

Contract No.: CM2687
Bid/Proposal No.: NC19-008

CONTRACT FOR DELIVERY OF CRUSH CRETE

THIS CONTRACT entered into this _____ day of _____, 2019, by and between the **BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **TIM-PREP, INC., a Florida corporation**, whose address is 18850 Macclenny Road, Jacksonville, Florida 32234, hereinafter referred to as "Vendor".

WHEREAS, the County received sealed bids for Delivery of Crush Crete, Bid No. NC19-008 on or before March 19, 2019 at 4:00 p.m.; and

WHEREAS, the Road & Bridge Department determined that Vendor was the lowest, most responsive and responsible bidder for the bid items as set forth in Attachment "B"; and

NOW, THEREFORE, in consideration of the terms and conditions herein set forth, the County and the Vendor agree as follows:

SECTION 1. Description of Services to be Provided

The County does hereby retain the Vendor to furnish materials or services as further described in the *Technical Specifications/Scope of Work* attached hereto as Attachment "A" and made a part hereof. Required materials and service shall be specifically enumerated, described and depicted in the Purchase orders authorizing performance of the specific task. This Contract standing alone does not authorize the performance of any work or require the County to place any orders for work.

SECTION 2. Receiving/Payment/Invoicing

No payment will be made for materials ordered without proper purchase order authorization. The County shall pay the Vendor within forty-five (45) calendar days of receipt of invoice, pursuant to and in accordance with the promulgations set forth by the State of Florida's Prompt Payment Act. (Fla. Stat. §218.70). Payment shall not be made until materials, goods or services have been received, inspected and accepted by the County in the quality and quantity ordered. Payment will be accomplished by submission of an invoice, in duplicate, with the purchase order number referenced thereon and mailed to the address set forth in the purchase order. Payment in advance of receipt of goods or services by the County cannot be made.

The invoice submitted shall be in sufficient detail as to item, quantity and price in order for the County to verify compliance with the awarded bid.

SECTION 3. Acceptance of Goods/Services

Receipt of goods/services shall not constitute acceptance. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that the product/performance meets bid specifications and conditions. Should the products/services differ in any respect from specifications, payment will be withheld until such time as the supplier takes necessary corrective action. If the proposed corrective action is not acceptable to the County, the County Manager's Office may authorize the recipient to refuse final acceptance of the goods/services. Should a representative of the County agree to accept the goods/services on condition that the Vendor will correct his performance within a stipulated time period, then payment will be withheld until the services are performed as specified.

SECTION 4. Inspection/Acceptance Title

Inspection and acceptance will be at destination unless otherwise stipulated. Title and risk of loss or damage to all items shall be the responsibility of the Vendor until accepted by the using department of the County, unless loss or damage results from negligence by the County or its using department.

SECTION 5. Firm Prices

Prices for goods and services covered in the specifications shall be firm; net delivered to the ordering agency, **F.O.B. DESTINATION**, vendor paying all delivery costs and shall remain firm for the period of this Contract. No additional fees or charges shall be accepted.

SECTION 6. Fund Availability

This Contract is deemed effective only to the extent that appropriations are available. Pursuant to Florida Statutes all appropriations lapse at the end of the Fiscal Year. Multi-year awards shall be adequately funded but the County reserves the right not to appropriate for an ongoing procurement if it is deemed in its best interest.

SECTION 7. Permits/Licenses/Fees

Any permits, licenses or fees required for this service will be the responsibility of the Vendor unless otherwise stated.

SECTION 8. Taxes

The County is tax exempt. As such, the County will not pay any Federal Excise or State of Florida Sales Tax. The Vendor will refrain from including taxes in any billing.

SECTION 9. Laws Governing this Contract

This Contract shall be consistent with, and be governed by, the Ordinances of Nassau County, the whole law of the State of Florida, both procedural and substantive, and applicable federal statutes, rules and regulations. Any and all litigation arising under this Contract shall be brought in Nassau County, Florida.

SECTION 10. Changes

The County reserves the right to order, in writing, changes in the work within the scope of the contract, such as change in quantity or delivery schedule. The Vendor has the right to request an equitable price adjustment in cases where changes to the contract under the authority of this clause result in increased costs to the Vendor.

