

## **Sprinklermatic Inspection, Testing, & Maintenance Agreement Terms & Conditions**

- 1. Reports:** The results of the inspection and/or test shall be detailed on the CONTRACTOR's then current report form which shall be distributed to the CUSTOMER and any designee of CUSTOMER.
- 2. Inspection Notification:** Prior to the CONTRACTOR performing any tests, the CUSTOMER shall notify any alarm monitoring CONTRACTOR, the local fire department, and all occupants and tenants.
- 3. Emergency/Additional Inspection:** Emergency or additional inspections requested by the CUSTOMER will be furnished at an extra charge and be subject to all terms and conditions of this Agreement.
- 4. Additional Equipment:** In the event additional equipment is installed or the systems are modified after the date of this contract, the annual inspection charge shall be increased in accordance with CONTRACTOR's prevailing rates as of the first inspection of the additional equipment/modification.
- 5. Water Supply:** Testing and treatment of the water supply, and any costs associated therewith, are not covered by this Agreement and are the sole responsibility of the CUSTOMER. Equipment is available that is designed to monitor for conditions that can contribute to internal corrosion inside the water based fire protection system installed in your facility. Such testing and treatment can be provided pursuant to a separate written agreement.
- 6. Scope of Inspection:** The inspection and testing services provided by this Agreement are designed to determine the functionality of the inspected systems at the time of the inspection/test. The inspection and testing provided under this Agreement does not include: maintenance, repairs, alterations, or replacement of parts or any other field adjustments. CONTRACTOR may choose to offer such services *at an additional charge*, but is not obligated under this Agreement to do so. The inspections and testing provided under this Agreement are NOT a system survey or engineering analysis of the system, its installation and/or its design. Inspection and testing services under this Agreement are not intended to reveal design or installation flaws or code compliance violations. Any observations and suggested improvements itemized on any inspection and/or testing report do not constitute an engineering review of the fire protection/suppression system installed in your facility. To the extent such are itemized, they were noticed while conducting an inspection and test of your fire protection system in accordance with applicable NFPA Inspection and Testing Guidelines; however, such items are not part of the NFPA required inspection and test. CONTRACTOR makes no guarantee or assurance that all defects or deficiencies in the systems have been itemized. The scope of work under this Agreement is limited to the provision of inspection and testing services. CONTRACTOR is not required to move personal property, equipment, walls, and ceilings or like materials which may impede access or limit visibility. Areas that are concealed are excluded from the inspection. CONTRACTOR does not warrant that the equipment or systems inspected/tested will meet or comply with the requirements of any fire or life safety code, or regulation of any state, municipality or other jurisdiction of CUSTOMER's particular location.
- 7. Work of Others:** CONTRACTOR makes no warranty as to the quality of work performed by others or the functionality and design of the originally installed/modified fire sprinkler/suppression or alarm system(s). CONTRACTOR makes no warranties, express or implied, regarding the adequacy, performance or condition of any fire protection/suppression or notification equipment. CONTRACTOR cannot and does not guarantee that loss or damage will not occur.
- 8. Limitation of Liability – Liquidated Damages:** The parties hereto agree that it is impractical and extremely difficult to fix the actual damages, if any, that may proximately result from failure on the part of CONTRACTOR to perform any of its obligations hereunder. CUSTOMER does not desire that this contract provide for full liability of CONTRACTOR and agrees that CONTRACTOR shall be exempt from liability for loss or damage due directly or indirectly to occurrences, or consequences there from, which the inspection and/or testing is designed to detect or avert. If CONTRACTOR shall be found liable for loss or damages due to

a failure of inspection and/or testing in any respect, CONTRACTOR's liability shall be limited to the lesser of a sum equal to one-half (1/2) of the current annual inspection charge paid (or to be paid) by the CUSTOMER or \$1,000.00 as liquidated damages and not as a penalty. The amounts payable to CONTRACTOR hereunder are based upon the value of the services and the scope of liability as herein set forth and are unrelated to the value of the premises, CUSTOMER's property or the property of others located in CUSTOMER's premises. IN NO EVENT WILL CONTRACTOR BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

