

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2018-136

A RESOLUTION TO EXTEND A MORATORIUM ON THE ENFORCEMENT OF SECTION 4-206(3)(A) OF THE ZONING CODE IN THE MIRACLE MILE AND GIRALDA OVERLAY AREA FOR AN ADDITIONAL 60 DAYS.

WHEREAS, the City Commission approved a moratorium on the enforcement of Section 4-(206)(3)(a) of the City's Zoning Code in the areas covered by the Miracle Mile and Giralda overlay, in Resolution No. 2018-92, dated March 20, 2018; and

WHEREAS, the initial moratorium on enforcement was not to exceed sixty (60) days; and

WHEREAS, City staff wants to continue to move forward with the moratorium for additional time; and

WHEREAS, the City would like to extend the moratorium for an additional sixty (60 days);

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

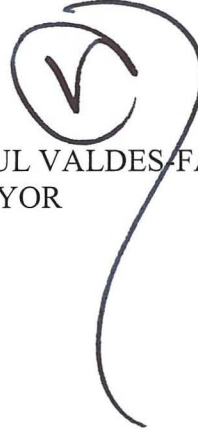
SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the City Commission does hereby authorize the extension of the moratorium on the enforcement of Section 4-206(3)(a) of the Zoning Code in the Miracle Mile and Giralda overlay area, for an additional sixty (60) days, permitting amplified music, not to exceed a decibel level of 75 decibels, while still adhering to hours of operations specified in the City Code.

SECTION 3. That this Resolution shall become effective upon the date of its passage and adoption herein.

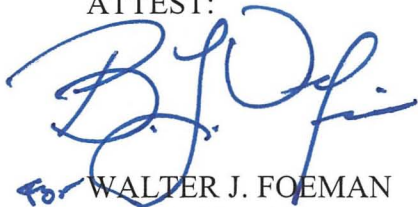
PASSED AND ADOPTED THIS EIGHTH DAY OF MAY, A.D., 2018.
(Moved: Quesada / Seconded: Lago)
(Unanimous: Voice Vote)
(Non-Agenda Item)

APPROVED:

A handwritten signature in black ink, consisting of a large, stylized 'V' with a circular flourish at the top and a long, sweeping tail that curves to the right.

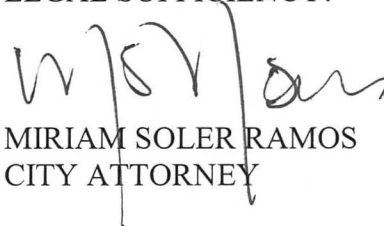
RAUL VALDES FAULI
MAYOR

ATTEST:

A handwritten signature in blue ink, appearing to be 'WJF' with a flourish at the end.

For WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

A handwritten signature in black ink, appearing to be 'M Soler Ramos' with a flourish at the end.

MIRIAM SOLER RAMOS
CITY ATTORNEY

INTEGRATED SUPPLY AGREEMENT

BY AND BETWEEN

GENUINE PARTS COMPANY

AND

CITY OF CORAL GABLES, FLORIDA

**INTEGRATED SUPPLY AGREEMENT
BY AND BETWEEN
GENUINE PARTS COMPANY
AND
CITY OF CORAL GABLES, FLORIDA**

THIS INTEGRATED SUPPLY AGREEMENT (this "Agreement") is made by and between **GENUINE PARTS COMPANY**, a Georgia corporation (d/b/a NAPA Auto Parts) ("NAPA"), and **CITY OF CORAL GABLES, FLORIDA**, ("CUSTOMER"), to be effective as of the ____ day of ____, 2018 (the "Effective Date").

WITNESSETH

WHEREAS, pursuant to a competitive bidding and selection process by the National Joint Powers Alliance (hereinafter, "NJPA"), a Minnesota-based Service Cooperative created by Minnesota Legislative Statute 123A.21, NJPA and NAPA executed contract #061015 on July 21, 2015 (hereinafter, "NJPA Contract"), attached hereto as Exhibit C, to establish a source of supply for certain auto, truck and bus parts as well as to provide Integrated Business Solutions services; and

WHEREAS, by becoming a participating member of NJPA (hereinafter, "Member"), the State of Florida and its related entities (hereinafter, "User Agencies") are authorized to utilize the pricing and incentives available to NJPA Members set forth in the NJPA Contract; and

WHEREAS, CUSTOMER desires to become a User Agency under such NJPA Contract and desires to receive integrated business solutions services from NAPA; and

WHEREAS, CUSTOMER and NAPA agree that the NJPA Contract is a vehicle by which CUSTOMER may contract directly with NAPA for parts and services, but that the terms and conditions of this Agreement and not the terms and conditions of the NJPA Contract shall govern the relationship of the parties; and

WHEREAS, NAPA desires to provide integrated business solutions services and to establish inventories in CUSTOMER's locations to service the fleet parts needs of CUSTOMER and to serve as the primary supplier of automotive replacement parts and other supplies and/or equipment (the "Inventory" or "Products") to serve the needs of CUSTOMER; and

WHEREAS, CUSTOMER desires to provide space for the Inventory on the premises of CUSTOMER for use by NAPA ("On Site Store") and agrees that NAPA will be its primary supplier of the Inventory pursuant to the terms herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

NJPA CONTRACT

AGREEMENT

1. **DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) ***Primary Supplier*** shall mean the parts supplier that provides a minimum of ninety percent (90%) of the Inventory needs of CUSTOMER.
- (b) ***NAPA Owned Store*** shall mean an auto parts store lawfully using the tradename or trademark "NAPA" which is wholly owned by NAPA.
- (c) ***NAPA Jobber*** shall mean an auto parts store lawfully using the tradename or trademark "NAPA" with respect to which NAPA maintains no ownership interest.
- (d) ***Current NAPA Jobber Acquisition Cost*** shall mean NAPA's current gold price as set forth on NAPA's Confidential Jobber Cost and Suggested Resales price list.

2. **CUSTOMER'S CURRENT LOCATIONS.** NAPA will establish On Site Store(s) at the CUSTOMER'S following location(s):

City of Coral Gables, Florida
Automotive Division
2800 SW 72nd Avenue, Miami, Florida 33155
Manager: Steve Riley, Automotive Division Director

Additional locations of the CUSTOMER may be added to this Agreement but only by a written amendment executed and agreed to by both the CUSTOMER and NAPA.