SECTION 11. Modifications

In addition to modifications made under the changes clause, this Contract may be modified within the scope of the contract upon the written and mutual consent of both parties, and approval by appropriate legal bodies in the County.

SECTION 12. Assignment & Subcontracting

The Vendor will not be permitted to assign its contract with the County, or to subcontract any of the work requirements to be performed without obtaining prior written approval by the County.

SECTION 13. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Contract is, for any reason, held invalid, unconstitutional, or unenforceable by any Court of Competent Jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 14. Termination for Default

The performance of the Contract may be terminated by the County in accordance with this clause, in whole or in part, in writing, whenever the County shall determine that the Vendor has failed to meet performance requirement(s) of the Contract.

SECTION 15. Termination for Convenience

The County reserves the right to terminate the Contract in whole or part by giving the vendor written notice at least thirty (30) days prior to the effective date of the termination. Upon receipt of termination from the County, the Vendor shall only provide those services specifically approved or directed by the County. All other rights and duties of the parties under the Contract shall continue during such notice period, and the County shall continue to be responsible to the Vendor for the payment of any obligations to the extent such responsibility has not been excused by breach of default of the Vendor.

SECTION 16. Force Majeure

Neither party of this Contract shall be liable to the other for any cost or damages if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the parties. Such causes may include, but are not restricted to, acts of nature, fires, quarantine restriction, strikes and freight embargoes. In all cases, the failure to perform must be totally beyond the control and without any fault or negligence of the party.

SECTION 17. Vendor Responsibilities

The Vendor will provide the services agreed upon in a timely and professional manner in accordance with specifications.

SECTION 18. Public Emergencies

The Vendor shall agree before, during, and after a public emergency, disaster, hurricane, tornado, flood, or other acts of nature that the County shall require a "First Priority" for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety, as determined by the County. The Vendor agrees to rent/sell/lease all goods and services to the County or governmental entities on a "first priority" basis. The County expects to pay a fair and reasonable price for all products and services rendered or contracted in the event of a disaster, emergency, hurricane, tornado or other acts of nature.

SECTION 19. Period of Contract/Option to Extend or Renew

This Contract shall begin on the date of execution and terminate three (3) years from the date of execution. The performance period of this Contract may be extended upon mutual Contract between the Vendor and the County with no change in terms or conditions. Any extension of performance period under this provision shall be in one (1) year increments. Total contract length and individual one (1) year extensions shall be in the County's best interest and sole discretion.

Any contract or amendment to the Contract shall be subject to fund availability and mutual written agreement between the County and the Vendor.

SECTION 20. Exercise of Option

Exercise of option to extend term of contract: If the County wishes to enter into an option period, the County shall request from the Vendor their written statement of desire to enter into an extension of the performance period.

SECTION 21. Probationary Period

The first ninety (90) days of this Contract are to be considered a "probationary" period. At the County's election, this Contract may be terminated, based on the performance of the Vendor, and a new award be granted without another formal bid.

SECTION 22. Escalation Clause

Ninety (90) days prior to the end of the contract term, the Vendor may request in writing an increase in an individual item unit cost. Consideration of price increases at each renewal period will be given provided such escalations are reasonable and acceptable to the County. It is also expected that de-escalation of prices will be extended to the County if market so reflects. The County will consider a price adjustment based on the latest Consumer Price Index and/or proof of a manufacturer's price increase. Any and all proposed increases are subject to approval by the County.

SECTION 23. Supervision

The Vendor shall act as an independent contractor and not as an employee of the County. The County shall not exercise any supervision or control over the Vendor's employees performing services under this Contract. Such employees shall be accountable not to the County, but solely to the Vendor, who in turn is responsible to the County.

SECTION 24. Indemnification and Insurance

The Vendor shall indemnify and hold harmless the County and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of this contract, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to loss to or destruction of tangible property, including loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Vendor and/or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

In any and all claims against the County or any of its agents or employees, by any employee of the Vendor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Vendor or any subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefits act.

The Vendor shall, and at its sole expense, agree to maintain in full force and effect at all times during the life of this contract, insurance coverage's, limits, including endorsements, as described in the *General Information and Minimum Insurance Requirements Form*, attached hereto as Attachment "C". The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the Vendor is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Vendor under the Contract.

SECTION 25. Disputes

Any dispute arising under this Contract shall be addressed by the representatives of the County and the Vendor as set forth herein. Disputes shall be set forth in writing to the County Manager with a copy to the Department Head or Vendor, depending on which party initiates the dispute, and provided by overnight mail, UPS, FedEx, or certified mail. A response shall be provided in the same manner prior to the initial meeting with the County Manager, the Department Head (or their designee), and a representative of the Vendor. This initial meeting shall take place no more than thirty (30) days from the written notification of the dispute addressed to the County Manager.

If the dispute is not settled at the initial meeting, the County Manager shall immediately notify the County Attorney. The Department Head (or his/her designee), the County Attorney and the County Manager shall meet with the Vendor's representative(s) within thirty (30) days of the County Manager's notification to the County Attorney of the continued dispute.

If there is no satisfactory resolution, the claims, disputes, or other matters in question between the parties to this Contract arising out of or relating to this Contract or breach thereof, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Vendor. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Vendor. Vendor shall not stop

work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed.

Venue for any mediation shall be in Nassau County, Florida. Venue for any litigation shall be in state court in Nassau County, Florida.

SECTION 26. Public Records

The County is a public agency subject to Fla. Stat. §119. IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF FLA. STAT. §119, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 530-6250, DMOODY@NASSAUCOUNTYFL.COM, 96161 NASSAU PLACE, YULEE, FLORIDA 32097. Under this Contract, to the extent that the Vendor is providing services to the County, and pursuant to Fla. Stat. §119.0701, the Vendor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Vendor or keep and maintain public records required by the public agency to perform the service. If the Vendor transfers all public records to the public agency upon completion of the contract, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of

public records, in a format that is compatible with the information technology systems of the public agency.

SECTION 27. Request for Records; Noncompliance

A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Vendor of the request, and the Vendor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

If a Vendor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

A Vendor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Fla. Stat. §119.10.

SECTION 28. Civil Action

If a civil action is filed against a Vendor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Vendor the reasonable costs of enforcement, including reasonable attorney fees if:

- (a) The court determines that the Vendor unlawfully refused to comply with the public records request within a reasonable time; and
- (b) At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, the public agency and to the Vendor.

A notice complies with subparagraph (b), if it is sent to the public agency's custodian of public records and to the contractor at the Vendor's address listed on its contract with the public agency or to the Vendor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A Vendor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

SECTION 29. Entire Agreement

The written terms and provisions of this Contract shall supersede all prior verbal statements of any official or other representative of the County. Such statements shall not be effective or be

construed as entering into, or forming a part of, or altering in any manner whatsoever, this Contract or contract documents.

IN WITNESS WHEREOF, the parties have executed this contract, which shall be deemed an original on this day and year first above written.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

JUSTIN M. TAYLOR
Its: Chairman

Attest as to authenticity of the
Chair's signature:

JOHN A. CRAWFORD
Its: Ex-Officio Clerk

Approved as to form and legality by the
Nassau County Attorney

MICHAEL S. MULLIN

TIM-PREP, INC.

By: _____
Its: _____

STATE OF _____
COUNTY OF _____

Before me personally appeared, _____, who is personally known _____ or produced _____ as identification, known to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he/she executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 2019.

Notary Signature

Notary-Public-State of _____ at large
My Commission expires:

ATTACHMENT "A" - TECHNICAL SPECIFICATIONS/SCOPE OF SERVICES

**TECHNICAL SPECIFICATIONS
DELIVERY OF CRUSH CRETE
BID NUMBER NC19-008**

1. The payment due date for a local government entity for the purchase of goods or services other than construction services is forty-five (45) days per Fla. Stat. §218.74.
2. Materials must meet current Florida Department of Transportation specifications for road and bridges per 2019 edition and all supplements thereto, if any.
3. Crush Crete to be provided under this solicitation shall comply with the requirements of FDOT Specifications, Section 901-5 Coarse Aggregate.
4. Deliveries shall be within forty-eight (48) hours of notification by the County and charged to the ordering department.
5. The County shall be billed only for amount ordered by the department; excess quantities will be refused at work site.
6. Each delivery to work site shall be accompanied by a delivery ticket indicating the ordering department and the quantity being delivered.
7. All charges must be on the Bid Sheet. If not, Nassau County will have the authority to reject those charges.
8. Complete description and specifications of product must accompany each and every bid.
9. Bidders are required to fill out the following bid sheet:

ATTACHMENT "B" – BID PRICE SHEET

**TECHNICAL SPECIFICATIONS
DELIVERY OF CRUSH CRETE
BID NUMBER NC19-008**

<i>ITEM DESCRIPTION</i>	<i>QTY (per Ton)</i>	<i>PRICE</i>	<i>TOTAL</i>
Delivery of Crush Crete to Nassau County Road & Bridge Hilliard Yard (Per Ton)	1	*25.75	25.75/ton
Delivery of Crush Crete to Nassau County Road & Bridge Yulee Yard (Per Ton)	1	*29.25	29.25/ton

* Bid is based on availability of material at the time of order.

The undersigned declares that they have examined the Notice to Bidders, Instructions to Bidders, and Technical Specifications/Scope of Work and is informed fully with regard to all terms and conditions pertaining thereto and agrees under these specifications at the prices set forth above.

Company: Tim-Prep, Inc.

Address: 18850 Macclenny Road

City, State, Zip: Jacksonville, Florida 32234

By: 

(Signature)

Michael Stokes

(Above name printed or typed)

Phone: 904-289-7000 **Fax:** 904-289-7445

Email: scole@timpred.com; tbowie@timpred.com

REMINDER: THIS FORM IS TO BE INCLUDED WITH THE BID. FAILURE TO SUBMIT ALONG WITH BID MAY BE CAUSE FOR DISQUALIFICATION.

ATTACHMENT "C"

GENERAL INFORMATION AND MINIMUM INSURANCE REQUIREMENTS

COMMERCIAL GENERAL LIABILITY INSURANCE

The Supplier/Vendor shall purchase and maintain at the Supplier/Vendor's expense Commercial General Liability insurance coverage (ISO or comparable Occurrence Form) for the life of this Contract. Modified Occurrence or Claims Made forms are not acceptable.

The Limits of this insurance shall not be less than the following limits:

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Fire Damage Limit (any one fire)	\$ 300,000
Medical Expense Limit (any one person)	\$ 10,000
Products & Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products & Completed Operations) Applies Per Project	\$2,000,000

General liability coverage shall continue to apply to "bodily injury" and to "property damage" occurring after all work on the Site of the covered operations to be performed by or on behalf of the additional insureds has been completed and shall continue after that portion of "your work" out of which the injury or damage arises has been put to its intended use.

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

The Supplier/Vendor shall purchase and maintain at the Supplier/Vendor's expense Workers' Compensation and Employer's Liability insurance coverage for the life of this Contract.

The Limits of this insurance shall not be less than the following limits:

<u>Part One</u> – Workers' Compensation Insurance – Unlimited	
Statutory Benefits as provided in the Florida Statutes and	
<u>Part Two</u> – Employer's Liability Insurance	
Bodily Injury By Accident	\$500,000 Each Accident
Bodily Injury By Disease	\$500,000 Policy Limit
Bodily Injury By Disease	\$500,000 Each Employee

*If leased employees are used, policy must include an Alternate Employer's Endorsement

AUTOMOBILE LIABILITY INSURANCE

The Supplier/Vendor shall purchase and maintain at the Supplier/Vendor's expense Automobile Liability insurance coverage for the life of this Contract.

The Limits of this insurance shall not be less than the following limits:

Combined Single Limit – Each Accident	\$1,000,000
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Covered Automobiles shall include any auto owned or operated by the insured Supplier/Vendor, insured Sub-Sub-Supplier/Vendor including autos which are leased, hired, rented or borrowed, including autos owned by their employees which are used in connection with the business of the respective Supplier/Vendor or Sub-Sub-Supplier/Vendor.

Supplier/Vendor shall require each of his Sub-Supplier/Vendors to likewise purchase and maintain at their expense Commercial General Liability insurance, Workers' Compensation and Employer's Liability coverage and

Automobile Liability insurance coverage meeting the same limit and requirements as the Supplier/Vendors insurance.

Certificates of Insurance acceptable to Nassau County Board of County Commissioners for the Contractor/Vendor's insurance must be received within ten (10) days of Notification of Selection and at time of signing Agreement.

