



Time and Material Agreement

Client:

**Galion City Schools
470 Portland Way North
Galion, OH 44833**

Equipment Location:

**Galion High School
Galion Middle School
Galion Intermediate School
Galion Primary School**

Prepared:

Eric Swain

McQuay Factory Service

8806 Tyler Blvd

Mentor, OH 44060

Phone 440-290-0094

Fax 440-290-0097

McQuay Factory Service:

McQuay Factory Service is the wholly owned and authorized service division of McQuay International. Our technicians are trained and certified in the service and repair of commercial and industrial HVAC&R equipment. All Factory Service technicians regularly update their certifications and remain current with the latest technology and industry trends.

REPAIR SERVICES

McQuay Factory Service will service all brands of heating, ventilating, and air conditioning (HVAC) equipment and related building controls.

Labor Rates will be charged as follows:

Labor Rates

Type of Service	Rate/HR.	Travel Charge
HVAC – CHILLER SERVICE	\$98.00	\$45.00 Per Trip
HVAC – CONTROL SERVICE	\$125.00	\$45.00 Per Trip
HVAC – RTU SERVICE > 50 TON	\$95.00	\$45.00 Per Trip
HVAC – MECHANICAL SERVICE	\$87.00	\$45.00 Per Trip

REPLACEMENT SERVICES

McQuay Factory Service will provide replacement services for any brand of heating, ventilating, and air conditioning (HVAC) equipment, building controls/energy management systems, as well as lighting fixtures and systems.

Labor Rates will be charged as follows:

Labor Rates

Type of Service	Rate/HR.	Travel Charge
HVAC – MECHANICAL SERVICE	\$87.00	N/A
HVAC – CONTROL SERVICE	\$125.00	N/A
PROJECT ENGINEERING	\$125.00	N/A
PROJECT MANAGEMENT	\$95.00	N/A
ELECTRICAL LIGHTING SERVICE	\$87.00	N/A

McQuay Factory Service will perform all services during its normal business hours of 8 AM to 5 PM, Monday through Friday. Overtime and Saturday labor rates are time and a half, Sundays and Holidays are double time.

PREVENTIVE MAINTENANCE SERVICES – (Optional)

McQuay Factory Service will provide preventive maintenance agreements on any brand of HVAC equipment and most building controls systems.

PM ONLY SERVICE AGREEMENTS – McQuay Factory Service will provide a fixed-cost, annual agreement for labor and supplies, to perform scheduled preventive maintenance. Travel charges do not apply on preventive maintenance. Any approved repairs or emergency services will be billed under Repair Services. Response time will be (4) hours.

MATERIAL AND PARTS DISCOUNTING

A discount of 10% off current McQuay Parts List Price will be provided for McQuay parts under this agreement.

PAYMENT DISCOUNT

A 2% discount will be applicable for payment that is made with a credit card – otherwise, net 30 days applies.

TERM OF AGREEMENT

The term of the agreement is 12–months from the acceptance date listed below. The agreement will automatically renew each year. The labor rates and travel charge listed above will be reviewed annually and adjusted as necessary per the CPI (Consumer Price Index).

(Full Legal name of customer)

(Signature)

Title:

Accepted Date: _____

McQuay International

(Signature)

Title:

