

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2016 Legislative Session

Introduced: Legislative Day No. 11
Adopted: Legislative Day No. 12

Resolution No. 67-2016

Introduced by: The President of the Council at the request of the County Executive

A RESOLUTION TO AUTHORIZE THE COUNTY EXECUTIVE TO EXECUTE, ON BEHALF OF WICOMICO COUNTY, A WINTERPLACE PARK HUNTING & FARMING RIGHTS LICENSE AGREEMENT WITH S & H FARMS, INC.

WHEREAS, pursuant to Section 22-1 of Chapter 22, entitled "County-owned property" paragraph E, the County Executive is authorized and empowered to lease County property in furtherance of public purposes; and

WHEREAS, approval of the County Council is required for any lease of County property for a lease term of more than one year; and

WHEREAS, S & H Farms, Inc. submitted a proposal for a hunting and farming rights license on approximately 230 255 acres of land, owned by Wicomico County, as shown on a WinterPlace Park Facility Plat, which is part of the WinterPlace Park property; and

WHEREAS, the County Executive proposes that Wicomico County, Maryland grant a WinterPlace Park Hunting and Farming Rights License to S & H Farms, Inc. for an initial term of one year, with two additional one year renewal options, and be given the authority to execute the license agreement on behalf of Wicomico County, Maryland; and

WHEREAS, S & H Farms, Inc. shall pay rent at an annual rental rate of \$5,551.50 for the initial term. The rental rate for each renewal term shall be increased by cost of living adjustments.

NOW, THEREFORE, BE IT RESOLVED by the County Council of Wicomico County, Maryland that the County Executive be, and is hereby, authorized to execute, on behalf of the County, an agreement for a WinterPlace Park Hunting & Farming Rights License, in substantially the form attached hereto as Exhibit A, with S & H Farms, Inc. for a term of one year at an annual rental rate of \$5,551.50, with two additional one year renewal options.

Done at Salisbury, Maryland, this 21st day of June, 2016.

ATTEST:


Matthew E. Creamer,
Council Administrator

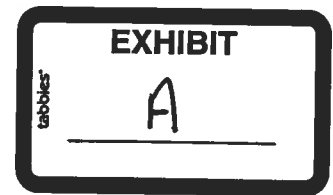
COUNTY COUNCIL OF
WICOMICO COUNTY, MARYLAND


John T. Cannon,
Council President

CERTIFICATION

This Resolution was Adopted , Adopted with Amendments ____, Failed ____, Withdrawn ____ by the County Council on June 21, 2016.

Certified by 
Matthew E. Creamer, Council Administrator



Wicomico County Department of Recreation & Parks

The property known as WinterPlace Park for Hunting & Farming Rights License

THIS LICENSE is made the ____ day of _____ 2016 by and between Wicomico County, Maryland acting by and through the Department of Recreation, Parks and Tourism (Owner/Licensor) and _____ (Licensee).

WITNESSETH, that in consideration of the payments, covenants and conditions hereinafter set forth, the Owner hereby grants to the Licensee a license to enter onto and use the following parcels of land, situate in the Parsons Election District of Wicomico County, State of Maryland:

- Map 40, Parcel 1, containing approximately 181.19 acres;
- Map 39, Parcel 428, containing approximately 45 acres;
- Map 30, Parcel 32, containing approximately 16.47 acres, and
- Map 31, Parcel 450, containing approximately 12.94 acres.

The land, in its entirety contains approximately 255 acres, of which eighteen (18) acres are tillable, more or less, as shown on the map attached hereto as Exhibit C, Map of the Lands of Wicomico County, Beaver Run Business Park Hunting & Farming Lease Area. The land being fully contained within the boundaries of the property acquired by Wicomico County, Maryland, and being the same and all that property conveyed unto Wicomico County, Maryland in a deed from Thomas H. Ruark to Wicomico County, Maryland, dated December 24, 1999 and recorded among the land records of Wicomico County in Liber M.S.B. No. 1727, Folio 729.

In the event that there should be any disagreement between the parties as to the lines of the property herein intended to be licensed, the decision of the Licensor as to the actual designation of the line or lines shall be final.

1. **HUNTING RIGHTS.** Licensee shall have the right to enter onto and use the property for the purpose of hunting waterfowl, upland game, and deer.
2. **FARMING RIGHTS.** Licensee covenants and agrees that he shall have the right to use the eighteen (18) acres of tillable land described above for agricultural and related purposes and shall farm, cultivate, and manage the said eighteen acres in a good and husbandlike manner and shall keep the whole in good condition and not allow any part of the land to become impoverished and to have the arable land at all times clean and free from weeds and never sown with any prejudicial crop.
3. **TERM:** The initial term of this license shall commence on June 1, 2016 and end automatically on May 31, 2017 unless terminated earlier pursuant to Section 10. This license may be renewed, at the discretion of the Licensee, for two additional one-year terms, each commencing on June 1 and terminating on May 31. Each renewal term shall be on the same terms and conditions. At the end of the third year term (May 31, 2019) the license will be re-bid.

4. **LICENSE FEE.** The license fee for the hunting and farming rights herein granted is the sum of _____ dollars (\$_____) per term, payable at the commencement of each term, the initial payment being due in full immediately upon the execution hereof. Additional terms will be subject to an increase in the fee by the amount of the consumer price index.

5. **ASSIGNMENT AND SUBLETTING:** The parties further covenant and agree that the premises may not be assigned, sublet or any portion thereof without the prior written consent of the Licensor.

6. **INDEMNIFICATION AND RELEASE.** Licensee hereby releases Owner, its agents, servants and employees from any and all present or future claims, causes, actions or damages arising out of or in any manner connected with the condition of the Property as it exists now or in the future, Licensee hereby acknowledging that it agrees to accept the Property in such condition AS IS currently WITH ALL AND ANY FAULTS at the time of the execution hereof or afterward. Owner has no responsibility to furnish any hunting equipment, blinds, pits or any other item. Licensee shall not make any alterations or improvements on the Property without prior written consent of Owner and, if approval is granted, Licensee shall remove all blinds or other structures erected by him within five (5) days after the date of termination of this license. Owner shall have no liability for, and shall not be responsible in any manner for security of or damage to Licensee's equipment located on or about the Property.

Licensee shall indemnify and hold Owner harmless from and against any and all causes, claims, rights, liabilities, damages, actions, injuries, losses or expenses (including attorney's fees) arising out of or in any manner connected with any damage or injury to person or property which arises out of or is in any manner connected with Licensee's use of the Property.

7. **INTERFERENCE.** Licensee shall not in any manner interfere with any activities of the

Owner or any tenant or resident of the Property, or their guests, including but not limited to, farming and residential activities. Licensee shall not block or obstruct ingress or egress to the Property or any lane or way on the Property.

8. **OTHER CONDITIONS.** Licensee further agrees as follows:

- a. Licensee shall exercise due care with respect to Owner's property and shall exercise extreme care and caution with respect to the use of firearms on the Property;
- b. Licensee shall not hunt nor fire across or into the area within a radius of 150 yards of any house and any out building located on or near the Property.
- c. Licensee shall become familiar with the said property and shall mark all

boundaries and all rights of way outlining the property with printed signs stating "private, no hunting. The property shall be posted before the Licensee shall hunt on the said property;

- d. Licensee shall not drive any vehicles of any kind on any wet or muddy farm lanes, roads or ways in such a manner as to cause harm thereto, or cause ruts or troughs to be created thereon;
- e. Licensee shall at all times, comply with all laws and regulations and shall do no act while hunting on the Property which is in violation of any federal, state, or local hunting or other law or regulation, now or hereafter in force, including but not limited to, killing or possessing more than the maximum legal limit of game;
- f. Licensee shall not make or suffer any waste whatsoever on the Property. All areas of the Property used by Licensee shall be kept free of litter at all times and all litter shall be removed from the Property by Licensee at Licensee's expense;
- g. The rights granted herein to Licensee shall be subject at all times to any rights and privileges that Owner may care to exercise of the Property;
- h. Licensee shall not use handguns on the Property but hunting with shotguns and bows shall be permitted.
- i. Licensee may permit guests to accompany him upon the Property for the purpose of hunting white-tailed deer, but the number of guests the Licensee may invite upon the Property shall not at any time exceed five (5).
- j. Licensee must be a resident of Wicomico County.

9. **GUIDELINES AND CROP RESTRICTIONS**: This License is subject to the following guidelines and crop restrictions.

- a. The Licensor reserves the right to prevent the production of any crop on any or all of the land where the production of such crop would clearly damage the land due to excessive erosion or other causes.
- b. The Licensee will use fertilization practices which will prevent depletion of the essential plant food elements in the soil.
- c. The Licensee will not bring any livestock or poultry on the land and will not use any buildings without the express approval of the Licensor.
- d. No fertilizers or manures may be stored on the property hereby Licensed. All manure shall be spread and tilled on the same day as delivered to the property.

10. **TERMINATION**.

