



Western States Fire Protection Co.

Protecting Lives and Property

2319 N. Plaza Drive Ste 1
Rapid City, SD 57702
(605) 484-1915 (605) 787-6028 FAX
email: tony.scheerz@wsfp.us

Fire Protection Sprinkler System
Engineering * Fabrication * Installation
Commercial * Industrial * Residential *
Institutional * Special Hazards * High
Tech * Defense * Retrofit * Service *
Inspection * Maintenance

April 24, 2024

City of Deadwood
108 Sherman St.
Deadwood, SD 57732

RE: Inspections

Lornie,

This agreement reflects the inspection pricing for the Fire Alarm and Fire Sprinklers for the buildings listed. Please review the list and let me know if there are any changes that need to be made.

- Days of 76 Museum – Fire Sprinkler & Fire Alarm \$995.00
- Adams Museum – Fire Sprinkler & Fire Alarm \$765.00
- Adams Research – Fire Sprinkler & Fire Alarm \$925.00
- Days of 76 Rodeo Arena – Fire Sprinkler & Fire Alarm \$625.00
- Deadwood Welcome Center – Fire Sprinkler & Fire Alarm \$875.00
- Outlaw Square – Fire Sprinkler & Fire Alarm \$475.00
- Deadwood Rec Center – Fire Sprinkler & Fire Alarm \$825.00
- Deadwood Library – Fire Sprinkler & Fire Alarm \$850.00
- Deadwood City Hall – Fire Sprinkler & Fire Alarm \$695.00
- Volunteer Fire Department – Fire Sprinkler & Fire Alarm \$675.00

Please review the proposal and if you have any questions, please contact me. If the proposal is acceptable, please initial this page and sign the Terms and Conditions pages and email both documents back to me. We will get the alarm inspections scheduled as soon as possible.

Thank you,

Tony Scheerz

Tony Scheerz

_____ Initial

THIS AGREEMENT is in full force for a period of one year, effective the date of acceptance by Western States Fire Protection Company or APi Systems Group, Inc a division of Western States Fire Protection Company. This agreement is renewable according to the terms contained herein and is between Western States Fire Protection Company (Hereinafter written as Company) and

CLIENT: City of Deadwood, SD

ADDRESS: 108 Sherman

Deadwood, SD 57732

SYSTEM LOCATION:

BUILDINGS OCCUPIED AND OPERATED BY

THE CITY OF DEADWOOD, SD.

ATTENTION: Lornie Stadler

SERVICE OF THE FIRE PROTECTION EQUIPMENT: The Client agrees to purchase and Company agrees to provide service without liability and

not as an insurer, as described herein, services for the purpose of maintaining, inspecting and testing Client's fire protection equipment in accordance with the terms and condition of this agreement.