Approval Date: _____

DAIKIN APPLIED AMERICAS INC. TERMS & CONDITIONS

1. This Standard Service Proposal or Maintenance Agreement (hereinafter sometimes referenced as "Agreement"), upon acceptance by the Customer, is made solely on the terms and conditions hereof, notwithstanding any additional or conflicting conditions that may be contained in any purchase order or other form of Customer, all of which additional or conflicting terms and conditions are hereby rejected by Daikin Applied. Further, you acknowledge and agree that any purchase order issued by you in accordance with this Agreement will only establish payment authority for your internal accounting purposes. Any such purchase order will not be considered by us to be a counteroffer, amendment, modification, or other revision to the terms of this agreement. No waiver, alteration or modification of the terms and conditions herein shall be valid unless made in writing and signed by an authorized representative of Daikin Applied.
2. This Maintenance Agreement or Standard Service Proposal is subject to acceptance by the Customer within 30 days from date show on the quote, unless specified otherwise. Prices quoted are for services, labor, and material as specified in this Proposal. If acceptance of this Maintenance Agreement or Standard Service Proposal is delayed or modified, prices are subject to adjustment.
3. Terms of payment are subject at all times to prior approval of Daikin Applied's credit department. Terms of payment are net 30 days upon receipt of invoice unless previously otherwise agreed in writing. Should payment become more than 30 days delinquent, Daikin Applied may stop all work under this Agreement or terminate this Agreement with five (5) days written notice to Customer. Daikin Applied reserves the right to add to any account outstanding more than 30 days interest at 1 ½% per month or the highest rate allowed by law. In the event of default in payment, Customer agrees to pay all costs of collection incurred by Daikin Applied including, but not limited to, collection agency fees, attorney fees and court costs. Additional services may be performed upon request at a price to be determined, subject to these Terms and Conditions.
4. In the event that Daikin Applied determines, during the first thirty (30) days of any Maintenance Agreement or upon seasonal start-up (discovery period) that any equipment covered under this Agreement in need of repair and/or replacement, Daikin Applied shall inform Customer of the equipment condition and remedy. Daikin Applied shall not be responsible for the present or future repair and/or replacement or operability of any specific equipment; until such time as the equipment is brought up to an acceptable condition or the Customer removes the unacceptable system(s), component(s), or part(s) from this contract.
5. Any Maintenance Agreement price is subject to adjustment once each calendar year, effective on the anniversary date, for changes in labor, subcontractor and material costs. The customer shall receive forty-five (45) days prior written notice of such adjustment unless specifically excluded otherwise in writing.
6. A Maintenance Agreement may be terminated: (i) by either party upon the anniversary date hereof; provided however, that written notice of such termination must be given to the non-terminating party at least thirty (30) days prior to the anniversary date; (ii) by Daikin Applied upon five (5) days prior written notice to Customer, in the event that any sums or monies due or payable pursuant to this Agreement are not paid when due or in the event that additions, alterations, repairs or adjustments are made to the system or equipment without Daikin Applied's prior approval; (iii) by either party, in the event that the other party commits any other material breach of this Agreement and such breach remains uncured for ten (10) business days, after written notice thereof. If a Maintenance Agreement is terminated for any reason, other than a material breach by Daikin Applied, Customer shall pay, in addition to all sums currently due and owing, the entire remaining balance due for the term of the Maintenance Agreement, or an amount equal to time and materials expended for the year, whichever is less. Notices required hereunder shall be sent via Certified U.S. Mail, Return Receipt Requested and provided that such notice is postmarked by the required date, such notice shall be deemed properly given.
7. Unless Customer provides appropriate documentation of tax exemption, Customer shall pay Daikin Applied, in addition to the contract price, the amount of all excise, sales, use, privilege, occupation or other similar taxes imposed by the United States Government or any other National, State or Local Government, which Daikin Applied is required to pay in connection with the services or materials furnished hereunder. Customer shall promptly pay invoices within 30 days of receipt. Should payment become more than 30 days delinquent, Daikin Applied may stop all work under this Agreement or terminate this Agreement as provided in the next paragraph.
8. Any and all costs, fees and expenses arising from or incurred in anticipation of any federal, state, county, local or administrative statute, law, rule, regulation or ordinance (collectively "Governmental Regulations") directly or indirectly requiring that refrigerant other than the type of refrigerant currently being utilized in connection with the equipment subject to this Agreement be used, shall be borne solely by Customer. In this regard, Daikin Applied shall not be required to bear any expense in connection with the modification, removal, replacement or disposal of any refrigerant in response to any Governmental Regulation designed to reduce or eliminate the alleged environmental hazards associated with the refrigerant.

9. The contract price stated herein is predicated on the fact that all work will be done during regular working hours of regular working days unless otherwise specified. If for any reason Customer requests that work be performed other than during regular working hours or outside the scope of services specified hereunder, Customer agrees to pay Daikin Applied any additional charges arising from such additional services, including but not limited to premium pay, special freight or other fees or costs associated therewith.

