

Assured Maintenance Agreement



Offered to:

City of Milpitas

Police Department



City of Milpitas
CALIFORNIA

Assured Maintenance Agreement Page 1 of 6

Customer Name **City of Milpitas / Police Department** Proposal No. **MAJAS0822912**

(Hereinafter referred to as "Customer")

Address **1275 North Milpitas** Agreement No.

City **Milpitas** State **CA** Zip **95035**

Scope of Service

In consideration of their mutual agreement, McQuay Factory Service, a division of McQuay International (hereinafter also referred to as "McQuay Factory Service") and Customer agree that the following services and type of coverage for the above location(s) for the equipment listed on the attached Equipment Schedule (hereinafter referred to as "Equipment") will be provided in accordance with the Terms and Conditions, Assured Maintenance Agreement Equipment Schedule and Assured Maintenance Agreement Plans and Service Programs included herein.

I. Type of Plan

- | | |
|----------------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> First Year Maintenance | <input type="checkbox"/> Labor Maintenance |
| <input checked="" type="checkbox"/> Inspection and Maintenance | <input type="checkbox"/> Comprehensive Maintenance |
-

II. System Components Covered

- | | | |
|-----------------------------------------------|------------------------------------------|------------------------------------------------|
| <input checked="" type="checkbox"/> Chiller | <input type="checkbox"/> Water Treatment | <input type="checkbox"/> Electrical Equipment |
| <input type="checkbox"/> Air Conditioning | <input type="checkbox"/> Air Filters | <input type="checkbox"/> Facility Operation |
| <input type="checkbox"/> Heating | <input type="checkbox"/> Refrigeration | <input type="checkbox"/> Other – Cooling Tower |
| <input type="checkbox"/> Temperature Controls | <input type="checkbox"/> Digital Systems | |
-

Emergency Service Response

This Agreement includes emergency service response as checked below:

- 24 hours per day, 7 days per week including holidays.
- 24 hours per day, 5 days per week (Monday - Friday).
- During normal working hours on McQuay Factory Service scheduled business days.
- Not included in this Agreement but available on a time and material basis.

Important: Additional terms and conditions are continued on the following pages.



Assured Maintenance Agreement Inspection Plan

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Customer Name **City of Milpitas / Police Department**

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Inspections

During normal working hours McQuay Factory Service shall provide **One (1) Annual with Condenser Tube Brushing & (1) Operating Inspections** scheduled services per year, unless otherwise noted, for the Equipment.

1. **McQuayService agrees to:**

- a) Furnish its Inspection Service during normal working hours, unless otherwise specified on page 1 herein, on the Equipment, in accordance with the Assured Maintenance Agreement Service Program(s) at the price stated herein and subject to the terms and conditions set forth herein.
- b) Provide a written report to the Customer about the condition of the Equipment and any recommendations for necessary repairs or enhancements to maintain capacity, reliability, and efficiency.
- c) Instruct the person(s) responsible for Equipment operation and familiarize them with normal operation.

2. **Customer agrees to:**

- a) Designate a representative in its employ to receive instructions in the operation of the Equipment. Such representative shall have authority to carry out recommendations received from McQuay Factory Service in conjunction with the performance of this Agreement.
- b) Allow McQuay Factory Service to start and stop the Equipment in order to perform services specified in this Agreement.
- c) Operate the Equipment in accordance with McQuay Factory Service instruction and to notify McQuay Factory Service promptly of any change in the usual operating conditions.
- d) Provide reasonable means of access to the Equipment and building.
- e) Employ only McQuay Factory Service personnel or persons authorized by McQuay Factory Service to perform all work on the Equipment, except for operation of same.

