

## Petcosky Companies New York Inspection Agreement – Terms and Conditions

- 1. Reports:** The results of the inspection and/or test shall be detailed on the COMPANY's current report form which shall be distributed to the CUSTOMER and any designee of CUSTOMER. COMPANY is defined as any one of the Petcosky Companies, which includes Petcosky Fire Protection Inc., Petcosky Fire Protection South Inc and Petcosky & Sons Plumbing and Heating D/B/A Petcosky Mechanical that is performing the Inspection or Services described herein.
- 2. Inspection Notification:** Prior to the COMPANY performing any tests, the CUSTOMER shall notify any alarm monitoring COMPANY, the local fire department, and all occupants and tenants. COMPANY shall have no obligation for any such notifications.
- 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 Agreement, the annual inspection charge shall be increased in accordance with COMPANY'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 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. COMPANY 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 or performance 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. COMPANY makes no guarantee, warranty 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. COMPANY 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. It is the CUSTOMER's responsibility to provide access to any non-common areas such as individual apartments or condo units, locked or gated areas, and areas unknown to COMPANY. It is agreed COMPANY has no duty to inspect and/or test any area or system component(s) in which CUSTOMER does not both make known to COMPANY and also provide access to.

COMPANY 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:** COMPANY 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). COMPANY makes no warranties, express or implied, regarding the adequacy, performance or condition of any fire protection/suppression or notification equipment. COMPANY cannot and does not guarantee or warrant 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 determine the actual damages, if any, that may proximately result from failure on the part of COMPANY to perform any of its obligations hereunder. CUSTOMER does not desire that this contract provide for full liability of COMPANY and agrees that COMPANY shall be exempt from liability for loss or damage due directly or indirectly to occurrences, or consequences therefrom, which the inspection and/or testing is designed to detect or avert. If COMPANY shall be found liable for loss or damages due to a failure of inspection and/or testing, or failure to perform adequately in any respect, COMPANY'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 COMPANY 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. CUSTOMER AGREES THAT IN NO EVENT WILL COMPANY BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR FOR ANY AMOUNTS EXCEEDING THE LIQUIDATED DAMAGES AMOUNT. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO ALL CLAIMS, DEMANDS AND CAUSES OF ACTION REGARDLESS OF THE NATURE OR BASIS THEREOF, INCLUDING CLAIMS, DEMANDS AND CAUSES OF ACTION FOR BREACH OF CONTRACT, BREACH OF WARRANTY OR IMPLIED WARRANTY, NEGLIGENCE, STATUTORY LIABILITY, OTHER TORT LIABILITY, AND INCLUDING ANY TYPE OR AMOUNT OF DAMAGES, INCLUDING DIRECT, INDIRECT, LOSS OF PROFITS, OR PUNITIVE DAMAGES.

***LIMITATION OF LIABILITY AND WARRANTY – NO EXPRESS OR IMPLIED WARRANTIES – THE CUSTOMER UNDERSTANDS AND AGREES THAT COMPANY 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 COMPANY MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO THE SERVICES RENDERED, AND THAT NO REPRESENTATIVE OF COMPANY HAS ANY AUTHORITY TO MAKE ANY WARRANTIES OR OTHERWISE VARY THE TERMS OF THIS AGREEMENT.***

- 9. Waiver of Subrogation:** COMPANY 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 insurers to recover for injuries or damage in the event of any loss or injury to the premises or property therein, including with respect to any testing or inspection services by the COMPANY. CUSTOMER does hereby, for itself and all others claiming by or through OWNER OR CUSTOMER under this Agreement, release and discharge COMPANY from and against all damages covered by OWNER/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 COMPANY.
- 10. Limitation On Lawsuits:** It is agreed that no suit, action, cause of action or other proceeding shall be brought against COMPANY 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 or cause of action arises, or whether based on tort, contract, or any other legal theory. It is agreed that CUSTOMER hereby knowingly waives and forfeits any right of recourse and/or recovery against COMPANY, and COMPANY has no liability to CUSTOMER for any damage, injury, death or loss, when a claim, cause of action or lawsuit is not commenced against COMPANY within the time period specified herein. Furthermore, in the event of a breach of this Agreement by the CUSTOMER, the CONTRACTOR shall be entitled to recover all reasonable attorneys' fees, expert fees and court costs from CUSTOMER.
- 11. Water Discharge:** COMPANY 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 COMPANY and the CUSTOMER shall be construed and enforced accordingly.
- 13. Attics:** Attics are excluded from this agreement unless after the COMPANY's investigation in its sole discretion determines 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 this Agreement. Assessment of the suitability of access, flooring and lighting is solely within the discretion of the COMPANY. 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 this Agreement, only such equipment as is safely visible and accessible from the floored area of the attic will be subject to the Agreement.
- 14. System Components & Dry Pipe System(s):** CUSTOMER is responsible for locating and/or identifying, in writing to COMPANY, all devices that are not marked, such as dry pipe system low point auxiliary drains, control valves for all suppression systems including wet pipe systems, and other devices. CUSTOMERS are 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 COMPANY full access to all low point auxiliary drains (drum drips) so that residual water from testing can be drained. CUSTOMER acknowledges it is CUSTOMER's 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. COMPANY 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/CUSTOMER of the premises and is authorized to enter into this Agreement for and on behalf of the Owner or Owner's designee. An electronic, written, or verbal acknowledgement of these terms and conditions shall bind CUSTOMER to all terms and conditions contained herein.
- 17. NFPA Standards:** CUSTOMER has reviewed and is familiar with the applicable National Fire Protection Association (NFPA) Standard(s) to this inspection, including but not limited to NFPA 25, NFPA 72, NFPA 96, NFPA 17/17A, and understands the requirements and consequences of failure to comply with the requirements therein. CUSTOMERS shall comply with the requirements of NFPA and all other applicable standards required of them. 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 COMPANY, to the fullest extent permitted by law, against any and all losses, damages, costs, including expert fees and expenses including reasonable attorney defense costs, brought by any party including all third party claims and losses, for personal injury, death, sickness, property damage, loss of use or economic loss, which in any way relate to any of the services, inspections or goods contracted for and provided under this Agreement. This indemnity covers all claims or causes of action against COMPANY, whether caused in whole or in part by the COMPANY and whether such claims or causes of action are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. COMPANY reserves the right to select counsel to represent it in any such action applicable to this paragraph to be paid by CUSTOMER.
- 19. Additional Services:** CUSTOMER agrees that the general terms of this agreement shall apply to any additional services performed by COMPANY for CUSTOMER. Additional services include but are not limited to, inspecting items at frequencies other than listed on this agreement, all service & repair work, work performed by COMPANY during any emergency call from CUSTOMER, or any other work provided by COMPANY for CUSTOMER outside the listed scope of work of this agreement.
- 20. 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.