10. Customer shall be responsible for all costs, expenses, damages, fines, penalties, claims and liabilities associated with or incurred in connection with any hazardous materials or substances, including but not limited to asbestos, upon, beneath, about or inside Customer's equipment or property. Title to, ownership of, and legal responsibility and liability for any and all such hazardous materials or substances, shall at all times remain with Customer. Customer shall be responsible for the removal, handling and disposal of all hazardous materials and substances in accordance with all applicable Governmental Regulations. Customer shall defend, indemnify, reimburse and hold harmless Daikin Applied and its officers, directors, agents, and employees from and against any and all claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties (including without limitation, attorneys' fees and expenses) suffered or incurred by any such indemnified parties, based upon, arising out of or in any way relating to exposure to, handling of, or fees and expenses) suffered or incurred by any such indemnified parties, based upon, arising out of or in any way relating to exposure to, handling of, or disposal of any hazardous materials or substances, including but not limited to asbestos, in connection with the services performed hereunder. Daikin Applied shall have the right to suspend its work at no penalty to Daikin Applied until such products or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted. Daikin Applied reserves the right to engage others in a subcontractor status to perform the work hereunder.

11. Customer agrees to provide Daikin Applied personnel with the usual required utilities (water, electricity, compressed air, etc.) and special tools and equipment normally used for such services unless restricted specifically in the quote. Customer agrees to ensure that sufficient service access space is provided. Daikin Applied shall not be held liable for failure or damage to any equipment caused by power interruptions, single phasing, phase reversal, low voltage, or other deficiencies beyond the control of Daikin Applied.

12. This agreement does not include responsibility for design of the system (unless specifically included), obsolescence, electrical power failures, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s) by others (including the Customer), negligence of the system by others (including the Customer), failure of the Customer to properly operate the system(s), or other causes beyond the control of Daikin Applied.

13. In the event that Daikin Applied is required to make any repairs and/or replacements or emergency calls occasioned by the improper operation of the equipment covered hereby, or any cause beyond Daikin Applied's control, Customer shall pay Daikin Applied for the charges incurred in making such repairs and/or replacements or emergency calls in accordance with the current established Daikin Applied rates for performing such services.

14. Daikin Applied shall not in any event be liable for failure to perform or for delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any Governmental Authority or of Customer, riot, war, embargo, fuel or energy shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials, or equipment from usual sources, or due to any cause beyond its reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of such delay. If the materials or equipment included in this Proposal become temporarily or permanently unavailable for reasons beyond the control of Daikin Applied, Daikin Applied shall be excused from furnishing said materials or equipment and be reimbursed for the difference between cost of materials or equipment unavailable and the cost of an available reasonable substitute.

15. DAIKIN APPLIED SHALL NOT IN ANY EVENT BE LIABLE TO THE CUSTOMER OR TO THIRD PARTIES FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PRODUCTION, LOSS OF USE OR LOSS OF PROFITS OR REVENUE ARISING FROM ANY CAUSE WHATSOEVER INCLUDING, BUT NOT LIMITED TO ANY DELAY, ACT, ERROR OR OMISSION OF DAIKIN APPLIED. IN NO EVENT WILL DAIKIN APPLIED'S LIABILITY FOR DIRECT OR COMPENSATORY DAMAGES EXCEED THE PAYMENT RECEIVED BY DAIKIN APPLIED FROM CUSTOMER UNDER THE INSTANT AGREEMENT.

16. Daikin Applied extends the manufacturer's warranties on all parts and materials and warrants labor to meet industry standards for a period of thirty (30) days from the date performed, unless a longer duration is expressly stated elsewhere in this Agreement. Daikin Applied expressly limits its warranty on Customer's Equipment to cover only that portion of Equipment which had specific service work done by Daikin Applied. These warranties do not extend to any Equipment or service which has been repaired by others, abused, altered, or misused, or which has not been properly maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR SPECIFIC PURPOSE, WHICH ARE HEREBY SPECIFICALLY DISCLAIMED.

17. Each of us agrees that we are responsible for any injury, loss, or damage caused by any negligence or deliberate misconduct of our employees or employees of our subcontractors. If any of our employees or those of our subcontractors, cause any injury, loss or damage in connection with performing their duties under this agreement, the responsible party will pay for all costs, damages, and expenses, which arise. Each of us agrees to defend and hold harmless the other party, its officers, directors and employees, from and against all claims, damages, losses and expenses, including but not limited to attorney's fees and court costs, arising out of or resulting from the performance of work hereunder, to the extent that such claim, damage, loss, or expense is caused by an active or passive act or omission of the indemnifying party or anyone directly or indirectly employed by that party, or anyone for whose acts that party may be liable.

