



**TO:** Mayor and Councilmembers

**SUBMITTED BY:** Matthew R. Fore, General Services Director

**SUBJECT:** Award of Purchase Order to The Terminix International Company Limited Partnership for Termite Treatment Services at the Goleta Community Center Campus

**RECOMMENDATION:**

Authorize the City Manager or his designee to award a purchase order and execute all required documents using Cooperative Purchase Agreement (Contract No. 3280-20-7210-01) with The Terminix International Company Limited Partnership for termite fumigation services at the Goleta Community Center Campus, for a total not-to-exceed amount of \$53,400.

**BACKGROUND:**

The City acquired the Goleta Community Center campus in 2013. The Goleta Valley Community Center organization managed the campus until December 31, 2022; the City assumed direct management of the facility on January 1, 2023. The City has no record that structures on the campus, including the main Community Center building and the adjacent classrooms, have ever been treated for termites. City Staff have recently observed visual signs of termite damage in several areas, including an exterior wood bench that was subsequently removed, the gazebo on the front lawn, and the exterior fascia of tenant spaces occupied by CommUnify, Rainbow School, and Resilience Fitness.

**DISCUSSION**

On November 1, 2023, the City engaged the Terminix Company (Terminix) to conduct a termite inspection of the main building. The inspection revealed evidence of both drywood and subterranean termites. Drywood termite activity was identified in the roofline, floor, and exposed wood members discovered during the recent seismic improvement project. Staff suspects that the infestation may extend into inaccessible areas that were not inspected. Terminix recommends fumigation of the entire campus to address the current infestation and prevent further damage, including the adjacent tenant spaces (CommUnify, Rainbow School, and Resilience Fitness), which are connected to the main building.

Section 3.05.100 of the Goleta Municipal Code allows the City to obtain equipment and services through a cooperative bidding procedure that is conducted by another local, state, or federal agency. This allows the City to take advantage of the cooperative purchasing award and competitive contract pricing. The proposed agreement with Terminix was awarded through a competitive bidding process by OMNIA, a cooperative purchasing program, of which the City is a member.

Contingent on City Council approval, the fumigation will begin on Wednesday, November 27, 2024, and be completed on Saturday, November 30, 2024. On Friday, the vent cap will be removed to start the post-treatment aeration process. On Saturday morning, Terminix will inspect the interior and assess the conditions. If all is satisfactory, the building will be cleared for occupancy.

As a safety precaution, temporary fencing will be installed around the perimeter of the campus to prevent unauthorized entry. Moreover, No Entry and other warning signs will be posted around the facility perimeter.

On September 12, 2024, General Services Staff and Terminix personnel conducted an on-site information session with tenants and other stakeholders to distribute information and to answer questions about the treatment process. Additionally, Terminix staff provided tenants with guidance on preparing spaces for fumigation.

Following City Council approval, Staff will execute a purchase order with Terminix for \$53,400.

**FISCAL IMPACTS:**

Sufficient budget exists in the Fiscal Year 2024-25 Budget. Therefore, Staff is not requesting additional appropriations with this Council action.

**ALTERNATIVES:**

The City Council could direct staff to request informal bids for the services instead of approving the use of the competitively bid cooperative contract.

**LEGAL REVIEW BY:** Megan Garibaldi, City Attorney

**APPROVED BY:** Robert Nisbet, City Manager

**ATTACHMENTS:**

1. Coop Contract No. 3280-20-7210-01 (Omnia Partners Cooperative)
2. Service Plan for Termite Treatment at the Goleta Community Center Campus

## **ATTACHMENT 1**

Cooperative Contract No. 3280-20-7210-0 with  
The Terminix International Company Limited Partnership

**The University of Nebraska**

**Contract # 3280-20-7210-01**

*for*

**Pest Control Products and Services**

*with*

**The Terminix International Company Limited Partnership**

Effective: April 9, 2021

The following documents comprise the executed contract between The University of Nebraska and The Terminix International Company Limited Partnership, effective April 9, 2021

- I. Master Agreement
- II. The University of Nebraska – RFP#3280-20-7210 (RFP), incorporated by reference
- III. Supplier's Response to the RFP, incorporated by reference

## UNIVERSITY OF NEBRASKA MASTER AGREEMENT

This Master Agreement sets forth the terms between The Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska having an address at 3835 Holdrege Street, Lincoln, NE 68583 (the "University") and The Terminix International Company Limited Partnership having an address at 150 Peabody Place, Memphis, TN 38103 (the "Service Provider") with regard to the performance by Service Provider of the services contemplated herein.

### RECITALS

WHEREAS, the University desires to obtain the services of the Service Provider; and

WHEREAS, the Service Provider claims to have expertise and experience to provide such services for the University;

THEREFORE, the University and the Service Provider hereby agree to the following terms, obligations and conditions:

**1. Description of Services.** The Service Provider agrees to perform such services, with the standard of professional care and skill customarily provided in the performance of such services, and shall use its best efforts to render the Services and provide the deliverables identified in (Exhibit A) (the "Services"). The Service Provider agrees to perform the Services to the satisfaction of the University during the term of this Agreement. The attachments, appendices, addendums, any exhibits and schedules, including but not limited to (Exhibit A), University of Nebraska- RFP#3280-20-7210 (the "RFP"), and The Terminix International Company Limited Partnership response dated (8/28/20), hereto are an integral part of this Agreement and are deemed incorporated by reference herein.

**2. Pricing.** All pricing contained in the Service Provider's response to the RFP will remain firm for a period of twelve (12) months from the effective date of this Agreement, thereafter pricing shall increase no more than three percent (3%) on an annual basis, provided however, that University agrees to reimburse Service Provider for any costs associated with 3<sup>rd</sup> party billing or compliance portals, Interactive Voice Response (IVR) technology, additional and unforeseen administrative services, and the like, if required to be used by Customer. The pricing provided as part of this Agreement is attached hereto and incorporated herein as (Exhibit B).

**3. Payment.** In full consideration for the Services performed by the Service Provider under this indefinite quantity-indefinite delivery Agreement and each engagement, the University shall pay or cause to be paid to the Service Provider the invoiced amount on an order-by-order basis. The Service Provider will invoice the University for completed Services monthly for Services provided

in the prior month and payment terms are NET 45 days, which 45-day term begins accruing upon receipt of an accurate invoice by the University. Invoices will be provided via e-mail in an Excel spreadsheet. Any disputes with an invoice or invoices must be brought to the attention of Service Provider by written notice within one hundred twenty (120) days from the invoice date, otherwise Service Provider will not be liable for any potential credits or adjustments. The parties agree to use good faith efforts to resolve any disputed invoice amounts within thirty (30) days after written notification of a dispute. Service Provider further agrees that if/when product returns and/or exchanges are deemed necessary by the University, regardless of invoice payment status, Service Provider will work with the University to accommodate such returns and/or exchanges whenever possible. The Service Provider agrees that it is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and that the University will not deduct such taxes from any payments to the Service Provider hereunder, unless required by law. If Applicable, sales tax will be added as a separate line item at the time of invoicing and is the responsibility of the University.

**4. Term.** The term of this agreement shall begin on April 9, 2022 and remain in place for five (5) years, "the Initial Term". The Initial Term of this agreement will expire on April 8, 2026. The contract may be renewed, by mutual agreement of both parties, in writing for three (3) additional one (1) year periods (the "Renewal Term") upon completion of the initial base contract period, provided written mutual concurrence of both parties is exercised in writing prior to the expiration of the existing contract. The Initial Term and the Renewal Term are collectively referred to as the "Term". (The length of the contract in its entirety will not

exceed eight (8) years.) The University reserves the right to contract certain work as needed to provide emergency or timely services, introduction of new technology and/or as a result of general market conditions.

**5. Confidentiality.** "Confidential Information" shall mean any materials, written information, and data marked "Confidential" by the University or non-written information and data disclosed by the University that is identified at the time of disclosure to the Service Provider as confidential and is reduced to writing and transmitted to the Service Provider within thirty (30) days of such non-written disclosure. The Service Provider agrees to use the same degree of care it uses to protect its own confidential information and, to the extent permitted by law, to maintain the Confidential Information in strict confidence for a period of three (3) years from the date of termination of this Agreement. The obligations of this paragraph do not apply to information in the public domain or information that is independently known, obtained or discovered by the Service Provider, or that is hereafter supplied to the Service Provider by a third party without restriction.

**6. Ownership of Work Product and Intellectual Property Rights.** The Service Provider shall have no interest in the deliverables provided under this Agreement, and the University shall be the sole owner of all such deliverables, including all works authored, produced, developed or reduced to practice by the Service Provider during its' performance of the Services (the "Work Product"). Furthermore, the University shall be the sole owner of any and all intellectual property rights, including without limitation, all patent, copyright, trademark and trade secrets rights in and to the Work Product. The University shall have the right to secure appropriate registration and protection for any and all intellectual property rights in and to the Work Product. Accordingly, the Service Provider hereby expressly assigns all right, title and interest in and to the Work Product, including any and all patent, copyright, trademark and/or trade secret rights thereto, to the University, and agrees to execute all documents required to evidence such assignment. Without limiting the foregoing, the Service Provider hereby grants to the University the sole and exclusive right throughout the world, in all languages, and in perpetuity, to use the Work Product pursuant to this Agreement. The Service Provider also hereby waives any and all claims it may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of "droit moral" with respect to the use, results and/or proceeds of the Service Provider's Services and Work Product. This provision shall survive the termination of this Agreement.

**7. Termination.** In the event that either party commits

a material breach of this Agreement and fails to remedy or cure such breach within thirty (30) days after receipt of written notice thereof from the non-breaching party, the non-breaching party may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending written notice of termination to the other party. Such termination shall be effective as of the date of its receipt.

Additionally, either Party may terminate this Agreement for its convenience upon sixty (60) days prior written notice to the other party. Upon any termination, the University shall promptly pay the Service Provider for all Services rendered and costs incurred up to and including the effective date of termination.

**8. Representations and Warranties.** The Service Provider represents and warrants that in performing the Services it will not be in breach of any agreement with a third party. The Service Provider also represents and warrants that no third party has any rights in, to, or arising out of, the Work Product rendered pursuant to the performance of the Services. The Service Provider agrees to hold University and its respective assigns and licensees harmless from any loss, damage or expense, including court costs and reasonable attorneys' fees, that University and its assigns and licensees may suffer as a result of a breach or alleged breach the foregoing warranties asserted by a third party.

Each party warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

**9. Independent Service Provider.** The Service Provider is an independent Service Provider and is solely responsible for maintenance and payment of any and all taxes, insurances and the like that may be required by federal, state or local law with respect to any sums paid hereunder. The Service Provider is not the University's agent or representative and has no authority to bind or commit the University to any agreements or other obligations.

**10. Liability; Limitation of Liability.** Except to the extent a claim arises from the negligent act, willful misconduct or omission of an indemnified party, Service Provider agrees to indemnify and hold the University, its regents, officers, employees, agents and students, harmless from any loss, claim, direct damage or liability asserted by a third party arising out of or in connection with the negligent performance of the Services by the Service Provider, including breach of this Agreement.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LIQUIDATED, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES WHATSOEVER IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

In no event shall this be considered a release of any claims against Terminix or its subsidiaries, affiliates, agents, employees, contractors, successors, assigns, officers or directors from any and all losses and liabilities for personal injury or death, whether known, unknown or unforeseen related to any product used by Terminix in performing the Services.

