AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Product Purchase Agreement; Terminix; Pest Control

Action Requested: County Manager Signature

Parties to the Agreement: Terminix Commercial and Gunnison County

Term Begins: 5/1/2018 **Term Ends:** 5/1/2019 **Grant Contract #:**

Summary:

We have not been able to get ahead of the problem with black spiders and mice. The mice are invading the shop, the office and the parked vehicles.

Fiscal Impact: $1,839.00

Submitted by: Marlene D. Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, costs can be covered in 2018 adopted budget for shop expenditures. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 4/23/2018

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 4/25/18

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 4/25/2018 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/26/2018

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 5/1/2018

Revised April 2015

Customized Proposal for:
GUNNISON COUNTY PUBLIC WORKS
Prepared by: RON SALAZAR
Phone: 7192441871
Email: RMSalazar@terminix.com
April 12, 2018

Inspection Results:

What We Heard

Have a problem with mice in the building.

What We Saw

Gaps under several exterior doors in the garage area and back door to the break area.

What We Recommend

Monthly pest and rodent control.

Scope of Work

Treat the exterior utilizing exterior rodent stations and interior with tin cats for trapping and monitoring purposes. Also interior and exterior general pest control for occasional invaders.

Covered Area(s)

☐ Bar/Lounge Area ☐ Basement ☑ Boiler Rooms ☑ Break/Vending Areas ☑ Building Exterior ☐ Cafeteria/Food Service Areas
☐ Compactor Areas ☑ Dock Areas ☐ Electrical Rooms ☑ Entrance/Lobby Areas ☑ Garages ☑ Janitor/Housekeeping Rooms
☐ Kitchen/Dining Areas ☐ Laboratories ☐ Laundry Rooms ☑ Locker Rooms ☐ Processing Areas ☐ Receiving/Delivery Areas
☑ Restrooms ☐ Shipping Areas ☐ Shop/Production Areas ☑ Storage/Warehouse Areas

Summary of Services

Service Location	Service/Product	Qty.	Initial	Recurring	1st Annual Amt
195 BASIN PARK DR	GPC MTHLY	1	350.00	89.00	1,329.00
195 BASIN PARK DR	Products SPC	1	530.00	0.00	530.00
Subtotal					1,859.00
Tax					0.00
Total					1,859.00

TERMINIX COMMERCIAL

PRODUCT PURCHASE AGREEMENT

PURCHASER INFORMATION

Customer (print name) GUNNISON COUNTY PUBLIC WORKS Home Phone 9706410044 Work Phone 9706410044

Customer Billing Address 195 BASIN PARK DR City GUNNISON State CO Zip Code 81230 Email

Description of Structure(s) Covered

PRODUCTS

Service Location	Service/Product	Qty.	Total
195 BASIN PARK DR, GUNNISON, CO 81230-7241	Aegis RP Anchor Bait Sta	14	350.00
195 BASIN PARK DR, GUNNISON, CO 81230-7241	612 MC Solid Top Multicatch Trap	12	180.00
Subtotal			530.00
Tax			0.00
Total			530.00

NOTICE: YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FOR AN EXPLANATION OF THIS RIGHT.

Purchaser accepts and agrees to the Terms and Conditions of this Agreement, including the MANDATORY ARBITRATION and CLASS ACTION WAIVER provisions in Sections 8 and 9 of the Terms and Conditions of this Agreement:

Customer Name GUNNISON COUNTY PUBLIC WORKS Customer's Authorized Representative (signature)

Customer Authorized Representative (Print Name) Marlene Crosby

Customer Authorized Representative (Title) Date April 12, 2018

Terminix Representative (signature) Date April 12, 2018

Terminix Representative (print name) RON SALAZAR Terminix Branch Telephone 1-800-TERMINIX

Terminix Branch Address 1610 QUAIL LAKE LOOP, COLORADO SPRINGS, CO 80906-4654 Terminix Branch Charter No.

In the event you have any questions or complaints, you may contact a Terminix representative by calling 1-800-TELLTMX (1-800-835-5869).