18. This Agreement shall be binding upon and inure to the benefit of each party's respective successors, assigns and affiliates. This Agreement is governed by and construed in accordance with the laws of the State of Minnesota

September 12, 2013

Ms. Terri Day
Galion City Schools
470 Portland Way North
Galion, OH 44833

Re: Galion City Schools Facility Optimization

Ms. Terri Day:

We wish to thank you for the opportunity to become a trusted consultant and resource for Galion City Schools. We are aware of the financial challenges the district is currently experiencing and wish to propose a solution that will help reduce operational, maintenance and future capital cost expenditures.

Per our recent discussions, the BAS (Building Automation System) and HVAC systems throughout the district are in need of recommissioning and optimization. Even though your maintenance staff has made strides with resolving issues and improving operation, the remaining ongoing issues require specialized resources to recommission and optimize these systems. We recommend initiating Phase-1 (*Auditing/Facility Assessment*) of a Facility Optimization Program.

Benefits of Facility Optimization

Facility Optimization – can result in energy savings of 5% - 30% with a typical payback of less than 2-years and often less than 0.5 years. Additional benefits of facility optimization are:

- Identifies system operating, control, and maintenance problems.
- Aids in long-term planning and major maintenance budgeting.
- Reduces energy waste and ensures that energy-using equipment operates efficiently.
- Reduces maintenance costs; reduces premature equipment failure.
- Provides complete and accurate building documentation, expedites troubleshooting, and reduces maintenance cost.
- Provides appropriate training to operating staff to increase skill levels; increases staff effectiveness in serving customers or tenants.

Facility Optimization Program

Phase -1

Auditing/System Assessment

- Review existing drawings and documentation of installed HVAC systems and building automation system (BAS).
- Analyze facility and verify drawings/documentation versus installed systems
- Analyze BAS system and document issues with graphics, network communication, alarms, temperature readings, set points and equipment operation.
- Develop a detailed plan to correct issues with the systems.
- Analyze and benchmark facilities' energy consumption and equipment efficiency.

Cost to initiate Auditing/System Assessment of school facilities: \$ 5,000

A successful Facility Optimization project depends not only on a deep understanding of building systems but also a firm grasp on how people interact to operate the building systems from day to day. This helps the facility optimization team to collect accurate data and propose cost-effective and energy savings solutions. The estimated cost to implement this program in its entirety will range between: (\$.05 - \$.40) per Square Foot of the facilities being optimized.

We are confident by implementing facility optimization strategies throughout the district; you will see a noticeable reduction in operational and maintenance costs, as well as improved occupant comfort and satisfaction throughout the district.

Best Regards,

Eric Swain, CEM
Client Solutions Manager
McQuay Factory Service

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15. DAIKIN APPLIED SHALL NOT IN ANY EVENT BE LIABLE TO THE CUSTOMER OR TO THIRD PARTIES FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PRODUCTION, LOSS OF USE OR LOSS OF PROFITS OR REVENUE ARISING FROM ANY CAUSE WHATSOEVER INCLUDING, BUT NOT LIMITED TO ANY DELAY, ACT, ERROR OR OMISSION OF DAIKIN APPLIED. IN NO EVENT WILL DAIKIN APPLIED'S LIABILITY FOR DIRECT OR COMPENSATORY DAMAGES EXCEED THE PAYMENT RECEIVED BY DAIKIN APPLIED FROM CUSTOMER UNDER THE INSTANT AGREEMENT.

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17. Each of us agrees that we are responsible for any injury, loss, or damage caused by any negligence or deliberate misconduct of our employees or employees of our subcontractors. If any of our employees or those of our subcontractors, cause any injury, loss or damage in connection with performing their duties under this agreement, the responsible party will pay for all costs, damages, and expenses, which arise. Each of us agrees to defend and hold harmless the other party, its officers, directors and employees, from and against all claims, damages, losses and expenses, including but not limited to attorney's fees and court costs, arising out of or resulting from the performance of work hereunder, to the extent that such claim, damage, loss, or expense is caused by an active or passive act or omission of the indemnifying party or anyone directly or indirectly employed by that party, or anyone for whose acts that party may be liable.

18. This Agreement shall be binding upon and inure to the benefit of each party's respective successors, assigns and affiliates. This Agreement is governed by and construed in accordance with the laws of the State of Minnesota