maintenance;
- 9.1.9 Work caused by any operation of, adjustments to, or repair to, Covered Equipment by others not authorized in advance by HTS;
- 9.1.10 Work caused by the negligence of others, including but not limited to equipment operators and water treatment companies;
- 9.1.11 Service calls due to failures caused by improper environmental conditions affecting equipment or electrical power fluctuations, if due to conditions beyond HTS' control, and service calls required because HTS has previously been denied access to the equipment and;
- 9.1.12 Disposal of hazardous waste; Hazardous waste remain the property and the responsibility of the Customer even when removed from equipment or replaced by HTS as provided by the terms of this Agreement. The Customer shall be responsible for the proper storage and disposal of hazardous wastes. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs.

10. HTS' Equipment

- 10.1 HTS may provide tools, documentation, panels, or other control equipment in the Customer's building for HTS' convenience in performing HTS' services. That equipment

Initial _____

shall remain HTS' property. HTS retains the right to remove such items at any time during the term, or upon termination of, this Agreement.

11. Indemnity

- 11.1 HTS and the Customer agree that HTS shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of HTS. HTS and the Customer agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and lawyer's fees, resulting from the intentional misconduct of their own employees or any negligent act or omission by their employees or agents. The obligations of HTS and of the Customer under this paragraph are further subject to paragraphs 12 and 13 below.

12. Limitation of Liability

- 12.1 Neither HTS nor the Customer will be responsible to the other for any special, indirect, or consequential damages arising in any manner from equipment or material provided or the work performed pursuant to this Agreement. Neither party will be responsible to the other for damage, loss, injury, or delay caused by conditions that are beyond their reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes; (d) labor disputes; (e) fire; (f) explosions or other casualties; (g) thefts; (h) vandalism; (i) riots or war; or (j) unavailability of parts, materials, or supplies.
- 12.2 HTS is not responsible for any injury, loss, or damage caused by equipment that is not Covered Equipment.

13. Asbestos and Hazardous Materials

- 13.1 HTS' work and services under this Agreement exclude anything connected or associated with asbestos or hazardous materials. HTS shall not be required to perform any identification, abatement, clean up, control, or removal of asbestos or hazardous materials. The customer represents that, to the best of the customer's knowledge, there is no asbestos or hazardous material in the Customer's building that will in any way affect HTS' work. Should HTS become aware of or suspect the presence of asbestos or hazardous materials, HTS shall have the right to stop work in the affected area immediately and notify the Customer. The Customer will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. The Customer agrees to assume responsibility for any claims arising out of or relating to the presence of asbestos or hazardous materials in the building.

14. Assessment

- 14.1 It is the Customer's responsibility to pay all taxes or other government charges relating to the transfer, use, ownership, servicing, or possession of any equipment relating to this Agreement.

15. Renewal Price Adjustment

- 15.1 HTS will provide the customer with notice of any adjustments in the Agreement price applicable to a renewal period no later than forty-five (45) days prior to the commencement of that renewal period. Unless the Customer terminates the Agreement as provided in the Term/Automatic Renewal provision of this Agreement, the adjusted price shall be the price for the renewal period.

16. Miscellaneous Provisions

Initial _____

- 16.1 Any notice that is required to be given under this Agreement must be in writing and sent to the party at the address or fax number noted on the first page of this Agreement
- 16.2 This Agreement cannot be transferred or assigned by either party without prior written consent of either party.
- 16.3 This agreement is the entire Agreement between HTS and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between HTS and the Customer.
- 16.4 Any change or modification to this Agreement will not be effective unless made, in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement
- 16.5 The Customer acknowledges and agrees that any purchase order issued by Customer, in accordance with the Agreement, is intended only to establish payment authority for the Customer's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in the Customer's purchase order will have any force or effect.
- 16.6 Should any change to relevant regulations, laws, or codes substantially affect HTS' services or obligations, the Customer agree to negotiate with HTS for appropriate changes to the scope or price of this Agreement or both.
- 16.7 Heat Transfer Solutions, Inc. is licensed and regulated by the Texas Department of Licensing and Regulation P.O. Box 12157, Austin, Texas 78711 1-800-803-9202 or 512-463-6599.

