

**MASTER SERVICES AGREEMENT
FOR PURCHASE ORDERS**

THE TERMS OF THIS MASTER SERVICES AGREEMENT (“MSA”) apply to all Purchase Orders for goods, materials, equipment, supplies, and services.

For the purpose and subject to the terms and conditions hereinafter set forth, the County hereby contracts for the goods, materials, and/or services of the Seller, and the Seller agrees to provide the goods, materials, and/or services as described in the Purchase Order.

Seller represents and agrees that Seller is qualified to perform and fully capable of performing and providing the goods, materials, and/or services purchased in a fully competent, professional and timely manner to the satisfaction of the County. Seller shall be responsible for all errors or omissions, in the performance of the Purchase Order. Seller shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts at no additional cost to the County.

SPECIFIC TERMS

1. Non-waiver: Failure by County at any time to require the performance by Seller of any of the provisions hereof shall in no way waive or affect the County's right hereunder to enforce the same, nor shall any waiver by the County of any breach be held to be a waiver of any succeeding breach or a waiver of this Non-Waiver Clause.

2. Independent Contractor: The Seller shall operate as an independent contractor, and the County shall not be responsible for any of the Seller's acts or omissions. The Seller shall not be treated as an employee with respect to the goods, or materials provided, or services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. The Seller understands that neither federal, nor state, nor payroll tax of any kind, shall be withheld or paid by the County on behalf of the Seller or the employees of the Seller.

3. Insurance: Seller shall maintain, at its sole expense, Commercial General Liability Insurance, Automobile Insurance, Workers' Compensation Insurance, and any additional insurance as may be required by County's Risk Manager as such insurance requirements are described in the Orange County Risk Transfer Policy and Orange County Minimum Insurance Coverage Requirements (each document is incorporated herein by reference and may be viewed at http://www.orangecountync.gov/departments/purchasing_division/contracts.php).

4. Indemnity: To the extent authorized by North Carolina law the Seller agrees, without limitation, to defend, indemnify, and hold harmless Orange County from all losses, liabilities, claims, demands, suits, costs, damages or expenses (including reasonable attorney's fees) arising from bodily injury, including death, to any person or persons or damage to or destruction of any property caused in whole or in part by any negligent or intentional act or omission on the part of the Seller in carrying out Seller's duties and obligations related to the goods or materials provided or services to be provided in the Purchase Order. It is the intent of this provision to require the Seller to indemnify the County to the fullest extent permitted under North Carolina law.

5. Termination/Cancellation: The Purchase Order may be terminated at any time by mutual written agreement of the parties or by the County, without penalty or further obligation, upon written notice to the Seller. County may suspend the Purchase Order upon verbal notice to Seller.

6. Entire Agreement and Signatures: The parties have read the terms of the Purchase Order and this MSA and agree to be bound by all of the terms, and further agree that the Purchase Order together with

this MSA constitutes the complete and exclusive statement of the agreement between the parties unless and until modified in writing and signed by the parties. Modifications may be evidenced by telefacsimile signature. The Purchase Order together with any amendments or modifications may be executed electronically. All electronic signatures affixed hereto evidence the consent of the Parties to utilize electronic signatures and the intent of the parties to comply with Article 11A and Article 40 of North Carolina General Statute Chapter 66.

7. Governing Law and Priority: Both parties agree that the Purchase Order shall be governed by the laws of the State of North Carolina and Orange County. Seller shall at all times remain in compliance with all applicable local, state, and federal laws, rules, and regulations including but not limited to all state and federal anti-discrimination laws, policies, rules, and regulations and the Orange County Non-Discrimination Policy and Orange County Living Wage Policy (each policy is incorporated herein by reference and may be viewed at http://www.orangecountync.gov/departments/purchasing_division/contracts.php). Any violation of this requirement is a breach of the Purchase Order and County may immediately terminate the Purchase Order without further obligation on the part of the County. This paragraph is not intended to limit and does not limit the definition of breach to discrimination. By accepting the Purchase Order the Seller certifies that Seller has not been identified, and has not utilized the services of any agent or subcontractor identified, on the list created by the State Treasurer pursuant to G.S. 147-86.58. By accepting the Purchase Order Seller certifies that Seller has not been identified, and has not utilized the services of any agent or subcontractor identified, on the list created by the State Treasurer pursuant to G.S. 147-86.81. By accepting the Purchase Order Seller affirms Seller is and shall remain in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. In determining the goods, materials, and/or services to be provided, should any documents be referenced in or attached to the Purchase Order, the terms of the Purchase Order and this MSA shall have priority in any conflict between terms.

8. Dispute Resolution: Neither party may initiate binding arbitration. Any disputes shall be resolved by nonbinding mediation. If such mediation fails either party may initiate litigation to resolve the dispute. Should either party initiate litigation to settle any dispute involving the terms of the Purchase Order or this MSA such litigation shall be initiated in the General Court of Justice of North Carolina seated in Orange County, North Carolina.

9. Warranty: The Seller expressly warrants that Supplies, covered by this order will conform to the specifications, drawings, and/or samples furnished by Orange County and shall be free from defects in material and/or workmanship and shall be merchantable. With regard to services performed pursuant to this order Seller expressly warrants Seller is competent and able to perform such services, the services shall be performed in a workmanlike manner, Seller shall exercise reasonable care and diligence in performing services pursuant to this order in accordance with generally accepted standards of this type of practice throughout the United States and in accordance with applicable federal, state and local laws and regulations applicable to the performance of these services. Seller is solely responsible for the professional quality, accuracy and timely completion and/or submission of all work related to the services, shall be responsible for its errors and omissions and shall correct such errors and omissions at no additional cost to the County. This warranty shall survive any inspection, delivery acceptance, and/or payment by Orange County.

10. Non-Appropriation: Seller acknowledges that County is a governmental entity, and the validity of this order is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this order, then this order shall automatically terminate without penalty to County immediately upon written notice to Seller of the unavailability and non-appropriation of public funds.

11. Purchase Orders Involving the Expenditure of Federal Funds the Seller is Obligated to Comply with the Following Federal Laws, Rules, and Orders:

(A) Equal Employment Opportunity. The Seller shall comply with the Equal Employment Opportunity provisions of 41 C.F.R. 60-1.4 as those terms may be applicable to this purchase.

(B) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). Except as otherwise noted herein, the Seller shall comply with the Davis-Bacon Act when required by Federal program legislation. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Seller shall pay its laborers and mechanics the higher of the wages specified in the referenced determination by the Secretary of Labor or the Living Wage as determined in the Orange County Living Wage Policy and the Orange County Operating Budget for the fiscal year in which the Purchase Order is entered.

(C) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Should this purchase involve federal funds in excess of \$100,000 and the employment of mechanics or laborers Seller shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act Seller shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic may be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(D) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended – Should this purchase involve federal funds in excess of \$150,000 Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

(E) Debarment and Suspension (Executive Orders 12549 and 12689) – Seller affirms that Seller is not listed on the governmentwide exclusions in the System for Award Management (“SAM”), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(F) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Should this Purchase exceed \$100,000 Seller shall file the required certification. Seller certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352 and that it has not engaged in any lobbying of any non-federal entity in connection with seeking or receiving federal funds.