**11. Insurance.** Service Provider shall, at its sole cost and expense, maintain at all times during the Term, the following insurance coverage specified below with insurers having an A.M. Best rating of A-VII or better. In no event should the insurance levels be less than the following:

- Commercial General and Umbrella Liability Insurance. Service Provider shall maintain commercial general liability with a limit of not less than \$3,000,000 each occurrence, and \$5,000,000 general aggregate or umbrella liability insurance, including blanket contractual liability insurance including coverage of the contractual indemnity provided herein.
- Workers' Compensation and Employer's Liability Insurance. Service Provider shall maintain statutory workers' compensation insurance as required by the laws of the state where the project is located. The employer's liability insurance and umbrella liability limits shall not be less than \$1,000,000 limit.
- Commercial Auto and Umbrella Liability Insurance. Service Provider shall maintain commercial auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$3,000,000 CSL. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned.
- Inclusion as Additional Insured. Customer, its affiliated companies, and their respective officers, directors, shareholders, employees, agents and such other entity as may be designated by Customer, shall be included as an additional insureds for the insurance required herein. At the commencement of this Agreement, and upon request thereafter, Service Provider shall provide Customer with certificates of insurance.

**12. Assignment.** This Agreement is non-assignable and non-transferrable. Any attempt by either party to assign its obligations hereunder shall be void. Service Provider shall have the right to have their franchisees and/or their affiliates perform the Services under this Agreement and this shall not constitute an assignment of Services.

**13. Amendment.** This Agreement constitutes the entire understanding between the Service Provider and the University with respect to the subject matter hereof and may not be amended except by an agreement signed by the Service Provider and an authorized representative of the University.

**14. Governing Law and Forum.** This Agreement shall be governed by the laws of the State of Nebraska without giving effect to its conflicts of laws provisions. Any legal actions brought by either party hereunder shall be in the District Court of Lancaster County, Nebraska.

**15. Conflict of Interest.** No article or service shall be purchased from any University faculty or staff member without prior approval by the Vice Chancellor of Business and Finance and any such approved purchase shall comply fully with the requirements of the conflict of interest provisions of the Nebraska Political Accountability and Disclosure Act, Neb. Rev. Stat., §§ 49-1493 through 49-14,104.

Service Provider certifies, to the best of its knowledge and belief, that there are no potential organizational conflicts of interest related to this Agreement. If Service Provider cannot so certify, it shall provide a disclosure statement to the University, which describes all relevant information concerning any potential conflict of interest under this Agreement. In the event the potential conflict of interest cannot be resolved, the University may declare this Agreement void and of no further force or effect and the University shall have no further obligations hereunder.

**16. Personal Use Prohibited.** University funds shall not be expended for articles or services which are for the personal use of staff or faculty members.

**17. Work Status Verification.** The Service Provider and its subcontractors shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. §§ 4-108 to 4-114 as amended.

**18. Debarment List.** No contract shall be awarded to any Service Provider/Bidder listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension," (the "Debarment List"). For contracts which in the aggregate exceed \$25,000, Service Provider/Bidder specifically warrants and represents that it is not included on the Debarment List. Service Provider/Bidder further agrees that should it be included on the Debarment List at the time the

Procurement Services November 2018



contract/proposal is awarded, or at any time during which it performs its contractual obligations pursuant to the contract, such listing shall be considered a material breach of the contract between the University and the Service Provider.

**19. Change Proposals.** Material changes in scope, rush delivery, rework of items already approved or requests for additional revision cycles, services and/or deliverables beyond those listed herein hereafter known as change orders, shall not be effective until authorized representatives of both Parties execute a mutually acceptable written change order to this Agreement. Any fees arising from change orders, additional services, or deliverables not reflected herein will be invoiced upon completion. Change orders agreed to by email shall be valid and enforceable as if made part of this Agreement.

**20. Taxpayer Transparency Act.** Pursuant to Nebraska's Taxpayer Transparency Act (Neb. Rev. Stat. §84-602.01, as may be amended), the University of Nebraska is required to provide the Nebraska Department of Administrative Services with a copy of each contract that is a basis for an expenditure of state funds, including any documents incorporated by reference in the contract. Copies of all such contracts and documents are published by the Nebraska Department of Administrative Services at [www.nebraskaspending.gov](http://www.nebraskaspending.gov). It shall be the sole responsibility of the Service Provider to notify the University of any redactions to such contracts and documents under Neb. Rev. Stat. 84-712.05(3) prior to contract execution.

**21. Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).** If applicable, this Service Provider and subcontractors shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime Service Providers and subcontractors to employ and advance in employment qualified protected veterans.

**22. Equal Opportunity.** This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take

**affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.**

**23. Nondiscrimination.** In accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §48-1122, Service Provider agrees that neither it nor any of its subcontractors shall discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privilege of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant.

**24. Logos or University Marks.** The Service Provider shall not use or display any University campus name, logo, trademark, servicemark (individually a "Mark" and collectively the "Marks") and/or other indicia designated by the University as a source identifier, unless expressly authorized in writing by the University. Any unauthorized use of University Marks is expressly prohibited.

**25. Right to Audit Privilege.** The University reserves the right to audit or inspect work performed by the Service Provider under this Agreement. Such audits may only occur during normal business hours with reasonable notice and will not occur more than once per year. All audits will be at the sole cost of the University, unless a discrepancy is found, then at the sole cost of the Service Provider. The University may participate directly or through an appointed representative, e.g. external auditor, in order to verify that the Services related to this agreement have been performed in accordance to the procedures indicated.

**26. Continuation of Services.** Service Provider agrees to continue to honor its ongoing obligations under this Agreement without interruption in the event of a bona fide dispute concerning payment or a dispute concerning any provision of this Agreement which may include time spent negotiating renewals.

**27. Purchase Order Requirement.** A Purchase Order shall be issued by the University to the Service Provider for payment in accordance with the terms of this Agreement. All invoice(s) submitted by the Service Provider shall make reference to the appropriate Purchase Order number to be eligible for payment.

**28. Compliance.** Service Provider will comply with all applicable laws, rules, regulations, ordinances and University policies in providing the Services.

**29. Order of Priority.** The order of priority of the documents that form this Agreement is: first, this

Master Agreement, including incorporated exhibits,  
and second, The Terminix International Company  
Limited Partnership\_Commercial Pest Management

Agreement (Schedule A-1) signed and agreed to by  
other participating public agencies other than the  
University of Nebraska. .

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**Notice.** Any notice to either party hereunder, shall be in writing and shall be served either personally or by registered or certified mail addressed to the following individuals:

**To the Service Provider:**

Name: The Terminix International Company Limited Partnership

Address: 150 Peabody Pl.

City, State, Zip: M e m p h i s , T N 3 8 1 0 3

Email: [Contracts@terminix.com](mailto:Contracts@terminix.com)

Phone: \_\_\_\_\_

**To the University:**

Name: Lynn McAlpine

Address: University of Nebraska at Omaha Procurement  
6001 Dodge St  
Omaha, NE 68182

Email: [lmcalpine@unomaha.edu](mailto:lmcalpine@unomaha.edu)

Phone: 402.554.3514

**Supplier Name:** The Terminix International Company Limited Partnership, by its general partner, TMX Holdco, Inc.

**The Board of Regents of the University of Nebraska:**

By: Aric Schroeder \_\_\_\_\_

Printed Name: Aric Schroeder \_\_\_\_\_

Title: GM & VP of National Accounts \_\_\_\_\_

Date: 04/09/21 | 12:47 CDT \_\_\_\_\_

By: Chris Kabourek \_\_\_\_\_ *CK*

Printed Name: Chris Kabourek \_\_\_\_\_

Title: VP | CFO \_\_\_\_\_

Date: 04/08/21 | 21:52 CDT \_\_\_\_\_

## **Exhibit A**

### **SERVICES**

#### **A. Scope of Services:**

1. Contractor(s) shall, at the request of University of Nebraska, provide covered pest control services under the terms of this RFP and the contract terms and conditions. The Master Agreement may be used as a model by a wide variety of Participating Public Agencies (such as Universities offering food services to students, Housing Authorities providing residences, Counties, etc.). Participating Public Agencies, other than the University of Nebraska, will also be asked to sign the Terminix Commercial Pest Management Agreement in Exhibit B. Products and services may include, but are not limited to:

- Inspection services:
  - Initial Inspections - Conducting an initial inspection during or before the first service to evaluate the needs of the premises and to present findings.
  - Routine Inspections - Conducting regularly scheduled inspection services for pests, set out or collect monitoring traps, and treat units for pests as needed. Frequency of services may vary.
  - Emergency Inspection - Conducting inspections and necessary treatment as requested.
  - Call-Back Services - Conducting follow-up inspections as requested.
  - Turnover Services - Conducting intensive inspection and necessary treatment as requested.
  - Special Services - Conducting inspection and pest control services not covered by routine inspections, as agreed to by Contractor(s) and the University of Nebraska and Participating Public Agencies. Use the Special Pricing Spreadsheet located in the Attachments tab as a template to provide pricing for Special Services. Attach your completed spreadsheet in the Response Attachments Tab.
- Non-destructive (e.g., opening walls, decks and accessing closed spaces not included) removal services such as dead animal/carcass removal limited to a 20 lb. weight limit. Removal of larger animals (deer, hogs, etc.) is an additional special service that may require a special crew.
- Monitoring and surveillance such as notifying the University of Nebraska and Participating Public Agencies via service ticket documentation and during check-out meetings if unusual levels of pests are found and routinely checking traps.
- Adequately preventing, removing, and/or suppressing pests (through insecticides, rodenticides, avicides, pesticides, portable vacuums, glue boards, trapping devices, bait boxes and formulations, crack and crevice treatments, and other methods)

#### **2. STANDARD SERVICE (COVERED) PESTS**

The regular pest control agreement covers these standard service pests:

- Cockroaches
- Mice, rats
- "House" ants (excluding Carpenter Ants, Pharaoh Ants, Fire Ants, Tawny Crazy Ants)
- Clothes moths
- Silverfish, centipedes, millipedes, earwigs, and house crickets
- Spiders (excluding Black Widow and Brown Recluse)
- Paper wasps and their nests 8' and below in height

#### **3. PREMIUM SERVICE PESTS**

The following pests can be treated for an additional charge on a case-by-case basis: Fleas; Flies, including small flies; ticks; Black Widow Spiders; Brown Recluse Spiders; Bees and Stinging Insects (including Yellow

Jackets, Hornets, and Wasps other than paper wasps and their nests under 8' and below in height); Stored Product Pests; termites (subterranean, dry wood, damp wood, winged termite swarmer); wood-boring beetles; bed bugs (*Cimex lectularius*); mosquitoes; birds; wildlife (raccoons, squirrels, opossums, skunks); and any other pests not specified.

4. Any additional services not covered in the above will be a Premium Service at an additional cost such as:

- Wildlife control/removal
- Infection control
- Disinfection
- Cleaning

- B.** SERVICE GUARANTEE. Service Provider shall, upon the request of the University and at no additional costs to the University, make a service visit to reapply pesticides to the structures on the premises as reasonably necessary to control for and mitigate against acute infestations of pests covered by this Agreement which occur within thirty (30) days from the last performance of the initial or regularly scheduled service visit, provided, however, that the University must correct any and all documented conducive sanitation conditions within sixty (60) days and structural conditions within ninety (90) days, otherwise any additional treatments in areas of such conditions that are not corrected as required shall be paid for by the University as an extra charge.
- C.** RESPONSE TIME COMMITMENTS: Service Provider will service locations on the set service frequency agreed upon by both parties. Service Provider will respond to the service request in 4 hours or less, by phone or in person, and be on-site in 24 hours or less during normal business days (excluding Sunday and federal holidays) and hours for confirmed emergencies.
- D.** ACCESS TO PROPERTY. Upon proper notice, Customer must allow Service Provider access to the structures for any purpose contemplated by this Agreement, including but not limited to inspections and re-inspections, whether the inspections were requested by the Customer or considered necessary by Service Provider. The failure to allow Service Provider such access will terminate this Agreement without further notice
- E.** ADDITIONAL WORK. Additional Scope of Work documentation may be developed on a case-by-case basis for Omnia Partners members. This documentation may include, but not be limited to other best practices for an effective pest control program.