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 Round Rock, Texas 78664
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MAINTENANCE SERVICE AGREEMENT

Heat Transfer Solutions, Inc. will provide the services, in accordance with the Service Agreement, Terms, Conditions and Schedules, described below for:

City of Boerne (hereinafter referred to as "customer")
 P. O. Box 1677
 Boerne, TX 78006
Police Department / Courthouse

☒ **Preventive Maintenance (PM)**

This agreement is for Preventive Maintenance services to be provided for the below Equipment List ("*Equipment Covered*"). Preventive Maintenance coverage can provide early detection of adverse operating conditions in order to avoid costly equipment failures. Upon approval, all parts and labor necessary to repair the equipment will be provided with an additional charge to the Customer. This Preventive Maintenance program is defined in Schedule A ("*Services*").

- 1.2 Maintain a computer based log containing the documentation of the work performed. Copies of all work orders will be forwarded to the Customer at the completion of each service visit.
- 1.3 Provide service during regular business hours. For work performed at other times the Customer agrees to pay the additional overtime charges.
- 1.4 Provide next day service for non-emergency type service calls and 4 hour response for emergency type service for equipment installations in critical areas.
- 1.5 Maintain 24-hour, 7 days a week emergency service hotline for emergency type service calls
- 1.6 Basic hourly rate shall be \$95.00 with overtime rates charged at 1.5 times the basic rate for work done after 4:30 p.m. and on weekends. Hourly rates will be reviewed on an annual basis.
- 1.7 Term/Automatic Renewal

This Agreement takes effect on 02/01/2016 and will continue until 01/31/2017 ("Original Term"). The Agreement will automatically renew on a year-to-year basis after the Original Term ends unless the Customer or HTS give the other written notice that it does not want to renew. The notice must be delivered at least thirty (30) days before the end of the original term or any of the renewal years. Renewal price adjustments are discussed in the Terms and Conditions.

- 1.8 The total Contract Price for HTS's Services during the 1st Year of the Original Term is \$8,878.21 (plus applicable sales tax). This payment will be due in four (4) quarterly

Initial _____

installments of **\$2,219.55** upon receipt of HTS invoices (which may be in advance of services rendered). Pricing for subsequent years will be adjusted by an increase of no more than 5% per year. Renewal price adjustments are further discussed in the Terms and Conditions.

* Prices quoted in this proposal are valid for 30 days.

HEAT TRANSFER SOLUTIONS Inc:	CUSTOMER:
By: Josh Nunnelee	By: Bob Vogel
Signature:	Signature:
Title: Account Manager	Title: Facilities Maintenance
Date: 02/01/2016	Date:02/01/2016

Initial _____

EQUIPMENT LIST

The following is the list of equipment HTS will be providing services on:

One seven ton Aeon HVAC unit
One four ton Aeon HVAC unit
One eleven ton Aeon HVAC unit
Two Data Aire CRAC HVAC units
Eight Daikin heat recovery condensing units
Five exhaust fans
Forty-Five Daikin VRV units
39 Piping modules
Building Automation System (does not include software updates)

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TERMS AND CONDITIONS

2. Definitions

- 2.1 **Covered Equipment** means the equipment for which services are to be provided under this agreement. Covered Equipment is defined by the equipment list attached.
- 2.2 **Equipment Failure** means the sudden and accidental failure of moving parts or electronic components that are part of the Covered Equipment and that are necessary for its operation.
- 2.3 **Scheduled Service** includes labor required to perform inspections and preventive maintenance on Covered Equipment as per attached equipment list.
- 2.4 **Scheduled Service Materials** include materials required to perform Scheduled Service on Covered Equipment.
- 2.5 **Repair Labor** includes labor necessary to restore Covered Equipment to working condition following an Equipment Failure and excludes total equipment replacement due to obsolescence or unavailability of parts.
- 2.6 **Repair Materials** includes materials necessary to restore Covered Equipment to working condition following an Equipment Failure and excludes total equipment replacement due to obsolescence or unavailability of parts.

