



ADMINISTRATIVE COMPLIANCE AGREEMENT



This Administrative Compliance Agreement (the "Agreement") dated this 15th day of October, 2015, is made between Patricia Lilia Winters ("Ms. Winters") and Tropical Contracting, LLC (Tropical Contracting), and the United States Department of the Army (the "Army").

PREAMBLE

1. Tropical Contracting is a limited liability company organized under the laws of Texas with its principal place of business in San Antonio, Texas.
2. Tropical Contracting, originally founded as Tropical Painting, LLC, provides general civil construction services, including "concrete, road work, streetscapes, culverts, [and] site work." Tropical Contracting has provided civil construction services to local, state, and federal governments as a prime contractor, subcontractor, and joint venture participant since its founding by Ms. Winters, its sole owner and managing-member, in 2000.
3. In February 2009, the Small Business Administration (SBA) certified Tropical Contracting as a small disadvantaged business. Tropical Contracting's participation in the SBA's 8(a) Business Development program will terminate in February 2018.
4. In 2010, Ms. Winters and her husband, Charles Winters ("Mr. Winters"), met Thomas Gregory Harris ("Mr. Harris"), a senior executive with Luster National, Inc. (Luster National), a professional services corporation that provides strategic planning, program, project, and construction and facilities management for commercial clients and Government agencies. Ms. Winters, Mr. Winters, and Mr. Harris discussed the SBA's 8(a) program, which is designed to promote the business development of companies owned and operated by socially and economically disadvantaged individuals. Mr. Harris suggested that Tropical Contracting and Luster National partner to pursue program, project, and construction management contracts with Government agencies.
5. Tropical Contracting possessed no experience in the program, project, and construction management field. Nonetheless, Tropical Contracting, by and through Ms. Winters, viewed this as an opportunity to grow as a business. On 26 March 2010, Luster National – a non-8(a) concern – and Tropical Contracting – an 8(a) concern – entered into a Joint Venture Agreement, forming Tropical Luster Joint Venture (TLJV). The SBA approved the TLJV on 27 July 2010.
6. The Joint Venture Agreement represented that Tropical would manage the joint venture with Mr. Winters serving as Program Director, "responsible for overall contract performance." Mr. Harris would serve as Program Manager, "responsible for overseeing the job-site, reporting to and implementing the instructions of the Program Director, preparing written reports, . . . detailing all developments and aspects of the job, and submitting such reports to the Program

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Director at his request.” Negotiating any contracts would be handled jointly by Mr. Winters and Mr. Harris. Additionally, Luster National and Tropical represented that each would comply with program rules, terms and conditions, and regulatory requirements in TLJV’s performance. As such, both agreed that “[t]he Joint Venture must perform at least 50% of the labor costs incurred . . . with its own employees.” To do so, Tropical agreed to “provide the Program Director, overall supervision of the Project, and appropriate personnel to perform duties as required.” Luster National agreed to “provide the Program Manager, and Project on-site management as well as subject matter expert personnel experienced with Customer requirements.” Profits were to be split, in accordance with SBA program rules, 51% to Tropical and 49% to Luster National. And the TLJV’s accounting and other administrative records were to be “kept and maintained” at Tropical’s office.

7. On 17 August 2010, TLJV received the first of several Government contracts when the U.S. Army Corps of Engineers (USACE), Galveston District, awarded W912HY-10-P-0064, a small business set-aside contract to perform an on-site assessment and After-Action Report concerning the Galveston District’s business and program/project management processes. The USACE, Galveston District, awarded a second small business set-aside contract, W912HY-11-D-0001, on 6 April 2011 (collectively, the “Galveston District Contracts”). Under the Galveston District Contracts, and associated task orders, Luster National received \$821,249.13, which represented incurred labor costs and profit; Tropical Contracting received \$110,382.29, which represented profit only.

8. On 12 August 2011, the Mission Installation Contracting Command, Fort Bliss, awarded TLJV a small business set-aside contract, W911SG-11-P-0291 (the “Fort Bliss Contract”), to develop a “plan for the integration of energy sources and approaches,” as well as a “schedule [for meeting] the long term needs of Fort Bliss achieving energy net zero goals.” Fort Bliss would then use the plan developed by TLJV to “develop request for proposals to energy management service providers to finance, build, maintain an sustain [sic] energy project to meet Fort Bliss’ long term energy goals[.]” Fort Bliss noted that the “service provider awarded this contract [here, TLJV] will not be able to present a proposal on the follow-on energy management service contracts.” Under the Fort Bliss Contract, Luster National received \$324,829.71, which represented incurred labor costs and profit; Tropical Contracting received \$15,412.18, which represented profit only.

