



TEMPEST, Inc.  
12750 Berea Road  
Cleveland, OH 44111  
PH: 216/883-6500  
FX: 216/883-6766  
[www.tempest-eng.com](http://www.tempest-eng.com)

January 01, 2025

Mr. Thomas Fidenza, Facilities Director  
Parks and Recreation Director  
City of Cleveland Heights  
40 Severance Circle  
Cleveland Heights, Ohio 44118-1576

REFERENCE: 2025 ANNUAL TOTAL PREVENTIVE MAINTENANCE PROGRAM FOR ONE YEAR ON TEMPEST ICE RINK REFRIGERATION PACKAGE # 3107.

Dear Mr. Fidenza:

We would like to thank you for the opportunity for Tempest, Inc. ("Tempest") to provide to City of Cleveland Heights (the "Customer") the Preventive Maintenance Program set forth in this agreement (the "Agreement"). The specific preventative maintenance services Tempest agrees to provide to Customer are set forth on Exhibit A attached hereto (the "Services") and apply to the equipment described in the Services (the "Equipment"). The Services will be provided on and subject to the following terms and conditions:

1. Term. The term of this Agreement commences on January 01, 2025 continues for a period of one year (the "Initial Term"). Upon expiration of the Initial Term, the term of this Agreement may be renewed for an additional one year terms if the Customer provides written notice for renewal at least thirty (30) days before the end of the term. Upon expiration of the Initial Term, the term of this Agreement may be renewed for additional one-year term from the commencement of the Initial Term if the Initial Term or any Renewal Term is renewed for any Renewal Term(s), the terms and conditions of this Agreement during each such Renewal Term will be the same as the Initial Term in effect immediately prior to such renewal for up to one year from the commencement of the Initial Term, except as provided in Section 2 below. If this agreement is not renewed by the Customer, this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the Initial term or then-current Renewal Term, as applicable.

2. Price. In consideration of Tempest's provision of the Services, Customer shall pay the fees set forth on Exhibit B attached hereto. At least 30 days before the expiration of the Initial Term or any Renewal Term, Tempest may increase the fees payable by Customer hereunder by providing written notice of such increase to Customer. Any fee increase will take effect upon the first day of the first Renewal Term following delivery of the notice. Where Services are provided on a time and materials basis, the fees payable for such Services shall be calculated in accordance with Tempest's then hourly fee rates for its personnel. Customer shall make all payments hereunder in immediately available funds in US dollars. Customer shall pay interest on all late payments at the lesser of the rate of

1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Tempest for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Any recommendations Tempest suggest, including replacing any part of the Equipment or purchasing additional goods or services will be at Customer's sole cost and expense.

3. Services. Tempest shall perform the Services: (a) using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement, and (b) in compliance with all applicable laws, rules and regulations (the "Services Warranty"). The Services are the only services Tempest is providing and Tempest is not required to make any repairs or provide any services other than the Services. Without limiting the foregoing, Tempest: (x) is not required to identify or remove or dispose of any hazardous materials (if hazardous materials are discovered Tempest may suspend performance of the Services without liability until Customer removes the hazardous materials), (y) is not responsible for provided any services or repairs to the Equipment necessitated by system design deficiencies (\_\_\_\_\_). The Services will be provided during normal working hours. Customer acknowledges that Tempest may be required (and Customer hereby authorizes Tempest) to start and stop the Equipment and use all available facilities and building services as may be necessary to perform the Services.

4. [Sale of Parts.]

5. Customer Responsibilities. Customer agrees: (a) to operate and maintain the Equipment in good working order and condition, in accordance with industry accepted practices, and in compliance with all applicable laws, rules and regulations, (b) comply with all instructions and guidelines for the Equipment issued by Tempest and/or the manufacturer of the Equipment, (c) promptly notify Tempest of any irregularities in the normal operation of the Equipment, (d) grant Tempest access to Customer's premises and the Equipment to enable Tempest to perform the Services, (e) not subject the Equipment to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, or abnormal environmental conditions, and (f) not allow any third party to provide the Services. If Customer breaches this Section 5(or any other provision of this Agreement, then in addition to any other rights and remedies available to Tempest, Tempest may terminate this Agreement at any time.

6. Warranty Exclusion. OTHER THAN THE SERVICES WARRANTY DESCRIBED IN SECTION 3, TEMPEST: (A) HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. Without limiting the foregoing, Tempest does not make any representations or warranties as to the as the operating condition or performance of the Equipment.

7. Limitations. In no event will Tempest be liable to Customer or to any third party for any loss of use, revenue or profit, for any increased operating costs, or for any consequential, incidental, indirect, exemplary, special or punitive damages, whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of

whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damages. In no event will Tempest's liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the aggregate amounts paid or payable to Tempest pursuant to this Agreement in the one year period preceding the event giving rise to the claim.

8. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority; shortage of adequate power or telecommunications or transportation facilities; or any other event which is beyond the reasonable control of such party (each a "Force Majeure Event"). Tempest is not responsible for any loss or damage to Equipment that has been subject to a Force Majeure Event or for providing any service to or otherwise repairing Equipment that has been damaged as a result of a Force Majeure Event.

9. **Entire Agreement; Amendments.** This Agreement, together with all Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. Without limiting the foregoing, this Agreement supersedes any purchase order or terms and conditions Customer has submitted or hereafter submits to Tempest. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving.

10. **Assignment.** Customer may not assign any of its rights or delegate any of its obligations under this Agreement without Tempest's prior written consent.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Ohio. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Ohio in each case located in the city of Cleveland and County of Cuyahoga, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall

be effective service of process for any suit, action or other proceeding brought in any such court.

12. Miscellaneous. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. If any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

[Signature Page Follows]

TEMPEST, INC.

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

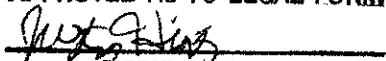
ACCEPTED and AGREED:



By: Kahlil Soren Mayor

Date: 7/1/25

APPROVED AS TO LEGAL FORM

  
\_\_\_\_\_  
DIRECTOR OF LAW  
CITY OF CLEVELAND HEIGHTS, OHIO

**Exhibit A:**

The scope of our program shall be an Annual Total Preventative Maintenance Program for 2025 on Tempest Chiller Package # 3107.

**Ice Rink Refrigeration Equipment:**

- (3) 456 XL Vilter Compressors
- (1) Compressor Skid to include all related components
- (1) System PLC controller
- (1) Evaporative Condenser
- (1) De-humidification packaged unit
- (3) Glycol Pumps
- (2) Condenser Pumps
- (1) Compressor cooling pump
- (1) Underfloor pump
- (1) De-humidification heat recirculation pump
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**This Total Preventative Maintenance Program shall include:**

- Regular and systematic preventive maintenance inspection on a monthly basis
- Furnish and install all the necessary repairs and renewal parts, lubricants, maintenance parts and materials, repair, etc. unless excluded or per the terms and special provisions listed below.
- Check performance, calibrate and repair all equipment, safety devices, temperature and capacity controls, gauges, thermometers, and similar components unless excluded or per the terms and special conditions listed below. Proper calibration of all controls is required.
- Annually clean and inspect the evaporative condenser.
- Change the oil and oil filters after the 5000 hour mark on each compressor. There after perform an internal inspection down to crank on one compressor and oil and oil filter change annually on the other two compressors.
- Emergency service in accordance with the terms and special provisions listed below.
- Check list tailored to the equipment, facility, and specific application.

**Exclusions from this Total Preventative Maintenance Program:**

- Equipment casings subject to deterioration from weather and age other than the responsibility to scrape and paint them to minimize deterioration.
- Repair or replacement of non-maintainable parts of the systems (s) such as but not limited to piping, shell and tube or plate and frame (evaporators, condensers, chillers, electrical components, motors, starters and heat exchangers) and other non-moving parts not limited to insulating material, electrical wiring, structural supports, and other non-moving parts are not included in this agreement.

- Upgrades or changes to the design of the system to include electrical, piping, refrigerant charge, etc.
- NH3 charge and glycol charge,
- The replacement desiccant for the dehumidification system
- Replacement of major components such as compressors, oil separators, pumps, motors, vessels, large valves, piping, etc.
- Any equipment, components, piping, components, Etc. that are damaged by an act of Mother Nature.
- Any equipment, piping, components, Etc. that are damaged by others outside of Tempest, Inc. employees or subcontractors.
- All under floor piping and subsequent glycol replacement.
- Replacement equipment. This program covers maintenance and service. If any equipment needs to be replaced, we will provide a written proposal and proceed upon approval from the owner.
- Insulation repairs or replacement of insulation
- General housekeeping not related to our scope.
- Power failures or equipment or parts that are damaged due to power supply, turned off breakers, or false alarm calls.

**Exhibit B:**

Price per month is \$ 2,795.00 for an annual cost of \$ 33,540.00. This price is based on a one-year agreement and will commence on January 1, 2025 and end on December 31, 2026.

This program covers the Tempest Chiller Package # 3107 and the Dehumidification system.

**Any work, parts & materials, equipment, Etc. over and above or excluded from this proposal, will be brought to the attention of the proper city personnel and will be completed and billed on a time and material basis or per written quote upon approval from the city.**

## **CERTIFICATE OF DIRECTOR OF FINANCE**

### Fiscal Officer Certificate

The undersigned fiscal officer of the City of Cleveland Heights hereby certifies that the funds required to meet the obligations of the City for services rendered by **TEMPEST, INC.** under this agreement, which shall not exceed **THIRTY-THREE THOUSAND, FIVE-HUNDRED FORTY & 00/100 DOLLARS**, have been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Revised Code.

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7/15/25

Date



Rodney Hairston, Finance Director