

ROOFTOP HVAC AGREEMENT

This Rooftop HVAC Agreement (the "Agreement") is entered this 4th day of October, 2007, between the Hanover Township Mental Health Board ("HTMHB") and Bulldog Heating & Cooling, Inc. an Illinois corporation ("Contractor") (collectively, the "Parties").

IN CONSIDERATION of the covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. Contractor shall replace the existing heating and cooling rooftop unit located at the Township Office Building (the "Office Building") located at 1535 Burgundy Parkway, Streamwood, Illinois, 60107 (the "Project Site") with a new Trane 4 ton, 3 phase, 120,000 BTU rooftop unit (the "HVAC Unit"), and shall perform all ancillary and other work relative thereto necessary for the HVAC Unit to properly heat and cool the Office Building, and in strict compliance with the terms and conditions herein (the "Project Work").

2. **Completion Date.** Contractor shall complete the Project Work in strict compliance with the requirements herein on or before October 31, 2007. Time is of the essence of this Contract.

3. **Payment.**

A. The HTMHB will tender payment to Contractor in the amount of \$4,700.00 (the "Contract Sum") for the Project Work, and Warranty herein provided, after the HTMHB and Hanover Township (the "Township") determine that the Project Work has been completed in strict compliance with the requirements set forth herein and is free from any defects and following receipt of the Payment Request Documentation required herein and completion of all Repair Work required herein.

B. The Contract Sum includes all costs attributable to the Project Work, Repair Work and Warranty Work, including but not limited to, all materials, equipment, labor warranties, licenses, insurance, bonds, letter of credit, fees, expenses, costs, profits and overhead.

4. **Material Inspection and Responsibility.** Materials, the style, make or quality of which is specifically designated, shall be as specified. Should any substitution of material or item of equipment or apparatus be made, the written approval of the HTMHB and Township must be obtained prior to installation which the Township and HTMHB may withhold in their respective sole and absolute discretion.

5. **Non-Discrimination.** Contractor shall not discriminate against any worker, employee or applicant or any member of the public because of religion, race, sex, color, national origin, marital status, ancestry, age, physical or mental disability unrelated to ability, or an unfavorable discharge from the military service, nor otherwise commit an unfair employment practice.

6. Compliance With Law. All goods, equipment, and all labor furnished by Contractor and subcontractors of every tier shall comply with all applicable Federal, State and local laws relative thereto including, but not limited to, all safety related regulations as required by the Federal Occupational Safety and Health Act (OSHA) and all applicable Villages of Streamwood Ordinances and Codes including, but not limited to applicable Village of Streamwood Building Codes. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Hanover Township and the HTMHB, and their respective officials, officers, employees and volunteers from loss or damage, including, but not limited to, attorney's fees, and other costs of defense by reason of actual or alleged violations of federal, state or local law, in the performance of the Project Work, including but not limited to any product liability claims, except to the extent attributable to the negligence of a party indemnified hereunder. This obligation shall survive the expiration and/or termination of this Agreement.

7. Indemnity. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless Hanover Township, HTMHB, and their respective officials, officers, employees, and volunteers (the "Indemnified Parties"), against all injuries, deaths, damage to property, loss, damages, claims, patent claims, suits, liens, lien rights, liabilities, judgments, costs and expenses, which may in any way arise directly or indirectly from (i) the Project Work, Repair Work, and/or Warranty Work provided hereunder; (ii) any acts and/or omissions of or on behalf of the Contractor, its employees, contractors, subcontractors of any tier, suppliers, and/or agents; and/or (iii) any breach or default under this Agreement by Contractor; except to the extent attributable to the negligence of a party indemnified hereunder; in which case Contractor shall at its own expense, appear, defend and pay all charges of attorneys and costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the Indemnified Parties, or any of them, in any such action, Contractor agrees that any bond or insurance protection required herein, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided. This obligation shall survive the expiration and/or termination of this Agreement.