3. Service Coverage

- 3.1 Service coverage includes Scheduled Service plus Scheduled Service Materials as described elsewhere in this Agreement for Covered Equipment. Repair Labor and Repair Materials **are not** included in this Agreement.

4. Warranty

- 4.1 HTS warrants that its service will be provided in a good and workmanlike manner. HTS warrants that for equipment furnished and/or installed but not manufactured by HTS, HTS will extend to Customer the same warranty terms and conditions which HTS received from the manufacturer of said equipment. For equipment installed by HTS, if, within a year of installation, Customer provides written notice to HTS of defect within thirty (30) days after the defect's appearance or date the defect should have reasonably been discovered, HTS shall, at its option, repair or replace the defective equipment. All transportation charges incurred in connection with the warranty for equipment shall be borne by Customer. These warranties do not extend to any equipment which has been repaired by anyone other than HTS, abused, altered or misused, or which has not been properly and reasonably maintained. To obtain assistance under this limited warranty, please contact Heat Transfer Solutions, 3350 Yale Street, Houston, TX 77018; (832) 328-1010. **HTS DISCLAIMS ALL OTHER WARRANTIES ON ANY EQUIPMENT FURNISHED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

5. Scope of Service

- 5.1 HTS is a provider of services under this Agreement and shall not be considered a merchant or vendor of goods. If HTS installs or furnishes a piece of equipment under this

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Agreement and that equipment is covered by a warranty from the manufacturer, HTS will transfer the benefits of that warranty to the Customer if this Agreement terminated before the equipment manufacturer's warranty expires.

6. Customer Obligations and Commitments to HTS

- 6.1 The Customer warrants that, to the best of Customer's knowledge, that all Covered Equipment is in good working condition and that the Customer has given HTS all information of which Customer is aware concerning the condition of the Covered Equipment.
- 6.2 The Customer agrees that, during the term of this Agreement, the Customer will:
 - 6.2.1 Operate the Covered Equipment according to the manufacturer's recommendations;
 - 6.2.2 Provide an adequate environment for Covered Equipment as recommended by the manufacturer or as recommended by HTS, including adequate space, electrical power, air conditioning, and humidity control;
 - 6.2.3 Notify HTS immediately of any equipment malfunction, breakdown, or other condition affecting the operation of the Covered Equipment;
 - 6.2.4 Allow HTS to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that HTS can perform the services required under this Agreement.
- 6.3 The Customer acknowledges that its failure to meet these obligations will relieve HTS of any responsibility for any equipment breakdown, or any necessary repair or replacement, of any equipment.

6.4 TERMS AND PROVISIONS OF CHARGE ACCOUNT AGREEMENT

- 6.5 **PAYMENT:** The Applicant shall pay to the Creditor the amount of all sales drafts and all other charges in respect of which the credit has been used together with interest thereon all or any portion of the foregoing herein called "indebtedness") within the time period on the creditor's invoice at the time of the sale.
- 6.6 **INTEREST:** The Applicant shall pay interest to the Creditor on the indebtedness at the annual percentage rate of 12% plus any and all collection fees required if turned over to a collection agency on accounts outstanding 30 days or more.
- 6.7 **APPLICATION OF PAYMENT:** Payments to reduce indebtedness shall be applied by the Creditor in the following order: interest charges; service fees; previously billed purchases; current purchases.

