

## SERVICES AGREEMENT

**THIS SERVICES AGREEMENT** (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date"), by and between THE CITY OF MANASSAS PARK, a Virginia municipal corporation, its successors and assigns (collectively, the "City"), and THE FIRELINE CORPORATION, a Maryland corporation authorized to conduct business in the Commonwealth of Virginia, its successors and assigns (collectively, the "Contractor").

### WITNESSETH:

**WHEREAS**, the City desires to have certain fire protection equipment inspection, testing and maintenance services performed, which services require specialized skills and other supportive capabilities; and

**WHEREAS**, the City lacks sufficient resources to provide such services; and

**WHEREAS**, pursuant to the City's small purchase procedures (City Code § 2-175) and the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*), the City solicited quotations from three businesses to provide fire protection equipment inspection, testing and maintenance services (the "Solicitation"); and

**WHEREAS**, in response to the Solicitation, the Contractor submitted a proposal to provide fire protection equipment inspection, testing and maintenance services (the "Proposal"), which Proposal is attached to this Agreement as Exhibit A and incorporated herein by this reference; and

**WHEREAS**, the City has determined that the Contractor's Proposal is responsive to the Solicitation and meets the needs of the City, and that the Contractor is responsible, qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and tasks set forth in this Agreement, and therefore desires to contract with the Contractor in accordance with the terms and conditions of the Proposal and the Virginia Public Procurement Act.

**NOW, THEREFORE**, in consideration of the foregoing recitals, each of which is hereby incorporated herein by this reference, and the terms, conditions, covenants, and obligations contained herein, the parties hereto agree as follows:

### **1. SCOPE OF SERVICES.**

The Contractor shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are set forth in the Proposal (the "Scope of Services"). The work performed will be bound by the specifications according to this Agreement.

### **2. TERM.**

The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date and shall expire on the date that is one (1) year following the Effective Date. The term of

this Agreement may be extended for up to two (2) additional 1-year periods (each, an “Additional Term” and, together with the Initial Term, individually referred to as the “Term”), provided that either the City’s city manager (the “City Manager”) or the City’s Public Works director (the “Director”), as the designated representative of the City’s governing body (the “Governing Body”), has first authorized each such extension prior to the expiration of the then-current Term. If the City Manager or the Director has not authorized such extension prior to the expiration of the then-current Term, this Agreement shall be deemed to have been terminated as of the date of such expiration and shall thereafter have no further force and/or effect, except for those provisions that by definition necessarily survive the termination of this Agreement (e.g., liability).

**3. COMPENSATION AND METHOD OF PAYMENT.**

A. Payments for services included in the Scope of Services shall be made monthly following the performance of such services in accordance with the fee schedule included in the Proposal.

B. No payment shall be made for any service rendered by the Contractor except for services identified and set forth in this Agreement.

C. For all work outside the Scope of Services, the Contractor shall submit a task proposal based on direction by the City. The City shall pay the Contractor for such work in accordance with the Proposal.

D. The Contractor shall submit to the City Manager or his designee, on a form approved by the City Manager, an invoice for services rendered during the prior month. The City shall make payment to the Contractor within thirty (30) days from receipt thereof. Requests for more rapid payment will be considered if a discount is offered for early payment.

**4. MAINTENANCE OF RECORDS; REPORTS AND INSPECTIONS.**

A. The Contractor, at such times and in such forms as the City may require, shall furnish the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

B. The Contractor shall retain all books, records, documents, data and other material relevant to all matters covered, directly or indirectly, by this Agreement for a period of six (6) years after the expiration of this Agreement. The Contractor shall at all reasonable times during said 6-year period, and as often as the City may deem necessary in its sole discretion, make available for examination and permit the City or its designated authorized representative to audit and inspect all such books, records, documents, data and other material.

C. The City Manager or his designee shall have full access and right to examine any of said books, records, documents and other materials at all reasonable times during said 6-year period.

**5. INDEPENDENT CONTRACTOR RELATIONSHIP.**

A. The parties intend that an independent Contractor/City relationship will be created by this Agreement. No employee, agent, or representative of the Contractor shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees, agents, and representatives of the Contractor are not entitled to any of the benefits the City provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its employees, agents, representatives, and subcontractors during the performance of work contemplated by this Agreement.

B. In the performance of the work contemplated herein, the Contractor shall be an independent contractor with the authority to control and direct the performance of the details of the work; provided, however, that the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

**6. CONTRACTOR'S EMPLOYEE/AGENTS/REPRESENTATIVES.**

The City may at its sole discretion require the Contractor to remove any employee(s), agent(s), or representative(s) from employment on City projects. The Contractor may, however, employ such individuals(s) on other projects not related to City projects.

**7. INSURANCE.**

A. The Contractor shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall provide a certificate of insurance from its insurance company (a "Certificate of Insurance") evidencing:

1) **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage.

2) **AUTOMOBILE LIABILITY.** Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.

3) **WORKERS COMPENSATION.** Workers Compensation insurance written on an occurrence basis with limits no less than one half million dollars (\$500,000) combined single limit per occurrence.

4) The above coverages and limits may be satisfied with a combination of primary and excess/umbrella policies.

B. The City shall be named as an additional insured on all insurance policies with respect to work performed by or on behalf of the Contractor and a copy of the endorsement naming the City as an additional insured shall be attached to each Certificate of Insurance. Each

Certificate of Insurance shall warrant that the City shall receive thirty (30) days advance notice of cancellation of the relevant insurance policy. The City reserves the right to request certified copies of any required insurance policies.

C. The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**8. HOLD HARMLESS; INDEMNIFICATION.**

A. The Contractor shall indemnify and hold the City and its agents, employees, and officers harmless from, and shall process and defend at its own expense, any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City and/or its agents, employees, and/or officers arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the gross negligence of the City, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, representatives, employees, and subcontractors; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

**9. DISPUTES.**

A. Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which is not disposed of by this Agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within thirty (30) days from the date of receipt of such decision, the Contractor shall deliver to the City a written and signed appeal addressed to the City Manager.

B. In connection with any appeal proceeding conducted pursuant to this section, the Contractor will be afforded an opportunity to be heard by a hearing officer designated by the Governing Body (the "Hearing Officer") and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of this Agreement and in accordance with the City's decision. The decision of the Hearing Officer shall be final and conclusive, but shall not be arbitrary or unreasonable.

**10. TREATMENT OF ASSETS.**

Title to all property furnished by the City shall remain in the name of the City and the City shall become the owner of the work product and other documents, if any, prepared by the Contractor pursuant to this Agreement.

**11. COMPLIANCE WITH LAWS.**

A. The Contractor, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The Contractor specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

**12. ASSIGNMENTS/SUBCONTRACTING.**

A. The Contractor shall not assign or delegate its rights or obligations under this Agreement or any portion of this Agreement without the written consent of the City Manager or his designee. Any such consent must be sought in writing by the Contractor not less than thirty (30) days prior to the date of any proposed assignment or delegation. The City Manager or his designee reserves the right to reject without cause any such assignment or delegation. Notwithstanding the foregoing, claims for compensation due or to become due the Contractor from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to the City Manager.

B. Any rights, work or services assigned or delegated hereunder shall be subject to each provision of this Agreement and procurement procedures where applicable as set forth in local, state and/or federal statutes, ordinances, regulations and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement must have express advance written approval by the City.

**13. PAYMENT TO SUBCONTRACTORS; MATERIALMEN; LABORERS.**

If the City reasonably believes that the Contractor has failed to pay subcontractors, materialmen, or laborers for work performed pursuant to this Agreement within a reasonable time of when payment is due, then the City may, after having notified the Contractor, pay the unpaid bill(s) and, at the City's sole discretion, either (i) withhold from payment to the Contractor a sum of money deemed reasonably sufficient to pay any and all such lawful claims, (ii) withhold from the release of the Contractor's payment bond, if any, the amount described in clause (i) above, or (iii) demand prompt payment from the Contractor for the amount described in clause (i) above, such demand for payment to be enforced by any means available to the City at law or in equity. Regardless of which option the City chooses for reimbursement of its cost associated with paying any such bills, the City shall also be entitled to charge the Contractor a fee for administering such claims equal to ten percent (10%) of the amount paid by the City.

**14. CHANGES.**

Either party may request changes to the Scope of Services and performance to be provided hereunder; provided, however, that no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by

both parties. Any such change or addition shall be attached to and made part of this Agreement as an amendment.

**15. PROHIBITED INTEREST.**

No officer or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds hereof.

**16. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.**

A. All work proposed by the Contractor is based on current government ordinances and fees in effect as of the date of this Agreement.

B. Any changes to the scope or cost of the services proposed by this Agreement resulting from a change to current government ordinances and/or fees may, at the sole option of the City, be treated as work outside the Scope of Services pursuant to Subsection 3C above or deleted from the Scope of Services.

C. The City shall make provision for access to the property and/or project and adjacent properties as necessary for performing the services contemplated herein.

**17. TERMINATION FOR CONVENIENCE.**

Except as otherwise provided in this Agreement, the City may terminate this Agreement at any time by providing at least thirty (30) days advance written notice of such termination to the Contractor. The Contractor shall be paid its costs, including contract close-out costs, on work performed up to the time of termination. The Contractor shall promptly submit a termination claim to the City following the City's termination of this Agreement pursuant to this section. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in a manner directed by the City.