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TERMS AND CONDITIONS

1. **FEES.** Purchaser shall pay the fees for purchase of the product(s) set forth in this Agreement based upon the Payment Option selected by Purchaser.
2. **LIMITED WARRANTY.** TERMINIX WARRANTS THAT THE PRODUCTS SHALL BE FREE OF DEFECTS IN WORKMANSHIP AND MATERIALS FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF INSTALLATION. THE SOLE OBLIGATION OF TERMINIX FOR ANY CLAIMS UNDER THIS LIMITED WARRANTY IS TO REPAIR OR REPLACE ANY DEFECTIVE COMPONENT(S), FREE OF ANY CHARGES TO PURCHASER.
3. **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE PROHIBITED BY LAW, TERMINIX DISCLAIMS AND SHALL NOT BE RESPONSIBLE FOR ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE AND/OR LOSS OF ENJOYMENT DAMAGES. THE OBLIGATIONS OF TERMINIX SPECIFICALLY STATED IN THIS AGREEMENT ARE GIVEN IN LIEU OF ANY OTHER OBLIGATION OR RESPONSIBILITY, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
4. **FORCE MAJEURE.** Terminix shall not be liable to Purchaser for any failure to perform or delay in the performance under this Agreement, attributable in whole or in part to any cause beyond its reasonable control and without its fault or negligence including, but not limited to, acts of God, fires, floods, earthquakes, strikes, unavailability of necessary utilities, blackouts, government actions, war, civil disturbance, insurrection or sabotage.
5. **CHANGE IN LAW.** Terminix sells the products in accordance with the requirements of law. In the event of a change in existing law as it pertains to the products herein, Terminix reserves the right to terminate this Agreement.
6. **NON-PAYMENT; DEFAULT.** In case of non-payment or default by the Purchaser, Terminix has the right to terminate this Agreement. In addition, cost of collection, including reasonable attorney's fees, shall be paid by the Purchaser, whether suit is filed or not. In addition, interest at the highest legal rate will be assessed for the period of delinquency.
7. **SEVERABILITY.** If any part of this Agreement is held to be invalid or unenforceable for any reason, the remaining terms and conditions of this Agreement shall remain in full force and effect.
8. **MANDATORY ARBITRATION.** Any claim, dispute or controversy, regarding any contract, tort, statute or otherwise ("Claim"), arising out of or relating to this Agreement or the relationships among the parties hereto, shall be resolved by one arbitrator through binding arbitration administered by the American Arbitration Association ("AAA"), under the AAA Commercial or Consumer, as applicable, Rules in effect at the time the Claim is filed ("AAA Rules"). Copies of the AAA Rules and forms can be located at www.adr.org or by calling 1.800.778.7879. The arbitrator's decision shall be final, binding and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or of the arbitrator's award; any such suit may be brought only in Federal District Court for the District or, if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state or local court, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability or formation of this Agreement, including any claim that all or any part of the Agreement is void or voidable. However, the preceding sentence shall not apply to the clause entitled "Class Action Waiver." Venue for arbitration hereunder shall lie in Memphis, TN.
9. **CLASS ACTION WAIVER.** Any Claim must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff or similar proceeding ("Class Action"). The parties expressly waive any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT, TO HAVE A JUDGE OR JURY DECIDE THEIR CASE AND TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION. HOWEVER, THE PARTIES UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY, THROUGH ARBITRATION.
10. **GOVERNING LAW.** Except for the Mandatory Arbitration Clause in Section 8 of this Agreement which is governed by and construed in accordance with the Federal Arbitration Act, this Agreement shall be governed by, and construed in accordance with, the laws of the state in which the dispute arises without regard to the conflict of laws provisions.
11. **ENTIRE AGREEMENT.** This Agreement, together with all exhibits thereto, constitutes the entire agreement between the parties, supersedes all proposals, oral or written, and all other communications between the parties relating to such subject matter, and no other representations or statements will be binding upon the parties. This Agreement may not be modified or amended in any way without the written consent of both parties.

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TERMINIX COMMERCIAL

Pest Control Service Plan

THIS AGREEMENT PROVIDES FOR SERVICES TO CONTROL FOR AND MITIGATE AGAINST INFESTATIONS OF CERTAIN INSECTS, SPIDERS AND RODENTS. TERMINIX SHALL NOT BE RESPONSIBLE FOR ANY INJURY, DISEASE OR ILLNESS RESULTING FROM BITES, INFESTATION OR CONTAMINATION OR FOR THE REPAIR OF ANY DAMAGE TO THE STRUCTURES ON THE PREMISES CAUSED BY SUCH INSECTS, SPIDERS AND RODENTS.

