

City of Scottsbluff, Nebraska

Monday, June 15, 2015

Regular Meeting

Item Reports2

Council to authorize the Mayor to sign the Annual Service Agreement with Protex Central for fire alarms at city hall.

Staff Contact: Nathan Johnson, Assistant City Manager



SERVICE AGREEMENT

Quote Number: 4150211R27
Date: 06/03/2015
Reference Number: 183566

By and between

Protex Central Inc. (PCI)
1239 North Minnesota Avenue
Hastings, Nebraska 68901

Nathan Johnson
Scottsbluff City Hall
2525 Circle Drive
Scottsbluff, NE 69361

1-800-274-0888
402-463-6057 Fax

308-630-6260

Services will be provided at the following location(s): Scottsbluff City Hall – Scottsbluff.

PCI shall provide Services as indicated below and in accordance with the attached Service Agreement Terms and Conditions, work scope documents and special provisions which form a part of this Agreement:

<input checked="" type="checkbox"/> Fire Alarm System Testing and Inspection	<input type="checkbox"/> Fire Alarm System Testing and Maintenance
<input type="checkbox"/> Fire Sprinkler System Testing and Inspection	<input type="checkbox"/> Fire Sprinkler System Testing and Maintenance
<input type="checkbox"/> Smoke Detector Cleaning and Sensitivity Testing	<input type="checkbox"/> Suppression System Testing and Inspection
<input type="checkbox"/> Security System Maintenance	<input type="checkbox"/> Emergency Services
<input checked="" type="checkbox"/> Fire Extinguishers	<input type="checkbox"/> Kitchen Range Hood
<input type="checkbox"/> Fire Alarm System Part Replacement Program	<input type="checkbox"/> Special Provisions

Provide Semi-Annual Fire Alarm Inspections - \$198.00 Annual Price.
Tag Fire Extinguishers Annually at \$5.00 Each (not included in price).
Annual Fee: All for the annual sum of \$198.00 plus applicable taxes.

Period of Agreement: The service(s) described in this Agreement shall begin on 2 / 1 /2015 shall continue for a period of Three (3) year from this date.

This proposal shall remain valid for a period of thirty (30) days from the above referenced proposal date.

This proposal and the pages attached shall become an Agreement only upon signature below by PCI and CUSTOMER. No waiver or modification of any terms or conditions of this Agreement shall be binding on PCI unless made in writing and signed by an authorized representative of PCI.

Protex Central Inc.
Signature: Jacob Lipker
(Type or Print Name) Jacob Lipker
Title: Service Sales Representative
Date: 6-3-15

AUTHORIZED CUSTOMER Acceptance:
Signature: _____
(Type or Print Name) _____
Title: _____
Date: _____

Terms and Conditions

DEFINITIONS

1. "Equipment" means the equipment covered by the Services to be performed under this Agreement, and is identified in the respective work scope attachments under the "Equipment List".
2. "Services" means those services and obligations to be undertaken by PCI in support of CUSTOMER pursuant to this Agreement, as more fully detailed in the attached work scope document(s), which are incorporated herein.

COVERAGE

1. CUSTOMER agrees to provide access to all Equipment covered by this Agreement. PCI will be free to start and stop all primary equipment incidental to the operation of the mechanical, and life safety system(s) as arranged with CUSTOMER's representative.
2. It is understood that the repair, replacement, and emergency service provisions apply only to the Equipment included in the attached Equipment List. Repair or replacement of non-maintainable parts of the system such as, but not limited to, piping, unit cabinets, insulating material, electrical wiring, hydronic and pneumatic piping, structural supports and other non-moving parts, is not included under this Agreement. Costs to repair or replace such non-maintainable parts will be the sole responsibility of CUSTOMER.
3. PCI will not reload software, nor make repairs or replacements necessitated by reason of negligence, vandalism or misuse of the Equipment by persons other than PCI or its employees, or caused by lightning, flood or water damage from any source, electrical storm, or other violent weather or by any other cause beyond PCI control. This clause shall supersede and take precedent over any Emergency Service clause or provision contained elsewhere in this Agreement.
4. This Agreement assumes that the systems and/or Equipment included in the attached Equipment List are in maintainable condition. If repairs are necessary upon initial inspection, repair charges will be submitted for approval. Should these charges be declined, those non-maintainable items will be eliminated from coverage under this Agreement and the price adjusted accordingly. System equipment deemed to be no longer economically maintainable (obsolete) by PCI will be identified throughout the term of this agreement and brought to the CUSTOMER's attention and may be removed from this specific Agreement or coverage type on the equipment identified may be reduced.
5. Maintenance, repairs, and replacement of Equipment parts and components are limited to restoring to proper working condition. PCI shall not be obligated to provide replacement software, equipment, components and/or parts that represent a significant betterment or capital improvement to CUSTOMER'S system(s) hereunder.
6. All non-emergency services under this Agreement will be performed between the hours of 8:00 a.m. - 5:00 p.m. local time Monday through Friday, excluding federal holidays and normal PCI observed Holidays. If for any reason CUSTOMER requests PCI to furnish any labor or services outside of the above stated hours, any overtime or other additional expense occasioned thereby, shall be billed to and paid by CUSTOMER except as may be provided under the Emergency Service section or Special Provisions of this Agreement.
7. CUSTOMER will promptly notify PCI of any malfunction in the system(s) or Equipment covered under this Agreement that comes to CUSTOMER'S attention.