9. Notwithstanding the Joint Venture Agreement and regulatory requirements concerning the percentage of work performed by the 8(a) joint venture participant, Tropical Contracting never managed the joint venture, participated in negotiations, supplied employees, or otherwise performed any labor on the Galveston District Contracts or Fort Bliss Contract. Instead, Tropical Contracting received \$125,794.47 for passively participating in the arrangement.

10. On 12 June 2013, a grand jury sitting in the Western District of Texas, El Paso Division, indicted Mr. Harris, charging him with seventeen counts of wire fraud. After a multi-day trial, a jury convicted Mr. Harris on sixteen of seventeen counts, concluding that Mr. Harris “purposefully fostered and maintained the fraudulent and material pretense that the [TLJV] was

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formed to be, and functioned as, a *bona fide* entity qualified to negotiate for and receive Section 8(a) set aside contracts, rather than as a mere 'pass-through' to Luster National."

11. On 1 April 2015, the Army proposed Ms. Winters and Tropical Contracting for debarment under the authority and procedures of Federal Acquisition Regulation Subpart 9.4.

12. Ms. Winters and Tropical Contracting submitted written matters in response to the proposed debarments on 29 April 2015 and requested that debarment not be imposed. Neither Ms. Winters nor Tropical Contracting disputed the material facts; instead, Ms. Winters and Tropical Contracting pointed to their reliance on Mr. Harris' experience, their belief that Mr. Harris was acting in their best interest, the SBA's encouragement to participate in the joint venture program, and their belief that Mr. Harris was ensuring compliance with the SBA 8(a) rules. Ms. Winters and Tropical Contracting acknowledged that their reliance and trust was misplaced. Upon learning of the misconduct, Ms. Winters and Tropical Contracting severed all ties with Mr. Harris and Luster National, and Ms. Winters cooperated with federal investigators and the U.S. Attorney's Office (USAO). Ms. Winters and Tropical Contracting further suggested that debarment would be inappropriate here given Tropical Contracting's long history of satisfactory performance on Government contracts and additional remedial measures implemented. Nonetheless, Tropical Contracting requested an opportunity to meet with the Army Suspension and Debarment Official (SDO).

13. On 24 June 2015, Ms. Winters, individually and as representative of Tropical Contracting, met with representatives of the Army, including the Army SDO. During that meeting, Ms. Winters reiterated the information supplied in the 29 April 2015 written submission, including efforts to grow her business through joint ventures, performance on various contracts awarded to TLJV, her misplaced trust in Mr. Harris, her subsequent cooperation with federal investigators and the USAO, and remedial efforts designed to distance her and Tropical Contracting from Mr. Harris and Luster National. Ms. Winters recognized her responsibility for complying with the FAR, regulatory requirements, and SBA program rules – as well as her failure to do so here – and expressed a willingness to take additional remedial steps designed to promote her, and Tropical Contracting's, responsibility as a Government contractor. Among other remedial measures, Ms. Winters offered to retain a consultant, provide regular reporting, and permit an audit of Tropical Contracting's financials and systems, all in an effort to promote a more robust compliance regime.

14. Ms. Winters and Tropical Contracting submitted supplemental information on 1 July 2015, discussing additional measures to which Tropical Contracting would agree to submit in an effort to improve its compliance policies, including the retention of an independent consultant to perform quarterly compliance reviews. Ms. Winters and Tropical Contracting also mentioned ongoing discussions with the Assistant United States Attorney (Civil) for the Western District of Texas concerning an agreement to repay amounts received by Tropical Contracting on contracts awarded to TLJV.

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15. On 1 September 2015, Ms. Winters and Tropical Contracting entered into a Settlement Agreement with the United States of America, acting through the United States Department of Justice and on behalf of the United States Army and the United States Army Corps of Engineers, to settle certain civil claims against Tropical Contracting and Ms. Winters "arising from (1) Thomas Harris' Criminal Conduct, and (2) alleged false records, statements and claims that Tropical Contracting presented and caused others to present to the United States to obtain (a) SBA approval of the TLJV, (b) the award of the TLJV contracts, and (c) payment under the Net Zero Contract and Galveston Contracts, during the period from March 26, 2010 through August 3, 2012." Although neither Ms. Winters nor Tropical Contracting admitted liability, Tropical Contracting agreed to pay to the United States \$125,794.47 plus simple interest at 2% per annum to settle the dispute.