3. **TERM.** This Agreement shall begin the date this Agreement is fully executed and shall end when the NJPA Contract terminates or expires or when terminated earlier in accordance with the applicable terms and conditions stated herein. As the NJPA Contract is renewed or extended, this Agreement may be renewed or extended for a period of time equal to or shorter than the period of time the NJPA Contract is renewed or extended upon the mutual written agreement of the Parties. This Agreement shall terminate automatically upon the termination, for any reason, of the NJPA Contract. Notwithstanding the foregoing, either party may terminate this Agreement at any time for its convenience by giving the other party sixty (60) days prior written notice of such termination.

4. **DUTIES AND RESPONSIBILITIES OF NAPA.** NAPA shall have the following duties and responsibilities during the term of this Agreement:

(a) NAPA will operate the On Site Store(s) and provide the Inventory to CUSTOMER's now existing locations. NAPA shall provide all personnel required to operate the On Site Store(s).

(b) In those circumstances when delivery is required by CUSTOMER, NAPA will provide parts to CUSTOMER's locations on a daily route basis. In addition, NAPA

NJPA Contract

will accelerate delivery on those items CUSTOMER requires to be delivered on an expedited basis. NAPA will make all reasonable efforts to ensure prompt delivery to the CUSTOMER's location(s) requesting part(s).

(c) NAPA shall provide all computers and reports necessary to monitor monthly expenses as they pertain to the daily operation of the On Site Store(s). NAPA shall provide computer ordering and cataloging to each On Site Store.

(d) NAPA shall provide a profit and loss statement of the parts operations to the CUSTOMER on approximately the 25th of each month for each On Site Store.

(e) NAPA shall provide back-up emergency service during non-working hour contingencies. This overtime expense (calculated at time and one half) will be charged on a cost basis to CUSTOMER, and must be pre-approved by CUSTOMER. The parties shall mutually agree upon the pre-approval process for such emergency situations. NAPA will provide a list of personnel, including telephone numbers, who will respond to emergency service requests.

5. DUTIES AND RESPONSIBILITIES OF CUSTOMER. CUSTOMER shall have the following duties and responsibilities during the term of this Agreement:

(a) CUSTOMER shall provide, at its sole expense, usable space for NAPA's On Site Store(s) and the Inventory. CUSTOMER shall provide access to restroom facilities for NAPA employees. Further, CUSTOMER shall furnish, at its sole expense, all utilities for the On Site Store(s) including: water, sanitation, sewer, light, telephone, heat, gas, electricity, power, fuel, janitorial and all other utilities and services rendered or delivered to the On Site Store(s) whatsoever. CUSTOMER shall provide NAPA a safe work environment that is free from hostility, violence, or discrimination. NAPA reserves the right to terminate the contract immediately should NAPA encounter a hostile, violent, discriminatory, or unsafe work environment.

(b) CUSTOMER shall use NAPA as its Primary Supplier of the Inventory under this Agreement. CUSTOMER reserves the right to purchase any item outside this Agreement where it is determined to be more economical or timely so long as the purchase of aforesaid part or parts does not result in NAPA no longer being CUSTOMER's Primary Supplier in which case NAPA may terminate this Agreement.

(c) Each On Site Store location shall be appropriately secured or otherwise maintained separate and apart from the business of CUSTOMER. There shall be no intermingling of CUSTOMER's parts or other inventory with NAPA's parts or inventory. Access to the secured On Site Store(s) shall be restricted to NAPA employees and authorized NAPA representatives only. CUSTOMER'S employees, contractors or agents shall not be permitted to enter the secured On-Site Store area unless accompanied by a NAPA employee or other authorized NAPA representative.

(d) CUSTOMER shall, at all times during the term of this Agreement, at CUSTOMER'S sole expense, maintain in good condition and repair (so as to prevent any damage or injury to NAPA's employees, the Inventory or other personal property located in the On Site Store(s)) the roof, exterior walls, foundation, and structural portions of the On Site Store(s) and all portions of the electrical and plumbing systems lying outside of the On Site Store(s) but serving the On Site Store(s).

(e) CUSTOMER shall provide information regarding fleet changes to NAPA as soon as possible. Fleet changes include but are not limited to the removal of types of vehicles from the fleet and the addition of new vehicles to the fleet.

6. **ALTERNATIVE SUPPLIERS.** Each On Site Store may be serviced by a NAPA Owned Store or a NAPA Jobber. CUSTOMER acknowledges that whether it will be serviced by a NAPA Owned Store or a NAPA Jobber will be determined by NAPA, in its sole discretion, and that if CUSTOMER is to be serviced by a NAPA Jobber, then such NAPA Jobber must evidence its desire to abide by the terms of this Agreement by entering into an Assignment in the form of Exhibit A hereto.

7. **PAYMENT TERMS/PRICING.** NAPA shall invoice the CUSTOMER for all Inventory purchased pursuant to this Agreement on a monthly basis according to the pricing plan below. CUSTOMER agrees to pay the entire amount of all statements received from NAPA by the 25th day of the month following receipt of any such statement. If CUSTOMER has not paid the entire amount of all statements received from NAPA within 10 days of the 25th day of the month following receipt of such invoice, CUSTOMER shall be put on COD until such amount is paid in full. No prompt pay discount is available under this Agreement.

There are two pricing options available to CUSTOMER. The pricing option for *this* Agreement must be indicated by CUSTOMER initials, below.