8. Binding Obligation and Non-Assignability. Contractor shall not assign the whole or any part of this Agreement without the written consent of Hanover Township and HTMHB. All subcontractors shall be approved by Hanover Township and HTMHB.

9. Taxes. HTMHB is a Tax Exempt Organization and is not subject to sales, consumer, use, and other similar taxes required by law. This exemption does not, however, apply to tools, machinery, equipment or other property leased by the Contractor, or Subcontractors, or to suppliers and materials which, even though they are consumed are not incorporated into the completed Project. The Contractor and Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and use taxes, on such leased tools, machinery, equipment or other property and upon such unincorporated supplies and materials the cost of which is included in the Contract Sum set forth in Section 3 above.

10. Investigations by Contractor. Contractor has made such investigations as it deems necessary to perform the Project Work, including, but not limited to, Project Site inspections, and represents and warrants that the required result can be produced under the requirements herein. No plea of ignorance of conditions that exist or of conditions or difficulties that may be encountered in the execution of the Project Work under this Agreement as a result of failure to make the necessary investigations will be accepted as an excuse for any failure or omission on the part of Contractor to fulfill in every detail all of the requirements of this Agreement, or will be accepted as a basis for any claims whatsoever, for extra compensation.

11. Insurance Requirements. Throughout the duration of the Project Work, including during the performance of the Repair Work and any Warranty Work required herein, Contractor, at its sole cost, shall maintain insurance with the following minimum types and amounts of coverages:

Commercial General Liability: \$1,000,000 each occurrence, \$2,000,000 aggregate.

Contractor will cause Hanover Township, HTMHB, and their respective officials, officers, employees, and volunteers, to be named as Additional Insured (collectively, the "Additional Insured") under the CGL coverage.

Any endorsement(s) or provision(s) which limits contractual liability shall be deleted in their entirety. Said insurance coverage shall be primary as respects the Additional Insured and shall state that it shall apply separately to each insured against whom claim is made or suit is brought. Any insurance or self-insurance maintained by the Additional Insured shall be in excess of the Contractor's insurance and shall not contribute with it.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence from CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, administration of the work, independent contractors, subcontractors, sub-subcontractors, vendors and suppliers, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Contractor shall maintain the above required CGL coverage in amounts not less than as required above for at least three (3) years following substantial completion of the Project Work.

Contractor represents and warrants that it currently has no employees. In the event Contractor hires any employees during the term of this Agreement, Contractor shall immediately obtain worker's compensation insurance coverage as required by statute and Employer's Liability coverage in an amount of not less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease.

A. Evidence of Insurance.

Prior to beginning work, Contractor shall furnish the Hanover Township and the HTMHB with a certificate(s) of insurance and applicable policy endorsement(s), including but not limited to the additional insured endorsements required herein, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Hanover Township and HTMHB prior to the cancellation or material change of any insurance referred to therein. Written notice to the Hanover Township and HTMHB shall be by certified mail, return receipt requested.

Failure of the Hanover Township and/or HTMHB to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Hanover Township and/or HTMHB to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

The Hanover Township and HTMHB shall have the right, but not the obligation, of prohibiting Contractor from beginning work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Hanover Township and HTMHB.

Failure to maintain the required insurance may result in termination of this Agreement.

Contractor shall provide certified copies of all insurance policies required above within 10 days of written request for said copies by Hanover Township and/or the HTMHB.

B. Acceptability of Insurers.

For insurance companies which obtain a rate from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Hanover Township and/or HTMHB have the right to reject insurance written by an insurer it deems unacceptable.

C. Cross-Liability Coverage.

If Contractor's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to the Hanover Township and HTMHB. At the option of the Hanover Township and/or HTMHB, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Hanover Township, HTMHB, and/or their respective officers, officials, employees, and volunteers, or required to procure a bond (in addition to the Bond hereinafter described) guaranteeing payment of losses and other related costs, including, but not limited to investigations, claim administration and defense expenses.

