

SUPPLY AGREEMENT NO. 1732

Tires for Fleet Maintenance

THIS **Tires for Fleet Maintenance Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and GCR Tires and Service ("Supplier"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide tires for Fleet Maintenance in response to Request for Bid No. **N/A** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Supplier's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Supplier agree as follows:

- 1. Scope.** Supplier will provide Tires for Fleet Maintenance in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.
- 2. Term.** This Agreement is for 12 months. The parties may mutually extend the term of this Agreement for up to zero additional zero-month periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** The total value of this Agreement is not to exceed \$52,621.20, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Benjamin Sanchez
Fleet Maintenance
361.826.1959
BenjaminS@cctexas.com

5. **Insurance.** Before performance can begin under this Agreement, the Supplier must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
6. **Purchase Release Order.** For multiple-release purchases of products to be provided by the Supplier over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Supplier a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Supplier until such time as the products are delivered and accepted by the City.
7. **Inspection and Acceptance.** Any products that are delivered but not accepted by the City must be corrected or replaced immediately at no charge to the City. If immediate correction or replacement at no charge cannot be made by the Supplier, a replacement product may be bought by the City on the open market and any costs incurred, including additional costs over the item's bid price, must be paid by the Supplier within 30 days of receipt of City's invoice.
8. **Warranty.**
 - (A) The Supplier warrants that all products supplied under this Agreement are new, quality items that are free from defects and of good material and workmanship. The Supplier warrants that it has clear title to the products and that the products are free of liens or encumbrances.
 - (B) In addition, the products purchased under this Agreement shall be warranted by the Supplier or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. **Quality/Quantity Adjustments.** Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Supplier will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Supplier be considered an employee of the City.
12. **Subcontractors.** Supplier may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Supplier must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid. In using subcontractors, the Supplier is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Supplier. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Supplier and its employees had performed the work.
13. **Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Supplier covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day

faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Benjamin Sanchez
Assistant Parts Foreman
5352 Ayers, Building 3B, Corpus Christi, Texas 78415
361.826.1959
Fax: 361.826.4394

IF TO SUPPLIER:

GCR Tires and Service
Attn: Bryan Salinas
Commercial Tire Consultant
4859 Baldwin, Corpus Christi, Texas 78408
361.883.5181
Fax: 361.883.4320

- 17. EXCEPT TO THE EXTENT OF ANY INJURIES, DEATHS, LOSSES, DAMAGES, CLAIMS, SUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES, RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OF CORPUS CHRISTI, ITS DEPARTMENTS, AND ALL OF THEIR OFFICERS, EMPLOYEES OR AGENTS OR OTHER CONTRACTORS, SUPPLIER SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, TO THE EXTENT THAT THEY ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE SUPPLIER OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE SUPPLIER OR ITS EMPLOYEES OR AGENTS. SUPPLIER MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL**

CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF SUPPLIER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City Manager may terminate this Agreement for Supplier's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Supplier written notice of the breach and set out a reasonable opportunity to cure. If the Supplier has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Supplier. The City Manager may also terminate this Agreement upon 24 hours written notice to the Supplier for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Assignment. No assignment of this Agreement by the Supplier, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Supplier is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

20. Severability. Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.


21. Order of Precedence. In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

- A. this Agreement (excluding attachments and exhibits);
- B. its attachments;
- C. the bid solicitation document including any addenda (Exhibit 1); then,
- D. the Supplier's bid response (Exhibit 2).

22. **Certificate of Interested Parties.** Supplier agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.
23. **Verification Regarding Israel.** In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Supplier verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
24. **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
25. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.
26. **Limitation of Liability.** The total liability of any Party to this Agreement shall not include any liquidated, penalty, incidental or consequential damages of any kind.

(SIGNATURE PAGE FOLLOWS)

SUPPLIER

Signature:  _____

Printed Name: RALPH H. MATHISEN

Title: DISTRICT SALES MANAGER

Date: 6-5-2013

CITY OF CORPUS CHRISTI

Signature: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM:

Assistant City Attorney

Date

Attached and Incorporated by Reference:

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance Requirements
- Attachment D: Warranty Requirements

Incorporated by Reference Only:

- Exhibit 1: RFB No. N/A
- Exhibit 2: Supplier's Bid Response

Attachment A: Scope of Work

New tires will be ordered on an as needed basis

1. Contractor will deliver new P265/60R17 tires
2. Contractor shall maintain stock in sufficient amount and sizes of tires to supply the reasonable demands of the City
3. Contractor shall have five hours to deliver the tires if the order is placed before 11am
4. Contractor shall have 24 hours to deliver the tires if the order is placed after 11am
5. Contractor shall deliver tires between the hours of 8am – 5pm
6. Tires will be delivered to the City Garage, City Service Center, at 5352 Ayers St., Corpus Christi, Texas 78415
7. Contractor shall provide bill of lading when tires are delivered

Attachment B: Bid/Pricing Schedule



TIRES & SERVICE

GCR 170992 CORPUS C630TTC
 4859 BALDWIN STREET
 CORPUS CHRISTI, TX 78408-2715
 (361)883-5181



INVOICE DATE	CUST. NO.	ORDER NO.	PAGE	INVOICE NO.
04/30/18	538312	149462	1	
COPY				
Tax Id: CORPUS CHRISTI TX 78469-9277 US				