Customer (print name) GUNNISON COUNTY PUBLIC WORKS Home Phone 9706410044 Work Phone 9706410044

Customer Billing Address 195 BASIN PARK DR City GUNNISON State CO Zip Code 81230 Email

Description of Structure(s) Covered

Summary of Charges

Service Location	Service/Product	Qty.	Initial	Recurring	1st Annual Amt
195 BASIN PARK DR, GUNNISON, CO 81230-7241	GPC MTHLY	1	350.00	89.00	1,329.00
Subtotal					1,329.00
Tax					0.00
Total					1,329.00

PREMIUM PESTS COVERED: (select)

☑ Cockroaches ☑ Mice ☑ Rats ☑ SilverFish ☑ House Ants ☑ Centipedes ☑ Millipedes ☑ Earwigs ☑ House Crickets ☑ Paper Wasps

Terminix has provided the Customer with a copy of the manufacturer's specimen label or other state-required documents for the pesticide(s), which will be used to treat the above-named property.

Customer accepts and agrees to the Terms and Conditions on pages 1- 2 of this Agreement, including the MANDATORY ARBITRATION and CLASS ACTION WAIVER provisions in Sections 16 and 17 of the Terms and Conditions on page 2 of this Agreement

Customer Name GUNNISON COUNTY PUBLIC WORKS Customer's Authorized Representative (signature)

Customer Authorized Representative (Print Name) Marlene Crosby

Customer Authorized Representative (Title) Date April 12, 2018

Terminix Representative (signature) Date April 12, 2018

Terminix Representative (print name) RON SALAZAR Terminix Branch Telephone 1-800-TERMINIX

Terminix Branch Address 1610 QUAIL LAKE LOOP, COLORADO SPRINGS, CO 80906-4654 Terminix Branch Charter No.

In the event you have any questions or complaints, you may contact a Terminix representative by calling 1-800-TELLTMX (1-800-835-5869).

STATE-SPECIFIC DISCOSURES. **CALIFORNIA**: Supplier shall provide the "Notice to Owner/Tenant" as required by Cal. Bus. & Prof. Code section 8538.**GEORGIA:** The Georgia Structural Pest Control Act requires all pest control companies to maintain insurance coverage. Information about this coverage is available from this pest control company. **TEXAS**: Licensed and regulated by: Texas Department of Agriculture, Structural Pest Control Service, PO Box 12847, Austin, TX 78711-2847 Phone 866-918-4481 Fax 888-232-2567.

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TERMS AND CONDITIONS

1. **INITIAL TERM; RENEWAL.** The term of this Agreement shall be a period of one (1) year beginning on the date executed (the "Initial Term"). Thereafter, this Agreement shall automatically renew for additional one (1) year periods (each a "Renewal Term") unless earlier terminated in accordance with this Agreement. Notwithstanding the foregoing, either Party may terminate this Agreement by providing the other Party with at least 30 days advance written notice prior to the start of any Renewal Term.

2. **FEES.** Customer shall pay the fees for Initial Service Visit and subsequent Service Visits (either monthly or quarterly as selected by Customer) for the Initial Term and any Renewal Term in accordance with the payment terms set forth above based upon the Payment Option selected by Customer.

3. **PEST CONTROL SERVICE PLAN.** Terminix shall control for and mitigate against infestations of Standard Pests located in and around the structures on the Customer's premises through delivery of regular pest control service. For an additional charge, Terminix shall control for and mitigate against infestations of Premium Pests designated by Customer on Page 1 of this Agreement located in and around the structures on the Customer's premises through delivery of regular pest control service. All services shall be performed in accordance with procedures recognized in the pest control industry and scientific community as effective against target pests. THIS AGREEMENT DOES NOT COVER AND TERMINIX SHALL HAVE NO OBLIGATION WHATSOEVER, WHETHER EXPRESS OR IMPLIED, TO REPAIR ANY DAMAGE TO THE STRUCTURES ON THE PREMISES OR THE CONTENTS THEREIN CAUSED BY ANY PESTS OR TO COMPENSATE CUSTOMER FOR ANY SUCH DAMAGE.

   a. **INITIAL SERVICE VISIT; SUBSEQUENT SERVICE VISITS.** On the initial service visit, Terminix shall apply pesticides to the interior of the structures and/or the exterior perimeter of the structures on the premises at its discretion as necessary to control for and mitigate against the pests covered by this Agreement (the "Initial Treatment"). Subsequent to the Initial Treatment, Terminix shall apply pesticides to the interior of the structures and/or the exterior perimeter of the structures on the premises at its discretion as necessary to control for and mitigate against the pests covered by this Agreement at the frequency selected by Customer in this Agreement during the Initial Term and any Renewal Term. Additionally, for control of certain pests, Terminix may utilize other pest control strategies including but not limited to, use of traps and glue boards.