PRICE, BILLING, AND TERM

1. CUSTOMER shall pay or cause to be paid to PCI the full price for the Services as specified on the first page of this Agreement. PCI shall submit annual invoices unless otherwise specified to CUSTOMER in advance for Services to be performed during the subsequent billing period, and payment shall be due within thirty (30) days of the Invoice Date. Payments for Services past due more than ten (10) days shall accrue interest from the due date to the date of payment at the rate of one and one-half percent (1.5%) per month, compounded monthly, or the highest legal rate then allowed. CUSTOMER shall pay all attorney and/or collection fees incurred by PCI in collecting any past due amounts. *Customer Acceptance Initial:* _____
2. PCI may adjust the annual price of this Agreement periodically during the term of this Agreement (either up or down), and CUSTOMER agrees to pay for this negotiated increase or decrease in scope of services to the main Agreement between the CUSTOMER and PCI, if additional systems and equipment are added or deleted to the scope of this Agreement.
3. Following the initial term of this Agreement as noted on Page 1 of this Agreement and titled, "Period of Agreement", this Agreement will automatically renew for successive one (1) year periods unless canceled prior to the anniversary date with at least a thirty (30) day written notice issued by the CUSTOMER. Agreements that are automatically renewed beyond the initial term may be subject to a minimum price increase based on the published U.S. Department of Labor, Consumer Price Index (CPI) at the time of renewal.
4. CUSTOMER agrees to pay any sales, excise, use or other taxes, now or hereafter levied, which PCI may be required to pay or collect in connection with this Agreement.

TERMINATION

1. CUSTOMER may terminate this Agreement for cause after giving PCI thirty (30) days advance written notice. CUSTOMER is responsible for payment of services provided up to cancellation date.
2. PCI may terminate this Agreement for cause (including, but not limited to, CUSTOMER'S failure to make payments as agreed herein) after giving CUSTOMER thirty (30) days advance written notice.

GENERAL TERMS AND CONDITIONS

1. **Assignment and Delegation:** CUSTOMER may not assign its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of PCI. PCI may assign its right to receive payment to a third party.
2. CUSTOMER shall be responsible for maintaining all liability and property insurance. No insurer or other third party will have any subrogation rights against PCI.
3. **Hazardous Materials:** CUSTOMER represents and warrants that, except as otherwise disclosed in this in the areas where PCI will undertake work or provide Services, there are no: (a) materials or substances classified as toxic or hazardous either (i) on or within the walls, floors, ceilings or other structural components or (ii) otherwise located in the work area, including asbestos or presumed asbestos-containing materials, formaldehyde, containers or pipelines containing petroleum products or hazardous substances, etc.; (b) situations subject to special precautions or equipment required by federal, state or local health or safety regulations; or (c) unsafe working conditions.