***LIMITATION OF LIABILITY AND WARRANTY – NO EXPRESS OR IMPLIED WARRANTIES – THE CUSTOMER UNDERSTANDS AND AGREES THAT CONTRACTOR HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF ANY KIND OR TYPE INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE. THE CUSTOMER FURTHER UNDERSTANDS AND AGREES THAT CONTRACTOR MAKES NO EXPRESS WARRANTIES AS TO THE SERVICES RENDERED, AND THAT NO REPRESENTATIVE OF CONTRACTOR HAS ANY AUTHORITY TO MAKE ANY WARRANTIES OR OTHERWISE VARY THE TERMS OF THIS AGREEMENT.***

**9. Waiver of Subrogation:** CONTRACTOR is not an insurer against loss or damage. Sufficient insurance shall be obtained by and is the sole responsibility of OWNER/CUSTOMER. CUSTOMER agrees to rely exclusively on CUSTOMER's insurer to recover for injuries or damage in the event of any loss or injury to the premises or property therein. CUSTOMER does hereby, for itself and all others claiming by or through it under this Agreement, release and discharge CONTRACTOR from and against all damages covered by CUSTOMER's insurance, it being expressly agreed and understood that no insurance company, insurer or other entity/individual will have any right of subrogation against CONTRACTOR.

**10. Limitation On Lawsuits:** It is agreed that no suit, cause of action or other proceeding shall be brought against CONTRACTOR more than one (1) year after the accrual of the cause of action or one (1) year after the claim arises, whichever is shorter, whether known or unknown when the claim arises, or whether based on tort, contract, or any other legal theory. It is agreed that CUSTOMER shall forfeit any right of recourse against CONTRACTOR, and CONTRACTOR has no liability to CUSTOMER for any damage, injury, or loss, when a claim or lawsuit is not brought against CONTRACTOR within the time period specified herein.

**11. Water Discharge:** CONTRACTOR will make every reasonable effort to prevent the discharge of water into or onto areas of landscaping, decorative pavement, etc. CUSTOMER must provide sufficient and readily accessible means to accept the full flow of water that may be required by tests as determined by the type of inspection and accepts all liability for water discharge. CUSTOMER is responsible for maintenance of any drains on or within their premises, including but not limited to floor drains and roof drains, and verifies they are unobstructed and capable of accepting the flow of water from testing of their fire sprinkler system(s).

**12. Severability:** If any provisions of this Agreement shall be invalid or unenforceable under the laws of the jurisdiction applicable to the Agreement, such invalid or unenforceable provision(s) shall be severed from the Agreement and the Agreement shall be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of CONTRACTOR and the CUSTOMER shall be construed and enforced accordingly.

**13. Attics:** Attics are excluded from this agreement unless after the CONTRACTOR's investigation and in its sole discretion the attic and its entry are deemed safe and accessible. Only those attics having a floor-level entry door with stairs, pull down stairs, and/or a permanently mounted access ladder will be considered for inclusion in the agreement. Further, only those attics having appropriate, permanently attached flooring and appropriate lighting will be considered for inclusion in the agreement. Assessment of the suitability of access, flooring and lighting is solely within the discretion of the CONTRACTOR. Any attic deemed safe and accessible must be specifically listed on the front of the Agreement to qualify for inclusion in the Agreement.

To the extent that any attic is included in the agreement, only such equipment as is safely visible and accessible from the floored area of the attic will be subject to the agreement.

**14. Dry Pipe System:** CUSTOMER is responsible for locating and/or identifying, in writing to CONTRACTOR, all devices that are not marked, such as dry pipe system low point auxiliary drains and other devices. CUSTOMER is aware that dry pipe sprinkler systems must be drained after each operation of the dry valve to remove water from the system. CUSTOMER is also aware that other sources of water can exist in dry pipe systems in the absence of the operation of the dry valve, e.g. condensation from the air compressor maintaining air pressure in the dry system and temperature changes in the space(s) surrounding the piping. CUSTOMER is aware that residual water left in a dry pipe system may freeze, causing damage to the pipes or other components, and cause water damage to the premises and property therein. During inspection and testing of dry pipe systems, CUSTOMER must provide CONTRACTOR full access to all low point auxiliary drains (drum drips) so that residual water from testing can be drained. CUSTOMER acknowledges their duty to perform regular, proper draining of low point auxiliary drains in accordance with the intervals described in NFPA 25 and otherwise required. If any dry pipe or pre-action systems are included in this Agreement, inspection or testing of proper pitch or slope of the pipe is excluded and outside the scope of this agreement.