3. **It is understood that,** except to the extent otherwise provided in the Assured Maintenance Agreement Equipment Schedule, the services and maintenance provided for herein includes only those items listed herein. It does not, for example, include any of the following:

- a) Normal daily and weekend functions of stopping/starting the Equipment covered hereunder.
- b) The maintenance of space conditions or system performance.
- c) The changing or cleaning of air filters.
- d) Piping or ductwork.
- e) Damage due to freezing weather.
- f) Water treatment.
- g) Corrosion or erosion damage to water and/or air side of Equipment (for example, but not limited to the following: tube bundles, heat exchangers, structural supports, and coils.)
- h) Disconnect switches, fuses and circuit breakers.
- i) Portable recorders
- j) Complementary equipment (for example, but not limited to the following: cabinets, fixtures, water boxes, water supply lines and drain lines, and painting for appearance).
- k) Boiler shell, tubes, and refractory material.
- l) Replacement of complete unit.
- m) Any items of equipment that are recommended or required by Insurance Companies, Government, State, Municipal or other authorities.

Exceptions and additions: Annual Condenser Tube Brushing is included



Equipment Schedule

Customer Name **City of Milpitas / Police Department**

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Equipment	Type	Qty	Manufacturer	Model/Serial No.	Maintenance
Centrifugal	Water Cooled	1	McQuay	WMC145D / STNU100400054	(1) Annual Inspection
Centrifugal	Water Cooled	1	McQuay	WMC290D / STNU100400058	
					(1) Operating Inspection



Assured Maintenance Agreement WMC Centrifugal Chillers

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Service Program 21

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McQuay Factory Service will perform the following procedures:

Annual Inspection

Test for refrigerant leaks including relief valve piping outlets
Check power panel(s) and control panel
Inspect and tighten electrical connections
Apply dielectric grease to applicable terminals
Check and record main supply voltages
Check relays, operating, and safety controls
Check flow switch operation
Check vane control operation
Check Electronic Expansion Valve operation
Take and record water side pressure drops across vessels
Perform MicroTech II check, log, and last fault analysis, analyze performance
Inspect vibration eliminators and inspect water piping for leaks at chiller and cooling tower
Clean (flush) condenser water strainer(s)
Check discharge pressure control operation for tower fans and bypass valve
Check minimum condenser water temperature operation
Clean external surfaces (painting external surfaces for Comprehensive Maintenance Agreements as determined necessary by McQuay Factory Service)
Log operating conditions
Review operating procedures with chiller operator
Manually brush water side of condenser tubes.
Chemical cleaning if necessary at additional charge.

■ Condenser head (s) to be removed by: McQuay Factory Service

Operational Inspection(s)

Review owner's log for trends
Inspect chiller for leaks
Check relays, operating, and safety controls settings
Inspect power panels
Check and record main supply voltages
Perform MicroTech II check, log, and last fault analysis
Review compressor event and fault logs
Record unusual noises and vibrations
Record refrigerant level in sight glass
Log operating conditions
Review chiller (s) operation with the operator

Exceptions and additions: _____

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International
a member of **DAIKIN** group

Assured Maintenance Agreement

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Special Conditions:

- Software Revisions are included in contract
- 24/7 Priority Service Response for unscheduled service calls at an additional cost at the discounted prevailing labor rate

Duration:

This Agreement shall remain in effect for an initial term of five (5) year(s) beginning **10/01/2012** (the "Effective Date") and shall continue year to year unless at least 30 days prior to the expiration date of the initial term or any extended term, either party gives the other written notice of its intention to terminate this Agreement.

Price and Payment Terms

1. McQuay Factory Service will provide services pursuant to this Assured Maintenance Agreement for:
 - **Standard Time Service \$5,952.00** Annual and Semi-Annual to be performed during standard time
2. Payment will be in advance as follows: **Semi-annual** beginning on the date of **10/01/2012** initiating the Effective Start Date of this Agreement. McQuay Factory Service will provide Customer with a semi-annual invoice with payment due upon receipt.
3. Customer shall pay for all costs, including all taxes, fees and governmental assessments incurred by McQuay Factory Service for refrigerant used in connection with this Agreement.

NOTE: This Agreement is subject to final approval by McQuay Factory Service.



Assured Maintenance Agreement Amendments

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This Agreement contains two (2) or more Plans as checked on page 1 hereof. The second and third plan (if applicable) are attached as Exhibit A and incorporated herein.

This proposal expires on: October 1, 2012

The Terms and Conditions set forth on the reverse side of this signature page from an integral part of this Agreement and are expressly incorporated herein.