4. **CUSTOMER SHALL INDEMNIFY AND HOLD PCI HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND COSTS OF WHATEVER NATURE, INCLUDING BUT NOT LIMITED TO, CONSULTANTS' AND ATTORNEYS' FEES, DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE, FINES, PENALTIES, CLEANUP COSTS AND COSTS ASSOCIATED WITH DELAY OR WORK STOPPAGE, THAT IN ANY WAY RESULTS FROM OR ARISES UNDER SUCH MATERIALS, SITUATIONS OR CONDITIONS, REGARDLESS OF WHETHER CUSTOMER HAS PRE-NOTIFIED PCI. THIS INDEMNIFICATION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.**
5. **Warranties and Limitation of Liability:** PCI will replace or repair any product PCI provides or CUSTOMER procures under this Agreement that fails within the warranty period (Typically one-year) due to defective workmanship or materials. The failure must not result from CUSTOMER's negligence; or from fire, lightning, water damage, or any other cause beyond PCI control. This warranty applies to PCI fabricated and outside-purchased products. The warranty effective date is the date of CUSTOMER acceptance of the product or the date CUSTOMER begins to receive beneficial use of the product, whichever comes first.
6. **THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE, AND PCI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES, EQUIPMENT, AND MATERIALS PROVIDED HEREUNDER. PCI SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM, OR RELATING TO, THIS LIMITED WARRANTY OR ITS BREACH.**
7. PCI shall not be liable for damages caused by delay or interruption in Services due to fire or flood; corrosive substances in the air or water supply that may enter or otherwise affect sprinkler piping and sprinkler systems including but not limited to biological growth, Calcium Carbonate Deposits and microbiologically influenced corrosion (MIC); strike, lockout, dispute with workmen, inability to obtain material or services, war, acts of God or any other cause beyond PCI reasonable control. Should any part of the system or any Equipment be damaged by fire, water, water leakage, freezing pipes, lightning, acts of God, third parties or any other cause beyond the control of PCI, any repairs or replacement shall be paid for by CUSTOMER.
8. **Indemnity and Limitation of Liability:** PCI agrees to indemnify and hold CUSTOMER and its agents and employees harmless from all claims for bodily injury and property damages to the extent such claims result from or arise under PCI negligent actions or willful misconduct in its performance of the Services. **PROVIDED, THAT NOTHING IN THIS ARTICLE SHALL BE CONSTRUED OR UNDERSTOOD TO ALTER THE LIMITATIONS OF LIABILITY CONTAINED IN THIS ARTICLE OR THE INDEMNIFICATION CONTAINED IN SECTION 4. IN NO EVENT SHALL PCI BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, OR CONSEQUENTIAL DAMAGES ARISING FROM, RELATING TO, OR CONNECTED WITH THE SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS PROVIDED HEREUNDER. SUCH INDEMNITY OBLIGATION IS VALID ONLY TO THE EXTENT CUSTOMER GIVES PCI REASONABLY PROMPT NOTICE IN WRITING OF ANY SUCH CLAIMS AND PERMITS PCI, THROUGH COUNSEL OF ITS CHOICE, TO ANSWER THE CLAIMS AND DEFEND ANY RELATED SUIT.**
9. The parties further agree that PCI is not an insurer; that the Services purchased herein is designed only to reduce the risk of loss; that CUSTOMER chose the level and scope of services being provided by PCI from a variety of service options; that PCI will not be held liable for any loss, in tort or otherwise, which may arise from the failure of the system(s) and/or service(s) or any errors and omissions in the above referenced specifications. The parties further agree that this Agreement shall not confer any rights on the part of any person or entity not a party hereto, whether as a third-party beneficiary or otherwise.
10. **BECAUSE IT IS IMPOSSIBLE TO ASSESS ACTUAL DAMAGES ARISING FROM THE FAILURE OF A SYSTEM AND/OR SERVICE PROVIDED UNDER THIS AGREEMENT, THE PARTIES AGREE THAT IF ANY LIABILITY IS IMPOSED ON PCI FOR DAMAGES OR PERSONAL INJURY TO EITHER CUSTOMER OR ANY THIRD PARTY, SUCH LIABILITY SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE AMOUNT OF THE ANNUAL SERVICE CHARGE OF THIS AGREEMENT.**

MISCELLANEOUS

1. **Extent of Agreement:** Except as and to the extent provided in the Contract, this Agreement represents the entire Agreement between CUSTOMER and PCI for the Services described herein and supersedes all prior negotiations, representations or Agreements between the Parties related to the Services described herein.
2. None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent document unilaterally issued by CUSTOMER that relates to the subject matter of this Agreement. This Agreement may be amended only by written instrument signed by both Parties.
3. PCI shall not be liable for any delay in producing, delivering, installing, or giving advice and technical assistance for any of the equipment or software covered hereunder if such delay shall be due to one or more of the following causes: fire, strike, lockout, dispute with workmen, flood, lightning, accident, delay in transportation, shortage of fuel, inability to obtain material, war, embargo, demand or requirement of the United States or any governmental or war activity, or any other cause whatsoever beyond the reasonable control of PCI. In addition, PCI shall not be liable for any delays caused by failure of CUSTOMER, or its agent, or any person or entity not a party hereto, to perform any of its obligations in a timely manner.