**15. Temperature:** CUSTOMER shall ensure that all areas of the building containing water-filled sprinkler pipe or components shall be maintained at a minimum temperature of 40°F. CONTRACTOR is not responsible for assessing or maintaining building conditions including, but not limited to, the heating, cooling, insulation and conditioning of spaces in which water-filled piping is located. Conditions of temperature for water-filled piping are outside the scope of this inspection.

**16. Authorization:** The person executing this Agreement on behalf of the CUSTOMER, expressly warrants and covenants that he/she is the authorized representative of the Owner of the premises and is authorized to enter into this Agreement for and on behalf of the Owner or Owner's designee.

**17. NFPA 25:** CUSTOMER has reviewed and is familiar with the National Fire Protection Association Standard 25 (NFPA 25) and understands the requirements and consequences of failure to comply with the requirements therein. CUSTOMER shall comply with the requirements of NFPA 25. CUSTOMER is responsible for maintaining all fire protection equipment in good, working order as outlined in the applicable NFPA Standards and any and all local rules, codes or standards applicable to the jurisdiction where the system(s) is/are located.

**18. Indemnity:** CUSTOMER agrees to indemnify, hold harmless and defend CONTRACTOR, to the fullest extent permitted by law, against any and all losses, damages, costs, including expert fees and expenses including reasonable defense costs, brought by any party, including all third party claims and losses, for personal injury, death, property damage or economic loss, which in any way relate to any of the services or goods contracted for and provided under this agreement. This indemnity covers claims against CONTRACTOR, whether caused in whole or in part by the CONTRACTOR and whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. CONTRACTOR reserves the right to select counsel to represent it in any such action.

**19. Entire Agreement:** This Agreement contains the entire understanding and final expression of Agreement and supersedes and replaces any previous Agreements between the parties. This Agreement may be amended only in a writing signed by both parties.

**20. TERM OF AGREEMENT:** This Agreement shall have a term of one (1) year (the "Initial Term") unless otherwise specified and shall automatically renew for successive one (1) year terms (each a "Renewal Term") unless either party provides written notice of termination via U.S. certified mail or a recognized commercial carrier at least thirty (30) days prior to the due date of the next annual term anniversary. In the event the

CUSTOMER terminates this Agreement or any specific service prior to the expiration of the then-current term, the CUSTOMER shall be liable to the CONTRACTOR for: (i) all outstanding invoices incurred prior to the effective date of cancellation; and (ii) a cancellation fee equal to fifty percent (50%) of the remaining balance due for unperformed services for the unexpired portion of the term of this Agreement, calculated from the annual anniversary or effective start date of the previous Renewal Term. The CUSTOMER acknowledges and agrees that such cancellation fee constitutes agreed-upon liquidated damages and is not a penalty. The pricing for auto-renewing services shall be subject to an annual increase of up to five percent (5%) to account for inflationary costs, at the discretion of the CONTRACTOR. Furthermore, pricing is subject to change in the event of modifications or upgrades to the building or system serviced. The CONTRACTOR reserves the right to increase rates during the term of this Agreement based on prevailing market conditions. Should the CUSTOMER fail to provide timely notification of cancellation, the CONTRACTOR shall have the right, in its sole discretion, to impose an additional reasonable fee to recover labor costs and/or travel expenses incurred as a result of such failure to notify.

**21. BACKFLOW & COMPLIANCE ENGINE PROCESSING FEES:** If CONTRACTOR is required to pay a municipality processing fee for on-line submission of back-flow test results or or inspection reports to BSI, Compliance Engine, or any other 3rd party compliance sites required by local authority having jurisdiction additional charges may apply to the final invoice. (Unless noted in pricing)

**22. MINIMUM CHARGE:** CONTRACTOR has a minimum charge of \$435.00 for standard service calls or \$652.50 for emergency service calls. After (3) hours of billable labor, any additional labor shall be billed at the standard hourly rate of \$145.00 per hour, or an emergency rate of \$217.50 per hour. All rates are on a per Technician basis and final invoice shall reflect the total labor hours necessary to complete repairs plus material cost.

**23. CERTIFIED FIRE PUMP & CONTROLLER TECHNICIAN MINIMUM CHARGE:** CONTRACTOR has a minimum charge of \$562.50 for standard service calls or \$825.00 for emergency service calls. After (3) hours of billable labor, any additional labor shall be billed at the standard hourly rate of \$187.50 per hour, or an emergency rate of \$275 per hour. All rates are on a per Technician basis and final invoice shall reflect the total labor hours necessary to complete repairs plus material cost.

**24. TRANSPORTATION SERVICE CHARGE:** TRANSPORTATION SERVICE CHARGE OF \$25.00 SHALL BE ADDED TO FINAL INVOICE.

**25. 24-HOUR CANCELLATION POLICY / DENIED ACCESS:** 24 hour notice must be given for all cancelled or rescheduled appointments or a cancellation fee of \$225.00 shall apply. If CUSTOMER places a service call and CONTRACTOR's technician is denied access and cannot perform troubleshoot or requested repairs a \$225.00 cancellation fee shall apply.

- Repairs - If access to entire property is not provided due to lost keys, failure to secure pets, failure to send notices, or any reason during scheduled repair appointment an additional charge of \$225.00 per building/system shall be applied to final invoice for return trip and labor to drain and fill each system. (Pricing is on a per system basis and charges shall apply on a per system basis where repairs were unable to be completed on the initial appointment.)
- Inspections - If access to entire property is not provided due to lost keys, failure to secure pets, failure to send notices, or any reason during scheduled inspection appointment an additional charge of \$225 plus \$10.00 per unit shall be applied to final invoice or billed additionally to perform return trip and complete walk thru inspection of units CONTRACTOR was denied access to on original inspection appointment.

**26. PAYMENT TERMS:** Payment to CONTRACTOR shall not be contingent upon Operator's receipt of payment from any source. All payments are due and payable at CONTRACTOR's offices at 4740 Davie Rd. Davie, FL 33314. Invoices are due upon receipt, and shall accrue a finance charge of 1.5% per month from the

date of the invoice if not paid in full within 30 days of the date of the invoice. CONTRACTOR may suspend performance if any invoice is not timely paid, and may terminate any further performance if any invoice remains unpaid more than 30 days from the date it was issued. The sole and exclusive venue for any actions arising from or relating to this Agreement, any and all invoices and/or any and all labor and materials, shall be Broward County, Florida, unless a contrary venue is mandated by Florida Statutes. THE PARTIES EXPRESSLY WAIVE THE RIGHT TO JURY TRIAL AS TO ANY CLAIM, COUNTERCLAIM OR OTHERWISE, ARISING FROM OR RELATING TO THIS AGREEMENT. The prevailing party in any action shall be entitled to recover their attorney's fees and all costs in such action. The laws of the State of Florida shall apply and bind the parties in any and all questions arising hereunder, regardless of the jurisdiction in which any action or proceeding may be initiated or maintained.

**27. MONITORING RESPONSE TIMES:** Central Station Monitoring Service requires repairs to commence within 4 hours, Alarm & Supervisory signals response time of 2 hours, Trouble signals response time of 4 hours.

**28. FALSE ALARMS:** In the event an excessive number of false alarms are caused by customers negligence or malicious action, or not maintaining the system. CUSTOMER agrees to pay all false alarm fees to City or County.

**29. CELLULAR ANTENNA:** Installation of cellular signal boosting antenna for cellular communication device not included unless specifically noted on estimate. Should antenna installation be required, additional charges shall apply.

**30. Credit Card Processing Fee:** Credit card processing fee of 4% shall be added to credit card transactions.

**31. LEASED EQUIPMENT POLICY:** If CUSTOMER elects to lease cellular monitoring communicator(s) in lieu of directly purchasing equipment at time of account takeover, CUSTOMER agrees to allow CONTRACTOR to return and remove leased equipment upon termination of agreement, or elect to purchase the cellular monitoring communicator(s) for a set price of (\$500.00) five hundred dollars per device. Upon receipt of payment for equipment purchase, CONTRACTOR shall provide documentation releasing cellular communicator(s) to contractor of CUSTOMER'S choosing. CONTRACTOR makes no warranty on leased cellular monitoring communicator. Should communicator fail or become damaged during term of monitoring agreement, CUSTOMER shall be responsible for cost of replacement communicator and replacement/installation labor.

**THIS AGREEMENT IS SUBJECT TO ALL TERMS AND CONDITIONS INCLUDED HEREIN.**