E. Subcontractors.

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Hanover Township and/or HTMHB, Contractor shall furnish copies of certificates of insurance evidence coverages for each subcontractor.

12. Performance Bond, Labor and Material Payment Bond. In the event that any change order or change orders increase the Contract Sum to an amount that exceeds \$5,000.00, then Contractor shall furnish Hanover Township and HTMHB with (i) a performance bond, labor and material payment bond in the amount of 110% of the Contract Sum in the form acceptable to the Hanover Township and HTMHB (the "Bond"), co-signed by a surety authorized by the Illinois Department of Insurance to sell and issue sureties in the State of Illinois; or (ii) an irrevocable letter of credit in the amount of 110% of the Contract Sum issued by a financial institution with at least \$40,000,000 in assets and a capital to asset ratio of not less than 6% in form acceptable to the Hanover Township and HTMHB; to guaranty the performance of the Contractor's obligations herein and the payment of all labor and materials furnished for the Project Work. The cost of said Bond or letter of credit, as the case may be, is included in the Contract Sum set forth in paragraph 3.

13. Prevailing Wages. All work on the Project will be subject to the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/01, *et seq.*) providing for the payment of prevailing rate of wages. Accordingly, Contractor and all subcontractors of every tier shall pay not less than prevailing wages for Cook County, Illinois as established by the Illinois Department of Labor to all laborers, workers and mechanic's performing work on or in connection with the Project Work, Repair Work and/or Warranty Work in accordance with the requirements of the Act and shall otherwise comply with the requirements of the Act, including but not limited to furnishing certified payrolls in accordance with the Act. A copy of the current prevailing wages for Cook County is attached hereto as Exhibit A and is incorporated herein.

14. Warranty. Contractor shall assign all warranties to the HTMHB and the Hanover Township, including but not limited to the Trane manufacturer's warranty. Notwithstanding such assignments, Contractor expressly warrants to Hanover Township and HTMHB that the Project Work and all labor, equipment, materials, and/or supplies furnished on or for the Project Work will be free from defects, and Contractor shall repair and/or replace such defective Project Work, at no cost to the HTMHB and/or Hanover Township for a period of one (1) year commencing upon the completion of the Project Work and acceptance of same by the HTMHB and the Township (the "Warranty Work").

15. Default. In the event of default hereunder, the non-defaulting party shall be entitled to all remedies available at law and/or equity, including reasonable attorney's fees subject to the limitations set forth in paragraph 20 herein.

16. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed served (a) when delivered by

Federal Express or similar overnight courier service to that party's address set forth below during the hours of 9:00 a.m. and 5:00 p.m. local time Monday through Friday, excluding federal holidays; (b) when mailed to any other person designated by that party in writing herein to receive such notice, via certified mail , return receipt requested, postage prepaid; (c) or via fax. Fax notice shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 A.M. to 5:00 P.M. Chicago time). In the event fax notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission. Notice shall be given to the following:

If to Contractor:

Bulldog Heating & Cooling, Inc.
1261 N. Lake Street, Unit E
Aurora, Illinois, 60506
Attention: Thomas F. Smith
Fax: (630) 879-0173

If to the HTMHB:

Hanover Township Mental Health Board
250 South Route 59,
Bartlett, Illinois, 60103
Attention: Danise Habun
Fax: (630) 837-0068

If to the Township:

Hanover Township
250 South Route 59,
Bartlett, Illinois, 60103
Attention: Michael Kelly and James Barr
Fax: (630) 837-7449

Any of the above mentioned entities may change the place of notice to it by sending written notice to the other above mentioned entities.

17. Repair Work. Upon completion the Project Work and/or any Warranty Work, Contractor shall repair any damage to the Project Site, Office Building, and/or any other HTMHB and/or Hanover Township property attributable to acts and/or omissions of Contractor, its employees, subcontractors of any tier, agents, or otherwise attributable to the Project Work and/or Warranty Work (the "Repair Work"). The Repair Work shall be completed within seven (7) days of the respective completion of the Project Work and/or Warranty Work (the "Repair Completion Date").