Submitted by Jeff Strong
Service Sales Account Executive
McQuay Factory Service

Date 09/19/2012

Accepted:
City of Milpitas

(Full legal name of Customer)

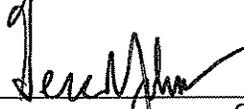
Signature

Title

Date _____

Approved:

McQuay Factory Service



Signature

Assistant Secretary

Title

Date November 12, 2012

Service Office Location

Address 2568 Barrington Court

Hayward, CA 94545

Phone 510-786-4161



Assured Maintenance Agreement Terms and Conditions

1. This Agreement, upon acceptance by Customer, is made solely on the terms and conditions hereof, notwithstanding any additional or conflicting terms and 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 McQuay Factory Service. 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 McQuay Factory Service.
2. McQuay Factory Service will provide the above-described services for that sum and in accordance with the payment terms herein and those set forth on page 4 hereof, McQuay Factory Service reserves the right to add to any account outstanding more than 30 days interest at 1 1/2% per month or the highest rate allowed by law. Customer agrees to pay all costs of collection incurred by McQuay Factory Service including, but not limited to, collection agency fees, attorneys' fees and court costs. Additional services may be performed upon request at a price to be determined, subject to these Terms and Conditions.
3. In the event that McQuay Factory Service determines, during the first thirty (30) days of this Agreement or upon seasonal start-up that any equipment covered under this Agreement is in need of repair and/or replacement, McQuay Factory Service shall inform Customer of the equipment condition and remedy. McQuay Factory Service 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.
4. The contract price is subject to adjustment once each calendar year, effective on the anniversary date, for changes in labor and material costs. The customer shall receive forty-five (45) days prior written notice of such adjustment.
5. Customer shall promptly pay invoices within 30 days of receipt. Should payment become more than 30 days delinquent, McQuay Factory Service may stop all work under this Agreement or terminate this Agreement as provided in the next paragraph.
6. This Agreement may be terminated: (i) by either party upon the anniversary date hereof, provided however, that written notice of such termination must be received by the non-terminating party at least thirty (30) days prior to the anniversary date; (ii) by McQuay Factory Service 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 McQuay Factory Service'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 this Agreement is terminated for any reason, other than a breach by McQuay Factory Service, Customer shall pay, in addition to all sums currently due and owing, the entire remaining balance due for the term of this Agreement, or an amount equal to time and materials expended for the year, whichever is less.
7. Customer shall pay McQuay Factory Service, 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 McQuay Factory Service is required to pay in connection with the services or materials furnished hereunder.
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, McQuay Factory Service 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 McQuay Factory Service 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 McQuay Factory Service 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



Assured Maintenance Agreement Terms and Conditions

disposal of any hazardous materials or substances, including but not limited to asbestos, in connection with the services performed hereunder. McQuay Factory Service shall have the right to suspend its work at no penalty to McQuay Factory Service 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.

11. McQuay Factory Service reserves the right to engage others in a subcontractor status to perform the work hereunder.
12. Customer agrees to provide McQuay Factory Service personnel with 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. McQuay Factory Service 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 McQuay Factory Service.
13. This agreement does not include responsibility for design of the system, 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 McQuay Factory Service.
14. In the event that McQuay Factory Service 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 McQuay Factory Service's control, Customer shall pay McQuay Factory Service for the charges incurred in making such repairs and/or replacements or emergency calls in accordance with the current established McQuay Factory Service rates for performing such services.
15. McQuay Factory Service 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 McQuay Factory Service, McQuay Factory Service 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.
16. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER 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 MCQUAY FACTORY SERVICE. IN NO EVENT WILL MCQUAY FACTORY SERVICE'S LIABILITY FOR DIRECT OR COMPENSATORY DAMAGES EXCEED THE INSURANCE POLICY LIMITS OF THE COVERAGES PROVIDED HEREUNDER.
17. McQuay Factory Service 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. McQuay Factory Service expressly limits its warranty on Customer's Equipment to cover only that portion of Equipment which had specific service work done by McQuay Factory Service. 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.
18. 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.
19. 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 California and venue in the district court of Santa Clara County, California,