   b. **STANDARD PESTS.** Includes: cockroaches, mice, rats, silverfish, "house" ants (other than ants listed in Section 3.c. below), centipedes, millipedes, earwigs, house crickets and paper wasps.

   c. **PREMIUM PESTS.** Includes: flies (including small flies), fleas, ticks, Carpenter Ants, Pharaoh Ants, Fire Ants, Tawny Crazy Ants, Black Widow Spiders, Brown Recluse Spiders and bees (Yellow Jackets, Hornets and Wasps excluding Paper Wasps), Clothes Moths and Stored Product Pests.

   d. **EXCLUDED PESTS.** Terminix shall have no obligation to control for or mitigate against the following pests: Termites (subterranean, dry wood, damp wood), wood boring beetles, bed bugs (Cimex lectularius), mosquitoes or any other pests not specified in Section 3.b. and 3.c. above, unless otherwise agreed to in writing by Terminix.

   e. **INTERIM SERVICE VISITS.** Subject to the limitations in Section 6 – **Purchaser Cooperation**, Terminix shall, upon the request of Customer and at no additional costs to Customer, make a service visit to reapply pesticides to the structures on the premises as is reasonably necessary to control for and mitigate against acute infestations of Standard Pests and/or Premium Pests which occur between the regularly scheduled monthly or quarterly service visits.

4. **TERMINIX 110% COMMERCIAL SATISFACTION GUARNATEE.** SUBJECT TO THE OBLIGATIONS OF CUSTOMER IN SECTIONS 6 AND 8 OF THIS AGREEMENT, THE SERVICES ARE PROVIDED IN ACCORDANCE WITH TERMINIX'S "110% COMMERCIAL SATISFACTION GUARANTEE." SPECIFICALLY, IF CUSTOMER IS NOT REASONABLY SATISFIED WITH THE QUALITY OF TERMINIX'S PEST CONTROL SERVICES PROVIDED TO ONE OR MORE CUSTOMER SITES, CUSTOMER SHALL PROVIDE WRITTEN NOTICE TO TERMINIX OF SUCH SERVICE DEFICIENCY AND TERMINIX SHALL CORRECT SUCH SERVICE DEFICIENCY WITHIN THIRTY (30) DAYS OF RECEIPT OF SUCH NOTICE. IF TERMINIX FAILS TO CORRECT SUCH SERVICE DEFICIENCY TO THE REASONABLE SATISFACTION OF CUSTOMER WITHIN SUCH THIRTY (30) DAY PERIOD, AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PROVIDED THAT CUSTOMER IS NOT OTHERWISE IN MATERIAL BREACH OF THE AGREEMENT, FOR EACH CUSTOMER SITE THAT TERMINIX FAILED TO CORRECT SUCH SERVICE DEFICIENCY (EACH AN "UNCURED SITE"), TERMINIX SHALL REFUND TO CUSTOMER AN AMOUNT EQUAL TO THE PREVIOUS THREE (3) MONTHS OF SERVICE FEES ACTUALLY PAID BY CUSTOMER FOR THE SERVICES PROVIDED TO SUCH UNCURED SITE PLUS AN ADDITIONAL 10% OF SUCH AMOUNT. FOLLOWING THE PAYMENT BY TERMINIX OF THE REFUND FOR SUCH UNCURED SITE(S), TERMINIX'S OBLIGATION TO PROVIDE SERVICES TO SUCH UNCURED SITE(S) SHALL IMMEDIATELY TERMINATE. EXCEPT FOR THE TERMINATION OF TERMINIX'S OBLIGATION TO PROVIDE SERVICES TO THE UNCURED SITE(S), THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