DISPUTE RESOLUTION

1. This Agreement shall be deemed to be made in Adams County, Nebraska, regardless of the location of any office or representative of CUSTOMER, or the location of the equipment, or the place of signing by any party. This Agreement will be governed by Nebraska law. The venue for any claim arising under this Agreement shall be in Adams County, Nebraska.
2. In the event of a dispute regarding the interpretation or enforcement of this Agreement which results in litigation, the prevailing party shall have its attorney's fees and costs paid by the losing party.



Fire Alarm System Testing & Inspection

Scope – Protex Central will test & inspect the fire alarm system components listed on the attached Equipment List.

Each call will be scheduled with a service report detailing the tasks to perform and any special tools and instrumentation required to properly maintain the system(s). Upon completion of each service call, a summary of the tasks completed will be provided to the CUSTOMER.

Testing Frequency – PCI will perform two tests during a 12 month period: 100% test per year on automatic initiating devices (heat, smoke, duct smoke, manual pull stations and beam/optical smoke detectors & sensors, etc...) and 100% functional test(s) of NFPA 72 required battery load and notification appliances excluding a Decibel level test shall completed during the 12 month period. Fire Protection/Sprinkler System Initiating Devices that are connected and supervised by the Fire Alarm system will be tested electrically. All testing will be completed in accordance with the most recent edition of NFPA 72 – National Fire Alarm Code. Please refer to Special Provisions for any additional testing and inspections to be performed under this Agreement.

Inspection Reports – PCI will furnish a report certifying that tests have been completed and document any deficiencies found which may require corrective action.

Hardware Support – Components and parts on the Equipment List that have been found to be defective or have failed will be identified following each test or inspection. If the component or part is covered under a current PCI or factory warranty, said part or component will be replaced at no charge to CUSTOMER including labor during normal business hours. If component or part is found not to be covered under a current PCI or factory warranty, an estimate will be prepared and submitted for approval on a reimbursable basis and repair authorization shall be issued in writing to PCI by an authorized representative of the CUSTOMER before proceeding with the work.

Replaced components will be new and of compatible design as required to maintain CUSTOMER's system in compliance with appropriate Listing Agencies and/or Local Authorities Having Jurisdiction. At PCI's sole discretion, marginal components may also be repaired or replaced. These replacements will be based upon commercial availability of parts and/or components. All exchanged parts shall become the property of PCI.



Equipment List

Scottsbluff City Hall – Fire Alarm Inspection

QTY	Description	Model Number	Location
3	Pull Station Remote Annunciator		
2	Heat Detector		
14	Smoke Detector Duct Detector Flow Switch Pressure Switch Tamper Switch		
5	Audibles		
10	Visuals Door Holders Fan Relays Smoke Damper Relays Power Supplies		
1	Main Panel Check with 100% Inspection (Once Yearly)		
1	Main Panel Visual Check (Once Yearly)		



Portable Fire Extinguishers

Scope – Protex Central will test & inspect the portable fire extinguishers at the facility listed.

Testing Frequency – PCI will perform **One (1)** 100% test(s) per year.

- Check that extinguishers are in their designated place
- Check for obstructions, access, and visibility
- Check that operating instructions on the nameplates are legible and facing outward
- Determine fullness of each extinguisher by weighing or hefting
- Examine for obvious physical damage, missing parts, corrosion, leakage, or clogged nozzles
- Check pressure gauge or indicator read in the operable range position
- Check condition of hose and nozzle (and tires for wheel units)
- Make sure the HMIS label is in place
- Tag each unit to insure that it conforms to fire department regulations

Inspection Reports – PCI will furnish a written report certifying that such tests and inspections have been completed documenting any deficiencies found which may require corrective action.

For any equipment requiring repair or replacement that is not covered as indicated above, an estimate will be prepared and submitted for approval on a reimbursable basis and repair authorization shall be issued in writing to PTC by an authorized representative of the CUSTOMER before proceeding with the work.

Note: If services, including the 6-year maintenance and hydro testing of pressurized dry chemical extinguishers, hydro testing of CO2 extinguishers, hose continuity test, inspection of cartridge type extinguishers, wheeled units, or if parts or refills are needed, additional charges will be incurred. Units requiring these services CANNOT be tagged at the time of the test and inspection unless the service is provided at that time; PCI will automatically provide service unless notified prior to inspection.