18. All Exhibits and documents referred to herein are hereby expressly incorporated herein and made a part hereof as though fully set forth in the body of this Agreement. In the event of any conflict between the terms and conditions of any of said documents, the most stringent terms and conditions shall control.

19. A. Upon completion of the Project Work and any Repair Work required hereunder, Contractor shall submit the following documentation to the HTMHB and Hanover Township:

General Contractor's Sworn Statement in form customarily used by Chicago Title & Trust Company, and final lien waivers from: (i) Contractor; (ii) all subcontractors of every tier that furnished labor and/or materials in connection with the Project Work; and (iii) all suppliers that furnished materials in connection with the Project Work (collectively, "Payment Request Documentation").

B. Notwithstanding the foregoing, in no event shall acceptance of the Project Work and Contractor's Payment Request Documentation and/or any payment to Contractor be deemed a waiver, expressed or implied, of any warranties and/or guaranties required herein.

20. Limitation on the Liability of HTMHB and Hanover Township. The Contractor agrees to waive any right which it may have to punitive, consequential, special, indirect, incidental, and/or exemplary damages and/or lost profits against HTMHB and/or Hanover Township and agrees not to make any claim or demand for such damages and/or lost profits against HTMHB and/or Hanover Township.

21. Hazardous Substances. Contractor shall not cause or permit any Hazardous Substances to be brought upon, kept, stored or used in or about the Project Site, Office Building, and/or any other property owned, leased or controlled by the Hanover Township and/or HTMHB (collectively, "Owner's Property") by contractor, its employees, subcontractors of any tier, suppliers and anyone for whose acts and/or omissions for whom Contractor may be liable (collectively "Contractor's Agents"). If the presence of Hazardous Substances brought upon, kept, stored or used in or about any of the Owner's Property by or on behalf of Contractor or Contractor's Agents in violation of this paragraph, results in contamination of the said Property, Contractor shall pay for all actual costs of clean up and shall indemnify, hold harmless and defend Hanover Township, HTMHB, and their respective employees, agents, volunteers, officers, and officials from and against any and all claims, demands, expenses (including reasonable attorneys' fees), costs, fines, penalties and other liabilities of any and every kind and nature, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any such Hazardous Substances on or about said Property.

For purposes hereof, Hazardous Substances shall include, but not be limited to, substances defined as "hazardous substances," "toxic substances" in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the federal Hazardous Materials Transportation Act, as amended; and the federal Resource Conservation and Recovery Act, as amended ("RCRA"); those substances defined as "hazardous substances," "materials," or "wastes" under any Federal law or the law of the State of Illinois; and as such substances are defined in any regulations adopted and publications promulgated pursuant to said laws (collectively, "Environmental Laws"). If Contractor's activities or the activities of any of Contractor's

Agents violate or create a risk of violation of any Environmental Laws, Contractor shall cause such activities to cease immediately upon notice from the Hanover Township and HTMHB. Contractor shall immediately notify the Hanover Township and HTMHB both by telephone and in writing of any spill or unauthorized discharge of Hazardous Substances or of any condition constituting an "imminent hazard" under any Environmental Laws.

Contractor's indemnification obligations and duties hereunder shall survive the termination and/or expiration of this Contract.

22. Delays in Project Work. Notwithstanding any provision herein to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum as a result of any delays in the progress of the Work. The Contractor's sole remedy for delay shall be an extension of time.

If the Contractor, but for a delay not within the Contractor's control, would have completed the Work prior to the project completion date, the Contractor shall not be entitled to any recovery of damages arising out of any event of delay which prevented such early completion of the Work.