   A. **REGULATORY FINE PROTECTION.** IF DURING THE TERM OF THIS AGREEMENT, A FINE IS ASSESSED AGAINST CUSTOMER BY A MUNCIPAL, STATE OR FEDERAL GOVERNMENTAL AGENCY BASED SOLELY UPON AN INFESTATION OF ANY PESTS COVERED BY THIS AGREEMENT, TERMINIX SHALL PAY TO CUSTOMER AN AMOUNT EQUAL TO SUCH FINE PLUS AN ADDITIONAL 10% OF SUCH AMOUNT (THE "**FINE REIMBURSEMENT PAYMENT**"); PROVIDED, HOWEVER, THAT TERMINIX SHALL HAVE NO OBLIGATION TO PAY TO CUSTOMER THE FINE REIMBURSEMENT PAYMENT UNLESS: (A) AT THE TIME OF THE ASSESSMENT, CUSTOMER HAS FULLY SATISFIED ALL OUTSTANDING PAYMENT OBLIGATIONS UNDER THIS AGREEMENT AND IS NOT OTHERWISE IN BREACH OF THIS AGREMENT; (B) AT THE TIME OF THE ASSESSMENT, CUSTOMER HAS CORRECTED TO TERMINIX'S REASONABLE SATISFACTION ALL CONDITIONS CONDUCIVE TO PEST BREEDING AND HARBORAGE AS RECOMMENDED BY TERMINIX PURSUANT TO SECTIONS 6 AND 8 OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY SANITATION AND STRUCTURAL RECOMMENDATIONS; AND (C) PRIOR TO PAYMENT OF THE ASSESSED FINE TO THE GOVERNMENTAL AGENCY, TERMINIX, IS AFFORDED A REASONABLE OPPORTUNITY TO ATTEMPT TO MITIGATE, REDUCE OR ELIMINATE SUCH FINE THROUGH THE FILING OF ADMINISTRATIVE AND/OR JUDICIAL PROCEEDINGS ON BEHALF OF CUSTOMER. IN SUCH EVENT, TERMINIX MAY RETAIN COUNSEL, AT THE SOLE COST OF TERMINIX, TO REPRESENT CUSTOMER AND TERMINIX. TERMINIX SHALL CONTROL THE PROCEEDINGS BUT SHALL REGULARLY CONSULT WITH CUSTOMER REGARDING THE STATUS OF THE PROCEEDINGS. CUSTOMER SHALL REASONABLY COOPERATE WITH TERMINIX AND COUNSEL IN THE PROSECUTION OF THE ACTION INCLUDING GATHERING OF EVIDENCE AND PROVISION OF TESTIMONY IN SUPPORT OF THE ACTION AS REQUESTED BY SUCH COUNSEL.

5. **ACCESS TO PROPERTY.** Customer must allow Terminix access to the structures for any purpose contemplated by this Agreement, including but not limited to reinspections, whether the inspections were requested by the Customer or considered necessary by Terminix. The failure to allow Terminix such access will terminate this Agreement without further notice.

6. **CUSTOMER COOPERATION.** Customer's cooperation is important to ensure the most effective results from Services. Whenever conditions conducive to the breeding and harborage of pests covered by this contract are reported in writing by Terminix to the Customer, and are not corrected by Customer, Terminix cannot ensure effective Services. If Customer fails to correct the conditions noted by Terminix within a reasonable time period, all guarantees as to the effectiveness of the Services in this Agreement shall automatically terminate. Further, additional treatments in areas of such conditions that are not corrected as required shall be paid for by Customer as an extra charge.

7. **LIMITATION OF LIABILITY, LIMITED WARRANTY.** EXCEPT AS OTHERWISE PROHIBITED BY LAW, TERMINIX DISCLAIMS AND SHALL NOT BE RESPONSIBLE FOR ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE AND/OR LOSS OF ENJOYMENT DAMAGES. THE OBLIGATIONS OF TERMINIX SPECIFICALLY STATED IN THIS AGREEMENT ARE GIVEN IN LIEU OF ANY OTHER OBLIGATION OR RESPONSIBILITY, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS AGREEMENT DOES NOT PROVIDE FOR THE REPAIR OF ANY DAMAGE CAUSED BY PESTS. THIS AGREEMENT DOES NOT GUARANTEE, AND TERMINIX DOES NOT REPRESENT, THAT PESTS WILL NOT RETURN SUBSEQUENT TO SERVICE TREATMENTS.

8. **WATER LEAKAGE.** Water leakage in treated areas, in interior areas or through the roof or exterior walls of the structures on the premises, may destroy the effectiveness of treatment by Terminix and is conducive to new infestation. Customer is responsible for making timely repairs as necessary to stop the leakage. Customer's failure to make timely repairs will terminate this Agreement automatically without further notice. Terminix shall have no responsibility for repairs with respect to water leakage.