## PRICING

### Pricing:

### Overview:

### Non-Food: Retail and Warehouse

Includes office space, retail space, worship space, data centers and non-food warehouses

## Food service

**Cafeterias, kitchens, restaurants**

## Housing

## Dormitories

Prices listed are per

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**SCHEDULE A-1**  
(For Participating Public Agencies other than University of Nebraska)

**COMMERCIAL PEST MANAGEMENT AGREEMENT**

This Commercial Pest Management Agreement is entered into on this [Click here to enter text.](#) day of [Click here to enter text.](#), 2020 (the "Effective Date") by and between **The Terminix International Company Limited Partnership**, a Delaware limited partnership ("Service Provider") with its principal place of business located at 150 Peabody Pl., Memphis, TN 38103, and [Click here to enter text.](#), a [Click here to enter text.](#) (STATE) [Click here to enter text.](#) (TYPE OF ENTITY) ("Customer"), with its principal place of business located at [Click here to enter text.](#) (ADDRESS). Service Provider and Customer are individually referred to in this Agreement as a "party", and collectively as the "parties".

**WHEREAS**, Customer desires to engage Service Provider to provide certain commercial pest management services as more specifically set forth herein; and

**WHEREAS**, Service Provider desires to provide such commercial pest management services to Customer in accordance with the terms and conditions contained herein; and

**NOW, THEREFORE FOR VALUABLE CONSIDERATION**, the receipt and sufficiency of which the parties hereby acknowledge, Service Provider and Customer agree as follows:

1. **INITIAL TERM.** The term of this Agreement shall commence on the Effective Date and continue thereafter for a period of five (5) years (the "Initial Term"). Thereafter, this Agreement shall automatically renew for additional one (1) year periods (each a "Renewal Term"), unless either party provides written notice of its intent not to renew at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term and any Renewal Term(s) are collectively referred to as the "Term". Notwithstanding the foregoing, the Term of this Agreement shall be automatically extended until the expiration or termination of all Work Statements issued hereunder..

2. **COMMERCIAL PEST MANAGEMENT SERVICES.**

a. **WORK STATEMENT ARRANGEMENT.** Service Provider will furnish commercial pest management services (the "Services") as specified in Work Statements issued by Service Provider and accepted by Customer, from time to time in substantially the form as set forth in **Exhibit A – Example Form of Work Statement** to this Agreement. Each Work Statement shall identify, at a minimum, the following: (a) a description of the Services to be performed; (b) the duration of the Services; (c) the charges to be paid by Customer for the Services and/or products; (d) Customer locations; and (e) any special terms, conditions, protocols, restrictions or limitations applicable to the Services. Service Provider shall perform the Services set forth on each Work Statement issued pursuant to this Agreement in compliance with the terms, conditions, protocols and procedures set forth in this Agreement and the applicable Work Statement. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of a Work Statement to this Agreement, the terms and conditions in the individual Work Statement will govern and control.

b. **FRANCHISEE AND AFFILIATE DEFINITIONS.**

- i. As used in this Agreement, "Franchisee" means a legal entity (e.g., a corporation, partnership, limited liability company, or other entity form) that: (A) is in good standing with the Secretary of State of its state of incorporation, formation or organization; (B) has signed a franchise agreement with the franchisor party or the franchisor party's affiliate or subsidiary pursuant to which the legal entity is granted a right or license to market and sell the franchisor party's or the franchisor party's affiliates' or subsidiaries' trademark, trade name, or services mark; and (C) is in good standing with the franchisor party under the terms and conditions of that franchise agreement.
- ii. As used in this Agreement, "Affiliate" means any individual, corporation, partnership, firm, limited liability company, joint venture, association, joint-stock company, trust,

unincorporated organization or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a party. An entity shall be regarded as in control of another corporation or entity if it owns or directly or indirectly controls more than fifty percent (50%) of the voting securities or other ownership interest of the other corporation or entity.

c. **CUSTOMER FRANCHISEE AND AFFILIATE PARTICIPATION.** If applicable, Customer's Franchisee or Affiliate, as defined in this Agreement, may sign an agreement with Service Provider to receive the Services. To receive the Services, Customer's Franchisee or Affiliate must sign and return a separate pest control services agreement, the form of which will be provided upon request and mutually agreed upon by the contracting parties. Customer is not financially responsible for purchases or the acts and omissions of its Franchisees or Affiliates who have signed a separate pest control services agreement with Service Provider. Customer shall have no liability in connection with the Services provided to the Franchisee or Affiliate by Service Provider, and Customer is not responsible for any charges or obligations incurred by the Franchisee or Affiliate.

d. **CUSTOMER CORPORATE OWNED LOCATIONS**

i. If Customer has a corporate owned location that is required to utilize the Services of the Service Provider, Customer may add or remove a location or adjust Service frequency by submitting their request and authorization to Service Provider via email.

ii. If Customer has a corporate owned location that may voluntarily utilize the Services of the Service Provider, that location must sign and return a separate Add-On Location Form in order to initiate Services at that location.

e. **SERVICE PROVIDER FRANCHISEES AND AFFILIATES.** Customer acknowledges that Service Provider has the right to utilize a current or future Franchisee and/or Affiliate to perform the Services for Customer. Service Provider's right to utilize a Franchisee and/or Affiliate to perform the Services shall not relieve Service Provider of any of its duties or obligations under this Agreement, and Service Provider shall indemnify and hold Customer harmless from any payment required to be paid to any such Franchisee and/or Affiliate.

f. **OTHER PROVIDERS.** Customer acknowledges that Service Provider has the right to utilize a current or future subcontractor and/or service partner to perform the Services for Customer. Service Provider's right to utilize a subcontractor and/or service partner to perform the Services shall not relieve Service Provider of any of its duties or obligations under this Agreement, and Service Provider shall indemnify and hold Customer harmless from any payment required to be paid to any such subcontractor and/or service partner.

3. **CHARGES; INVOICING, PAYMENT AND COLLECTION.**

a. **CHARGES.**

i. The charges for the Services provided by Service Provider hereunder shall be set forth in the applicable Work Statement and/or pertinent Exhibit(s).

ii. If certain additional or emergency Services are necessary and may result in Service Provider incurring additional costs, such additional costs must be approved in writing by the appropriate Customer representative prior to Service Provider's performance of the Service, but only if such costs will exceed a pre-set and mutually agreed upon not to exceed "NTE" amount of five hundred U.S. dollars (\$500).

iii. Customer agrees to reimburse Service Provider for any costs associated with 3<sup>rd</sup> party billing or compliance portals, Interactive Voice Response (IVR) technology, additional and unforeseen administrative services, and the like, if required to be used by

Customer.

- b. INVOICING AND PAYMENT. Except as otherwise agreed to in an applicable Work Statement, Service Provider shall invoice Customer for any charges due on a monthly basis. Invoices are due and payable by Customer in U.S. dollars within thirty (30) days of the invoice date. Any disputes with an invoice or invoices must be brought to the attention of Service Provider by written notice within one hundred twenty (120) days from the invoice date, otherwise Service Provider will not be liable for any potential credits or adjustments. The parties agree to use good faith efforts to resolve any disputed invoice amounts within thirty (30) days after written notification of a dispute. Disputed amounts shall not affect payment of all undisputed amounts, and Customer agrees to pay all undisputed amounts owed on any disputed invoice within the applicable due dates. Invoices not paid on or before the invoice due date shall accrue interest charges at a rate of one percent (1%) per month, accruing as of the invoice date, until the time that such amounts are paid in full.
- c. COLLECTION. Notwithstanding Section 16 and any other provision herein, the parties agree that Service Provider, at its option, may file a lawsuit in state or federal court in Memphis, TN, or where the Customer does business, for the collection of past due sums..
4. COMMERCIAL PEST MANAGEMENT SERVICE PLAN. Except as otherwise agreed to in an applicable Work Statement, Service Provider shall control for and mitigate against infestations of target pests and/or Premium Pests 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 products and procedures recognized in the pest control industry and scientific community as effective for their intended purpose.
- a. FREQUENCY OF SERVICE VISITS. Service Provider shall perform the Services at such frequency as agreed to in the applicable Work Statement.
- b. TARGET PESTS FOR STANDARD SERVICE. Except as otherwise agreed to in an applicable Work Statement, target pests for standard service may include: Cockroaches (American, German, Oriental, and Smokybrown), House Mice, Rats, Silverfish, "House" Ants (other than Ants listed in Section 4.c. below), Spiders (excluding the Brown Recluse (*Loxosceles reclusa*) & Black Widow (members of genus *Latrodectus*)), Centipedes, Millipedes, Earwigs, House Crickets, Common Ground Beetles, and Paper Wasps (within eight (8) feet of ground level).
- c. TARGET PESTS FOR PREMIUM SERVICE (SUBJECT TO ADDITIONAL SERVICE CHARGES). Except as otherwise agreed to in an applicable Work Statement, Premium Pests subject to additional service charges may include: Flies (including Small Flies), Fleas, Ticks, Carpenter Ants, Pharaoh Ants, Fire Ants, Tawny Crazy Ants, Spiders (Example: Black Widow and Brown Recluse), Bees, Wasps (Yellow Jackets, Hornets, other stinging Wasps), Clothes Moths, Scorpions, Brown-Banded Cockroaches, and Stored Product Pests.
- d. EXCLUDED PESTS (SUBJECT TO SEPARATE TERMS AND CONDITIONS). Unless otherwise agreed to in writing by Customer and Service Provider in a separate Work Statement to this Agreement, this Agreement does not cover and Service Provider shall have no obligation to control for or mitigate against the following pests: Termites (Subterranean, Dry Wood, Damp Wood), Wood Boring Beetles, Bed Bugs (all species), Mosquitoes, or any other pests not specified in Section 4.b. and 4.c. herein. All terms and conditions contained in this Agreement are for General Pest Control services only. The terms and conditions for any Excluded Pests or other services will be detailed in that particular Work Statement and those terms and conditions will apply solely to the services performed under that Work Statement.
- e. SERVICE GUARANTEE. Subject to the obligations of Customer set forth in Section 6 of this Agreement, Service Provider 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 reasonably necessary to control for and mitigate against acute infestations of pests covered by this Agreement which occur within thirty (30) days from the last performance of the initial or regularly scheduled service visit.
5. 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 Agreement are reported in writing by Service Provider to the Customer, and are not corrected by Customer, Service Provider cannot ensure effective Services. If Customer fails to correct the documented conducive sanitation conditions within 60 days and structural conditions within 90 days, all service 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.
6. ACCESS TO PROPERTY. Upon proper notice, Customer must allow Service Provider access to the structures for any purpose contemplated by this Agreement, including but not limited to inspections and re-inspections, whether the inspections were requested by the Customer or considered necessary by Service Provider. The failure to allow Service Provider such access will terminate this Agreement without further notice.
7. 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 Service Provider and is conducive to new infestation. Customer is responsible for making repairs as necessary to stop the leakage within thirty (30) days of receipt of written notice from Service Provider. If Customer fails to make such repairs within such thirty (30) day period, any guarantees in this Agreement as to the effectiveness of the pest control services shall automatically terminate. Service Provider shall have no responsibility for repairs with respect to water leakage.
8. CHANGE IN LAW. Service Provider 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, Service Provider reserves the right to revise the Service charges or terminate this Agreement.
9. TERMINATION.
- a. This Agreement and/or any Work Statements issued pursuant thereto may be terminated by either party upon written notice if the other party hereto breaches any of its obligations under this Agreement or any Work Statement(s) issued pursuant thereto, which breach is not cured to the satisfaction of the non-breaching party within thirty (30) days of provision of written notice of such breach.
- b. This Agreement and/or any Work Statement(s) issued pursuant thereto may be terminated by either party immediately upon written notice if: (a) the other party fails to comply with applicable Laws; (b) the other party has a receiver or similar party appointed for its property; (c) the other party becomes insolvent; (d) the other party acknowledges its insolvency in any manner; (e) the other party makes an assignment for the benefit of its creditors; and/or (f) the other party ceases to do business.
- c. Either party may terminate this Agreement or any Work Statement(s) issued pursuant thereto for any reason or no reason upon ninety (90) days' notice to the other party.
- d. Service Provider may immediately terminate this Agreement upon written notice to Customer upon a change in any applicable statute, rule, regulation, ordinance, or other law or any order or directive or interpretation of any applicable governmental authority or regulatory body which, in the reasonable opinion of the Service Provider: (i) invalidates or is otherwise inconsistent with the terms of this Agreement; (ii) would cause one or both of the parties to this Agreement to be in violation of the law; (iii) would materially impact Service Provider's ability to satisfy its obligations under this Agreement; and/or (iv) would have a material adverse effect on the Service Provider's business, financial condition and/or operations.
10. ASSIGNMENT. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party without the written consent of the other party; provided, however, that this Agreement and the rights, interests or obligations hereunder may be assigned by either party without the prior written consent of the other party to: (a) an Affiliate of the assigning party; or (b) to the successor in interest of the assigning party whether by operation of law, as a result of a merger, consolidation, amalgamation, or to the acquirer of