16. Ms. Winters and Tropical Contracting have expressed interest in taking the actions necessary to demonstrate that they may be trusted to deal fairly and honestly with the Government, and that continued exclusion under FAR Subpart 9.4 is not necessary if the terms and conditions set forth herein are duly and forthrightly implemented. To this end, Ms. Winters and Tropical Contracting have agreed to take the actions specified herein to assure that both possess the high degree of business honesty and integrity required of a Government contractor.

17. The Army, Ms. Winters, and Tropical Contracting agree that FAR Subpart 9.4 provides a legally sufficient basis for debarring Ms. Winters and Tropical Contracting. This Agreement is intended to provide assurances to the Government that Ms. Winters and Tropical Contracting can be presently responsible and, notwithstanding the bases for the proposed debarment, that both can be trusted to deal fairly and honestly with the Government. The Army has determined that the terms and conditions of this Agreement provide adequate assurances that the interest of the Government will be sufficiently protected to preclude the necessity of debarring Ms. Winters and/or Tropical Contracting.

NOW THEREFORE, in consideration of the promises set forth herein and for good and valuable consideration, the parties mutually agree as follows.

ARTICLES

1. Proposed Debarment. The proposed debarment of Ms. Winters and Tropical Contracting is terminated upon execution of this Agreement by the Army. This Agreement in no way restricts the authority, responsibility, or legal duty of the Army, or any other federal agency, to consider and institute suspension or debarment proceedings against Ms. Winters and/or Tropical Contracting based upon information constituting independent cause for suspension or debarment concerning events unrelated to the facts and circumstances set forth in the Preamble, including, but not limited to, any substantive allegations of wrongdoing in the past, at present, or in the future. The Army, or any other federal agency, may, in its sole discretion, initiate such proceedings in accordance with FAR Subpart 9.4. The Army's ability to institute such administrative action is independent of any ability to take action under Article 13 of this Agreement.

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2. Definitions.

- a. "Contractor" refers to Tropical Contracting, including its directors, officers, and employees, while acting in their capacities as such.
- b. "Days" refers to "calendar days."
- c. "Effective date" (of this Compliance Agreement) refers to the date on which the Army's Suspension and Debarment Official signs this Agreement on behalf of the Army.
- d. "Employee" refers to officers, managers, and supervisors. All full and part-time workers and consultants will be considered employees for training purposes.
- e. "Ethics Program Director" refers to an individual, whether a senior employee of Contractor or an outside attorney, who will serve as the first point of contact for all questions regarding the terms and conditions of this Agreement.
- f. "FAR" refers to the Federal Acquisition Regulation.
- g. "Government" refers to any department, agency, division, independent establishment, or wholly-owned corporation of the United States Government.
- h. "Independent cause" for suspension or debarment refers to a reason or basis for such action not directly related to information set forth in the Preamble or any document referred to in the Preamble.
- i. "Independent Monitor" refers to an independent attorney, certified public accountant, or other expert knowledgeable in the area of Government contracting policies and procedures, and who will audit Contractor compliance with the terms of this Agreement.
- j. "Army SDO" refers to the Army's Suspension and Debarment Official.

3. Independent Monitor.

a. Appointment of Independent Monitor. Within 30 days of the effective date of this Agreement, Contractor shall nominate an individual, not an employee, to serve as an Independent Monitor at Contractor's expense for the oversight of this Agreement. Contractor shall provide the Army with the name, telephone number, current position, resume, and duties of the nominee for Army approval. Should the Army reject the nominee, Contractor shall promptly nominate another Independent Monitor for Army approval. Furthermore, any change of Independent Monitor requires prior Army approval, and should the Army become dissatisfied with the performance of the Independent Monitor, the Army may require Contractor to propose a new Independent Monitor for Army approval.

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b. Nature of Employment. The Independent Monitor is an independent check upon the Contractor's compliance with this Agreement. The Independent Monitor shall not be an agent of Contractor, and his or her work shall not be subject to Contractor's assertion of the attorney-client privilege or the work product doctrine. Generally, the Independent Monitor shall serve as Contractor's first point of contact for all questions regarding the terms and conditions of this Agreement and Contractor implementation thereof. The Independent Monitor, in consultation with Contractor, shall ensure the implementation and management of the Ethics Program. Any change in the Ethics Program management shall require prior Army approval. It will be the Independent Monitor's duty to assist management in implementing this Agreement, serve as a point of contact for all questions regarding the terms and conditions of this Agreement, investigate complaints concerning Contractor's compliance with this Agreement, and report to the Army concerning Contractor's compliance with this Agreement.