9. **OWNERSHIP TRANSFER.** Upon transfer of ownership of the structures, Services may be continued upon request of the new owner and upon payment of the Ownership Transfer Fee set forth on page 1 of this Agreement. In addition, Terminix reserves the right to revise the service charges upon transfer of ownership. In the event the new owner fails to request continuation of this Agreement or does not agree to pay the transfer fee of the revised service charges, this Agreement will terminate automatically as of the date of the change of ownership.

10. **FORCE MAJEURE.** Terminix shall not be liable to Customer for any failure to perform or delay in the performance under this Agreement attributable in whole or in part to any cause beyond its reasonable control and without its fault or negligence, including but not limited to acts of God, fires, floods, earthquakes, strikes, unavailability of necessary utilities, blackouts, government actions, war, civil disturbance, insurrection, or sabotage.

11. **ADDITIONAL DISCLAIMERS.** This Agreement does not cover and Terminix will not be responsible for damage resulting from or services required for: (a) termites and/or any other wood-destroying organisms except as specifically provided herein; (b) moisture conditions, including but not limited to fungus damage and/or water leakage caused by faulty plumbing, roofs, gutters, downspouts and/or poor drainage; (c) masonry failure or grade alterations; (d) inherent structural problems, including but not limited to, wood to ground contacts; (e) termites entering any rigid foam, wooden or cellulose containing components in contact with the earth and the Structures regardless of whether the component is a part of the Structures; and (f) the failure of Customer to properly cure at Customer's expense any condition that prevents proper treatment or inspection or is conducive to pest infestation.

12. **CHANGE IN LAW.** Terminix performs its services in accordance with the requirements of law. In the event of a change in existing law as it pertains to the services herein, Terminix reserves the right to revise the service charges or terminate this Agreement.

13. **NON-PAYMENT, DEFAULT.** In case of non-payment or default by the Customer, Terminix has the right to terminate this Agreement. In addition, cost of collection including reasonable attorney's fees shall be paid by the Customer, whether suit is filed or not. In addition, interest at the highest legal rate will be assessed for the period of delinquency.

14. **CHANGE IN TERMS.** At the time of any renewal of this Agreement, Terminix may change this Agreement by adding, deleting or modifying any provision. Terminix will notify the Customer in advance of any such change, and Customer may decline to accept such a change by declining to renew this Agreement. Renewal of this Agreement will constitute acceptance of any such changes.

15. **SEVERABILITY.** If any part of this Agreement is held to be invalid or unenforceable for any reason, the remaining terms and conditions of this Agreement shall remain in full force and effect.

16. **MANDATORY ARBITRATION.** Any claim, dispute or controversy, regarding any contract, tort, statute, or otherwise ("Claim"), arising out of or relating to this agreement or the relationships among the parties hereto shall be resolved by one arbitrator through binding arbitration administered by the American Arbitration Association ("AAA"), under the AAA Commercial or Consumer, as applicable, Rules in effect at the time the Claim is filed ("AAA Rules"). Copies of the AAA Rules and forms can be located at www.adr.org, or by calling 1-800-778-7879. The arbitrator's decision shall be final, binding, and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or of the arbitrator's award; any such suit may be brought only in Federal District Court for the District or, if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability or formation of this Agreement including any claim that all or any part of the Agreement is void or voidable. However, the preceding sentence shall not apply to the clause entitled "Class Action Waiver." Venue for arbitration hereunder shall lie in Memphis, TN.

17. **CLASS ACTION WAIVER.** Any Claim must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar proceeding ("Class Action"). The parties expressly waive any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT, TO HAVE A JUDGE OR JURY DECIDE THEIR CASE AND TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION. HOWEVER, THE PARTIES UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY, THROUGH ARBITRATION.

18. **GOVERNING LAW.** Except for the Mandatory Arbitration Clause in Section 16 of this Agreement which is governed by and construed in accordance with the Federal Arbitration Act, this Agreement shall be governed by, and construed in accordance with, the laws of the state in which the dispute arises without regard to the conflict of laws provisions.

19. **ENTIRE AGREEMENT.** This Agreement, together with all exhibits thereto, constitutes the entire agreement between the parties, supersedes all proposals, oral or written, and all other communications between the parties relating to such subject matter and no other representations or statements will be binding upon the parties. This Agreement may not be modified or amended in any way without the written consent of both parties.

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