PRICING OPTION #1 CUSTOMER INITIALS: _____ SEE AMENDMENT

The overall objective of CUSTOMER's pricing plan is for NAPA to provide Products in accordance with the agreed upon Pricing Plan Summary set forth below. By billing CUSTOMER for the Products, NAPA's On Site Store(s) will achieve its target ten percent (10%) net profit for the Agreement (the "Net Profit Target"). CUSTOMER's pricing plan is comprised of the following elements:

- (a) **Product Price.** The pricing of the Products to be supplied to CUSTOMER by NAPA pursuant to this Agreement shall be divided into: 1) "**NAPA Product Price**," which is the pricing of NAPA branded or NAPA cataloged supplier manufactured products; and 2) "**Non-NAPA Product Price**," which is the pricing of products which have not been manufactured by NAPA suppliers or do not exist in NAPA's proprietary catalog system but which have been acquired for CUSTOMER by NAPA pursuant to this Agreement. The pricing of NAPA Product and Non-NAPA Product shall be billed in accordance with the Pricing Plan Summary defined below.
- (b) **Operational Expenses.** Any and all costs and expenses associated with the operation of the On Site Store(s), including, but not limited to, vehicle gas and maintenance costs, salary and benefits payable to NAPA employees at the On Site Store(s), worker's compensation benefits and insurance, unemployment insurance, personal property insurance for the On Site Store(s) and Inventory, any deductible for losses covered under the personal property, automobile liability, or general liability insurance policies of NAPA, all equipment supplied by NAPA, Corporate Allocation

Expenses (as defined below), inventory investment expense, obsolescence expense, pension funding costs, executive fees, accounting fees, general office expenses, and shared service expenses. An example of a profit and loss statement reflecting such costs and expenses is attached hereto as Exhibit B. CUSTOMER acknowledges and agrees that the costs and expenses reflected on the profit and loss statement set forth on Exhibit B are subject to change based on actual monthly costs, expenses or Corporate Allocation Expenses incurred relative to the operation of the On Site Store(s). To achieve economies of scale, NAPA utilizes certain headquarter and corporate personnel to assist in the performance of this Agreement. As a result, each On Site Store location is charged certain corporate allocation expenses for various line items shown on Exhibit B ("Corporate Allocation Expenses") which are calculated as a percentage of total Product sales for each month. As such, there is not a supportive invoice for such expenses other than a monthly allocation rate statement. These Corporate Allocation Expenses allow NAPA to have fewer employees performing routine general administrative tasks such as paper work and filing at the On Site Store(s), allowing NAPA counter personnel to focus more attention on serving the On-Site Store operations, and maximizing on-site cost efficiency.

PRICING PLAN SUMMARY

NAPA Product Price	Billed to CUSTOMER on a "9074 NAPA Pricing Profile"
Non-NAPA Product Price	Billed to CUSTOMER at a 25% gross profit rate (The formula for Non-NAPA Product Price for CUSTOMER is the current product acquisition cost divided by .75) This formula will achieve the gross profit rate set forth above. Example: current product acquisition cost is \$1.00. CUSTOMER's price would be $\$1.00/.75=\1.33
Operational Expenses	Paid entirely by NAPA
Net Profit Target	Amounts will be refunded or charged based on the failure or achievement of an overall 10% net profit for the previous month.

NAPA Product shall be billed to CUSTOMER based on a "9074 NAPA Pricing Profile" which has been provided to CUSTOMER in connection with this Agreement. Non-NAPA Product shall be billed by NAPA to yield a gross profit of twenty-five percent (25%). All Operational Costs shall be borne by NAPA.

Sales at each On Site Store location will be reviewed after the first ninety (90) days of operation and on a month by month basis thereafter to ensure a ten percent

(10%) net profit for NAPA. If monthly sales at each On Site Store, independently as opposed to in the aggregate, are producing more than a ten percent (10%) net profit for NAPA, NAPA will pay to CUSTOMER, via a refund check, the overage. Conversely, if NAPA's net profit for the preceding month is less than ten percent (10%), NAPA will bill CUSTOMER for the deficiency.

CUSTOMER and NAPA mutually agree that CUSTOMER'S maximum payment obligation pursuant to this profit guarantee shall be set at \$_____; and CUSTOMER has encumbered such amount to cover this potential liability. The parties agree to mutually work together to adjust the amount if such amount must be increased during the term of the contract. CUSTOMER INITIALS _____ SEE AMENDMENT

In addition, NAPA may use any sub-contractor for the procurement of "outside" purchases or services (i.e., those parts or services not traditionally stocked or performed by NAPA), and CUSTOMER will be billed an additional charge for any such purchases so as to yield NAPA a twenty-five percent (25%) gross profit on such purchases. CUSTOMER must provide pre-approval in writing for such outside purchases. CUSTOMER is solely responsible for improper or inappropriate instructions by CUSTOMER's employees to NAPA regarding NAPA's purchases of nontraditional parts or services, unless CUSTOMER provided prior written notice to NAPA of parts or services that may not be procured by NAPA in relation to this Agreement.

PRICING OPTION #2 CUSTOMER INITIALS: _____ SEE AMENDMENT

The overall objective of CUSTOMER's pricing plan is for NAPA to provide Products in accordance with the agreed upon Pricing Plan Summary set forth below and reimbursement by CUSTOMER of each On Site Store's operating expenses. By billing CUSTOMER for these two categories, NAPA's On Site Store(s) will achieve its target ten percent (10%) net profit for the Agreement (the "Net Profit Target"). These categories are defined as follows:

- (a) **Product Price.** The pricing of the Products to be supplied to CUSTOMER by NAPA pursuant to this Agreement shall be divided into: 1) "**NAPA Product Price**," which is the pricing of NAPA branded or NAPA cataloged supplier manufactured products; and 2) "**Non-NAPA Product Price**," which is the pricing of products which have not been manufactured by NAPA suppliers or do not exist in NAPA's proprietary catalog system but which have been acquired for CUSTOMER by NAPA pursuant to this Agreement. The pricing of NAPA Product and Non-NAPA Product shall be billed in accordance with the Pricing Plan Summary defined below.
- (b) **Operational Expenses.** Any and all costs and expenses associated with the operation of the On Site Store(s), including, but not limited to, vehicle gas and maintenance costs, salary and benefits payable to NAPA employees at the On Site Store(s), worker's compensation benefits and insurance, unemployment insurance, personal property insurance for the On Site Store(s) and Inventory, any deductible for losses covered under the personal property, automobile liability, or general liability insurance policies of NAPA, all equipment supplied by NAPA, Corporate Allocation

Expenses (as defined below), inventory investment expense, obsolescence expense, pension funding costs, executive fees, accounting fees, general office expenses, and shared service expenses. An example of a profit and loss statement reflecting such costs and expenses is attached hereto as Exhibit B. CUSTOMER acknowledges and agrees that the costs and expenses reflected on the profit and loss statement set forth on Exhibit B are subject to change based on actual monthly costs, expenses or Corporate Allocation Expenses incurred relative to the operation of the On Site Store(s). To achieve economies of scale, NAPA utilizes certain headquarter and corporate personnel to assist in the performance of this Agreement. As a result, each On Site Store location is charged certain corporate allocation expenses for various line items shown on Exhibit B ("Corporate Allocation Expenses") which are calculated as a percentage of total Product sales for each month. As such, there is not a supportive invoice for such expenses other than a monthly allocation rate statement. These Corporate Allocation Expenses allow NAPA to have fewer employees performing routine general administrative tasks such as paper work and filing at the On Site Store(s), allowing NAPA counter personnel to focus more attention on serving the On-Site Store operations, and maximizing on-site cost efficiency.

PRICING PLAN SUMMARY

NAPA Product Price	Billed to CUSTOMER at a 10% gross profit rate (The formula for NAPA Product Price for CUSTOMER is the Current NAPA Jobber Acquisition Cost divided by .90) This formula will achieve the gross profit rate set forth above. Example: Current NAPA Jobber Acquisition Cost is \$1.00. CUSTOMER's price would be $\$1.00/.90=\1.11
Non-NAPA Product Price	Billed to CUSTOMER at a 10% gross profit rate (The formula for Non-NAPA Product Price for CUSTOMER is the current product acquisition cost divided by .90) This formula will achieve the gross profit rate set forth above. Example: current product acquisition cost is \$1.00. CUSTOMER's price would be $\$1.00/.90=\1.11
Operational Expenses	Billed to CUSTOMER in accordance with Section 7(b) above.
Net Profit Target	10% net profit for the NAPA On Site Store(s) after Products and Operational Expenses are billed to CUSTOMER.

Both NAPA Product and Non-NAPA Product shall be set by NAPA to yield a gross profit of ten percent (10%). Operational Expenses will be charged to CUSTOMER in accordance with Section 7(b) above, with all such charges for Operational Expenses to be included in CUSTOMER's monthly billing statement. CUSTOMER will be billed at the end of each month for Operational Expenses on an "in arrears" basis.

CUSTOMER and NAPA mutually agree that CUSTOMER'S maximum payment obligation pursuant to this profit guarantee shall be set at \$_____ ; and CUSTOMER has encumbered such amount to cover this potential liability. The parties agree to mutually work together to adjust the amount if such amount must be increased during the term of the contract.

CUSTOMER INITIALS _____ SEE AMENDMENT

In addition, NAPA may use any sub-contractor for the procurement of "outside" purchases or services (i.e., those parts or services not traditionally stocked or performed by NAPA), and CUSTOMER will be billed an additional charge for any such purchases so as to yield NAPA a ten percent (10%) gross profit on such purchases. CUSTOMER must provide pre-approval in writing of such outside purchases. CUSTOMER is solely responsible for improper or inappropriate instructions by CUSTOMER's employees to NAPA regarding NAPA's purchases of nontraditional parts or services, unless CUSTOMER provided prior written notice to NAPA of parts or services that may not be procured by NAPA in relation to this Agreement.

8. INSURANCE.

(a) CUSTOMER is a state agency and is self-insured for liability and workers compensation through the Department of Administrative Services. CUSTOMER shall provide to NAPA, upon execution of this Agreement, a copy of all Certificates of Insurance evidencing the insurance coverages above.

(b) NAPA shall maintain during the term of this Agreement worker's compensation insurance coverage for its employees located at the On Site Store(s) in amounts required by law. In addition, NAPA shall maintain personal property insurance during the term of this Agreement in an amount sufficient to cover any loss or damage to the Inventory and any other personal property owned by NAPA that is located at the On Site Store(s).

(c) The insurance policies in this section required to be held by each party shall contain a waiver of subrogation against the other party.

(d) Neither CUSTOMER nor the Department of Administrative Services shall procure or provide insurance for NAPA property or Inventory.

9. NO LIENS.

(a) CUSTOMER warrants that it shall take no action, including but not limited to the granting of a security interest, or fail to take any action, which would operate or does operate in any way to encumber the Inventory of NAPA located in the On Site Store(s).

(b) CUSTOMER grants NAPA a power of attorney to execute such documents as are necessary to protect NAPA's interest in the Inventory on consignment on CUSTOMER's premises, including any UCC-1 statements.

10. **PERSONNEL.** NAPA and CUSTOMER shall attempt in good faith to mutually agree upon the identity of the persons that will be selected to staff the On Site Store(s). In the event that CUSTOMER for any reason wishes to remove or replace any of the NAPA personnel in the On Site Store(s), the parties will attempt to resolve CUSTOMER's request by mutual agreement.

11. **WARRANTY/LIABILITY DISCLAIMER.** All Products supplied pursuant to this Agreement are subject to the terms of written warranties provided by the manufacturer of each Product, and NAPA shall use reasonable commercial efforts to assist the CUSTOMER in processing all warranty claims that the CUSTOMER may have against a manufacturer. The manufacturer's warranty will be the sole and exclusive remedy of the CUSTOMER in connection with any claims concerning the Products supplied to CUSTOMER pursuant to this Agreement. ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED. Copies of the manufacturers' warranties are available to CUSTOMER upon request.

For suppliers (or categories of suppliers) of Non-NAPA Products that CUSTOMER instructs NAPA to utilize or consider for future purchases, NAPA is under no obligation to (and NAPA disclaims all liability in connection with) investigate product quality, management, ownership, reputation, certifications, qualifications, price competitiveness, or any other related characteristics of the products, individuals or entities at issue.

12. **TERMINATION FOR CAUSE.** This Agreement may be terminated immediately, unless otherwise stated in this Section 12, by either party for cause:

(a) In the event that the other party fails or refuses to pay any amounts due under this Agreement and such failure continues for ten (10) days;

(b) In the event that the other party fails or refuses to perform any other obligation required under this Agreement, and such failure or refusal continues for thirty (30) days after written notice thereof; or

(c) In the event that the other party files any bankruptcy petition, has any bankruptcy petition filed against it, makes any assignment of its assets for the benefit of creditors, or admits in writing its inability to pay its debts as they become due.

13. **EFFECT OF TERMINATION.** Immediately upon termination of this Agreement by either party for any reason:

(a) All duties, responsibilities and other obligations of each party hereunder shall terminate, except for the payment of any amounts due and owing to NAPA at the time of termination.

(b) Each party shall immediately return to the other party all equipment,

software, books, records, tools and any other personal property owned by the other party that are in such party's possession. CUSTOMER shall allow NAPA full and unrestricted access to enter into the On Site Store(s) and immediately remove all equipment and other items of personal property owned by NAPA without being deemed guilty of trespass or any other violation of the law. All inventory records, sales history, sales analysis and all other information generated by NAPA under this Agreement will be returned to CUSTOMER.

Nothing contained in this Section shall be deemed a waiver of, or in any other manner impair or prejudice, any other legal rights that either party may have against the other party for any breach of this Agreement. The provisions and obligations of Sections 9, 11, 14, 15, 18, and 20 shall survive the termination of this Agreement for any reason.

14. **BUY-BACK OF INVENTORY.** Upon termination, expiration, or non-renewal of this Agreement, NAPA shall have the option to require CUSTOMER to purchase all non-NAPA Inventory owned by NAPA and located in each On Site Store at NAPA's On Site Store's current product acquisition cost, and CUSTOMER shall have the option to purchase all NAPA Inventory, owned by NAPA and located in each On Site Store at the Current NAPA Jobber Acquisition Cost. Upon CUSTOMER's request, NAPA shall provide CUSTOMER with a listing of all NAPA and non-NAPA Inventory owned by NAPA and located in the On Site Store(s).

CUSTOMER INITIALS: _____

15. **CHANGE OF CONTROL.** NAPA may unilaterally terminate this Agreement by giving thirty (30) days written notice to CUSTOMER upon the occurrence of any one or more of the following events:

- (a) A change in the management or ownership of CUSTOMER;
- (b) A sale, lease, assignment or other transfer of CUSTOMER'S business or assets, whether through a stock purchase, merger, asset purchase, or other similar transaction, of at least a ten percent (10%) interest therein.

16. **LANDLORD CONSENT AND WAIVER.** Not Applicable.

17. **INDEMNIFICATION.** NAPA shall be responsible for and shall indemnify and hold CUSTOMER harmless from and against all damages, claims or demands that may, during the term of this Agreement, arise or be occasioned by the negligent or intentional acts of NAPA or NAPA's employees.

18. **NOTICES.** Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be hand-delivered in person or sent via facsimile, by overnight mail through a reputable service, or by certified mail, return receipt requested, to the addresses set forth below:

As to NAPA: Patrick Wolfe
Division VP
APG
5420 Peachtree Industrial Blvd
Norcross, GA 30071

As to CUSTOMER: City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134
Attn: City Manager

Copy: City Attorney

Each such notice shall be deemed delivered (i) on the date of receipt if delivered by hand, overnight courier service or if sent by facsimile, or (ii) on the date three (3) business days after depositing with the United States Postal Service if mailed by registered or certified mail. Either party may change its address specified for this notice by giving the other party at least ten (10) days written notice in accordance with this Section 18.

19. FORCE MAJEURE / DAMAGE OF PREMISES.

(a) Whenever performance by either party of any of their respective obligations (other than the obligation to make payment of money due hereunder) is substantially prevented by reason of any act of God, other industrial or transportation disturbance, fire, floods, riots, acts of enemies, national emergencies or by any other cause not within the reasonable control of such party and not occasioned by its negligence, then such performance shall be excused and the performance of such obligations under this Agreement shall be suspended for the duration of such prevention and for a reasonable time thereafter.

(b) NAPA may terminate this Agreement immediately in the event that the CUSTOMER's premises are damaged by any casualty, or such portion of the premises is condemned by any legally constituted authority, such as will make the CUSTOMER's premises unusable for the On Site Store(s) in the reasonable judgment of NAPA.

20. SUCCESSORS AND ASSIGNS. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective officers, directors, employees, successors and assigns. Notwithstanding the foregoing, the rights and obligations of either party to this Agreement may not be assigned without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

21. AMENDMENTS. No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

22. NO WAIVER OF RIGHTS. No failure of either party hereto to exercise any power given such party hereunder or to insist upon strict compliance by the other party to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

23. LIMITATIONS ON RIGHTS OF THIRD PARTIES. All obligations of a party under this Agreement are imposed solely and exclusively for the benefit of the

parties, and no other person shall, under any circumstances, be deemed to be a beneficiary of such obligations.

24. **INDEPENDENT CONTRACTOR.** The parties hereto are independent contractors. Nothing in this Agreement shall create or shall be deemed to create any fiduciary relationship or the relationship of principal and agent, partnership, joint venturers or any other similar or representative relationship between the parties hereto.

25. **CHOICE OF LAW.** This Agreement shall be construed and interpreted under the laws of the State of Georgia.

26. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

27. **SECTION HEADINGS.** Section titles or captions contained herein are inserted only as a matter of convenience for reference and in no way define, limit, extend, or describe the scope hereof or the intent of any provision hereof.

28. **SEVERABILITY.** In the event any part of this Agreement shall be finally determined by a court of law to be illegal or unenforceable for any reason, then that illegal or unenforceable part shall be severed from the Agreement, and the remaining terms shall continue in full force and effect.

29. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties hereto and no prior representation, inducement, promise or agreement, oral or written, between the parties not embodied herein shall be of any force and effect.

30. **AMENDMENT TO INTEGRATED SUPPLY AGREEMENT.** Simultaneous with the execution of this Agreement, NAPA and CUSTOMER shall execute that certain Amendment to Integrated Supply Agreement dated as of even date herewith, attached hereto as Exhibit D.

[Signatures Appear on Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date above written.

Approved as to Insurance:

AS TO CITY:

David J. Ruiz
Risk Management Division

Catherine Swanson-Rivenbark
City Manager

Approved by Department Head
or head of negotiations team as to
the negotiated business terms:

Peter Iglesias
Assistant City Manager

Eduardo Santamaria
Public Works Director

ATTEST:

Approved as to compliance with applicable
Procurement Requirements:

Celeste S. Walker
Procurement Officer

Walter J. Foeman
City Clerk

Approved as to Funds Appropriation:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Diana M. Gomez
Finance Director

Miriam Soler Ramos
City Attorney

AS TO NAPA:

ATTEST:



Name: PATRICK JOYCE
DIVISION VICE PRESIDENT

Title:

Corporate Secretary

(SEAL)

(OR)

WITNESSES (2):



Print Name: BONNIE GANAS



Print Name: Alan D. Rideout

EXHIBIT A
ASSIGNMENT

See attached.

ASSIGNMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, GENUINE PARTS COMPANY, a Georgia corporation (hereinafter "Assignor"), hereby assigns, transfers, sets over and delivers to [JOBBER/POP], a _____ (hereinafter "Assignee"), all of Assignor's rights, obligations and interest, including any options to renew or extend the contract term, in those certain location(s) as set forth below, as governed by the Integrated Supply Agreement dated _____ by and between Genuine Parts Company and _____ [CUSTOMER] (the "Integrated Supply Agreement").

Location(s): _____

Assignee hereby accepts the assignment of the Integrated Supply Agreement, agrees to provide the services and perform all other obligations required to be performed by "NAPA" in said Integrated Supply Agreement at the times and in the manner set forth in said Integrated Supply Agreement, and shall be bound by all other terms, covenants and conditions of said Integrated Supply Agreement with regard to the location(s) set forth above, all with the same force and effect as if Assignee were originally named as "NAPA" therein.

[CUSTOMER] hereby consents to the above assignment of the Integrated Supply Agreement on the terms set forth herein.

The parties hereto agree that the assignment as set forth herein shall be effective as of midnight on _____.

IN WITNESS WHEREOF, the undersigned have set their hands this _____ day of _____, 20____.

ASSIGNOR:

ASSIGNEE:

GENUINE PARTS COMPANY

_____ [JOBBER/POP]

By: *Patrick Wolfe*
Name: Patrick Wolfe
Its: _____

By: _____
Name: _____
Its: _____

Agreed and acknowledged:

_____ [CUSTOMER]

By: _____
Name: _____
Its: _____

NIPA Contract

EXHIBIT B

SAMPLE PROFIT AND LOSS STATEMENT

See attached.

Sample: NJPA Cost Plus Pricing Option

Estimated Operating Expenses

NJPA	Monthly	% to SALES	Annual	% to SALES	
Customer Purchases	75,000		800,000		Parts Bill For Customer
Cost of Goods to NAPA	68,181	84.36%	818,172	90.91%	NAPA IBS Cost of Goods
NAPA Margin on Parts	6,819	9.09%	81,828	9.09%	NAPA IBS Margin on Parts above cost of goods
GROSS MARGIN	6,819	9.09%	81,828	9.09%	
Payroll					
Acctg & Data Proc. - .50%	375	0.50%	4,500	0.50%	These costs will vary based on scope, hours and responsibilities as required per each contract
General Office - .49%	388	0.49%	4,410	0.49%	Fixed Expense @ .50% of sales, Accounting & Data Processing Fee
Manager Salary	6,250	8.33%	75,000	8.33%	Fixed Expense @ .49% of sales, General Office
Delivery Driver Salary	2,500	3.33%	30,000	3.33%	Cost of Dedicated Parts Manager/Project Manager and any parts clerks for IBS Site
Pension/401K	450	0.45%	5,400	0.45%	Delivery Driver Pay - if applicable for a site there will be a charge in this category
Payroll Taxes	1,522	2.03%	18,264	2.03%	Fixed Expense @ .45% of customer monthly purchases
Group Insurance and Benefits	615	0.82%	7,380	0.82%	FICA, FUTA, SUTA Payroll Taxes
Total IBS Payroll	12,610	16.11%	144,954	16.11%	Group Insurance Premiums for on-site NAPA IBS staff
Miscellaneous Expenses					
Delivery Truck Insurance	300	0.40%	3,600	0.40%	Insurance Coverage for delivery trucks required per contract - if applicable
Delivery Maintenance/Gas	281	0.37%	3,372	0.37%	Vehicle Repairs and Fuel for Delivery Vehicles required per contract - if applicable
Truck Payment	255	0.34%	3,060	0.34%	Lease/Depreciation Payment for any Delivery Trucks required per contract - if applicable
Shelving/Equipment Depreciation	0	0.00%	0	0.00%	Shelving needed for secure parts location - if customer requires us to add shelving, Cage, etc - if applicable
Freight & Postage	1,650	2.20%	19,800	2.20%	Estimated Freight Charges Incurred by this Operation to procure special order parts
Insurance	150	0.20%	1,800	0.20%	General Liability, Workmans Comp, Property Insurance
Store Expenses	450	0.60%	5,400	0.60%	Misc. Store Expenses (Fax Machine, Fax Paper, Printer Ribbons, Telephone etc.)
Phone Charges/WAN	300	0.44%	3,600	0.44%	NAPA IBS on-site computer monthly WAN fees - required
TAMS Inventory Computer	750	1.00%	9,000	1.00%	TAMS Computer & Equipment Lease/Depreciation Expense, Maint./Support Fees & Tams Misc. Expenses
Taxes	0	0.00%	0	0.00%	Sales and Use Taxes, Personal Property Tax - only if applicable
Total IBS Misc Expense	4,146	5.55%	49,992	5.55%	
TOTAL EXPENSES	16,246	21.66%	194,946	21.66%	Total Monthly Expenses to Operate this IBS
Gross Margin Less Expenses	-9,427	-12.57%	-113,118	-12.57%	
Miscellaneous Discounts	0	0.00%	0	0.00%	Any additional discounts negotiated by NAPA IBS for customer
Expense Bill	16,246	21.66%	194,946	21.66%	Expense Reimbursement by Customer
NET MARGIN for NAPA	6,819	10.00%	81,828	10.00%	NAPA's contracted return on investment

TOTAL COST OF NAPA IBS Services - Cost Plus Example	
On example provided above	
Parts Cost	\$75,000 Monthly estimated - Includes total price of parts
Expense Reimbursement	\$16,246 Monthly estimated
Total Cost of NAPA IBS Program	\$91,246 Monthly estimated

EXHIBIT C

NJPA CONTRACT

See attached.

Contract Award
RFP #061015



FORM D

Formal Offering of Proposal
(To be completed Only by Proposer)

FLEET-RELATED MAINTENANCE EQUIPMENT, SUPPLIES, SERVICES, AND INVENTORY MANAGEMENT SOLUTIONS

In compliance with the Request for Proposal (RFP) for FLEET-RELATED MAINTENANCE EQUIPMENT, SUPPLIES, SERVICES, AND INVENTORY MANAGEMENT SOLUTIONS, the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: Genuine Parts Company/NAPA Integrated Business Solutions (IBS) Date: June 10, 2015

Company Address: 2899 Circle 75 Parkway SE

City: Atlanta State: GA Zip: 30339

Contact Person: Jeff Kuntz Title: Vice President, NAPA IBS

Authorized Signature (ink only):  _____
Jeff Kuntz
(Name printed or typed)

Form E



Contract Acceptance and Award

(To be completed only by NJPA)

NJPA 061015 FLEET-RELATED MAINTENANCE EQUIPMENT, SUPPLIES, SERVICES, AND INVENTORY MANAGEMENT SOLUTIONS

Genuine Parts Company/NAPA Integrated Business Solutions (IBS)
Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective start date of the Contract will be July 21st, 20 15 and continue for four years from the board award date. This contract has the consideration of a fifth year renewal option at the discretion of NJPA.

National Joint Powers Alliance (NJPA)

NJPA Authorized signature: [Signature] Dr. Chad Connette
NJPA Executive Director (Name printed or typed)

Awarded this 21st day of July, 20 15 NJPA Contract Number 061015-GPC

NJPA Authorized signature: [Signature] Scott Veronen
NJPA Board Member (Name printed or typed)

Executed this 21st day of July, 20 15 NJPA Contract Number 061015-GPC

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name: Genuine Parts Company / NAPA IBS

Vendor Authorized signature: [Signature] (Name printed or typed)

Title: Vice President - NAPA IBS

Executed this 22nd day of July, 20 15 NJPA Contract Number 061015-GPC

EXHIBIT D

AMENDMENT TO INTEGRATED SUPPLY AGREEMENT

See attached.

NJPA Contract

**AMENDMENT TO INTEGRATED SUPPLY AGREEMENT
BETWEEN
GENUINE PARTS COMPANY AND
CITY OF CORAL GABLES, FLORIDA**

THIS AMENDMENT TO INTEGRATED SUPPLY AGREEMENT (this "Amendment") is entered into this __ day of _____, 2018 (the "Amendment Effective Date") by and between **GENUINE PARTS COMPANY**, a Georgia corporation ("NAPA") and **CITY OF CORAL GABLES, FLORIDA** ("CUSTOMER").

WHEREAS, NAPA and CUSTOMER are parties to that certain Integrated Supply Agreement dated as of _____, 2018 (the "Agreement") for the supply and sale of automotive parts and related supplies at certain locations as required by CUSTOMER; and

WHEREAS, NAPA and CUSTOMER desire to amend the Agreement according to the terms set forth below.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NAPA and CUSTOMER hereby agree to amend the Agreement as follows:

1. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. Section 3 of the Agreement is hereby amended by adding the following sentence to the end of such section: "Upon the termination or expiration of the NJPA Contract, in the event that NAPA enters into a new agreement with NJPA (the "New NJPA Contract"), the parties may agree to extend the term of this Agreement by entering into an addendum to this Agreement which incorporates the terms of such New NJPA Contract.

3. Section 7 of the Agreement is hereby deleted in its entirety and replaced with the following:

" 7. **PAYMENT TERMS/PRICING.** NAPA shall invoice the CUSTOMER for all inventory purchased pursuant to this Agreement on a monthly basis according to the pricing plan below. CUSTOMER agrees to pay the entire amount of all statements received from NAPA by the 25th day of the month following receipt of any such statement if CUSTOMER has not paid the entire amount of all statements received from NAPA within 10 days of the 25th day of the month following receipt of such invoice, CUSTOMER shall be put on COD until such amount is paid in full. No prompt pay discount is available under this Agreement.

The overall goal of CUSTOMER's pricing plan is to achieve a ten percent (10%) net profit for NAPA (the "Net Profit Target") by adjusting the pricing of two elements:

NJPA Contract

- (a) **Product Costs.** The pricing of the Inventory to be supplied to CUSTOMER by NAPA pursuant to this Agreement. Product Costs shall be further divided into "NAPA Product Costs," which is the pricing of NAPA supplier manufactured products, and "Non-NAPA Product Costs," which is the pricing of products which have not been manufactured by NAPA suppliers but which have been acquired for CUSTOMER by NAPA pursuant to this Agreement
- (b) **Operational Costs.** Any and all costs and expenses associated with the operation of the On Site Store(s) or the vehicles used by NAPA in the operation of the On Site Store(s), including, but not limited to, salary and benefits payable to NAPA employees at the On Site Store(s), worker's compensation benefits and insurance, unemployment insurance, personal property insurance for the On Site Store(s) and Inventory, any deductible for losses covered under the personal property, automobile liability or general liability insurance policies of NAPA and all equipment supplied by NAPA. An example of a profit and loss statement reflecting such costs and expenses is attached hereto as Exhibit B.

PRICING PLAN SUMMARY

NAPA Product Costs	Billed to CUSTOMER at Current NAPA Jobber Acquisition Cost plus a 10% markup
Non-NAPA Product Costs	Billed to CUSTOMER at current product acquisition cost plus a 10% markup
Operational Costs	Billed to CUSTOMER at cost
Net Profit Target	10% net profit for NAPA

NAPA Product Costs will be billed to CUSTOMER at Current NAPA Jobber Acquisition Cost plus a ten percent (10%) mark-up. Non-NAPA Product Costs will be billed to CUSTOMER at current product acquisition cost plus a ten percent (10%) mark-up. Operational costs will be charged to CUSTOMER at cost, with all such charges for Operational Costs to be included in CUSTOMER's monthly billing statement. CUSTOMER will be billed at the end of each month for operational costs on an "in arrears" basis.