1. **TERMS AND RENEWAL OF AGREEMENT:** Client agrees and acknowledges that this Agreement shall run for one (1) year from the date of acceptance by Company unless terminated as provided herein. Thereafter, this agreement shall automatically continue in effect from year to year, unless terminated by written notice of either party to the other, thirty (30) days prior to the effective date of the cancellation.
2. **PRICE AND PAYMENT:** The charge for each Agreement shall include all labor, as described in paragraph 4.A, per diem and travel. Client agrees to pay company for the Term(s) of this Agreement, Company's applicable charges for preventive maintenance and inspection services and for service calls as set forth under this Agreement. With approved credit, all invoices are due and payable in full according to the stated terms, net 30 days and interest at a rate of (1 ½%) on all unpaid invoices (30) days past due. Charges for inspection services or rates for basic or emergency service in any subsequent year of this agreement shall not exceed 115% of the prior year.
3. **MAINTENANCE INSPECTIONS AND SERVICE:** For the agreed on amount, as shown on the attached Proposal, during the term(s) of this Agreement, Company agrees to provide preventive maintenance and inspection, certification, service and parts as follows:
 - A. Periodic maintenance inspections of the fire protection equipment described in our attached Proposal means to inspect, test, and adjust the systems to assure components thereof are operating within the manufacturer's acceptable standards. Client will be notified, in writing, of any components found not to be within accepted operating standards. Components will be repaired or replaced only upon written authorization of the Client and invoiced at the service rates (s) set forth under the Clarifications of the Proposal. The frequency of each inspection shall be identified within the Proposal, beginning with the first inspection.
 - B. Any additional work, material or services outside the scope of this Agreement, which is requested by the Client and furnished by the Company, may be provided by the Company at its sole discretion. Further, such additional work, material or services shall be delivered under the terms of this Agreement, and by execution hereof. Client acknowledges that this Agreement shall be incorporated into and become a part of any order for such additional work, equipment or services.
 - C. If in the sole determination of the Company, and at any time prior to or during the term of this Agreement, the equipment or any portion of it cannot be adequately inspected, repaired or adjusted on-site to bring it to an acceptable condition, Company shall have the right, at its discretion, to cancel this Agreement. If, alternatively and in the sole determination of the Company, portions of the system which cannot be brought up to acceptable level of operation through service and maintenance, in lieu of canceling the Agreement and the inspection and maintenance charge adjusted accordingly.
 - D. Repair(s), diagnosis, addition(s) change(s), relocation(s) or emergency services are not included within the inspection amount quoted unless otherwise specifically stated within Paragraph 5 herein. These services will not be provided without the authorization of the Client and will be invoiced at the company's then current hourly rate for services, including travel charges and per-diem. Service calls during normal working hours will be invoiced based upon cost portal to portal and a (2) hour minimum. After hours service calls will be based upon portal to portal and a (3) hour minimum. Client also agreed to pay Company an overtime rate of (1 ½) times the hourly rate for service(s) required at other than normal working hours for the Company except for Sundays and Holidays which will be at an overtime rate of (2) times the hourly rate of service. Normal working hours for the Company are, 8:00 AM – 5:00 PM, Monday through Friday, excluding holidays. Service parts and applicable material will be charged out in accordance with Company's current established pricing, not to exceed the Manufacturer's current published list price.
4. **LIMITATION OF WESTERN STATES FIRE PROTECTION COMPANY LIABILITY:** CLIENT ACKNOWLEDGES THAT WESTERN STATES FIRE PROTECTION COMPANY IS NOT AN INSURER AND THAT THE PAYMENTS MADE TO WESTERN STATES FIRE PROTECTION COMPANY BY CLIENT ON THIS PROJECT ARE BASED UPON THE VALUE OF THE SYSTEM AND/OR SERVICES PROVIDED AND ARE UNRELATED TO THE VALUE OF CLIENT'S PROPERTY OR BUSINESS. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS TO THE CLIENT AND TO WESTERN STATES FIRE PROTECTION COMPANY RESULTING FROM THE WORK TO BE PERFORMED BY WESTERN STATES FIRE PROTECTION COMPANY, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT, AS WELL AS THE CLIENT'S ASSIGNS, AGENTS, AND REPRESENTATIVES, AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF WESTERN STATES FIRE PROTECTION COMPANY, ITS' OFFICERS, DIRECTORS, EMPLOYEES AND WESTERN STATES FIRE PROTECTION COMPANY'S PARENT, SUBSIDIARIES, AFFILIATES, CONSULTANTS, SUBCONTRACTORS, VENDORS, TO A MAXIMUM OF \$10,000 OR THE AMOUNT OF THE CONTRACT/PRICE OF WORK TO BE PERFORMED, WHICHEVER IS LESS, AND CLIENT DOES HEREBY RELEASE WESTERN STATES FIRE PROTECTION COMPANY FROM ANY

CLAIMS IN EXCESS OF SAID LIMIT. THIS LIMITATION OF LIABILITY SHALL APPLY TO ALL JUDGEMENTS, CLAIMS, LIABILITY, COSTS, CLAIM EXPENSES, AND ALL OTHER DAMAGES OR LOSSES OF ANY NATURE SUSTAINED BY CLIENT, CONTRACTOR OR SUBCONTRACTORS, OR ANY OTHER PARTY CLAIMING BY OR THROUGH THEM, THIS LIMITATION OF LIABILITY SHALL BE ENFORCEABLE, 1.) REGARDLESS OF THE AMOUNT OF ANY ACTUAL DAMAGES SUSTAINED, IF ANY, AS A RESULT OF THIS WORK, AND, 2.) EVEN IF THE LOSS OR DAMAGE IN ISSUE IS CAUSED OR ALLEGED TO BE CAUSED BY THE NEGLIGENCE, BREACH OF WARRANTY, DEFECTIVE PRODUCTS, VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT, OR OTHER FAULT OF WESTERN STATES FIRE PROTECTION COMPANY OR WESTERN STATES FIRE PROTECTION COMPANY'S PARENT, SUBSIDIARIES, AFFILIATES, CONSULTANTS, SUBCONTRACTORS, VENDORS, OR THEIR RESPECTIVE EMPLOYEES, AGENTS OR REPRESENTATIVES. SHOULD CLIENT DESIRE A DIFFERENT LIMITATION OF LIABILITY, SUCH IS AVAILABLE AS AN ADDITIONAL SERVICE AT AN ADDITIONAL COST. IF PAYMENT FOR WORK PROVIDED IN THIS AGREEMENT IS NOT PAID WHEN DUE, CLIENT AGREES TO PAY ALL COSTS OF COLLECTION INCLUDING ATTORNEYS FEES AS WELL AS INTEREST COMPUTED AT THE HIGHEST RATE ALLOWABLE BY APPLICABLE STATE LAW.