23. Relationship of the Parties. It is understood, acknowledged and agreed by the parties that the relationship of the Contractor to the HTMHB and/or Hanover Township arising out of this Agreement shall be that of an independent contractor. Neither Contractor, nor any employee or agent of Contractor, is an employee, partner, joint venturer, and/or agent of the HTMHB and/or Hanover Township, and therefore is not entitled to any benefits provided to employees of the HTMHB and/or Hanover Township. Contractor has no authority to employ/retain any person as an employee or agent for or on behalf of the HTMHB and/or Hanover Township for any purpose. Neither Contractor nor any person engaging in any work or services related to this Agreement at the request or with the actual or implied consent of the Contractor may represent himself to others as an employee of the HTMHB and/or Hanover Township. Should any person indicate to the Contractor or any employee or agent of Contractor by written or oral communication, course of dealing or otherwise, that such person believes Contractor to be an employee or agent of the HTMHB and/or Hanover Township, Contractor shall use its best efforts to correct such belief. In ordering or accepting delivery of or paying for any goods or services, Contractor shall do so in Contractor's own business.

24. Assumption of Liability. To the fullest extent permitted by law, Contractor assumes liability for all injury to or death of any person or person's including employees of Contractor, any subcontractor of any tier, any supplier or any other person and assumes liability for all damage to property sustained by any person or persons occasioned by or in any way arising out of any work performed pursuant to this Contract.

25. Hanover Township is a Third Party Beneficiary. The Parties understand that the Project Site is owned by Hanover Township and expressly intend and agree that Hanover Township is a third party beneficiary of this Agreement.

26. No Waiver of Immunities and/or Privileges by Hanover Township and/or HTMHB. Nothing herein shall be construed as an express and/or implied waiver of any

common law and/or statutory immunities and/or privileges of Hanover Township, HTMHB, and/or their respective officials, officers, employees, volunteers and/or agents.

27. Miscellaneous.

A. This Agreement supersedes all prior agreements and understandings, both written and oral, of the parties to the subject matter hereof. This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement. Any amendments to this Agreement must be in writing and executed by both parties and approved by Hanover Township.

B. This Agreement may be executed in any number of counterparts, and by the HTMHB and Contractor on different counterparts, each of which when executed shall be deemed an original and all of which together shall constitute one and the same Agreement.

C. Changes in the number, gender and grammar of terms and phrases herein when necessary to conform this Agreement to the circumstances of the parties hereto shall in all cases, be assumed as though in each case fully expressed therein.

D. This Agreement shall be construed, governed and enforced according to the laws of the State of Illinois, and the exclusive venue for the enforcement of this Agreement and/or litigation between the parties shall be the Circuit Court of Cook County, Illinois.

E. In construing this Agreement, section headings shall be disregarded.

F. Time is of the essence of this Agreement and every provision contained herein.

G. If any clause, phrase, provision or portion of this Agreement or the application thereof, to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor shall it affect the application of any other clause, phrase, provision or portion hereof to other persons or circumstances.

H. Facsimile signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Agreement.

I. Each of the undersigned signing as an officer or agent on behalf of the respective party to this Agreement warrants that he or she holds such capacity as is specified beneath his or her name and further warrants that he or she is authorized to execute and effectuate this Agreement and that he or she does so voluntarily and in his or her official capacity.

J. Survival of Obligations. Except as otherwise provided, any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement, including, without limitation, Sections pertaining to Indemnity shall survive the expiration of this Agreement.

HANOVER TOWNSHIP
MENTAL HEALTH BOARD:

By: Mary Alice Saviet
Chairperson

Attest:

Kathleen M. O'Hanlon
Secretary

BULLDOG HEATING &
COOLING, INC.:

By: [Signature]
President

Attest:

[Signature]
Title: Henry T. [Signature] MHB

HANOVER TOWNSHIP
MENTAL HEALTH BOARD:

By: Mary Alice Swift
Chairperson

Attest:

Kathleen M. Blum
Secretary

BULLDOG HEATING &
COOLING, INC.:

By: _____
President

Attest:

Title: _____