substantially all of the assets of the assigning party. An "Affiliate" of a party means any other individual or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such party. The term "controls" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract or otherwise.

11. **INDEPENDENT CONTRACTOR.** The relationship between Service Provider and Customer is that of independent contractors. Nothing contained in this Agreement or any Work Statements issued pursuant thereto shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

12. **INSURANCE.** Service Provider shall, at its sole cost and expense, maintain at all times during the Term, the following insurance coverage specified below with insurers having an A.M. Best rating of A-VII or better. In no event should the insurance levels be less than the following:

a. **Commercial General and Umbrella Liability Insurance.** Service Provider shall maintain commercial general liability with a limit of not less than \$3,000,000 each occurrence, and \$5,000,000 aggregate or umbrella liability insurance, including blanket contractual liability insurance including coverage of the contractual indemnity provided herein.

b. **Workers' Compensation and Employer's Liability Insurance.** Service Provider shall maintain statutory workers' compensation insurance as required by the laws of the state where the project is located. The employer's liability insurance and umbrella liability limits shall not be less than \$1,000,000 limit.

c. **Business Auto and Umbrella Liability Insurance.** Service Provider shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$3,000,000 CSL. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned.

d. **Inclusion as Additional Insured.** Customer, its affiliated companies, and their respective officers, directors, shareholders, employees, agents and such other entity as may be designated by Customer, shall be included as an additional insureds for the insurance required herein. At the commencement of this Agreement, and upon request thereafter, Service Provider shall provide Customer with certificates of insurance.

13. **REPRESENTATIONS.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has, and throughout the Term shall retain, the full right, power and authority to enter into this Agreement (including any Work Statements issued pursuant to this Agreement) and to perform its obligations hereunder; (c) the execution of this Agreement (including any Work Statements issued pursuant to this Agreement) by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and (d) when executed and delivered by such party, this Agreement and any Work Statements issued pursuant thereto shall constitute the legal, valid and binding obligation of that party, enforceable against that party in accordance with its terms except as such enforcement may be limited by (i) bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the rights and remedies of creditors and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at Law).

14. **COMPLIANCE WITH LAWS.** Service Provider shall provide the Services in accordance with the requirements of applicable federal, state and local statutes, regulations, ordinances, rules and orders. Service Provider, at its sole cost and expense, shall procure, maintain and comply with, at all times during the Term, all licenses, permits

consents and authorizations required by any federal, state, local or municipal governmental authority with respect to the Services.

15. **INDEMNITY.** Service Provider shall indemnify, defend and hold harmless Customer, its affiliates, and their respective officers, directors, employees and agents (the "Indemnified Party") from and against any Loss (as defined below herein) sustained by the Indemnified Party as a direct result of any threatened, pending or completed claims, actions, lawsuits or arbitration proceedings, asserted by third parties against the Indemnified Parties ("Claims"), but only to the extent arising out of the negligent acts or omissions of Service Provider, its employees, subcontractors and agents in performing Services under this Agreement. Notwithstanding the foregoing, Service Provider's indemnity obligations shall be comparatively reduced to the extent that the Claim is caused in part by the acts or omissions of the Indemnified Party, or any other person or entity.

a. The term "Loss" shall mean monetary awards, fines, and/or penalties assessed against the Indemnified Party by any court, arbitration panel, governmental or quasi-governmental body adjudicating the Claim, monetary amounts paid in settlement of the Claim, reasonable expenses of investigation of the Claim and reasonable attorneys' fees, court costs and expenses directly related to investigation and the defense of the Claim. Except as expressly set forth herein, the term "Loss" shall not include loss of profits, loss of goodwill, or any other indirect, incidental or consequential loss or damages which may be sustained by the Indemnified Party.

b. If any Claim is brought or asserted against an Indemnified Party, Service Provider shall retain counsel to represent such Indemnified Party and Service Provider shall control the proceeding but shall regularly consult with the Indemnified Party and its counsel regarding such defense. The Indemnified Party shall have the right to participate in such defense through counsel of its own choosing at such Indemnified Party's sole expense if the suit or claim or settlement thereof could result in the imposition of an injunction or other equitable relief on or materially interfere with the business or operations of such Indemnified Party. In no event shall Service Provider consent to entry of judgment or enter into any settlement agreement that does not include a full release of the Indemnified Party. If Service Provider refuses or otherwise fails to defend such Claim as provided herein, the Indemnified Party shall have the right to defend such Claim in any manner it deems appropriate at the sole cost of Service Provider; provided, however, that such Indemnified Party will not settle such a Claim without the prior written consent of Service Provider, which consent shall not be unreasonably withheld or delayed. Such Indemnified Party may invoice Service Provider for reimbursement during the course of the investigation or defense as and when bills are received or expenses are incurred.

16. **MANDATORY ARBITRATION.** Any claim, dispute or controversy, regarding any contract, tort, statute, or otherwise, except as set forth in Section 3 herein for the collection by Service Provider of past due sums owed by Customer ("Claim"), arising out of or relating to this Agreement and any Work Statements issued pursuant thereto or the relationships among the parties hereto must 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](http://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.

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, THEY 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 and any Work Statements issued pursuant to this Agreement shall be governed by, and construed in accordance with, the laws of the state of service without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than such state.

19. **CONFIDENTIALITY.** "Confidential Information" means any information disclosed by one party ("Discloser") to the other party ("Recipient"), either directly or indirectly, in writing, orally or by inspection of tangible objects, other than information that the Recipient can establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure; (ii) becomes publicly known and made generally available after disclosure other than through Recipient's action or inaction; or (iii) is in Recipient's possession, without confidentiality restrictions, at the time of disclosure by Discloser as shown by Recipient's files and records immediately prior to the time of disclosure. Recipient shall not at any time (a) disclose, sell, license, transfer or otherwise make available to any person or entity any Confidential Information, or (b) use, reproduce or otherwise copy any Confidential Information, except as necessary in connection with the purpose for which such Confidential Information is disclosed to Recipient or as required by applicable law. Recipient agrees to take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. All Confidential Information shall at all times remain the property of Discloser and all documents, electronic media and other tangible items containing or relating to any Confidential Information shall be delivered to Discloser immediately upon the request of Discloser.

Notwithstanding the foregoing, if Recipient is required by law, regulation, subpoena, government order, regulatory agency order, judicial order or other court order to disclose any Confidential Information, Recipient shall give the Disclosing Party timely and lawful written notice of such a requirement prior to such disclosure, and shall reasonably and lawfully cooperate with the Disclosing Party to seek a protective order, confidential treatment or other appropriate measures for such Confidential Information.

20. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, SERVICE PROVIDER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INJURY TO OR LOSS OF GOODWILL, REPUTATION, BUSINESS PRODUCTION, REVENUES, PROFITS, ANTICIPATED PROFITS, CONTRACTS OR OPPORTUNITIES (IRRESPECTIVE OF HOW THESE ARE CLASSIFIED AS DAMAGES), OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE OR BREACH OF THIS AGREEMENT OR ANY WORK STATEMENTS ISSUED PURSUANT THERETO), REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE OBLIGATIONS OF SERVICE PROVIDER 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 GUARANTEE, AND SERVICE PROVIDER DOES NOT REPRESENT, THAT PESTS WILL NOT RETURN SUBSEQUENT TO SERVICE TREATMENTS. SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY INJURY, DISEASE OR ILLNESS RESULTING FROM BITES, INFESTATION OR CONTAMINATION CAUSED BY ANY PESTS. THIS

AGREEMENT DOES NOT COVER AND SERVICE PROVIDER 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.

In no event shall this be considered a release of any claims against Terminix or its subsidiaries, affiliates, agents, employees, contractors, successors, assigns, officers or directors from any and all losses and liabilities for personal injury or death, whether known, unknown or unforeseen related to any product used by Terminix in performing the Services.

21. **NOTICES.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given in accordance with this Section:

<b>If to Service Provider:</b> TMX Holdco, Inc. Attn: Legal Department 150 Peabody Place Memphis, TN 38103 Email: <a href="mailto:contracts@terminix.com">contracts@terminix.com</a>	<b>With a copy also sent to:</b> Terminix International, Inc. Attn: Email:
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<b>If to Customer:</b>  ATTN:  EMAIL:	<b>With a copy also sent to:</b>  ATTN:  EMAIL:
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Notices sent in accordance with this Section shall be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third (3rd) business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

22. **FORCE MAJEURE.** Neither party will be liable to the other party for any delay or failure in performance under this Agreement (except for the payment of money for Services) arising out of a cause beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to fires, floods, earthquakes, strikes, unavailability of necessary utilities, blackouts, acts of God, acts of declared or undeclared war, acts of regulatory agencies, or national disasters.

23. **SURVIVAL.** Any right, obligation or required performance of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

24. **COUNTERPARTS.** This Agreement and any Work Statements issued pursuant thereto may be executed in one or more identical counterparts, each of which will be deemed to be an original and, which taken together, shall be deemed to constitute the Agreement. Each party agrees that the delivery of the Agreement and any Work Statements issued pursuant thereto by electronic means shall have the same force and effect as delivery of the original signatures.