1. WARRANTIES:

- A. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATEVER, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THERE ARE NO WARRANTIES OR REPRESENTATIONS WHICH EXTEND BEYOND THE FACE OF THIS AGREEMENT.
- B. COMPANY DOES WARRANT THAT SERVICE UNDER THIS AGREEMENT WILL BE COMPETENT AND THAT PARTS INSTALLED ON THE SYSTEM IN CONNECTION WITH SERVICE PROVIDED UNDER THIS AGREEMENT WILL MEET MANUFACTURER'S SPECIFICATIONS AT THE TIME THEY ARE INSTALLED. FAILURES TO PERFORM CONSISTENTLY WITH THIS WARRANTY WILL BE REMEDIED SOLELY BY THE COMPANY DURING THE TERM OF THIS AGREEMENT, BY CORRECTLY RE-PERFORMING NON-COMPLYING SERVICE(S) OR REPAIRING OR REPLACING DEFECTIVE MATERIALS PROVIDED BY THE COMPANY, UPON WRITTEN NOTICE TO THE COMPANY BY THE CLIENT.
- C. THE COMPANY DOES NOT REPRESENT, GUARANTEE OR WARRANT THAT ANY EQUIPMENT REFERRED TO IN THIS AGREEMENT OR ANY SERVICE, INSPECTION OR MAINTENANCE PROVIDED BY IT UNDER THIS AGREEMENT WILL RESULT IN A SYSTEM WHICH WILL OPERATE AS DESIGNED, OR IS SUITABLE FOR ANY PARTICULAR PURPOSE, OR WILL PREVENT ANY LOSS BY BURGLARY, FIRE OR OTHERWISE, OR WILL IN ALL CASES OR ANY PARTICULAR CASE AVERT OR PREVENT RISKS, LOSSES, OR OTHER OCCURRENCES, OR THE CONSEQUENCES THEREFROM, WHICH THE EQUIPMENT OR SERVICES IS DESIGNED TO PERFORM, DETECT OR AVERT. CLIENT ACKNOWLEDGES AND AGREES THAT IT IS NOT RELYING ON COMPANY SKILL OR JUDGMENT IN SELECTING OR FURNISHING A SYSTEM SUITABLE FOR ANY PARTICULAR PURPOSE, AND THAT THE COMPANY HAS MADE NO REPRESENTATIONS EXCEPT AS ARE CONTAINED IN THIS AGREEMENT. COMPANY IS NOT AN INSURER AGAINST LOSS OR DAMAGE, AND ALL INSURANCE ARRANGEMENTS TO COVER LOSS, PROPERTY DAMAGE OR PERSONAL INJURY MUST BE MADE SEPARATELY BY THE CLIENT. THE CLIENT ASSUMES ALL RISK OF LOSS OR DAMAGE TO THE PREMISES OR TO THE CONTENTS THEREOF, AS WELL AS ALL RISK TO THE PHYSICAL OR MENTAL WELL-BEING OF PERSONS THEREIN. THE LIMITED WARRANTY CONTAINED IN THIS AGREEMENT GIVES THE CLIENT SPECIFIC LEGAL RIGHTS. THE CLIENT MAY HAVE OTHER LEGAL RIGHTS WHICH VARY, FROM STATE TO STATE.

1. RESPONSIBILITIES OF CLIENT: The Client agrees to:

- A. Promptly notify Company of any known or suspected trouble or malfunction in the equipment.
- B. Meet Manufacturer' specifications. All replaced parts become the property of the Company.
- C. Authorize Company, its agents and employees, for purposes of this Agreement, to enter upon the premises of Client, to repair, maintain or inspect the equipment and to make any changes or alteration to the equipment, as may be necessary. Client also agrees to provide Company with appropriate working space, including adequate light, electricity, telephone access, ladders or lifts as required for Company's use in providing service(s) under this Agreement. In addition, Client agrees to provide one individual to monitor the control panel during testing and certification.
- D. Designate suitable representative(s) satisfactory to the Company as exclusive contact(s) between Company and the Client, who shall have authority to make decisions on behalf of Client concerning service of the equipment by Company.
- E. Neither authorizes nor permits maintenance, repairs or modifications of any kind to be made to the equipment, except by the Company or as specified and approved in advance by the Company.
- F. Assume complete responsibility for the maintenance and repair of the system *except as is set forth in this agreement* .