- a. This License Agreement shall terminate with no liability to Owner, in the event of:
- (i) The breach by Licensee of any covenant or condition set forth herein, or
 - (ii) Owner, at Owner's option, desires to terminate this license. If Owner elects to terminate this license and provided Licensee, in Owner's reasonable opinion, has not breached any covenant or condition set forth in this Agreement, then in such event Owner shall refund to Licensee the proportionate amount of the fee paid, as the same shall bear to the unexpired term of this Agreement.
- b. In the event Owner elects to terminate this Agreement pursuant to paragraph (a) above, then this Agreement shall terminate effective upon the mailing of written notice by Owner or Owner's agent, addressed to _____
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11. **RELATIONSHIP OF PARTIES.** It is understood and agreed that the relationship of the parties hereto is strictly that of Owner and Licensee and this License shall not be construed as a joint venture or partnership. The Licensee is not and shall not be deemed to be an agent or representative of the Owner.

12. **INSURANCE.** The Licensee agrees to keep in force, at all times during the term hereof, at its own expense, general liability insurance against claims for personal injury or property damage in an amount of at least one-half million dollars (\$500,000). Such policy or policies shall name the Licensor and the Licensee as the insureds. Said policy shall be issued by an insurance company satisfactory to the Licensor. Within ten (10) days after the day hereof, the Licensee shall deliver to the Licensor certificates of insurance certifying that such insurance is in full force and effect and shall deliver to the Licensor an annual renewal certificate of insurance on the first of each year thereafter until the expiration of the term hereof.

13. **SURRENDER OF PREMISES:** If during the term of this License, it is determined by the Licensor that any part or portion of the Licensed premises is needed for park improvement or operation, then the Licensor shall give the Licensee notice of the Licensor's intention to use the necessary part or portion of the Licensed premises at any time prior to the end of the calendar year. In the event that the County elects to use any part of the Licensed property, this License shall terminate as to the property so designated by the Licensor commencing at the end of the License year at the property as aforesaid. The rent for the remaining property will be apportioned at the hereinbefore stated charge per acre, pro-rated for the remaining property to be used by the Licensee.

14. **RULES AND REGULATIONS:** The Licensee hereby agrees to abide by all rules and regulations as set forth by the Licensor. The Licensee hereby agrees that it will not store equipment on the Licensed premises unless specifically approved by the Licensor. The Licensee shall make no alterations, installations, additions or improvements to the Licensed premises without the Licensor's written consent, and improvements to the

Licensed premises without the Licensor's written consent, and then only in a manner and by such persons as may be approved by the Licensor. The cost of all such alterations, installations, additions or improvements shall be borne by the Licensee.

15. **ENTRY AND INSPECTION**: The Licensee shall permit the Licensor and/or its agents or representatives to enter the herein Licensed premises at all reasonable times to inspect the same and the improvements thereon and to determine whether the herein Licensed premises are being properly maintained.

16. **MISCELLANEOUS**. This Agreement sets forth the entire understanding of the parties, and there are no other reorientations, warranties or understandings other than as expressly set forth herein. This Agreement may not be amended, and no waiver of any rights hereunder shall occur unless in writing signed by the parties hereto. This Agreement and the rights hereunder may not be assigned by Licensee in whole or in part without the express written consent of the Owner, which may be withheld for any reason. If there is more than one person who is a party to this Agreement, as Licensee, the obligations of such persons hereunder shall be joint and several.

EXECUTED by the parties the day and year first above written.

ATTEST/WITNESS

**WICOMICO COUNTY DEPARTMENT
OF RECREATION AND PARKS**

By: Bob Culver, County Executive

ATTEST/WITNESS

LICENSEE

(SEAL)

WICOMICO COUNTY, MARYLAND STANDARD TERMS AND CONDITIONS

This document sets out provisions generally applicable to all Wicomico County ("County") contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and special conditions, if any. This document and the Contract are intended to be complementary and shall be construed accordingly. However, should there be a direct contradiction between the terms and conditions contained herein and the Contract, then the Contract shall govern and control those contradictory terms and conditions. As used herein, the term "Department" includes the County, its various departments, unit, agencies, employees or agents as may be appropriate. The term "Contract" shall include a document entitled "agreement" or any other title on a document that is denoting a contract. The Wicomico County Executive is the person authorized to enter into contracts for Wicomico County.

Amendment. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.

Bankruptcy. Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify the County immediately. Upon learning of the actions herein identified, the County reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights the County may have as provided in this County or by law.

Compliance with Law. The Contractor hereby represents and warrants that:

- A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with the professional standards;
- C. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- D. It is not in arrears in the payment of any obligations due and owing to the County or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- E. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;
- F. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

Contingent Fee Prohibition. The Contractor, architect or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.

Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

Force Majeure. Neither the County nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, County declaration of emergency, or war where such cause was beyond, respectively, the County's or Contractor's reasonable control. The County and Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Maryland and Wicomico County without regard to principles of conflicts of law.

Indemnification. The Contractor shall protect, hold free and harmless, defend and indemnify the County including its officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including Attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract. This obligation of indemnification shall apply to any acts or omissions, negligent conduct, whether active or passive, including acts or omissions of Contractor's agents or employees; except that it shall not be applicable to injury, death or damage to the property arising from the sole negligence of Wicomico County, its officers, agents and employees.

Independent Contractor.

- A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although the County reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, the County cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by the County relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is responsible for determining the appropriate means and manner of performing the work.
- B. Contractor represents and warrants that Contractor is not an employee of the County, is not currently employed by the Federal Government, and is not an officer, employee or agent of the County.
- C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
- D. Contractor agrees to immediately provide the County notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without the County's written consent, any obligation of the County to indemnify Contractor for any actions under this Contract.

Insurance Requirements.

- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with the County prior to the time this Contract is executed, providing coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with the County to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED.

- C. Contractor shall provide the County with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required by Maryland law in effect for each year of this Contract.
- D. All insurance policies shall have a minimum 30 days' notice of cancellation. Immediate written notice to the County shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
- E. When insurance coverage is renewed Contractor shall provide new certificates of insurance prior to expiration of current policies.

Nondiscrimination. A contractor who is the recipient of County funds, or who proposes to perform any work or furnish any goods under this Contract shall not discriminate against any worker, employee or applicant because of religion, race, sex, age, sexual orientation, physical or mental disability, or perceived disability. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.

Ownership of Documents and Materials.

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to the County upon request by the County and shall become and remain the exclusive property of the County upon termination or completion of the services. The County shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. The County shall be the owner for the purposes of copyright, patent or trademark registration.
- B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to the County of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with the County.
- C. The Contractor shall indemnify and save harmless the County from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless the County, its officers, agents, and employees with respect to any claim. Action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

Payments. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the County's receipt of a proper invoice from the Contractor. If an invoice remains unpaid 45 days after the invoice was received, interest shall be charged at a rate of nine percent (9%) per annum, in accordance with state law.

Records. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that the County and its duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three years, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later. All subcontracts shall also comply with these provisions.

Remedies.

- A. Corrections of errors, defect and omissions. Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract,

without undue delays and without cost to the County. The acceptance of the work set forth herein by the County shall not relieve the Contractor of the responsibility of subsequent corrections of such errors.

- B. Set Off. The County may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by the County, its agents, employees of recipients of its services, by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.
- C. Cumulative. All rights and remedies of County and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County by law.

Responsibility of Contractor.

- A. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by the County, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.
- C. If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in subparagraph A above it shall, if required by the County, perform at its own expense and without additional cost to the County, those services necessary for the correction of any deficiencies of damages resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to the County under the "Remedies" paragraph, or otherwise available by law.

Severability/Waiver. The County and Contractor agree that, if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract.

Subcontracting or Assignment. The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the County. The County has the right to withhold such consent for any reason the County deems appropriate.

Substance Abuse and Drug Testing. Contractors and contract employees are subject to the provisions of the County's policy on substance abuse and drug testing regarding the use, possession, or sale of drugs or alcohol while performing County business or while in a County facility. Violation of these provisions or refusal to cooperate with implementation of the County's policy on substance abuse and drug testing can result in the barring of contract personnel from County facilities or from participating in County operations.

Survival. The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

Termination. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, the County may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the County's option, become the County's property. The County shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the County can affirmatively collect damages.

Termination of Contract for Convenience. The performance of work under this Contract may be terminated by the County, in whole or in part, upon written notice to the Contractor, when the County determines such termination is in the best interest of the County. The termination for convenience is effective on the date specified in the County's written notice. The County will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

Termination of Multi-year Contract. If the County fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the County's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the County from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The County shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

Third Party Beneficiaries. The County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

Time is of the essence. Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.

Use of County Facilities. Contractor and its employees or agents shall have the right to use only those facilities of the County that are necessary to perform the services under this Contract and shall have no right of access to any facility of the County without prior approval of County Administration. County shall have no responsibility for the loss, theft, mysterious disappearance of or damage to equipment, tools, materials, supplies, and other personal property of Contractor or its employees, subcontractors or agents which may be stored on County premises.

Whole Contract. This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.