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

26. **ENTIRE AGREEMENT.** This Agreement, any Work Statement issued pursuant thereto 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, statements or agreements will be binding upon the parties. This Agreement and/or any Work Statements issued pursuant thereto may not be modified or amended in any way without the written consent of both parties. In the event that Customer requires Service Provider to utilize a third party billing or compliance portal which necessitates the use of click-through acceptance agreements, the terms of those agreements will

not be binding on the Service Provider and the terms of this Agreement will prevail.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed below by their respective duly authorized representatives with the intention of being legally bound hereby.

**SERVICE PROVIDER:**

**THE TERMINIX INTERNATIONAL COMPANY LIMITED PARTNERSHIP,  
BY ITS GENERAL PARTNER, TMX HOLDCO, INC.**

By: \_\_\_\_\_  
(Signature)  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CUSTOMER:**

[Click here to enter text.](#)

By: \_\_\_\_\_  
(Signature)  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**STATE SPECIFIC DISCLOSURES.**

**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.

**NOTICE FOR CALIFORNIA CONSUMERS:** In order to establish an account and provide you with service, we may collect personal information about you, such as your name or alias(es), physical address, phone number, and/or email address. During the course of business, we will maintain service records related to your established account. If financing a service via our internal financing options, we will also collect your social security number and date of birth in order to process a credit check for loan purposes. We do not sell your personal information. For additional information about your rights related to data privacy, please review our privacy policies, located respectively at [www.terminix.com/privacy](http://www.terminix.com/privacy)

EXHIBIT A TO COMMERCIAL PEST MANAGEMENT AGREEMENT

EXAMPLE FORM OF WORK STATEMENT

**(This page not for execution—This is an example of what the Work Statements should look like for all services)**

WORK STATEMENT NO. \_\_\_\_\_

THIS WORK STATEMENT [#] ("WS[#]") IS ISSUED PURSUANT TO AND IS GOVERNED BY THE COMMERCIAL PEST MANAGEMENT AGREEMENT ENTERED INTO BETWEEN THE TERMINIX INTERNATIONAL COMPANY LIMITED PARTNERSHIP ("SERVICE PROVIDER") AND \_\_\_\_\_ ("CUSTOMER") EFFECTIVE AS OF \_\_\_\_\_ (THE "AGREEMENT").

- 1) Description of Services. Service Provider shall perform the Services as described in Exhibit A-Scope of Services to this WS[#].
- 2) Locations. The locations that will be receiving service under this Agreement are noted in Exhibit B- Location List to this WS[#].
- 3) Term. The term of this WS[#] shall commence on \_\_\_\_\_ and shall continue thereafter for a period of \_\_\_\_\_ (the "Initial Term"). Thereafter, this WS[#] shall automatically renew for additional \_\_\_\_\_ periods (each a "Renewal Term"), unless either party provides written notice of its intent not to renew at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term or otherwise terminates this WS[#] in accordance with the terms of the Agreement. The Initial Term and any Renewal Term(s) are collectively referred to as the "Term".
- 4) Charges. Service Provider agrees to perform the Services for the charges set forth on Exhibit C – Charges to this WS[#]. Charges are subject to increase or adjustment annually as per Section 1 of the Agreement.
- 5) Work Statement Point of Contact. Service Provider's Work Statement point of contact is: \_\_\_\_\_. Customer's Work Statement point of contact is: \_\_\_\_\_.
- 6) Miscellaneous. Capitalized terms used herein shall have the meaning ascribed to such terms in the Agreement unless otherwise defined in this WS[#]. To the extent there exists a conflict between any terms and conditions of this WS[#] and the Agreement, the terms and conditions of the Agreement shall govern and control.
- 7) The following Exhibits are hereby incorporated by reference in this Work Statement.

Exhibit A:	Scope of Services
Exhibit B:	Location List
Exhibit C:	Charges

IN WITNESS WHEREOF, the Parties have caused this WS[#] to be executed by their duly authorized representatives as of the date first written above with the intention of being legally bound hereby.

**SERVICE PROVIDER:**

**THE TERMINIX INTERNATIONAL COMPANY LIMITED PARTNERSHIP,  
BY ITS GENERAL PARTNER, TMX HOLDCO, INC.**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DO NOT EXECUTE -  
EXAMPLE ONLY

**CUSTOMER:**

[Click here to enter text.](#)

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DO NOT EXECUTE -  
EXAMPLE ONLY



## **ATTACHMENT 2**

Service Plan for Termite Treatment at the Goleta Community Center Campus



## TENT DEFEND SERVICE PLAN FOR DRYWOOD TERMITES

**THIS AGREEMENT PROVIDES FOR FUMIGATION TREATMENT OF A STRUCTURE TO CONTROL FOR INFESTATIONS OF DRYWOOD TERMITES (*KALOTERMES SPP.*, *INCISITERMES SPP.*, *CRYPTOTERMES SPP.*) BUT DOES NOT PROVIDE FOR THE REPAIR OF DAMAGE CAUSED BY SUCH DRYWOOD TERMITES.**

Customer (print name) City of Goleta Main Phone (805) 562-5557 ALT Phone \_\_\_\_\_  
Mailing Address 130 Cremona Drive, Suite B City Goleta State CA Zip Code 93117  
Property Address 5679 Hollister Ave City Goleta State CA Zip Code 93117  
Description of Structure(s) Covered Community Center and Connecting Structures Email \_\_\_\_\_

PAYMENT OPTIONS	SUMMARY OF CHARGES AND PAYMENTS
<input type="checkbox"/> Initial cash, check or credit card down payment of \$ _____ will be due upon acceptance of this Agreement by Terminix, and <input type="checkbox"/> 12 or <input type="checkbox"/> 18 monthly installments of \$ _____ will be paid as indicated on a Retail Installment Contract. I understand that these installments are subject to a Finance Charge and that if I select this option, I will be required to sign a Retail Installment Contract. I further understand that this option is only available subject to credit approval and that the Finance Charge and other terms and conditions not set forth herein will be contained in the Retail Installment Contract.  <input type="checkbox"/> Initial 20% down payment of \$ _____ by cash, check or credit card will be due upon acceptance of this Agreement by Terminix, with the remaining balance to be paid upon completion of the initial treatment or installation.  <input type="checkbox"/> One-time cash, check or credit card payment will be paid upon acceptance of this Agreement by Terminix.  <input type="checkbox"/> One-time credit card payment will be paid upon completion of the initial treatment or installation. By signing the Card Holder Signature line in the box below, I, the Card Holder, am authorizing Terminix to process this one-time credit card payment upon the completion of the initial treatment or installation without further signature or authorization from me.	<b>1. SERVICE(S) PURCHASED</b>  A. INITIAL CHARGES (Initial Fumigation and Initial Term Fee).....\$ <u>53,400.00</u>  B. Annual Renewals _____ year(s) @ \$ <u>5,340.00</u> per year (Limit 2 Years) \$ <u>0.00</u>  Subtotal (Sum A + B).....\$ <u>53,400.00</u>  <b>2. TAX.....\$ <u>0.00</u></b>  <b>3. GRAND TOTAL (1 + 2).....\$ <u>53,400.00</u></b>  <b>4. LESS \$ _____ DOWN PAYMENT..... (\$ <u>0.00</u>)</b>  <b>5. LESS AMOUNT TO BE PAID PER RETAIL INSTALLMENT AGREEMENT..... (\$ <u>0.00</u>)</b>  <b>6. BALANCE TO BE PAID TO TERMINIX AT COMPLETION (Sum 3 - 4 - 5)..... \$ <u>53,400.00</u></b>  BALANCE TO BE PAID BY (Check One): <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Check <input type="checkbox"/> Money Order <input type="checkbox"/> Credit Card  ANNUAL RENEWAL TERM FEE.....\$ <u>0.00</u>  OWNERSHIP TRANSFER FEE.....\$ <u>0.00</u>

Credit Card Type: ☐ MasterCard ☐ Visa ☐ Discover ☐ AMEX

Credit Card # Not Applicable

Name (as it appears on credit card) \_\_\_\_\_

Card Holder Signature \_\_\_\_\_ Card Exp. Date \_\_\_\_\_

**Customer acknowledges, accepts and agrees that:**

- Terminix has provided the Customer with a copy of the manufacturer's specimen label or other state-required disclosures for the fumigant(s), which will be used to treat the above-named property.
- Terminix has provided the Customer with an *Inspection Graph* as described in Section 5 of the Terms and Conditions on page 2 of this Agreement, which is a part of this Agreement and is incorporated by reference herein.
- Terminix has provided to Customer for review and execution the *Wood Destroying Pests and Organisms Inspection Report* as required by Cal. Bus. & Prof. Code §8516, which is a part of this Agreement and is incorporated by reference herein.
- Terminix has provided the Customer with *Notice to Owner/Tenant* as required by Cal. Bus. & Prof. Code §8538.
- Terminix has provided the Customer with *Occupants Fumigation Notice and Pesticide Disclosure Statement* as required by Cal. Code of Regulations, Title 16, Article 4, §1970.4.
- Terminix has provided the Customer with the following Notices: (a) *Preparation by Owner or Occupant Prior To Fumigation Notice* and (b) *Fumigation Services Notice*.

**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 20 and 21 of the Terms and Conditions on page 2 of this Agreement:**

Customer's Company Name The City of Goleta  
Customer's Authorized Representative (signature) \_\_\_\_\_  
Customer's Authorized Representative (print name) \_\_\_\_\_  
Customer's Authorized Representative (title) \_\_\_\_\_ Date \_\_\_\_\_  
Terminix Representative (signature) \_\_\_\_\_ Date \_\_\_\_\_  
Terminix Representative (print name) Robert Hockenberry Terminix Branch Phone 562.236.6939  
Terminix Branch Address \_\_\_\_\_  
Terminix License No. \_\_\_\_\_

In the event you have any questions or complaints, you may contact a Terminix representative by calling 1-800-TELLTMX (2600-835-5869).

# TERMS AND CONDITIONS

1. **INITIAL INSPECTION.** Terminix shall conduct a full inspection of the Structures for wood destroying pests and organisms and provide a written report to Customer within ten (10) business days of the date of the inspection and prior to commencing the provision of any services under this Agreement in accordance with Cal. Bus. & Prof. Code §8516.
2. **INITIAL TERM; RENEWAL.** The term of this Agreement shall commence on the date of initial treatment of the Structures with the Tent Defend System and shall continue thereafter for one year (the "Initial Term"), unless terminated earlier as set forth herein. Customer may extend the Initial Term for additional one year periods (each a "Renewal Term") for so long as Customer owns the property described on the Inspection Graph by paying the Annual Renewal Term Fee set forth above prior to the expiration of the Initial Term or any Renewal Term. Terminix reserves the right to revise the Annual Renewal Fee following the expiration of the second Renewal Term.
3. **NOTICE OF WORK COMPLETED AND NOT COMPLETED.** Within ten (10) business days of the date of the completion of the initial fumigation service, Terminix will file with the California Structural Pest Control Board and furnish to customer a copy of the written Notice of Work Completed and Not Completed in accordance with Cal. Bus. & Prof. Code §8518 and Title 16, Article 4, §1996.2 of the California Code of Regulations respectively.
4. **FEES.** Customer shall pay the fees for the initial treatment of the Structures with the Tent Defend System and Services for the Initial Term and any Renewal Term based upon the Payment Option selected by Customer.
5. **INSPECTION GRAPH.** This Inspection Graph prepared by Terminix and provided to Customer is a record of a visual, non-destructive inspection by Terminix of certain readily accessible areas of the identified property for visible termite infestation/damage. Terminix is not responsible for repairs to damages identified on the Inspection Graph. In addition, hidden damage may exist in concealed, obstructed or inaccessible areas. No attempt to remove siding, plastic or sheetrock insulation, carpeting, paneling, etc. to search for hidden damage was made. Terminix cannot guarantee that the damage disclosed by visual inspection of the premises depicted in the Inspection Graph represents the entirety of the damage which may exist as of the date of the initial control application. Terminix shall not be responsible for repair of any damages to the Structures including without limitation, any damage which existed in areas or in structural members which were not accessible for visual inspection as of the date of the Inspection Graph. If X (circled or not) appears on the Inspection Graph, it is advisable that a qualified building expert inspect the property to determine what effect, if any, the infestation/damage has upon the structural integrity of the property.
6. **LIMITED PLAN SERVICES; NO COVERAGE FOR DAMAGES.** The sole obligation of Terminix during the Initial Term or any Renewal Term, as applicable, of this Agreement (hereinafter the "Services") is as follows: (a) Treat the Structures as described on the Inspection Graph attached to this Agreement with the Terminix Tent Defend System (the "Tent Defend System"); (b) Provide additional fumigation treatments at no additional charge to Customer, as deemed necessary by Terminix, to provide ongoing prevention, control and/or elimination of Drywood Termite colonies; and (c) Conduct a full inspection of the Structures annually or at any time upon the request of Customer for termite activity. THIS AGREEMENT DOES NOT COVER AND TERMINIX SHALL HAVE NO OBLIGATION WHATSOEVER, WHETHER EXPRESS OR IMPLIED, TO REPAIR ANY DAMAGE CAUSED BY DRYWOOD TERMITES REGARDLESS OF WHETHER SUCH DAMAGE OCCURS PRIOR TO OR SUBSEQUENT TO THE DATE OF INITIAL TREATMENT WITH THE TENT DEFEND SYSTEM. All corrections of infestations or infections covered by this control services agreement shall be completed within 6 months of discovery, unless otherwise agreed to in writing by the parties.
7. **PROTECTION AGAINST DRYWOOD TERMITES.** CUSTOMER ACKNOWLEDGES THAT THE FOLLOWING WOOD-DESTROYING ORGANISMS COULD INFEST OR INFEST CUSTOMER'S STRUCTURES: (A) SUBTERRANEAN (IN-GROUND) TERMITES (*RETICULITERMES SPP.*, *HETEROTERMES SPP.*) AND FORMOSAN TERMITES (*COPTOTERMES SPP.*); (B) DRYWOOD TERMITES (*KALOTERMES SPP.*, *INCISITERMES SPP.*, *CRYPTOTERMES SPP.*); (C) DAMPWOOD TERMITES (*ZOOTERMOPSIS SPP.*, *NEOTERMES SPP.*); (D) CARPENTER ANTS AND CARPENTER BEES; (E) WOOD-BORING AND/OR POWDER-POST BEETLES; AND (F) WOOD-DECAY FUNGI. THE TERMINIX TENT DEFEND SYSTEM ONLY CONTROLS FOR AND PROTECTS THE STRUCTURES FROM DRYWOOD TERMITES (*KALOTERMES SPP.*, *INCISITERMES SPP.*, *CRYPTOTERMES SPP.*) (COLLECTIVELY "DRYWOOD TERMITES") INFESTATIONS. THE TENT DEFEND SYSTEM DOES NOT CONTROL OR PROTECT THE STRUCTURES FROM SUBTERRANEAN (IN-GROUND) TERMITES (*RETICULITERMES SPP.*, *HETEROTERMES SPP.*) AND FORMOSAN TERMITES (*COPTOTERMES SPP.*) INFESTATIONS OR OTHER WOOD DESTROYING ORGANISMS, INCLUDING BUT NOT LIMITED TO, AS DAMPWOOD TERMITES, CARPENTER ANTS, POWDER-POST BEETLES OR WOOD DECAY FUNGI.
8. **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.
9. **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.
10. **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 DRYWOOD TERMITES. THIS AGREEMENT DOES NOT GUARANTEE, AND TERMINIX DOES NOT REPRESENT, THAT TERMITES WILL NOT RETURN FOLLOWING ANY TREATMENTS.
11. **WATER LEAKAGE.** Water leakage in treated areas, in interior areas or through the roof or exterior walls of the Structures, 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.
12. **ADDITIONS OR ALTERATIONS TO STRUCTURES.** This Agreement covers the Structures described on the Inspection Graph as of the date of initial treatment with the Tent Defend System. If the Structures are structurally modified, altered or otherwise changed (collectively "Alterations"), Customer must provide Terminix with written notice of such Alterations within ten (10) days of the occurrence of such Alteration. Customer's failure to provide such notice will terminate this Agreement automatically without further notice. The failure of Terminix to discover such Alterations does not release Customer from the obligations to provide written notice to Terminix of the same. Customer shall pay Terminix's then current charges for a service call to evaluate the Alterations and provide additional Tent Defend System treatment as a result of the Alterations. Terminix reserves the right to increase the Annual Renewal Term Fee as a result of the Alterations.
13. **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 Annual Renewal Term Fee 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 Annual Renewal Term Fee, this Agreement will terminate automatically as of the date of the change of ownership.
14. **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.
15. **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 termite infestation.
16. **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 Annual Renewal Term Fee or terminate this Agreement.
17. **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.
18. **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.
19. **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.
20. **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](http://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.
21. **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.
22. **GOVERNING LAW.** Except for the Mandatory Arbitration Clause in Section 18 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.
23. **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.

Providing Exterminating Solutions Today, Inc. (P.E.S.T.)  
CALIFORNIA CUSTOMER AGREEMENT FOR  
STRUCTURAL FUMIGATION  
-COMMERCIAL-

THIS AGREEMENT IS FOR P.E.S.T. OR A CONTRACTOR DESIGNATED BY P.E.S.T. TO PROVIDE FUMIGATION TREATMENT OF A STRUCTURE CURRENTLY UNDER CONTRACT WITH THE TERMINIX INTERNATIONAL COMPANY, L.P. (TERMINIX) TO CONTROL DRYWOOD TERMITES (KALOTERMES SPP. INCISITERMES SPP., CRYPTOTERMES SPP.) OR OTHER TARGET PESTS AS PER THE APPLICABLE PRODUCT LABEL. THE SERVICES BEING PERFORMED ARE BEING PROVIDED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT AND WITH YOUR TERMINIX CONTRACT.

Customer (print name) The City of Goleta Main Phone (805)562-5557 Alt Phone \_\_\_\_\_  
Mailing Address 130 Cremona Drive, Suite B City Goleta State CA Zip Code 93117  
Property Address 5679 Hollister Ave City Goleta State CA Zip Code 93117  
Description of Structure(s) Covered Community Center and Adjoined Structures Email \_\_\_\_\_

THE FUMIGATION SERVICES IDENTIFIED HEREIN MAY BE PERFORMED BY P.E.S.T., OR MAY BE PERFORMED BY ANOTHER CONTRACTOR SELECTED BY P.E.S.T.

P.E.S.T. IS NOT RESPONSIBLE FOR WOOD DESTROYING ORGANISM DAMAGE OR DAMAGE RESULTING FROM FUMIGATION TREATMENT. CUSTOMER UNDERSTANDS THAT FUMIGATION OF THE STRUCTURE DOES NOT GUARANTEE THAT ALL TARGET PESTS WILL BE EXTERMINATED OR THAT ALL TARGET PESTS WILL NOT RETURN. CUSTOMER ACKNOWLEDGES THAT WOOD DESTROYING ORGANISM INFESTATION AND DAMAGE MAY BE PRESENT OR MAY OCCUR IN THE FUTURE AND IN EXCHANGE FOR THE SERVICES PROVIDED BY P.E.S.T. WAIVES ANY CLAIM OR LIABILITY AS TO P.E.S.T. FOR THE SAME. CUSTOMER ACKNOWLEDGES THAT THE PROCESS OF FUMIGATION MAY RESULT IN DAMAGE TO THE STRUCTURE AND/OR ITS CONTENTS, INCLUDING LANDSCAPING NEAR THE STRUCTURE AND HEREBY ASSUMES ALL RISK THEREOF AND WAIVES ANY CLAIM FOR THE SAME AS TO P.E.S.T. CUSTOMER ACKNOWLEDGES THAT IT IS POSSIBLE THAT ILLEGAL ENTRY BY THIRD PARTIES MAY OCCUR DURING THE PROCESS OF FUMIGATION AND THAT CUSTOMER ASSUMES THE RISK THEREOF AND ASSUMES RESPONSIBILITY FOR THE REMOVAL OR SAFEGUARDING OF THE STRUCTURE AND VALUABLES THEREIN. CUSTOMER ACKNOWLEDGES THAT P.E.S.T. DOES NOT PROVIDE SECURITY AGAINST ILLEGAL ENTRY BY THIRD PARTIES AND WAIVES ANY CLAIM AGAINST P.E.S.T. FOR DAMAGES AS A RESULT THEREOF.

CONSIDERATION FOR SERVICES PERFORMED BY P.E.S.T. AS DEFINED BY THIS AGREEMENT HAS BEEN SATISFIED BY TERMINIX AND CUSTOMER’S ACCEPTANCE OF SERVICES FROM P.E.S.T. THERE IS NO SEPARATE AMOUNT OWED BY CUSTOMER TO P.E.S.T. FOR THE SERVICES DEFINED BY THIS AGREEMENT. P.E.S.T. IS NOT RESPONSIBLE FOR COLLECTION OF ANY AMOUNT OWED TO TERMINIX BY CUSTOMER.

CUSTOMER WILL COOPERATE WITH P.E.S.T. WITH RESPECT TO THE EXECUTION OF ANY ADDITIONAL NOTICES AND ALL PREPARATION AND SAFETY DIRECTIVES REASONABLY NECESSARY FOR P.E.S.T. TO SAFELY PERFORM THE SERVICES OUTLINED IN THIS AGREEMENT IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS.

A TREATMENT TAG WILL BE PLACED IN THE ATTIC, SUB-AREA, OR A CONSPICUOUS PLACE IF THE PROPERTY DOES NOT HAVE EITHER UPON JOB COMPLETION.

CUSTOMER ACCEPTS AND AGREES TO THE TERMS, CONDITIONS, RESTRICTIONS, LIMITATIONS AND EXCLUSIONS ON PAGES 1–2 OF THIS AGREEMENT, INCLUDING THE MANDATORY ARBITRATION AND CLASS ACTION WAIVER PROVISIONS OF THE TERMS AND CONDITIONS ON PAGE 2 OF THIS AGREEMENT. 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 Rules, as applicable,

Customer or Representative (signature) \_\_\_\_\_ Date \_\_\_\_\_  
Customer or Representative (Name and/or title) \_\_\_\_\_  
Company Representative (Name and Title) Robert Hockenberry National Account Executive  
Company Branch/Operation Address \_\_\_\_\_  
Company License No. \_\_\_\_\_



## **TERMS AND CONDITIONS**

**1. LIMITED SERVICES; NO COVERAGE FOR DAMAGES.**

The sole obligation of PEST under this agreement is to provide the following Services: Treat the Structures as described on the Inspection Graph that has been prepared by Terminix and attached to your Terminix contract, and to re-fumigate the Structures for one year thereafter, if deemed necessary by TERMINIX. THIS AGREEMENT DOES NOT COVER AND PEST SHALL HAVE NO OBLIGATION WHATSOEVER, WHETHER EXPRESS OR IMPLIED, FOR ANY OTHER OBLIGATION, PROVIDED THAT PEST IS EXERCISING ORDINARY CARE IN DELIVERING TERMITE FUMIGATION SERVICES.

**2. ACCESS TO PROPERTY.** Customer must allow PEST access to the Structures for any purpose contemplated by this Agreement including, but not limited to, re-inspections, whether the inspections were requested by the customer or considered necessary by PEST. Failure to allow PEST such access will terminate this Agreement without further notice.

**3. LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE PROHIBITED BY LAW, PEST 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 PEST 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 DRYWOOD TERMITES. THIS AGREEMENT DOES NOT GUARANTEE, AND PEST DOES NOT REPRESENT, THAT TERMITES WILL NOT RETURN FOLLOWING TREATMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, PEST'S MAXIMUM LIABILITY TO THE INDEMNIFIED PARTIES UNDER THIS AGREEMENT SHALL BE LIMITED TO \$250,000, REGARDLESS OF TYPE OF CLAIMED DAMAGES OR LEGAL THEORY OF RECOVERY.

**4. FORCE MAJEURE.** PEST 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 materials or utilities, blackouts, government actions, war, civil disturbance, insurrection or sabotage.

**5. CHANGE IN LAW.** PEST 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, PEST reserves the right to revise or terminate this Agreement.

**6. 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.

**7. 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](http://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 or near the location of the Structure identified in this Agreement.

**8. 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.

**9. GOVERNING LAW.** Except for the Mandatory Arbitration Clause 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.

**10. 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.



## NOTIFICATIONS AND WARNINGS DESCRIPTIONS: POTENTIAL TILE ROOF DAMAGE

*Date of Fumigation:* November 27, 2024 to November 30, 2024

*Property Address:* 5679 Hollister Ave., Goleta, CA 93117

*Providing Exterminating Solutions Today Inc. expects to cause damage to your tile roof while performing fumigation services. We will use our utmost care when working on your tile roof but due to the sensitive and fragile nature of your roof we expect extensive damage to occur.*

*The amount of tile damage that occurs is dependent on the type, age, and condition of the roof. While we may be able to provide a rough estimate of the amount of damage that may occur, this estimate is based solely on past experience and the amount of damage that has occurred to comparable roofs; there is no method available to precisely estimate the number of tile that will break on each individual roof. Under no circumstance should any estimate given be misconstrued as a guarantee to the amount of damage that may occur. In addition, as specified in the terms, conditions, and liabilities, there is potential for damage to attached gutters, wiring, patio and awning covers, solar heating panels and related lighting, plumbing, antennas, and chimneys.*

*I have read, understand and acknowledge the tile breakage warning given above and accept the risk and responsibility that there will be tile broken during the fumigation process. I release Providing Exterminating Solutions Today Inc. and Terminix from any liability for tile or other types of roof damage that it may cause during the fumigation services, as well as other consequential property damage which may develop as a result of the fumigation services while exercising its utmost care to avoid damage to City property. This release does not extend to negligent, reckless, or willful conduct of P.E.S.T., its employees, sub-contractors, or other agents.*

*Date:*

*Printed Name of Owner, Co-Owner:*

*Signature of Owner, Co-Owner or Authorized Agent or **Authorized Agent***

THE TERMINIX INTERNATIONAL COMPANY

OCCUPANTS FUMIGATION NOTICE AND PESTICIDE DISCLOSURE

Unit \_\_\_\_\_

JOB ADDRESS 5679 Hollister AvenueCITY Goleta

☐ Single Family Dwelling☐ Multi Family Dwelling☒ Other Commercial Structures

Owner/Agent The City of Goleta

Tel No. (805) 562-5557Emergency No. ( )

Occupant Goleta Community Center, Rainbow School, CommUnify, Resilience Personal Training

Tel No. ( )Emergency No. ( )

Prime Contractor TerminixEmergency No. ( 800) Terminix

Fumigation Contractor P.E.S.T. Emergency No. ( )

Target Pest(s):☒ Drywood Termites☐ Beetles☐ Other(s)

Fumigants proposed to be used:☐ Methyl Bromide☒ Sulfuryl Fluoride Product name Vikane Gas

☐ Other(s)

Are you aware of any conduits, pipes, common drains, air ducts, central vacuum systems or any construction elements that would allow passage of fumigants from the structure to be fumigated to any other adjacent or adjoining structure?

Yes ( ) No (X)

CHLOROPICRIN WILL BE USED AS WARNING AGENT WITH EITHER FUMIGANT

Dates of fumigation: November 27 - November 30, 2024Date changes/Alternative date:

Initials

IMPORTANT - READ CAREFULLY

THIS BUILDING WILL BE FUMIGATED WITH LETHAL GASES ON THE DATE(S) INDICATED ABOVE. ALL PERSONS AND ANIMALS MUST VACATE THE PREMISES ON OR BEFORE ARRIVAL OF THE FUMIGATION CREW.

UNDER NO CIRCUMSTANCES CAN ANYONE ENTER THE BUILDING UNTIL THE FUMIGATION COMPANY’S NOTICE IS POSTED GIVING THE TIME AND DATE FOR SAFE RE-ENTRY.

“State law requires that you be given the following information: CAUTION-PESTICIDES ARE TOXIC CHEMICALS. Structural pest control companies are registered and regulated by the Structural Pest Control Board, and apply pesticides which are registered and approved for use by the California Department of Pesticide Regulation and the United States Environmental Protection Agency. Registration is granted when the State finds that based on existing scientific evidence there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.”

If within 24 hours you experience symptoms or dizziness, headache, nausea, reduced awareness, slowed movement, garbled speech or difficulty in breathing, leave the structure immediately and seek medical attention by contacting your physician or Poison Control Center (see below) and notify your pest control company. The warning agent, Chloropicrin, can cause symptoms of tearing, respiratory distress and vomiting. Entry into the space during fumigation can be fatal.

For further information, contact any of the following: your pest control company (Prime Contractor, see above); for health questions - the County Health Department (see below); for application information - the County Agricultural Commissioner (see below); and for regulatory information - the Structural Pest Control Board, 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815-3831.

COUNTY:

COUNTY HEALTH DEPARTMENT	COUNTY AGRICULTURAL COMMISSIONER	POISON CONTROL CENTER	STRUCTURAL PEST CONTROL BOARD
PHONE #	PHONE #	PHONE #	PHONE #
		800/876/4766	916/561/8700

(This section may be modified to include the information of geographical area served by the licensee.)

I hereby acknowledge receipt of a copy of this document as well as a list that includes the instructions for the necessary preparations for the fumigation, procedures for leaving the structure, and the following documents.

WE SUGGEST THAT YOU NOTIFY NEIGHBORS OF THE DATE OF FUMIGATION AND TO KEEP PETS AWAY DURING THE FUMIGATION. CLOSE OFF ANY OPEN ACCESS TO THE SUBAREA TO PREVENT PETS FROM ENTERING.

☒ Owner/Agent (signature)Date

☐ Occupant(s) (signature)Date

Note: This is a two page document. It is necessary that the owner/occupant/agent sign the bottom of each page where indicated.

ADDRESS TO BE FUMIGATED: 5679 Hollister Ave, Goleta, CA 93117

You may reenter property following the date and time stated on the Notice of Re-entry.

THE FUMIGANT TO BE USED WILL BE VIKANE GAS (SULFURYL FLUORIDE).

Chloropicrin gas will be used as a warning agent.

Fumigation is for the control of: Drywood Termites

**PREPARATION BY OWNER OR OCCUPANT PRIOR TO FUMIGATION**

**1. The following items must be removed from the property before fumigation can begin:**

All persons, domestic animals, pets, including fish and desirable growing plants; remove baby bed mattress, mattresses (except waterbeds) that are plasticized and pillows that are completely enveloped in waterproof covers, or remove covers. Food, feed, drugs, and medicines (including those items in refrigerators and freezers) can remain in the structure if they are in plastic, glass, or metal bottles, cans, or jars with the original manufacturers airtight seal intact. Food, feed, drugs and medicines (including those items in refrigerators and freezers) not in plastic, glass or in metal bottles, cans or jars with the original manufacturers airtight seal intact, need to be removed from the fumigation site, or double bagged in Nylofume bags. We will remove all food items found in the premises which are not in factory sealed glass or metal containers or in the Nylofume bags. All perishables may be thrown away. Non-perishables may be stored outside of the building at occupants cost and liability.

**WE SUGGEST THAT YOU NOTIFY NEIGHBORS OF THE DATE OF FUMIGATION AND TO KEEP PETS AWAY DURING THE FUMIGATION. CLOSE OFF ANY OPEN ACCESS TO THE SUBAREA TO PREVENT PETS FROM ENTERING.**

**2. Dishes and utensils need not be removed or washed after fumigation. Structural fumigants are colorless, odorless and will not affect paints, finishes, or fabrics. They will not leave a residue on surfaces.**

**3. Vines and shrubs connected to the building must be detached, trimmed or removed by the owner leaving at least twelve inches of space to allow the fumigation tarps to go between the shrubs and the building. Gravel, bark, and other decorative ground cover should be raked back twelve inches so as to expose the soil. Due to the nature of the work, we cannot be held responsible for trampled or damaged plants. The day before fumigation, the soil surrounding the structure(s) (including decks, garages, etc.) must be soaked with water to a depth of at least six inches for at least one foot outward from the structure. This will require from four to eight hours of soaking, depending on soil conditions:**

**4. We are required to shut off the natural gas (or Propane) supply going into the house to guard against problems associated with gas leaks and to prevent fumigant from reacting with hot surfaces. THE ELECTRICITY MUST STAY ON. It is the occupant's responsibility to turn the gas back on and re-light the pilot lights unless other arrangements have been made with the fumigator.**

**5. Our crews may fumigate several structures in various locations each day. Therefore, the time that any fumigation is scheduled must be approximate. Opening after proper exposure to the fumigant is usually 20 hours following the introduction of the fumigant but may be as few as 12 hours depending on dosage. YOU WILL NEED TO BE OUT OF THE PROPERTY FOR AT LEAST TWO NIGHTS. APPROPRIATE NOTICE OF RE-ENTRY WILL BE POSTED WHEN IT IS SAFE TO ACCESS THE STRUCTURE.**

**6. It is required that the fumigator have keys to the premises during the course of fumigation. We must have access to all parts of the building, including garages and rooms which are normally kept locked. Any vehicle left within the structure which is to be fumigated, must have the trunk open and all windows down.**

**WE MUST HAVE A COMPLETE SET OF KEYS TO THE PROPERTY.**

**7. All automatic timing devices (sprinklers, lights, alarms, etc.) must be turned off prior to fumigation. Terminix will not be responsible for any damage to lighting fixtures or other items that project from the structure.**

**8. All antennae, weather vanes, chimney stacks, etc. must be removed by the owner or occupant. If we have to remove the antennae there may be an extra charge, we will not re-install it, nor will we be responsible for inadequate function or damage, resulting from the removal or re-installation.**

**9. Care will be taken to avoid damage to the roof, gutters, and chimneys of the building. However, due to the condition of the chimney, the roof and gutters, their age, or the type of roof and gutters as well as the nature of the work, some damage to the chimney or the roof or its gutters may be unavoidable. Therefore, the undersigned hereby releases Terminix and the fumigator or fumigation contractor from liability for damage which might occur.**

**10. Solar Systems must be turned off and drained. We cannot accept any responsibility for damage to solar systems.**

**11. Fumigation operations may not commence during inclement weather or high winds and may have to be re-scheduled.**

**12. To avoid possible misunderstandings, our insurance company requests that all valuables, such as jewelry, large amounts of cash, and objects of art be removed prior to fumigation. As a safety precaution, the fumigator must have access to all parts of the structure including closets and storerooms which are normally kept locked. Windows will be left open during and following the fumigation. Owner/occupant/agent may post a guard at the property at his/her own discretion and cost.**

**WE WILL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE DUE TO VANDALISM, THEFT, OR OTHER ACTS OF THIRD PARTIES.**

**13. If the attic and/or crawl space below the structure are/is accessible through a closet, the closet must be completely emptied.**

**FUMIGATION CANNOT COMMENCE WITHOUT  
THIS SIGNED NOTICE IN POSSESSION OF THE FUMIGATOR.  
FUMIGATOR MUST HAVE A COMPLETE SET OF KEYS TO THE PROPERTY  
BEFORE WORK CAN BEGIN.**

TERMINIX ASSUMES NO LIABILITY FOR OCCUPANTS FAILURE TO FOLLOW THESE PROCEDURES

\_\_\_\_\_ I have read the instruction sheets and understand it is my responsibility to have all the preparations made before the fumigation crew arrives.