SOLD TO
 CITY OF CORPUS CHRISTI
 PO BOX 9277
 ATTENTION FLEET MAINTANCE
 CORPUS CHRISTI, TX 78469-9277

SHIP TO
 CITY OF CORPUS CHRISTI
 PO BOX 9277
 ATTENTION FLEET MAINTANCE
 CORPUS CHRISTI, TX 78469-9277

PURCHASE ORDER NO.	SALES PERSON	PHONE	SHIP VIA	Quote
	1141	361-857-1912	DELIVER	

ITEM NO.	DESCRIPTION	QTY. ORDERED	QTY. SHIPPED	F.E.T.	PRICE	NET EXTENSION
023189	FS P265/60R17 FH GTV PURSUIT BL108V *BUY BOARD PROPOSAL#553-18 *CONTRACT#7105	423	423	0.00	124.40	52621.20
CHK'D BY: _____ DELV'D BY: _____ TIME: OUT/IN _____ MILEAGE: OUT/IN _____		DO NOT PAY. THIS IS A QUOTE				
						SubTpt Parts: 52621.20

Customer authorized company to perform the above written services to their vehicle.
 SEE INFORMATION STATEMENT OF REVERSE SIDE REGARDING CONSUMER CREDIT CONTRACT AND SECURITY AGREEMENT

X _____
 PRINT NAME / AUTHORIZED SIGNATURE

NOTE: In order to save all FINANCE CHARGES, the customer must pay, in full, the entire unpaid balance by the 10th of the following month. FINANCE CHARGES are computed on amounts 30 days or more past due at the PERIODIC RATE of 1.5% PER MONTH (MINIMUM CHARGE OF \$1.00) which is an ANNUAL PERCENTAGE RATE OF 18%. The above credit terms have been set out in accord with the Truth-In-Lending requirements of the Federal Government and are for the customer's benefit and protection.

Inv Total : 52621.20

PAY FROM THIS INVOICE

PO# _____
 Date Delivered: _____
 Fleet Authorization # _____
 Credit Release # _____
 Phone: _____
 Customer/Fleet Acct # _____
 Customer/Fleet Loc # _____

Disposition of Take Off Tires:
 ___ Ret'd w/Driver ___ Ret'd w/ Dealer
 ___ Ret'd to Customer ___ Ret'd for Warranty

Tire Replacement Reason _____

Vehicle Information: _____
 For ERS Information Only:
 ERS Work Order # _____
 DOT On Tires _____
 DOT Off Tires _____
 Driver Roll Time _____
 Serial/VIN# _____

Hubometer _____
 Odometer _____
 Color _____
 Lic#/State _____
 Chassis # _____

Make _____
 Model _____
 Vehicle # _____
 Trailer # _____
 Tire/Wheel Pos: _____
 Container # _____

- Your wheel components have been inspected and it has been determined your wheel components require immediate attention.
- A wheel assembly has been installed. Industry guidelines require that the torque level of the wheel nuts be rechecked between 50 and 100 miles of operation and retorqued as necessary. Failure to do so may result in loss of this assembly. I acknowledge receipt of wheel assembly info.

 (Signature)

 (Name Printed)

Attachment C: Insurance and Bond Requirements

A. CONTRACTOR'S LIABILITY INSURANCE

1. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.

2. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on all applicable policies. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas)	Statutory and complies with Part II of this Exhibit.
Employer's Liability	\$500,000/\$500,000/\$500,000

3. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

B. ADDITIONAL REQUIREMENTS

1. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
2. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
3. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

4. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
 - List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.

5. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
6. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
7. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
8. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
9. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2018 Insurance Requirements
Purchasing
Delivery of New Tires for Fleet
05/09/2018 sw Risk Management
Valid Through 12/31/2018

Bond is not required for this service.

Attachment D: Warranty Requirements

"Warranty: All new products ("Products") supplied by Supplier are subject to manufacturer's standard limited warranties as in effect at the time of delivery. As the exclusive remedy for breach of this warranty, Supplier, at its option, shall: (a) repair the Products, (b) replace the Products, or (c) refund the fees paid and attributable to the Products at issue for the then-current Period. Each casing retreaded using the Bandag® process (a "Bandag® Retread") and supplied to City by Supplier under this Agreement is subject to the provisions of the Bandag National Warranty, as in effect at the time of delivery. City will make no set-off, without the written consent of Supplier, for warranty claims or adjustments against any sum otherwise owing to Supplier, but settlement of such claims and adjustments will be in accordance with Supplier's warranty procedures then in effect. All warranty claims will be submitted to Supplier in accordance with warranty claims procedures in effect at the time of claim, unless Supplier notifies City otherwise.

Supplier warrants that the services it provides ("Services") will be performed in a good workmanlike manner, with that standard of care, skill, and diligence normally provided by a similar professional in the performance of similar services in accordance with applicable specifications and industry standards. As the exclusive remedy for breach of this Services warranty, Supplier, at its option, shall: (a) correct or re-perform any Service that is in breach of the warranties expressed herein or (b) refund the fees paid and attributable to the Services at issue.

OTHER THAN THE WARRANTIES STATED IN THE AGREEMENT, SUPPLIER DOES NOT MAKE ANY AND EXPRESSLY DISCLAIMS ALL: 1) WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, 2) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY; 3) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS OR ARISING UNDER OTHER THEORIES OF LAW OR EQUITY WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SUPPLIER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY NOR ITS PARENT, SUBSIDIARIES OR AFFILIATED ENTITIES, BE LIABLE FOR ANY INCIDENTAL, EXEMPLARY, SPECIAL, INDIRECT, CONTINGENT, PUNITIVE OR CONSEQUENTIAL DAMAGES, ANY CAUSE OF ACTION, WHETHER ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, WHETHER BASED IN AGREEMENT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION, LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUES, OR BUSINESS, LOSS OF GOODWILL, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, FACILITIES, SUBSTITUTE PRODUCTS OR SERVICES, DOWNTIME, DELAY OR SLOWDOWN COSTS, SPOILAGE OF MATERIAL, OR FOR ANY OTHER TYPE OF ECONOMIC LOSS, DIRECT OR INDIRECT, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THESE OR ANY OTHER DAMAGES OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN."