

## Alliance Fire & Safety Services Agreement Terms & Conditions Version 2010-2IR, Effective July, 2010

This agreement is set forth between the subscribing party referenced on the front page of this document as "CUSTOMER", and Alliance Fire & Safety, hereafter referred to as AFS.

**1. Payment Terms:** Full payment is due upon receipt of invoice unless otherwise agreed by AFS. Nothing shall serve to void AFS's Mechanics Lien and/or Bonding claim rights in accordance with Florida Law.

**2. Late payments:** In the event any payments are not made when due, CUSTOMER may be liable for interest in an amount equal to the maximum legal rate permitted by law, accruing from the date the last payment became "overdue." CUSTOMER assumes responsibility for all costs associated with collections efforts of AFS including attorneys' fees, administrative expense or other costs.

**3. Back Charges:** No back-charges or claims of CUSTOMER for services shall be valid unless agreed to in writing by AFS before 'back-charge work' is executed. In the case of AFS's failure to meet any requirement of this agreement, the CUSTOMER shall notify AFS of such default in writing, and allow AFS time to correct any deficiency in accordance with paragraph (6) below.

**4. Liquidated Damages:** The CUSTOMER shall make no demand for liquidated damages unless such damages are specifically named herein. AFS shall under no circumstances be liable for liquidated damages for more than the amount paid by the CUSTOMER for unexcused delays to the extent caused by AFS.

**5. Warranty:** AFS will warrant materials and workmanship against defects for a period of one year from the date equipment is serviced or installed. AFS's total liability under any circumstances shall be limited to the costs incurred in correcting any defect warranted, and under no circumstances shall AFS be liable for loss of profits or incidental or consequential damages, whether in contract, tort or otherwise. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** CUSTOMER and/or Owner shall be responsible to maintain equipment in good, sufficient working order as outlined in NFPA standards and State Fire Marshal's Rules.

**6. Change Orders and Conflicts:** Upon determination by either party that contract terms or Scope must change, or a conflict has arisen outside the Scope of Work or failure thereof, the Discovering Party shall notify the other party in writing within 72 hours of receipt. If not settled, a meeting shall be called for resolution. Upon agreement of solution, a Change Order showing scope changes, pricing changes (extra or credit) and revised schedule shall be attached. If the change order requires a variable cost approach, Time and Material (T&M) rates must be pre-agreed. CUSTOMER and AFS must initial a change order, and proceed in accordance with original terms of contract. AFS shall be entitled to fair and reasonable re-mobilization fees if delayed beyond its control.

### **7. CUSTOMER Responsibilities:**

a. CUSTOMER bears total responsibility for status and condition of all fire protection systems inspected by AFS. NFPA Pamphlets may be obtained from AFS at suggested retail pricing or directly from NFPA. By signing this agreement CUSTOMER acknowledges familiarity with referenced standard(s) and the Owner responsibilities described therein.

b. CUSTOMER shall furnish all necessary facilities for the performance of work by AFS, including adequate space for storage and handling of materials, adequate light, electricity, water, freeze protection, local telephone, security, toilet facilities, hoisting, clean up labor, and dumpster facilities. AFS shall be responsible for clearing its own debris.

c. CUSTOMER warrants the sufficiency of the structure, asbestos free and able to support the water filled weight of fire protection piping and its related equipment. CUSTOMER also warrants adequacy of water supply, character, condition, or use of foundations, walls, or other structures, along with wiring, fixtures, or other equipment, existing or erected by others.

d. CUSTOMER warrants that all existing fire protection or detection system components and equipment that will not be re-worked as part of this project are free from defects. CUSTOMER retains full responsibility for adequacy and working condition of existing system(s) and equipment and shall hold AFS harmless against any claims for damages that may result from subsequent failure of said components.

e. Fire rating of piping penetrations shall be provided by CUSTOMER, unless otherwise noted. AFS will typically make piping or conduit penetrations through existing walls and structures during installation, unless otherwise noted herein. If AFS piping or conduit is installed prior to walls or structures, CUSTOMER shall be responsible for "leave outs", holes, and "fire rating" of penetrations thereafter.

**8. Site Conditions Discoveries:** When AFS's work includes excavation or concealed piping and equipment: If water, quicksand, rock, environmental contamination, asbestos, or other unforeseen obstructions, subsurface soil conditions or "cross connection" of domestic or other water systems are encountered, such discoveries will constitute conditions above and beyond the agreement and solutions shall be executed in accordance with paragraph (6) above.

**9. Force Majeure:** AFS shall not be responsible for failure to render services due to causes beyond its control including, but not limited to, work stoppages, fire, civil disobedience, riots, acts of nature, or any other cause beyond the control of AFS.

**10. Hazardous Waste Disposal:** This Agreement does not provide for the cost of any hazardous waste materials, or hazardous materials encountered in any of the Covered System(s) discovered before, during or after performance of services, which at all times shall remain the property of the CUSTOMER. AFS shall not be responsible for removal and disposal of hazardous materials.

**11. Working Hours and Days:** CUSTOMER acknowledges that all services are to be performed by AFS during standard hours of 8:00AM - 4:30PM, Monday - Friday, excluding holidays. Any work required to be performed during other than standard hours is subject to additional charges at prevailing rates and payable by CUSTOMER.

**12. Limitation of Liability:** CUSTOMER agrees, by itself and on behalf of all of its insurance carriers and other related parties, that:

a. Equipment installed or serviced by AFS cannot be guaranteed to perform as may be required. CUSTOMER, its insurance carriers and all other related parties agree that AFS shall not be held liable for damages, injury or death resulting from performance or non-performance of equipment serviced by AFS.

b. AFS is not an insurer.

c. AFS shall not be liable for any property damages whatsoever, resulting directly or indirectly from work performed as part of this agreement.

d. CUSTOMER, its insurance carriers and all other related parties waive all rights of subrogation against AFS and/or its insurers.

e. Total AFS liability shall not exceed \$1,000.00.

**13. This agreement is the exclusive agreement between the CUSTOMER and AFS, and there are no other agreements, written or oral, which are not specifically set for herein. If any legal action arises out of this agreement or breach thereof, both parties agree that any civil suit shall be filed in Sarasota County, Florida.**

### **14. Inspections Performances (As applicable):**

a. CUSTOMER shall hold AFS harmless against any and all claims for damages. CUSTOMER shall immediately notify AFS of any fire protection system related incident that may cause property damage or personal injury. Upon receipt of such notification, AFS shall immediately dispatch appropriate personnel and begin investigative efforts to determine cause and extent of damages. In all cases, AFS liability shall not exceed \$1,000.

b. CUSTOMER on its own behalf and on behalf of any insurance carrier waives any right of Subrogation CUSTOMER's insurance carrier may otherwise have against AFS, its agents, employees, and subcontractors of AFS arising out of this Agreement or the relation of parties hereto.

c. This service consists of imperfect visual inspections and pass-fail testing of specified items. It is not an engineering/design evaluation or a water supply analysis. AFS shall report anything observed that is readily revealed through performance of work as outlined in applicable NFPA standards/editions and included by specific reference in this agreement.

d. CUSTOMER accepts and maintains responsibility for performance of all inspections, testing and maintenance activities required by law and NFPA standards not specifically described herein as being performed by AFS.

e. Activities prescribed by various standards and/or codes to be performed at less frequent than annual intervals may be applicable to CUSTOMER's facility. Performances of these activities are not included in this agreement unless described in specific addenda.

f. Non payment of services, defined as payments not received within 60-days of invoice date may void this agreement and cause discontinuance of service.