

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

PURCHASE OF GOODS CONTRACT

THIS CONTRACT, made and entered into this the ____ day of _____, 2013, for _____ by and between the **COUNTY OF DURHAM**, North Carolina, a political subdivision of the State of North Carolina, hereinafter called the **“PURCHASER”**, and _____ whose principal office and place of business is _____, hereinafter called the **“SELLER”**.

1. TERMS.

- A. The Seller, in consideration of the sum of _____ (\$_____), hereby sells to Purchaser the goods and services at the times, in the manner, at the prices, and at the place(s), as set forth herein. **No charges of any kind not appearing in this contract will be accepted or paid by Purchaser.** It is Purchaser's discretion to accept items shipped in excess of the quantity ordered and any over shipment may be returned at Seller's expense.
- B. Shipments received prior to delivery date without previous approval Purchaser may be returned or stored at Seller's expense.
- C. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all crates, packages, packing slips, invoices, and correspondence shipped or mailed to Purchaser. All items will be accompanied by assembly instructions and operating and repair manuals, as applicable. Purchaser's count will be accepted as conclusive on all shipments not accompanied by a packing slip.
- D. The parts, material, and workmanship of all items are subject to inspection, testing and counting by Purchaser. Purchaser may reject for full credit or require prompt correction or replacement at Seller's expense, including the expense of unpacking, examining, repacking, storing and transporting of any item defective in material or workmanship or otherwise not in conformity with Bid No _____ (if applicable) or specifications provided by Purchaser. Goods will be delivered to the Purchaser in new condition and undamaged (unless otherwise specified by Purchaser).
- E. This order to Seller is not transferable or assignable without the written permission of Purchaser. Seller is an independent contractor and is not an agent or employee of Purchaser.
- F. Seller warrants that it is the sole owner of the described goods and that it has the unrestricted right to convey a clear title to the Purchaser free and clear of all encumbrances.

2. CHANGE: Purchaser reserves the right to change, modify and/or cancel this order upon issuance of a change order. If the Purchaser is not notified to the contrary in writing within 10 days after the issuance of the change order, the changed and/or modification and/or cancellation is considered accepted by the Seller.

3. WARRANTY OF GOODS AND MATERIALS: Seller expressly warrants that all goods, provided or used by the Seller, will: conform to the drawings, specifications, samples or other descriptions furnished by the Purchaser or by the Seller; meet requirements detailed in the scope of work; be of good materials and workmanship and free from defect. This express warranty shall not be waived by reason of acceptance of the goods or payment made by the Purchaser. Seller also warrants that all items sold or furnished under this order have been produced sold, delivered and furnished in compliance with all applicable laws and regulations.

THE SELLER WARRANTS THE MERCHANTABLE QUALITY OF THE GOODS SOLD HEREUNDER AND THAT SUCH GOODS ARE FIT FOR THE PURPOSES FOR WHICH THEY WERE PURCHASED. SUCH WARRANTIES ARE IN ADDITION TO ALL EXPRESS WARRANTIES AND WILL RUN TO THE BENEFIT OF THE

PURCHASER. THE SELLER'S PERIOD OF WARRANTY WITH RESPECT TO EACH ITEM WILL BE AT LEAST AS LONG AS THAT OF THE MANUFACTURER OF SUCH ITEM, AND SELLER WILL HONOR SAME.

4. INDEMNITY. To the fullest extent permitted by laws and regulations, the Seller shall indemnify and hold harmless the Purchaser and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of attorneys, and other professionals and costs related to court action or arbitration) arising out of or resulting from the performance of this Contract or the actions of the Seller or its officials, employees, or contractors under this Contract or under the contracts entered into by the Seller in connection with this Contract. This indemnification shall survive the termination of this agreement.

5. EXISTENCE. Seller warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this Agreement.

6. CORPORATE AUTHORITY. By execution hereof, the person signing for Seller below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the Seller.

7. GOVERNING LAW. This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

8. TERMINATION. The Purchaser may, by written notice, terminate this contract in whole or in part, for failure of Seller to perform, including failure to deliver as and when specified. If so terminated, Seller shall be liable for all damages, including, without limitation, 1) the excess cost of re-procuring similar goods or services, 2) shipping charges for any items the Purchaser may at its option return to Seller, including items already delivered but for which Seller no longer has any use because of default, 3) amounts paid by Purchaser for any items it has received but returns to Seller, and 4) any other damages permitted by applicable law. Purchaser shall have the right to pursue any remedies provided by applicable laws.

9. NOTICES. All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

**COUNTY OF DURHAM
PURCHASING DIVISION
4TH FLOOR, 200 EAST MAIN STREET
DURHAM, NORTH CAROLINA, 27701**

SELLER

10. ENTIRE AGREEMENT: This Agreement shall constitute the entire understanding between Purchaser and Seller and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

11. HEADINGS: The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

12. E-VERIFY. As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Purchase of Goods Contract to be executed by their duly authorized office or agent.

Purchaser: COUNTY OF DURHAM

Name and Title

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

George K. Quick
Durham County Chief Financial Officer

Seller: _____

By: _____
Authorized Representative

Print Name: _____

Title: _____