c. Costs, Fees, Retainers, or Other Reimbursements and Compensation. Contractor shall be responsible for and shall promptly and fully pay all reasonable costs, fees, retainers, or other reimbursements and compensation customarily charged by and payable to the Independent Monitor. If, and to the extent the Independent Monitor requires at his or her reasonable discretion as communicated in writing, staff assistance and/or legal counsel, the Independent Monitor shall be authorized and empowered to retain such assistance and/or legal counsel with reasonable advance notice to Contractor. Contractor shall be responsible for and shall pay all reasonable costs, fees, retainers, or other reimbursements and compensation payable to or on account of such staff or legal counsel for the Independent Monitor. Contractor shall pay all such advance retainers, if any, required by the Independent Monitor on account of his or her own customary fees or charges, as well as that of his or her staff or counsel.

d. Duties and Responsibilities.

(1) The Independent Monitor shall report to and be responsible to the Army, and shall be free to communicate with the Army without interference by Contractor. The Army may communicate with the Independent Monitor on a confidential basis and without disclosure to Contractor. The purpose of the Independent Monitor is to observe and review on an ongoing basis, and to report to the Army regarding, Contractor's ongoing compliance in all respects with this Agreement; its compliance with applicable Government contracting laws, rules, and regulations, as well as SBA program rules and guidelines, both with respect to existing contracts and any future contracts; and whether Contractor is seeking, entering into, and performing Government contracts responsibly and with integrity.

(2) The Independent Monitor shall provide quarterly reports to the Army on Contractor's compliance with this Agreement; with all applicable Government contracting laws, rules, and regulations in connection with its seeking, obtaining, and performing Government contracts; and with respect to Contractor's present responsibility to obtain and perform Government contracts. The reports shall also include any findings and recommendations for improvement concerning Contractor's Contractor Responsibility Program (discussed in greater detail below in Article 4).

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The first report will be delivered to the Army **on or before January 15, 2016**, with subsequent reports following each quarter thereafter through **January 15, 2017**, at which point the Army will determine whether less frequent reports are sufficient to accomplish the objectives of this Agreement. To the extent permitted by law, including the Freedom of Information Act, said reports shall be deemed confidential to Contractor, the Independent Monitor, and the Army.

(3) The Independent Monitor's reports are for the Army's assistance and monitoring purposes and shall be considered by the Army as part of the totality of the information available to it. Proof of Contractor's ongoing compliance or non-compliance with this Agreement, and all its obligations under law, shall be determined based upon all relevant information, documents, communications, testimony, and other evidence of such compliance or lack thereof. Neither the delivery nor review by the Army of any Independent Monitor report shall waive, limit, or in any way diminish the Army's right to obtain, review, analyze, or evaluate any underlying actual evidence of Contractor's compliance or non-compliance with this Agreement or applicable law.

(4) The Independent Monitor shall have unfettered, immediate, and, if requested, real-time access to all Contractor's documents, information, and personnel, including without limitation all files, records, communications, IT and communications systems, e-mail systems, electronic documents, and databases. The Independent Monitor shall be empowered to provide no prior notice, or only minimal prior notice to Contractor if the Independent Monitor determines, in his or her reasonable discretion, that the needs or exigencies of his or her monitoring require immediate access or communication. The Independent Monitor shall, during the term hereof, be permitted to communicate with any manager, employee, or contractor of Contractor pertaining to any matter concerning Contractor's present responsibility. Contractor commits to cooperate in good faith with any such communications and to provide, or to have provided, copies of any documents relating to any such communications within a reasonably prompt time. The Independent Monitor shall retain all of Contractor's information and documents in the strictest confidence and shall disclose all such information solely to the Army or other governmental investigatory authorities, and shall not disclose such information or documents to third parties outside Contractor or use such information for any purpose not associated with his or her monitoring activities provided for herein.

(5) Within 30 days of receipt of the above-described report, Contractor shall provide to the Army and to the Independent Monitor its action plan, with milestones, for implementing the Independent Monitor's recommendations. Contractor shall fully implement the Independent Monitor's recommendations within 90 days and report on that implementation to the Army and to the Independent Monitor.

e. If requested by the Independent Monitor, Contractor shall provide to the Independent Monitor, at Contractor's place of business, on-site management-type office space, furniture, telephone, network access, equipment, and supplies, along with adequate enclosed conference room space or access for the Independent Monitor such that he or she can undertake confidential conferences with Contractor's employees.