7. Changes to Customer Equipment

- 7.1 Subject to the potential void of warranties extended by HTS in Paragraph 4.1, above, the Customer retains the right to make changes or alterations to its Equipment. If, in HTS' opinion, such changes or alterations substantially affect HTS' services or obligations, HTS shall have the right to make appropriate changes to the scope or to the price of this Agreement or to both.

8. Access

- 8.1 The Customer will give HTS full access to all equipment that is either Covered Equipment or associated with it when HTS requests such access. If access cannot be provided,

Initial _____

HTS' obligation under this Agreement will be suspended until such access to the equipment is provided. Matters affecting HTS' access to the equipment may include, but are not limited to, the removal, replacement, repair, refinishing, restoration, reconstruction, or other remedial actions taken by the Customer with respect to equipment or to the Customer's facility. Suspension of HTS' duties for this reason will not cancel or suspend any of the Customer's obligations under this Agreement.

9. Exclusions

- 9.1 HTS' services under this Agreement do not include:
- 9.1.1 Supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as ribbons, bulbs, paper;
 - 9.1.2 Calls resulting from lack of operator level preventive maintenance, site-related problems, or operator error;
 - 9.1.3 Service calls due to failures resulting from acts of God, abuse or misuse of equipment, or alterations, modifications, or repairs to equipment not performed or provided by HTS;
 - 9.1.4 The furnishing of materials and supplies for painting or refinishing equipment;
 - 9.1.5 Electrical work to the Customer's facility necessary because of equipment;
 - 9.1.6 Service call resulting from attachments made to Covered Equipment or other equipment not covered by this Agreement;
 - 9.1.7 The repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slats/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
 - 9.1.8 Service call resulting from the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather that is beyond what is prevented by HTS' normal maintenance;
 - 9.1.9 Work caused by any operation of, adjustments to, or repair to, Covered Equipment by others not authorized in advance by HTS;
 - 9.1.10 Work caused by the negligence of others, including but not limited to equipment operators and water treatment companies;
 - 9.1.11 Service calls due to failures caused by improper environmental conditions affecting equipment or electrical power fluctuations, if due to conditions beyond HTS' control, and service calls required because HTS has previously been denied access to the equipment and;
 - 9.1.12 Disposal of hazardous waste; Hazardous waste remain the property and the responsibility of the Customer even when removed from equipment or replaced by HTS as provided by the terms of this Agreement. The Customer shall be responsible for the proper storage and disposal of hazardous wastes. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs.

10. HTS' Equipment

- 10.1 HTS may provide tools, documentation, panels, or other control equipment in the Customer's building for HTS' convenience in performing HTS' services. That equipment

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shall remain HTS' property. HTS retains the right to remove such items at any time during the term, or upon termination of, this Agreement.

11. Indemnity

- 11.1 HTS and the Customer agree that HTS shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of HTS. HTS and the Customer agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and lawyer's fees, resulting from the intentional misconduct of their own employees or any negligent act or omission by their employees or agents. The obligations of HTS and of the Customer under this paragraph are further subject to paragraphs 12 and 13 below.

12. Limitation of Liability

- 12.1 Neither HTS nor the Customer will be responsible to the other for any special, indirect, or consequential damages arising in any manner from equipment or material provided or the work performed pursuant to this Agreement. Neither party will be responsible to the other for damage, loss, injury, or delay caused by conditions that are beyond their reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes; (d) labor disputes; (e) fire; (f) explosions or other casualties; (g) thefts; (h) vandalism; (i) riots or war; or (j) unavailability of parts, materials, or supplies.
- 12.2 HTS is not responsible for any injury, loss, or damage caused by equipment that is not Covered Equipment.

13. Asbestos and Hazardous Materials

- 13.1 HTS' work and services under this Agreement exclude anything connected or associated with asbestos or hazardous materials. HTS shall not be required to perform any identification, abatement, clean up, control, or removal of asbestos or hazardous materials. The customer represents that, to the best of the customer's knowledge, there is no asbestos or hazardous material in the Customer's building that will in any way affect HTS' work. Should HTS become aware of or suspect the presence of asbestos or hazardous materials, HTS shall have the right to stop work in the affected area immediately and notify the Customer. The Customer will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. The Customer agrees to assume responsibility for any claims arising out of or relating to the presence of asbestos or hazardous materials in the building.