2. INDEMNIFICATION, DAMAGES AND LIMITATIONS OF LIABILITY. COMPANY AND CLIENT SHALL DEFEND, INDEMNIFY AND HOLD ONE ANOTHER HARMLESS FROM ANY EXPENSE, LIABILITY, LOSS, CLAIM OR DAMAGE, INCLUDING PERSONAL INJURIES AND DEATH ASSERTED BY ANY PERSON, INCLUDING THOSE NOT A PARTY TO THIS AGREEMENT, RELATING TO OR ARISING FROM THE ALLEGED IMPROPER ACTS OR ACTIONS/NEGLIGENCE OF ITSELF, ITS AGENTS, EMPLOYEES, OR ANY OTHER INDIVIDUAL OR ENTITY AFFILIATED WITH IT, OCCURRING IN ANY WAY FROM THE INSTALLATION, OPERATION MAINTENANCE OR OVERALL FUNCTIONALITY OF THE SYSTEM IDENTIFIED IN THIS AGREEMENT.

3. ADDITIONAL COMPANY RESPONSIBILITY.

- A. Company will provide service calls and emergency service, upon request of the Client, subject to any delay which may be occasioned by strike, riot, acts of god or any other circumstances beyond the control of the Company, as soon as it is reasonably practical to do so. Company will make reasonable efforts to attend promptly to the emergency needs of the Client, but it can make no guaranty of response time by the company or what may be required to properly service the equipment.

- B. In the event a malfunction of a type covered by this Agreement has not been remedied before this Agreement has terminated for whatever reason, any service requested by the Client thereafter may be provided by the Company in its sole discretion and at the Company's then-current rates for services, including travel charges, per diem and materials.
 - C. Company will provide necessary test equipment required to perform service(s) under this Agreement.
 - D. If replacement parts are necessary under this Agreement, Company may provide new and /or used replacements.
4. **NO CONFLICT WITH OTHER CLIENT AGREEMENTS.** Client warrants that the negotiation, execution and implementation of this Agreement will not conflict with any other agreement of which the Client is aware with any other person or firm. Client agrees to defend, indemnify and hold harmless the Company from claims of any sort by any person or firm alleging that this Agreement violates, interferes with or infringes upon any other Agreement in any way.
 5. **LICENSES, TAXES, PERMITS AND FALSE ALARMS.** Client shall identify any rules, regulations, standards or codes with which the equipment must comply, and shall obtain and pay for any necessary licenses or other certificates of compliance for same. Client is solely responsible for any fees, taxes (including sales taxes), false alarm fines, and any other governmental assessments related to the equipment or system operation and shall reimburse and indemnify the Company for any such expenses incurred by the Company. Client and Company are each responsible for obtaining any necessary licenses or permits needed to perform their respective obligations under this Agreement.
 6. **ASSIGNMENTS AND DELEGATIONS.** The Company may assign this Agreement to any other person, firm or corporation without notice to or approval by the Client, and may subcontract any activities, which it may perform under this Agreement. The Client may not assign or delegate any rights or obligations under this Agreement, either voluntarily or by operation of law, without advance written consent of the Company.
 7. **ENGINEERING CHANGES.** Occasionally, manufacturers may issue non-warranty engineering changes to equipment necessary to assure proper operation of system components. If, in the opinion of the Company and *Client*, installation of such engineering changes requires service(s) or material(s) in excess of those incidental to a normal preventive maintenance inspection, such excess shall be paid for by the Client or Company's applicable charges for on-call and emergency services as set forth under this Agreement *provided that company will remain responsible for performance of its obligations under this agreement*. Failure by the Client to have factory recommended engineering changes installed on the system will relieve the Company from further performance under this Agreement, but will not relieve the Client of its obligations hereunder. No other engineering changes or system modification are covered by this Agreement except as may be otherwise specifically provided herein.
 8. **INVALID PROVISIONS.** If any of the parts of this Agreement shall be determined by a court of competent jurisdiction to be invalid or inoperative, all of the remaining parts shall remain in full force and effect.
 9. **ENTIRE AGREEMENT.** This writing is intended by the parties as the final expression of their Agreement and as a complete and exclusive statement of the terms thereof. This Agreement supercedes all prior representations, understandings or agreements between the parties; there are no prior writings, verbal negotiations, understandings, representations or agreements not expressed in this Agreement, and the parties rely only upon the contents of this Agreement in executing it, and have not relied on any other representations, oral or otherwise, made by the parties, their agents or employees. Only a writing signed by each of the parties or their duly authorized agents may modify this Agreement. No waiver of breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach. This agreement shall bind and benefit the heirs, successors and assigns for the respective parties. A written Service Agreement Proposal is provided for clarification purposes and is hereby made a part of this contract.
 10. **RECEIPT AND REVIEW OF AGREEMENT** The Client specifically acknowledges that it has received a copy of this Agreement in its entirety, represents that it has authority to enter into this Agreement, and has read the same, understood it and agreed to its contents before signing it. Further the person executing the Agreement has the full authority of the Client to bind the Client, to the fullest extent provided by law, to the terms of this Agreement.
 11. **CLIENT ACCEPTANCE:**

 (Name)

 (Title)

 (Signature)

 (Date)