Certificates of Insurance and the insurance policies required for this Agreement shall contain an endorsement that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Nassau County Board of County Commissioners.

Certificates of Insurance and the insurance policies required for this Agreement will include a provision that policies, except Workers' Compensation, are primary and noncontributory to any insurance maintained by the Supplier/Vendor.

Nassau County Board of County Commissioners must be named as an Additional Insured and endorsed onto the Commercial General Liability (CGL), and Auto Liability policy (ies). A copy of the endorsement(s) must be supplied to Nassau County Board of County Commissioners ten (10) days following the execution of the agreement or prior to the first date of services, whichever comes first.

CGL policy Additional Insured Endorsement must include Ongoing and Completed Operations (Form CG2010 11 84 **OR** Form CG2010 04 13 and GC2037 04 13 edition or equivalent). Other Additional Insured forms might be acceptable but only if modified to delete the word "ongoing" and insert the sentence "Operations include ongoing and completed operations".
CGL policy shall not be endorsed with Exclusion - Damage to Work performed by Sub-Supplier/Vendors on Your Behalf (CG2294 or CG2295)
CGL policy shall not be endorsed with Contractual Liability Limitation Endorsement (CG2139) or Amendment of Insured Contract Definition (CG 2426)
CGL policy shall not be endorsed with Exclusion - Damage to Premises Rented to you (CG 2145)
CGL policy shall include broad form contractual liability coverage for the Supplier/Vendors covenants to and indemnification of the Authority under this Contract

Certificates of Insurance and the insurance policies required for this Agreement shall contain a provision under General Liability, Auto Liability and Workers' Compensation to include a Waiver of Subrogation clause in favor of Nassau County Board of County Commissioners.

All Certificates of Insurance shall be dated and shall show the name of the insured Supplier/Vendor, the specific job by name and job number, the name of the insurer, the policy number assigned its effective date and its termination date and a list of any exclusionary endorsements.

All Insurers must be authorized to transact insurance business in the State of Florida as provided by Florida Statute 624.09(1) and the most recent Rating Classification/Financial Category of the insurer as published in the latest edition of "Best's Key Rating Guide" (Property-Casualty) must be at least A- or above.

All of the above referenced Insurance coverage is required to remain in force for the duration of this Agreement and for the duration of the warranty period. Accordingly, at the time of submission of final application for payment, Supplier/Vendor shall submit an additional Certificate of Insurance evidencing continuation of such coverage.

If the Supplier/Vendor fails to procure, maintain or pay for the required insurance, Nassau County Board of County Commissioners shall have the right (but not the obligation) to secure same in the name of and for the account of Supplier/Vendor, in which event, Supplier/Vendor shall pay the cost thereof and shall furnish upon demand, all information that may be required to procure such insurance. Nassau County Board of County Commissioners shall have the right to back-charge Supplier/Vendor for the cost of procuring such insurance. The failure of Nassau County Board of County Commissioners to demand certificates of insurance and endorsements evidencing the required insurance or to identify any deficiency in Supplier/Vendors coverage based on the evidence of insurance provided by the Supplier/Vendor shall not be construed as a waiver by Nassau County Board of County Commissioners of Supplier/Vendor's obligation to procure, maintain and pay for required insurance.

The insurance requirements set forth herein shall in no way limit Supplier/Vendors liability arising out of the work performed under the Agreement or related activities. The inclusions, coverage and limits set forth herein are minimum inclusion, coverage and limits. The required minimum policy limits set forth shall not be construed as a limitation of Supplier/Vendor's right under any policy with higher limits, and no policy maintained by the

Supplier/Vendor shall be construed as limiting the type, quality or quantity of insurance coverage that Supplier/Vendor should maintain. Supplier/Vendor shall be responsible for determining appropriate inclusions, coverage and limits, which may be in excess of the minimum requirements set forth herein.

If the insurance of any Supplier/Vendor or any Sub-Supplier/Vendor contains deductible(s), penalty(ies) or self-insured retention(s), the Supplier/Vendor or Sub-Supplier/Vendor whose insurance contains such provision(s) shall be solely responsible for payment of such deductible(s), penalty(ies) or self-insured retention(s).

The failure of Supplier/Vendor to fully and strictly comply at all times with the insurance requirements set forth herein shall be deemed a material breach of the Agreement.