In addition, NAPA may use any sub-contractor for the procurement of "outside" purchases or services (i.e., those parts or services not traditionally stocked or performed by NAPA), and CUSTOMER will be

billed an additional charge for any such purchases at cost plus a ten percent (10%) mark-up. CUSTOMER must provide pre-approval in writing of such outside purchases."

4. Section 8 of the Agreement is hereby amended by adding the following to such section:

"NAPA shall also maintain Commercial General Liability Insurance written on an occurrence basis including, but not limited to; Coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

Each Occurrence Limit - \$1,000,000
Personal & Advertising Injury Limit - \$1,000,000
General Aggregate Limit - \$2,000,000
Products & Completed Operations Aggregate Limit - \$2,000,000."

The following shall be added as subsection (e) to Section 8 of the Agreement:

" (e) Required Endorsements.

In addition to being stated on the Certificate of Insurance, the following endorsements with CUSTOMER approved language:

Additional insured status provided on a primary & non-contributory basis to the extent of NAPA's indemnification obligations herein.

Waiver of Subrogation

NAPA will provide to CUSTOMER at least thirty (30) days' prior written notice of cancellation, non-renewal or of any material changes to the insurance policies required herein."

5. Section 17 of the Agreement is hereby deleted in its entirety and replaced with the following:

"17. **INDEMNIFICATION.**

To the fullest extent permitted by laws and regulations, NAPA shall defend, indemnify, and hold harmless CUSTOMER and its commissioners, attorneys, administrators, officers, consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to reasonable fees and charges of attorneys and other consultants and court and arbitration costs) arising out of or resulting from the performance of this Agreement and caused by any willful, intentional, reckless, or negligent act or omission of NAPA or any of its employees, officers, directors, subconsultants and agents. As permitted by contract or applicable law, NAPA shall extend to CUSTOMER the benefit of any indemnities or other protections to the extent NAPA has received such

indemnities and protections from the third party manufacturer. For the avoidance of any doubt, the parties agree that the term "subconsultants" as used herein shall exclude all third party suppliers and manufacturers of the products sold hereunder and all third party delivery service providers (i.e. UPS and FedEx).

In any and all claims against CUSTOMER or any of its consultants, agents, or employees by any employee of NAPA, any subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or equipment or anyone for whose acts any of them may be liable, the indemnification obligation under the above Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for NAPA or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly agree that this provision shall be construed broadly, and NAPA's obligations to pay for the CUSTOMER'S legal defense hereunder shall arise and be fully enforceable when NAPA (or any of its employees, directors, officers, subconsultants, and agents) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of NAPA to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject NAPA to debarment from consideration for future award of CUSTOMER contracts pursuant to Section 2-912(4) of the City of Coral Gables Code of Ordinances. Nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

The Indemnification and Hold Harmless provision shall include, but not be limited to, all of the following:

- a. Damages awarded to any person or party.
 - b. Reasonable attorney's fees and costs incurred in defending such claims.
 - c. Reasonable attorney's fees and cost of any party that a court orders CUSTOMER to pay."
6. Section 25 is hereby deleted in its entirety and replaced with the following:
"25. **CHOICE OF LAW.** This Agreement shall be construed and interpreted under the laws of the State of Florida."
7. The Agreement is hereby amended by adding a new Section 31 as follows:
"31. **WAIVER OF CONSEQUENTIAL DAMAGES.** NAPA waives claims against CUSTOMER for consequential damages arising out of or

related to this Agreement or its performance, including but not limited to, damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any Work not performed by NAPA.

8. The Agreement is hereby amended by adding a new Section 32 as follows:

"32. PUBLIC RECORDS LAW, FLORIDA STATUTES CHAPTER 119. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. NAPA acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by CUSTOMER in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the CUSTOMER for such disclosure and/or production. NAPA also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the CUSTOMER. Furthermore, NAPA agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein. In the event that CUSTOMER is requested or required by legal or regulatory authority to disclose confidential or proprietary information of NAPA, CUSTOMER shall promptly notify NAPA of such request or requirement prior to disclosure so that the NAPA may seek an appropriate protective order.

9. The Agreement is hereby amended by adding a new Section 33 as follows:

"33. OWNERSHIP OF DOCUMENTS. Any and all documents, records, disks, or other information necessary for the use of any product or service delivered to the CUSTOMER hereunder and not confidential or proprietary to NAPA shall become the property of CUSTOMER for its use and/or distribution as may be deemed appropriate by CUSTOMER."

10. The Agreement is hereby amended by adding a new Section 34 as follows:

"34. RESOLUTION OF DISPUTES, GOVERNING LAW, AND VENUE. NAPA understands and agrees that all claims by NAPA against the CUSTOMER based upon an alleged violation of the terms of this Agreement by the CUSTOMER shall be submitted for resolution in the following manner. Any claims by NAPA arising under this Agreement shall be submitted in writing, with all supporting documentation, to the City Manager as identified in the Notices Paragraph herein. Upon receipt of said notification City Manager or designee shall review the issues relative to the dispute or Claim, and issue a written finding within ninety (90) calendar days from the date of submission of the dispute or Claim

consistent with Section 2-913 of the City of Coral Gables Code of Ordinances, unless City Manager or designee requires additional time to gather information or allow the parties to provide additional information. During the pendency of any dispute and after a determination thereof, NAPA and CUSTOMER shall act in good faith to mitigate any potential damages. The decision of City Manager shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not be supported by substantial evidence. A party may seek judicial relief pursuant to the Florida Rules of Appellate Procedure; however, the claimant shall not be entitled to such judicial relief if they have not followed the procedure outlined herein.

The Agreement shall be construed under and in accordance with the laws of the State of Florida. Any legal proceeding arising from the Agreement shall be brought only in a court of competent jurisdiction in Miami-Dade County, Florida.

Attorneys' Fees: In connection with any litigation including appellate proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs."

11. The Agreement is hereby amended by adding a new Section 35 as follows:

"35. RIGHTS AND REMEDIES. The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law."

12. The Agreement is hereby amended by adding a new Section 36 as follows:

"36. EXHAUST ADMINISTRATIVE REMEDIES. THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE. CUSTOMER AND NAPA HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBALLY OR WRITTEN), OR ACTIONS OF ANY PARTY."

[Signatures Appear on Next Page]