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f. Failure to cooperate fully and promptly with the Independent Monitor's inquiries, document and information requests, and other monitoring activities may be considered a breach of this Agreement.

g. Contractor hereby agrees that the Independent Monitor shall be released from, held harmless from, and indemnified against any claims, demands, liabilities, obligations, damages, suits, or costs of any sort whatsoever, whether to Contractor or to any third party, arising out of or relating in any way to the Independent Monitor's agreement, presence at Contractor's place of business, or performance of his or her duties and obligations under this Agreement.

4. Contractor Responsibility Program. Contractor agrees to implement a values-based ethics and compliance program (the "Contractor Responsibility Program"). The Contractor Responsibility Program (or "Program") shall be designed to ensure that Contractor, and each of its employees, acts with the business honesty and integrity required of a Government contractor, and that Contractor operates in compliance with all applicable laws, regulations, policies, and terms of any Government contract. At minimum, the Program shall include the following features, each of which shall be implemented within 60 days of the effective date of this Agreement:

a. Appointment of Ethics Program Director. Within 30 days of the effective date of this Agreement, Contractor shall designate an individual to serve as Contractor's Ethics Program Manager.

b. Notification of this Agreement. Within 30 days of the effective date of this Agreement, Contractor's Managing-Member shall prepare and display, in a prominent place accessible to all employees and subcontractors, a letter stating that Contractor has entered into an administrative agreement with the Army. A copy of the Managing-Member's letter will be forwarded to the Army for approval before distribution and will describe this Agreement and Contractor's responsibilities thereunder. The letter shall state:

- (1) The basis for this Agreement;
- (2) Contractor's commitment to observe all applicable laws and regulations, and to maintain the highest standards in conducting business with the United States Government;
- (3) A brief description of the features of the Contractor Responsibility Program;
- (4) The Contractor's Ethics Program Director's name, address, and mechanism for reporting misconduct.
- (5) The availability of the Ethics Program Director for consultation on any questions concerning Contractor's business practices or employee responsibilities, or subcontractors including required reporting of improprieties; and

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(6) That all improprieties regarding Government operations shall be reported to the Ethics Program Director, who will conduct an investigation followed by appropriate corrective action, and that employees may make such reports without revealing their identity.

c. Code of Business Ethics and Conduct.

(1) Contractor shall create, maintain, and revise, as necessary, a Code of Business Ethics and Conduct (the "Code"). The Code shall be designed to ensure that Contractor maintains the business integrity and honesty required of a Government contractor, and that Contractor's performance is in strict compliance with the terms and conditions of its Government contracts.

(2) The Code shall include, at minimum, the following:

(a) A statement of Contractor's commitment to comply with the contractor responsibility provisions of the FAR and all other applicable laws and regulations concerning the conduct of Government contracting or subcontracting;

(b) A statement of Contractor's commitment to fully cooperate with any Government agencies responsible for either investigation or corrective actions;

(c) Specific standards of conduct for Contractor employees concerning their business dealings with the Government on behalf of Contractor;

(d) Notice that Contractor will immediately discipline, to include termination if appropriate, employees or officers whose conduct violates applicable laws, regulations, or the basic tenets of business integrity and honesty set forth in the Code;

(e) Notice that Contractor will immediately terminate affiliation with any other entity or contractor, whether the affiliation results from a joint venture, teaming agreement, subcontracting agreement, or other arrangement, whose conduct violates applicable laws, regulations, or the basic tenets of business integrity and honesty set forth in the Code;

(f) A requirement that Contractor employees report to the Ethics Program Director any impropriety or violation of this Agreement, whether committed by Contractor, a vendor, a subcontractor, or a Government employee; and

(g) Any provisions that pertain to an individual contractor's misconduct that this Agreement is designed to prevent, *e.g.*, failure to comply with SBA program terms and regulatory requirements, ostensible subcontracting rule violations, etc.

d. Government Contracting Policies and Procedures Manual.

(1) Contractor shall establish and maintain a written Government Contracting Policies and Procedures Manual (the "Manual") to regulate the performance of its Government contracts.

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The Manual shall describe, in detail, Contractor's method for competing for and administering Government contracts, and the positions responsible for performing, approving, and reviewing these tasks.

(2) Contractor management shall review employee compliance with the policies and procedures set forth in the Manual, and consider such compliance when making personnel decisions, including compensation.

e. Training Program.

(1) *Training Plan.* Within 30 days of the effective date of this Agreement, Contractor shall create and implement an ethics and Government contracting training plan.

(2) *Ethics training.* Within 60 days of the effective date of this Agreement, Contractor shall provide all its employees with a copy of its Code and conduct initial training in business ethics and conduct. All employees shall sign and date a roster, certifying that they attended training, and received and read a copy of the Code. Contractor shall ensure that newly hired employees receive the training, a copy of the Code, and sign and date a roster certifying that they attended training, and received and read a copy of the Code.