14. Assessment

- 14.1 It is the Customer's responsibility to pay all taxes or other government charges relating to the transfer, use, ownership, servicing, or possession of any equipment relating to this Agreement.

15. Renewal Price Adjustment

- 15.1 HTS will provide the customer with notice of any adjustments in the Agreement price applicable to a renewal period no later forty-five (45) days prior to the commencement of that renewal period. Unless the Customer terminates the Agreement as provided in the Term/Automatic Renewal provision of this Agreement, the adjusted price shall be the price for the renewal period.

16. Miscellaneous Provisions

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- 16.1 Any notice that is required to be given under this Agreement must be in writing and sent to the party at the address or fax number noted on the first page of this Agreement
- 16.2 This Agreement cannot be transferred or assigned by either party without prior written consent of either party.
- 16.3 This agreement is the entire Agreement between HTS and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between HTS and the Customer.
- 16.4 Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement
- 16.5 The Customer acknowledges and agrees that any purchase order issued by Customer, in accordance with the Agreement, is intended only to establish payment authority for the Customer's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in the Customer's purchase order will have any force or effect.
- 16.6 Should any change to relevant regulations, laws, or codes substantially affect HTS' services or obligations, the Customer agree to negotiate with HTS for appropriate changes to the scope or price of this Agreement or both.
- 16.7 Heat Transfer Solutions, Inc. is licensed and regulated by the Texas Department of Licensing and Regulation P.O. Box 12157, Austin, Texas 78711 1-800-803-9202 or 512-463-6599.

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HTS Texas

2251 Picadilly Dr.
Round Rock, Texas 78664
Phone: (512) 251-0030
Fax: (512) 251-0050
TACLA 23269C

MAINTENANCE SERVICE AGREEMENT

Heat Transfer Solutions, Inc. will provide the services, in accordance with the Service Agreement, Terms, Conditions and Schedules, described below for:

Boerne Public Library
451 N. Main St. Building 100
Boerne, TX 78006

☒ **Preventive Maintenance (PM)**

This agreement is for Preventive Maintenance services to be provided for the below Equipment List ("*Equipment Covered*"). Preventive Maintenance coverage can provide early detection of adverse operating conditions in order to avoid costly equipment failures. Upon approval, all parts and labor necessary to repair the equipment will be provided with an additional charge to the Customer. This Preventive Maintenance program is defined in Schedule A ("*Services*").

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- 1.3 Provide service during regular business hours. For work performed at other times the Customer agrees to pay the additional overtime charges.
- 1.4 Provide next day service for non-emergency type service calls and 4 hour response for emergency type service for equipment installations in critical areas.
- 1.5 Maintain 24-hour, 7 days a week emergency service hotline for emergency type service calls
- 1.6 Basic hourly rate shall be **\$95.00** with overtime rates charged at 1.5 times the basic rate for work done after 4:30 p.m. and on weekends. Hourly rates will be reviewed on an annual basis.
- 1.7 Term/Automatic Renewal

This Agreement takes effect on **02/01/2016** and will continue until **01/31/2017** ("Original Term"). The Agreement will automatically renew on a year-to-year basis after the Original Term ends unless the Customer or HTS give the other written notice that it does not want to renew. The notice must be delivered at least thirty (30) days before the end of the original term or any of the renewal years. Renewal price adjustments are discussed in the Terms and Conditions.

- 1.8 The total Contract Price for HTS's Services during the 1st Year of the Original Term is **\$7,468.00** (plus applicable sales tax). This payment will be due in four (4) quarterly installments of **\$1,867.00** upon receipt of HTS invoices (which may be in advance of

Initial _____

services rendered). Pricing for subsequent years will be adjusted by an increase of no more than 5% per year. Renewal price adjustments are further discussed in the Terms and Conditions.

* Prices quoted in this proposal are valid for 30 days.

HEAT TRANSFER SOLUTIONS Inc:	CUSTOMER:
By: Josh Nunnelee	By: Bob Vogel
Signature:	Signature:
Title: Account Manager	Title: Facilities Maintenance
Date: 02/01/2016	Date:02/01/2016

EQUIPMENT LIST

The following is the list of equipment HTS will be providing services on:

One York Air Cooled Chiller

Seven McQuay AHU

Two Data Aire Conditioning Units

Alerton controllers 7x AHU; 1x CEP; 1x Lighting; 1x MM-1,DS-1; 24 FPB-6-1 thru 11, FBP-7-1 thru 13; 1x Misc Control

Building Automation System (does not include software updates)

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TERMS AND CONDITIONS

2. Definitions

- 2.1 **Covered Equipment** means the equipment for which services are to be provided under this agreement. Covered Equipment is defined by the equipment list attached.
- 2.2 **Equipment Failure** means the sudden and accidental failure of moving parts or electronic components that are part of the Covered Equipment and that are necessary for its operation.
- 2.3 **Scheduled Service** includes labor required to perform inspections and preventive maintenance on Covered Equipment as per attached equipment list.
- 2.4 **Scheduled Service Materials** include materials required to perform Scheduled Service on Covered Equipment.
- 2.5 **Repair Labor** includes labor necessary to restore Covered Equipment to working condition following an Equipment Failure and excludes total equipment replacement due to obsolescence or unavailability of parts.
- 2.6 **Repair Materials** includes materials necessary to restore Covered Equipment to working condition following an Equipment Failure and excludes total equipment replacement due to obsolescence or unavailability of parts.

3. Service Coverage

- 3.1 Service coverage includes Scheduled Service plus Scheduled Service Materials as described elsewhere in this Agreement for Covered Equipment. Repair Labor and Repair Materials **are not** included in this Agreement.

4. Warranty

- 4.1 HTS warrants that its service will be provided in a good and workmanlike manner. HTS warrants that for equipment furnished and/or installed but not manufactured by HTS, HTS will extend to Customer the same warranty terms and conditions which HTS received from the manufacturer of said equipment. For equipment installed by HTS, if, within a year of installation, Customer provides written notice to HTS of defect within thirty (30) days after the defect's appearance or date the defect should have reasonably been discovered, HTS shall, at its option, repair or replace the defective equipment. All transportation charges incurred in connection with the warranty for equipment shall be borne by Customer. These warranties do not extend to any equipment which has been repaired by anyone other than HTS, abused, altered or misused, or which has not been properly and reasonably maintained. To obtain assistance under this limited warranty, please contact Heat Transfer Solutions, 3350 Yale Street, Houston, TX 77018; (832) 328-1010. **HTS DISCLAIMS ALL OTHER WARRANTIES ON ANY EQUIPMENT FURNISHED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

5. Scope of Service

- 5.1 HTS is a provider of services under this Agreement and shall not be considered a merchant or vendor of goods. If HTS installs or furnishes a piece of equipment under this

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Agreement and that equipment is covered by a warranty from the manufacturer, HTS will transfer the benefits of that warranty to the Customer if this Agreement terminated before the equipment manufacturer's warranty expires.