**18. TERMINATION FOR CAUSE; DEFAULT AND REMEDY.**

A. The City may terminate this Agreement upon the occurrence of one or more of the following events.

1) If the Contractor or any subcontractor substantially violates any of the provisions of this Agreement;

2) If the Contractor substantially fails to perform any part of this Agreement;

3) If the Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or fails to provide services under this Agreement for a period of seventy-two (72) hours;

4) If the Contractor shall (i) become insolvent in a bankruptcy sense; (ii) be generally not paying its debts as they become due, or within a reasonable time thereafter; (iii) suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian, receiver, trustee, or other officer

with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (iv) suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (v) suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (vi) be dissolved; (vii) become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (viii) voluntarily suspend substantially all of its business operations; (ix) be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (x) take action for the purpose of any of the foregoing.

B. Termination shall be effected by serving a notice of termination on the Contractor and its surety (if applicable) setting forth the manner in which the Contractor is in default. The Contractor will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

C. In the City's sole discretion, after serving ten (10) days' written notice on the Contractor and its surety, if applicable, of its intention to terminate the services of the Contractor, and if within ten (10) days after serving such notice the violation is not corrected to the City's reasonable satisfaction, the City then may take over the work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor and the bonding company, if applicable, shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for the work.

D. The Contractor shall be entitled to a hearing before the Hearing Officer upon the issue of termination for cause if it submits a written request to the City Manager therefor within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall be entitled to be heard at such hearing on the issue of termination for cause. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the Hearing Officer.

E. The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this section.

F. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **19. NONDISCRIMINATION.**

A. During the performance of this Agreement:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis

prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. The Contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**20. DRUG-FREE WORKPLACE.**

A. During the performance of this Agreement:

1) The Contractor will provide a drug-free workplace for the Contractor's employees.

2) The Contractor will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

3) The Contractor will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.

B. The Contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

**21. THIRD PARTY RIGHTS.**

Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**22. NOTICE.**

Except for notice provided to the parties in accordance with the procedures established for requesting work set forth in the Scope of Services, notice and other correspondence provided for in or required by this Agreement shall be hand delivered or sent by overnight mail or certified



U.S. mail to the City at One Park Center Court, Manassas Park, Virginia 20111, and to the Contractor at the address designated for the Contractor on the Contractor's signature page. Such notice shall be deemed received (i) upon actual receipt, (ii) on the same day if hand-delivered, (iii) the following day if sent using overnight mail, or (iv) three days later if sent using certified U.S. mail.

**23. ATTORNEYS' FEES AND COSTS.**

If any legal action or proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorneys' fees and other costs incurred in such action or proceeding.

**24. JURISDICTION AND VENUE.**

A. This Agreement has been and shall be construed as having been made and delivered within the Commonwealth of Virginia and shall be governed by laws of the Commonwealth of Virginia, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in a court of competent jurisdiction in Prince William County, Virginia.

**25. SEVERABILITY; WAIVER.**

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remaining parts, terms, and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be illegal, invalid, void or unenforceable.

B. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable with respect to particular circumstances, such part, term, or provision shall nevertheless remain in full force and effect in all other circumstances.

C. If it should appear that any provision hereof is in conflict with any statutory provision of the Commonwealth of Virginia, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and this Agreement shall be deemed as having been modified to conform to such statutory provisions.

D. One or more waivers by the City of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of that or any other provision of this Agreement.

**26. AMBIGUITY; MEANING OF “CITY”.**

A. Although this Agreement has been drafted by the City, the Contractor acknowledges that it has been afforded the opportunity to have this Agreement reviewed by legal counsel and expressly agrees that any ambiguity herein shall be resolved in favor of the City.

B. The term “City”, as used in this Agreement, shall mean the person, board, commission, committee, or other subunit of the City having the legal obligation or right to act on behalf of the City, as the context may require.

**27. ENTIRE AGREEMENT.**

This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement.

**28. MISCELLANEOUS.**

Headings and captions are provided in this Agreement for ease of reference only and shall not be used to construe or interpret any provision of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original; but all of which together shall constitute one and the same instrument.

{Signature pages follow }

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

THE CITY OF MANASSAS PARK,  
a Virginia municipal corporation

By: \_\_\_\_\_  
James W. Zumwalt, City Manager

COMMONWEALTH OF VIRGINIA  
CITY OF MANASSAS PARK, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by James W. Zumwalt, City Manager of the City of Manassas Park, Virginia.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Dean H. Crowhurst, City Attorney

CONTRACTOR:

THE FIRELINE CORPORATION,  
a Maryland corporation

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax ID#: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE/Commonwealth of \_\_\_\_\_  
CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2011, by \_\_\_\_\_ as \_\_\_\_\_  
of The Fireline Corporation., a Maryland corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**THE PROPOSAL**