(3) *Government contracting training.* Within 60 days of the effective date of this Agreement, Contractor shall provide employees directly involved with Government contracts specialized training in laws, regulations, and contractor policies and procedures related to Government contracting. These employees shall sign and date a roster certifying that they attended the training, and received and familiarized themselves with the Manual.

(4) *Frequency and certification of training.* Contractor shall conduct and update all ethics and Government contracting training and employee certifications annually. The Ethics Program Director shall maintain all employee certification rosters for ethics and Government contracting training, and make them available to the Army upon request.

(5) *New employees.* Contractor's training plan shall require that, within 60 calendar days of starting employment with Contractor, each new employee to attend a training session administered by the Ethics Program Director covering the topics and requiring the certifications described in subparagraphs (2), (3), and (4) above.

(6) *Notice of training.* Contractor will provide the Army a schedule of all ethics and Government contracting training sessions at least 15 days in advance so that the Army may attend the training.

5. Contractor Reporting Requirements.

a. Managing-Member's Quarterly Report. On a quarterly basis, the Managing-Member shall submit a written report to the Army describing the measures taken by Contractor during the reporting period to ensure compliance with this Agreement. Contractor shall provide a copy of

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each quarterly report to the Independent Monitor. The reports shall include (1) information required by other Articles and subparagraphs of this Agreement; (2) information about the status of all internal and Government investigations that are pending, resolved, or initiated from Contractor's last reporting period; (3) indications of any problems or weaknesses identified by the Program, the corrective action proposed or initiated, and the status of any corrective action; and (4) with respect to each recommendation for improvement included in the Independent Monitor's quarterly report, a summary of the steps taken to implement the recommendation, or an explanation of the reason(s) Contractor has not taken any such steps. The first report will be delivered to the Army on or before February 15, 2016, with subsequent reports following each quarter thereafter through February 16, 2017, at which point the Army will determine whether less frequent reports are sufficient to accomplish the objectives of this Agreement. To the extent permitted by law, including the Freedom of Information Act, said reports shall be deemed confidential to Contractor, the Independent Monitor, and the Army.

b. Misconduct Reporting.

(1) Within 30 days of the effective date of this Agreement, Contractor shall establish and maintain a mechanism by which employees and/or subcontractors may report to the Ethics Program Director suspected incidents of improper conduct, including fraud, waste, and abuse, or violation of the terms of any contract or this Agreement. The reporting mechanism, and the name and address of the Ethics Program Director, shall be prominently displayed in all employees' and subcontractors' work and break areas, and included in all appropriate internal employee and management publications. These notifications shall describe the reporting mechanism's purpose, explain that reports may be made anonymously, and advise that all anonymous reports will be acted upon in the same manner as identifiable reports.

(2) The Ethics Program Director shall maintain a log of all misconduct reporting, to include: date and time of reporting; identity of reporter, if disclosed; summary of allegation or inquiry; and general resolution or referral. The Ethics Program Director shall ensure that each report is adequately investigated and resolved. Investigation reports shall be provided to the Army. Contractor shall not assert an attorney-client or work product privilege with respect to the reporting log, investigative reports, or their contents.

(3) Contractor shall report to the Army, within 30 days of discovery by the Managing-Member or Ethics Program Director, any suspected misconduct that the Managing-Member or Ethics Program Director has reasonable grounds to believe may constitute a violation of U.S. criminal or civil law. Contractor shall investigate all reports of such misconduct that come to its attention and shall notify the Army of the outcome of such investigations and any potential or actual impact of such misconduct on any aspect of Contractor's business. This requirement is in addition to other reporting requirements articulated in this Agreement, as well as any disclosure to any agency Office of the Inspector General and contracting officer (copies of which Contractor shall provide to the Army) under FAR 52.203-13.

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(4) Contractor shall notify the Army, within 30 days of notice, of any of the following events: (a) the initiation of any criminal or civil investigation by any U.S. federal, state, or local government entity involving any allegations of U.S. criminal or civil law violations, or any other offenses relating to Contractor's business integrity, if Contractor has reason to believe it is a target or subject of such investigation; (b) service of subpoenas by any such U.S. federal, state, or local government entity, if Contractor has reason to believe that it is a subject or target of the investigation; (c) service of search warrants and/or searches carried out by any U.S. federal, state, or local government entity in any of Contractor's places of business; or (d) initiation of any legal action against Contractor, or any of its members, employees, affiliates, or agents, by any U.S. federal, state, or local government entity alleging violations of any U.S. criminal or civil law or any other offenses relating to Contractor's business integrity. Contractor shall provide to the Army as much information as necessary, consistent with applicable law, to allow the Army to determine the impact of the investigation or legal activity upon Contractor's present responsibility.

6. Cooperation with Investigations. Contractor shall cooperate fully with all Government agencies responsible for audits and investigations. In addition, Contractor shall cooperate fully with all Government agencies responsible for actions relating to the stated conduct, circumstances, and representations in the Preamble of this Agreement. Contractor agrees that full cooperation shall be judged by the Army (or, if appropriate, another Government agency) and shall include, at minimum, providing unfettered and timely access to employees, records, documents, electronically-stored information, and other information or evidence to federal law enforcement upon request and without requiring a subpoena. Such full cooperation shall not require Contractor to waive the attorney-client privilege, work product protection, or any other applicable privileges or protections. In addition, Contractor agrees to take all reasonable steps to make its current and/or former employees and consultants available to testify on behalf of the Government in any criminal or civil proceeding arising out of the investigation(s) described above. Contractor shall not seek to exclude from evidence any non-privileged information it provides to the Army (or other Government agency) from any forum, including administrative, judicial, or executive.

7. Access to Books and Records. During the term of this Agreement, the Army Procurement Fraud Branch shall have the opportunity to interview Contractor and/or its representative(s) or request written submissions for the purpose of evaluating (a) compliance with the terms of this Agreement; (b) future compliance with federal procurement policies and regulations; and (c) maintenance of the high level of business integrity and honesty required of a Government contractor. To the extent permitted by law, including the Freedom of Information Act, this information all be deemed confidential to Contractor, the Independent Monitor, and the Army.

8. Business Relationships with Suspended or Debarred Individuals and Entities. Within 60 days of the effective date of this Agreement, Contractor agrees to institute a written policy stating that:

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(a) Contractor shall not knowingly employ, with or without pay, an individual who is listed by a federal agency as debarred, suspended, or otherwise ineligible for federal programs. Contractor shall make reasonable inquiry into the status of any potential employee or consultant. Such reasonable inquiry shall include, at minimum, review of the Systems for Award Management. The policy will further provide that, if any employee is charged with a criminal offense relating to Government contracts or otherwise indicating a lack of business integrity or business honesty, the Contractor will remove that employee immediately from responsibility for, or involvement with, Contractor's business affairs. Contractor shall notify the Independent Monitor and the Army of each such personnel action taken, and the reasons therefore, within 30 days of the action.

(b) Contractor shall not knowingly form a contract with, purchase from, or enter into any business relationship with any individual or business entity that is listed by a federal agency as debarred, suspended, or otherwise ineligible for federal programs. Contractor shall make reasonable inquiry into the status of any potential business partner. Such reasonable inquiry shall include, at minimum, review of the Systems for Award Management.

9. Adverse Actions. The Contractor avers that adverse actions taken, or to be taken, by Contractor against any employee, other individual, or business entity associated with Contractor arising out of or related to the conduct at issue here were or are solely the result of Contractor's initiatives and decisions, and were or are not the result of any action by, or on behalf of, agents or employees of the United States.

10. Unallowable Costs. Contractor agrees that all costs, as defined in FAR 31.205-47, incurred by, for, or on behalf of Contractor or any current or former employee, affiliate, or agent in connection with: (a) criminal or civil actions arising out of alleged violations described in the Preamble; (b) the proposed debarment and all costs incurred in negotiating, implementing, and abiding by the terms of this Agreement; (c) any investigation conducted as a result of the proposed debarment or this Agreement; or (d) the costs of Contractor's submissions, presentations, reviews by outside consultants and law firms, and appearances before the Army SDO, both in the past and throughout the term of this Agreement, shall be expressly deemed unallowable costs, direct or indirect, for Government contract accounting purposes. Contractor shall separately account for these costs (i) through accounting records to the extent possible; (ii) through memorandum records, including diaries and formal logs, regardless, of whether such records are part of official corporate documentation, where accounting records are not available; and (iii) through good faith itemized estimates, where no other accounting basis is available. However, the costs of all self-governance, compliance, or ethics programs, activities, and offices in existence before the matters described in the Preamble of this Agreement arose, and which are continued by the terms of this Agreement, shall be allowable costs to the extent otherwise permitted by law and regulation.

11. Present Responsibility. Contractor's compliance with the terms and conditions of this Agreement shall constitute an element of Contractor's present responsibility for Government

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contracting. By entering into this Agreement, the Army is not determining that Contractor is presently responsible for any specific Government contract.