6. Customer Obligations and Commitments to HTS

- 6.1 The Customer warrants that, to the best of Customer's knowledge, that all Covered Equipment is in good working condition and that the Customer has given HTS all information of which Customer is aware concerning the condition of the Covered Equipment.
- 6.2 The Customer agrees that, during the term of this Agreement, the Customer will:
 - 6.2.1 Operate the Covered Equipment according to the manufacturer's recommendations;
 - 6.2.2 Provide an adequate environment for Covered Equipment as recommended by the manufacturer or as recommended by HTS, including adequate space, electrical power, air conditioning, and humidity control;
 - 6.2.3 Notify HTS immediately of any equipment malfunction, breakdown, or other condition affecting the operation of the Covered Equipment;
 - 6.2.4 Allow HTS to start and stop, periodically turn off, or otherwise change or temporarily suspend equipment operations so that HTS can perform the services required under this Agreement.
- 6.3 The Customer acknowledges that its failure to meet these obligations will relieve HTS of any responsibility for any equipment breakdown, or any necessary repair or replacement, of any equipment.

6.4 TERMS AND PROVISIONS OF CHARGE ACCOUNT AGREEMENT

- 6.5 **PAYMENT:** The Applicant shall pay to the Creditor the amount of all sales drafts and all other charges in respect of which the credit has been used together with interest thereon all or any portion of the foregoing herein called "indebtedness") within the time period on the creditor's invoice at the time of the sale.
- 6.6 **INTEREST:** The Applicant shall pay interest to the Creditor on the indebtedness at the annual percentage rate of 12% plus any and all collection fees required if turned over to a collection agency on accounts outstanding 30 days or more.
- 6.7 **APPLICATION OF PAYMENT:** Payments to reduce indebtedness shall be applied by the Creditor in the following order: interest charges; service fees; previously billed purchases; current purchases.

7. Changes to Customer Equipment

- 7.1 Subject to the potential void of warranties extended by HTS in Paragraph 4.1, above, the Customer retains the right to make changes or alterations to its Equipment. If, in HTS' opinion, such changes or alterations substantially affect HTS' services or obligations, HTS shall have the right to make appropriate changes to the scope or to the price of this Agreement or to both.

8. Access

- 8.1 The Customer will give HTS full access to all equipment that is either Covered Equipment or associated with it when HTS requests such access. If access cannot be provided,

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HTS' obligation under this Agreement will be suspended until such access to the equipment is provided. Matters affecting HTS' access to the equipment may include, but are not limited to, the removal, replacement, repair, refinishing, restoration, reconstruction, or other remedial actions taken by the Customer with respect to equipment or to the Customer's facility. Suspension of HTS' duties for this reason will not cancel or suspend any of the Customer's obligations under this Agreement.

9. Exclusions

- 9.1 HTS' services under this Agreement do not include:
- 9.1.1 Supplies, accessories, or any items normally consumed during the use of Covered Equipment, such as ribbons, bulbs, paper;
 - 9.1.2 Calls resulting from lack of operator level preventive maintenance, site-related problems, or operator error;
 - 9.1.3 Service calls due to failures resulting from acts of God, abuse or misuse of equipment, or alterations, modifications, or repairs to equipment not performed or provided by HTS;
 - 9.1.4 The furnishing of materials and supplies for painting or refinishing equipment;
 - 9.1.5 Electrical work to the Customer's facility necessary because of equipment;
 - 9.1.6 Service call resulting from attachments made to Covered Equipment or other equipment not covered by this Agreement;
 - 9.1.7 The repair or replacement of ductwork, casings, cabinets, structural supports, tower fill/slats/basin, hydronic and pneumatic piping, and vessels, gaskets, and piping not normally replaced or maintained on a scheduled basis, and removal of oil from pneumatic piping;
 - 9.1.8 Service call resulting from the effects of erosion, corrosion, acid cleaning, or damage from unexpected or especially severe freezing weather that is beyond what is prevented by HTS' normal maintenance;
 - 9.1.9 Work caused by any operation of, adjustments to, or repair to, Covered Equipment by others not authorized in advance by HTS;
 - 9.1.10 Work caused by the negligence of others, including but not limited to equipment operators and water treatment companies;
 - 9.1.11 Service calls due to failures caused by improper environmental conditions affecting equipment or electrical power fluctuations, if due to conditions beyond HTS' control, and service calls required because HTS has previously been denied access to the equipment and;
 - 9.1.12 Disposal of hazardous waste; Hazardous waste remain the property and the responsibility of the Customer even when removed from equipment or replaced by HTS as provided by the terms of this Agreement. The Customer shall be responsible for the proper storage and disposal of hazardous wastes. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs.