\_\_\_\_\_ I have been provided with a copy of the Fact Sheet For Vikane (Sulfuryl Fluoride).

\_\_\_\_\_ I hereby acknowledge receipt of this Occupants Fumigation Notice, pages one and two.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

Terminix Representative: Robert Hockenberry Date: \_\_\_\_\_ Telephone Number: (562) 236-6939

**Note: This is a two page document. It is necessary that the owner/occupant/agent sign the bottom of each page where indicated.**



# TERMINIX® FUMIGATION SERVICES

We are informing you that the utmost care will be taken during the process of fumigation to the property located at:

5679 Hollister Ave	Goleta	93117
Street Address	City	Zip

## PROPERTY ACCESS AUTHORIZATION

At: 5679 Hollister Avenue

*INITIAL* The Terminix International Company Limited Partnership is hereby authorized to enter my property for the purpose of performing a fumigation on the adjacent property located at the above stated address.

It is understood that TERMINIX INTERNATIONAL will exercise all reasonable care to minimize any damage to fence(s) and plants. All animal life will be secured for their safety during the fumigation process and will be in my care and custody for the duration of the fumigation.

Date \_\_\_\_\_

## PLANT AND FENCE WAIVER

<i>INITIAL</i>	TERMINIX INTERNATIONAL will use due care and caution during the fumigation process at your home. It may become necessary to cover the exterior plants during the fumigation in order to maintain the proper seal of the fumigant. If this should occur, TERMINIX will not be liable for any replacement or reimbursement for any undesirable or damaged plants.
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Fence sections may be included during your fumigation, Terminix does not include fences as a covered item in regards to our warranty whether they are attached or detached. No treatment or guarantee of fences is offered.

## PET NOTICE

INITIAL We suggest that you notify nearby neighbors of the date of the fumigation and to keep pets away during the fumigation. Close off any open access to the sub area to prevent pets from entering. It is also understood that this is not the responsibility of TERMINIX INTERNATIONAL.

# TILE/WOOD/METAL SHINGLE ROOF WAIVER

INITIAL I (we) have been expressly informed by TERMINIX that due to the brittle and fragile nature of the tile/wood/metal roofs and the necessity of walking thereon or using equipment to safely perform the job, DAMAGE is likely to occur during performance of this fumigation.

With full knowledge thereof, I (We) hold TERMINIX harmless from the entire risk of broken or damaged roof covering material, whether tile, wood, metal, or any other material that is damaged during the course of the fumigation of this structure.

## SUB-CONTRACTOR WAIVER

INITIAL Subcontractor Company Name: P.E.S.T.  
This Addendum is to inform you that Terminix may subcontract the fumigation on the above property to another registered company.  
NOTICE: The charge for service that this company subcontracts to another company may include the company's charges for arranging and administering such services that are in addition to the direct costs associated with paying the subcontractor. You may accept Terminix's bid or you may contract directly with another registered company licensed to perform the work.  
If you chose to contract directly with another registered company, Terminix will not be responsible for any act of omission in the performance of work that you directly contract with another to perform. Where you contract directly with another company, Terminix will not be able to issue a Standard Notice of Work Completed or Not Completed.

# GAS SHUT OFF NOTICE

INITIAL Some State and/or Local requirements mandate only the gas company can shut off gas to a structure prior to a fumigation being conducted. In the event you are in one of these areas Terminix will arrange with your Local Gas Company for the gas turn-off. **It is your responsibility to contact the gas company to arrange for restoration of gas services after your fumigation is completed.** Please make sure to contact the gas company at least 48 hours in advance of the restoration date you desire. Failure to contact the gas company in advance may result in delayed restoration. The gas Company will require access to the interior to inspect and light all appliances.

Please note that additional notice may be required for fumigations that occur during holiday periods. Please refer to your gas company for details.

Local Gas Company Phone: 800-427-2200 Gas Meter#: 16142108

## AC/HEATER &amp; ATTIC VENT

**INITIAL** If you have automatic and/or electric venting in the attic you must disconnect the power during the fumigation process. Terminix will disable all power vents as deemed necessary. The owner will be responsible for reconnecting or resetting all vents. Please turn all AC/heater thermostats off during the fumigation.

## FUMIGATION OF CONNECTING STRUCTURES

INITIAL I, as the OWNER \_\_\_\_\_ AGENT X OTHER \_\_\_\_\_ (describe), state that I DO NOT have knowledge of the presence of any construction elements, conduits, drains or vacuum systems that could allow passage of the fumigant from the structure to be fumigated to any adjacent or adjoining structure(s), thereby connecting them.

I, as the OWNER \_\_\_\_\_ AGENT ☒ OTHER \_\_\_\_\_ (describe), state that I DO have knowledge of the presence of any construction elements, conduits, drains or vacuum systems that could allow passage of the fumigant from the structure to be fumigated to any adjacent or adjoining structure(s), thereby connecting them.

To the best of my knowledge, the following are conditions which could allow passage of the fumigant.

## ELECTRICAL HAZARDS

**INITIAL** In the event overhead electrical wires connected to your structure pose a risk, we ask the homeowner to arrange for necessary repairs/covering of the hazard prior to any fumigation work beginning. Delays to the fume job may occur if hazardous electrical situations exist. **The electrical company may be called out to cover the hazardous wiring, and it is the homeowner's responsibility to contact the electric company to arrange for this service, both before and after the fumigation process.** Please make sure to contact the electric company at least 48 hours in advance of the scheduled fumigation. Please note that additional notice may be required for fumigations that occur during holiday periods. Please refer to your local electric company for details.

## COMPLIANCE WITH LAWS & REGULATIONS

**INITIAL** It may become necessary to install anchors into your roof, foundation or surrounding grounds in order to protect our workers from dangers associated with working from heights, and to comply with Federal (OSHA CFR 1926.502) & State Regulations. If installation is necessary, TERMINIX will repair any holes caused by anchors.

I have initialed the above paragraph(s) pertaining to the fumigation being performed at the above referenced address. I further understand that TERMINIX assumes no liability for the items mentioned in the paragraphs I have initialed.

Date \_\_\_\_\_

## **Fact Sheet for Vikane<sup>®</sup> Gas Fumigant (Sulfuryl Fluoride)**

In the interest of Dow AgroSciences' commitment to product stewardship, this fact sheet is intended to provide basic information about the product and how it is used. If you have specific questions about your fumigation, refer to documents provided by the fumigator or call the fumigator listed on the warning signs posted on your structure. If you have questions about Vikane<sup>®</sup> gas fumigant (the fumigant used) or the procedures described, call the Dow AgroSciences Customer Information Center at 1-800-352-6776.

### **WHY BUILDINGS ARE FUMIGATED**

Insects that feed or tunnel into wood can seriously damage houses, apartments, and other dwellings or structures. Each year termites or other wood destroying insects damage more than 5 million homes. Other pests, such as bed bugs, may be dispersed throughout rooms and can be difficult to locate and control quickly and completely. Depending on the extent or location of the infestation, fumigation is the only total control method proven to eliminate certain infestations of wood destroying insects, bed bugs, and other structure-infesting pests.

### **HOW BUILDINGS ARE FUMIGATED**

Because Vikane is a gas, prior to fumigation, the structure is completely sealed. This serves to contain Vikane in the building so it can penetrate wood and building contents to thoroughly eliminate the pests. Depending on the construction of the building, the doors and windows may be sealed with tape and a plastic sheet, or the structure may be covered with a tarp. The building will remain sealed for 2-72 hours depending on the specifics of the job. Warning signs are posted around the building notifying people to keep out.

After the fumigation period is completed, a professional fumigator will aerate the structure using fans for a prescribed aeration period. Once the dwelling has been thoroughly aerated, the fumigator is required to measure the level of any fumigant remaining in the living space to ensure it is below the EPA approved concentration for reentry by the occupants. Extremely low levels of fumigant can remain for a short period of time in dead air spaces between walls and inside cabinets as well as porous materials such as furniture. The small amount of fumigant in these areas will continue to dissipate for a few hours after the fumigation but at levels well below the established safe reentry concentration. Your building will not be cleared for reoccupancy until it is safe to enter. The fumigator will post a notice on your building indicating the day and time for reentry. Structures can be occupied only when the concentration is 1 part per million or less (this represents a margin of safety – laboratory animals have been exposed to 100 parts per million for 2 weeks with no adverse effects.) Because Vikane is a true gas and not a vapor, aeration is rapid. Recent studies demonstrated that in most structures levels are less than 1 part per million after the prescribed aeration period and have no detectable levels of Vikane within 24 hours after the start of aeration.

Sulfuryl fluoride is a colorless, odorless gas, so a warning agent is added to the building that causes watery eyes and a scratchy throat. If you experience these symptoms in a structure that has been recently fumigated, you should leave immediately and call the pest control company to have your building retested.

#### SULFURYL FLUORIDE (POTENTIAL HEALTH RISKS FROM OVEREXPOSURE)

Sulfuryl fluoride is a gas and can potentially enter your body only through inhalation. Because it is a gas, it does not stay on dry surfaces; therefore, there is no exposure from touching treated surfaces.

##### *Nervous system and respiratory irritation:*

Overexposure to high levels of sulfuryl fluoride can result in nose and throat irritation and nausea. At high concentrations (such as those used during the fumigation) it can cause excess fluid in the lungs, sleepiness, pneumonia, and convulsions. These symptoms would be expected to appear within 8 hours after such an exposure. In the unlikely event you experience these symptoms in the building that has been recently fumigated, you should leave immediately. Consult your physician and call the pest control company to have your building retested.

##### *Additional studies:*

Sulfuryl fluoride has not been shown to cause birth defects in pregnant animals exposed under experimental conditions. In addition, current studies have demonstrated there are not mutagenic or genotoxic effects caused by exposure to sulfuryl fluoride.

#### **Safety Precautions and Homeowner Preparation**

- Discuss the treatment program in advance with your pest control company so you fully understand what will be done and what you need to do.
- Carefully follow the instructions you are given about what items you are to remove from your building.
- Stay out of the treated building until it is cleared by your pest control company for reentry.
- If you are interested or concerned, you should ask your pest control company to show the records of how your building was aerated before it was cleared for reentry.
- You may wish to increase ventilation by opening doors and windows.

If you have specific questions about your fumigation, refer to documents provided by the fumigator or call the fumigator listed on the warning signs posted on your structure. Call the Dow AgroSciences Customer Information Center at 1-800-352-6776 if you need additional information or have questions concerning this product.