12. Survival of this Agreement. If, during the term of this Agreement, Contractor establishes new companies, subsidiaries, merges with another company, or transfers the entire company or major assets to new owners, it shall notify the Army not less than 90 days in advance of such action and provide a copy of the corporate documents. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns, unless the new owners request and show good cause why it should not be applicable to their operations. Bankruptcy proceedings shall not prevent or stay the enforcement of this Agreement or any debarment proceedings the Army deems to be appropriate should the parties fail to comply with the terms of this Agreement, or engage in such other conduct that is a cause for suspension or debarment.

13. Breach of Agreement. If at any point during the term of this Agreement, the Army determines, in its sole discretion, that Contractor has breached a term of this Agreement or failed to meet any requirement of this Agreement, the Army may terminate this Agreement and suspend or initiate proceedings to debar Contractor and its managers, employees, and other agents, as appropriate. The basis of this determination may include any conduct that constitutes a breach of this Agreement. Contractor does not, by this Agreement or otherwise, waive its right to oppose such action under FAR Subpart 9.4, or any other substantive, procedural, or due process rights it may have under the United States Constitution, or other applicable laws or regulations of the United States.

14. Release. Contractor releases the United States, its instrumentalities, agents, and employees, in their official and personal capacities, of any and all liability or claims, monetary or equitable, arising out of the investigation and negotiation of this Agreement.

15. Paragraph Headings. The paragraph headings in this Agreement are inserted for convenient reference only and shall not affect the meaning or interpretation of this Agreement.

16. Severability. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement.

17. Entire Agreement. This Agreement constitutes the entire agreement between the Army, Ms. Winters, and Tropical Contracting and supersedes all prior agreements or understandings, oral or written, with respect to the subject matter of this action. This Agreement shall be binding upon, and be enforceable by, the parties hereto and their respective successors and assigns.

18. Modifications of this Agreement. Any requirements imposed on Contractor by this Agreement may be discontinued by the Army at its sole discretion. Other modifications shall be made only in writing and upon mutual consent of the parties to this Agreement.

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19. Restriction on Use. Contractor shall not use any term of this Agreement, the existence of this Agreement, or the termination of Contractor's proposed debarment for any purpose related to the defense or litigation of, or in mitigation of, any criminal, civil, or administrative investigation or proceedings. Notwithstanding this provision, Contractor may share a copy of this Agreement with other Government agencies.

20. Public Document. This Agreement, and any related Army administrative actions and notices, is a public document that may be distributed by the Army throughout the Government for official purposes and to other interested parties.

21. Truth and Accuracy of Submissions. Contractor represents that all written materials and other information supplied to the Army directly by Contractor's authorized representatives or through its counsel during the course of discussions with the Army preceding this Agreement are true and accurate in all material respects to the best of Contractor's information and belief. Contractor understands that this Agreement is executed on behalf of the Army in reliance upon the truth, accuracy, and completeness of all such representations.

22. Notices. All submissions required by this Agreement shall be delivered to the following addresses, or such other addresses as the parties may designate in writing.

If to the Army:

Procurement Fraud Branch
U.S. Army Legal Services Agency (USALSA)
9275 Gunston Road
Fort Belvoir, Virginia 22060-5546

If to Tropical Contracting:

Patricia Lilia Winters
c/o Mr. Jason M. Davis, Esq.
Davis & Santos
112 E. Pecan Street, Suite 900
San Antonio, Texas 78205

23. Authorized Representative. Patricia Lilia Winters is fully authorized to execute this Agreement and represents that she has authority to bind Tropical Contracting.

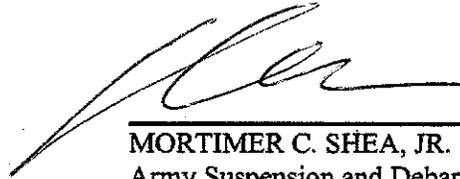
24. Period of Agreement. This Agreement shall be effective upon its execution by the Army SDO. The parties intend that the terms and conditions of this Agreement shall continue in force and effect for three years from the effective date absent an extension or earlier termination by the Army SDO. Any decision to extend, or terminate early, the Agreement shall be at the sole discretion of the Army SDO.

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PATRICIA LILIA WINTERS
Managing-Member,
Tropical Contracting, LLC
For herself and Tropical Contracting

10-9-2015
DATE



MORTIMER C. SHEA, JR.
Army Suspension and Debarment Official
U.S. Army

10-15-2015
DATE