10. HTS' Equipment

- 10.1 HTS may provide tools, documentation, panels, or other control equipment in the Customer's building for HTS' convenience in performing HTS' services. That equipment

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shall remain HTS' property. HTS retains the right to remove such items at any time during the term, or upon termination of, this Agreement.

11. Indemnity

- 11.1 HTS and the Customer agree that HTS shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of HTS. HTS and the Customer agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and lawyer's fees, resulting from the intentional misconduct of their own employees or any negligent act or omission by their employees or agents. The obligations of HTS and of the Customer under this paragraph are further subject to paragraphs 12 and 13 below.

12. Limitation of Liability

- 12.1 Neither HTS nor the Customer will be responsible to the other for any special, indirect, or consequential damages arising in any manner from equipment or material provided or the work performed pursuant to this Agreement. Neither party will be responsible to the other for damage, loss, injury, or delay caused by conditions that are beyond their reasonable control, and without the intentional misconduct or negligence, of that party. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes; (d) labor disputes; (e) fire; (f) explosions or other casualties; (g) thefts; (h) vandalism; (i) riots or war; or (j) unavailability of parts, materials, or supplies.
- 12.2 HTS is not responsible for any injury, loss, or damage caused by equipment that is not Covered Equipment.

13. Asbestos and Hazardous Materials

- 13.1 HTS' work and services under this Agreement exclude anything connected or associated with asbestos or hazardous materials. HTS shall not be required to perform any identification, abatement, clean up, control, or removal of asbestos or hazardous materials. The customer represents that, to the best of the customer's knowledge, there is no asbestos or hazardous material in the Customer's building that will in any way affect HTS' work. Should HTS become aware of or suspect the presence of asbestos or hazardous materials, HTS shall have the right to stop work in the affected area immediately and notify the Customer. The Customer will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. The Customer agrees to assume responsibility for any claims arising out of or relating to the presence of asbestos or hazardous materials in the building.

14. Assessment

- 14.1 It is the Customer's responsibility to pay all taxes or other government charges relating to the transfer, use, ownership, servicing, or possession of any equipment relating to this Agreement.

15. Renewal Price Adjustment

- 15.1 HTS will provide the customer with notice of any adjustments in the Agreement price applicable to a renewal period no later than forty-five (45) days prior to the commencement of that renewal period. Unless the Customer terminates the Agreement as provided in the Term/Automatic Renewal provision of this Agreement, the adjusted price shall be the price for the renewal period.

16. Miscellaneous Provisions

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- 16.1 Any notice that is required to be given under this Agreement must be in writing and sent to the party at the address or fax number noted on the first page of this Agreement
- 16.2 This Agreement cannot be transferred or assigned by either party without prior written consent of either party.
- 16.3 This agreement is the entire Agreement between HTS and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between HTS and the Customer.
- 16.4 Any change or modification to this Agreement will not be effective unless made, in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement
- 16.5 The Customer acknowledges and agrees that any purchase order issued by Customer, in accordance with the Agreement, is intended only to establish payment authority for the Customer's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in the Customer's purchase order will have any force or effect.
- 16.6 Should any change to relevant regulations, laws, or codes substantially affect HTS' services or obligations, the Customer agree to negotiate with HTS for appropriate changes to the scope or price of this Agreement or both.
- 16.7 Heat Transfer Solutions, Inc. is licensed and regulated by the Texas Department of Licensing and Regulation P.O. Box 12157, Austin, Texas 78711 1-800-803-9202 or 512-463-6599.

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