

CONTRACT FOR DEMOLITION OF WATER MANAGEMENT STRUCTURES

This contract is dated, made, and entered into as of the 6th day of October, 2014, by the City of Durham (“City”), a N. C. municipal corporation, and Vistabution, LLC (“Contractor”), a limited liability company organized and existing under the laws of North Carolina.

Sec. 1. Background and Purpose. The City of Durham Department of Water Management (“DWM”) plans to demolish structures located on nine (9) DWM-owned properties near Lake Michie Reservoir, Brown Water Treatment Plant and the Solid Waste Landfill. Demolition of the existing structures and returning the sites back to natural conditions aligns with DWM’s ongoing source water protection efforts.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s.

The Contractor shall perform the following work under the Contract:

TASK 1: Demolition.

- a) The contractor shall furnish all labor, materials and equipment necessary for building demolition, site stabilization and restoration of the properties/parcels listed below and shown in Figures 1-8 of Exhibit A.

DWM properties identified for demolition and site restoration.

Property Address	Structure Types
3214 Ellis Chapel Rd Bahama, NC	House, Well, Septic System
3124 Ellis Chapel Rd Bahama, NC	House, Mobile Home, Outbuildings (8), Well, Septic System
3414 Pat Tilley Rd Bahama, NC	House, Septic System
2621 Roberts Rd Bahama, NC	House w/basement, Well, Septic System
110 Saddlebrook Dr Bahama, NC	House w/basement, Well, Septic System
7720 Jock Rd Bahama, NC	Well, Septic System
1507 Goodwin Rd Durham, NC	House w/basement, Well
1509 Goodwin Rd Durham, NC	House w/basement
3601 Wishart St Durham, NC	House, Outbuilding, Well, Septic System

- b) The Contractor shall demolish and remove all structures and materials at and below grade, utilities and service lines, and appurtenances on the site including but not limited to: houses, foundations, driveway pavements, basements, slabs, raised curbing, garages, carports, patios, decks, fences, private sidewalks, outbuildings, sheds, equipment pads, rubbish, stumps, and any other existing utility equipment from the sites. Driveway storm pipes shall be removed unless otherwise specified by the City. The demolition of structures shall be completed in accordance with all applicable State and Federal regulations.
- c) The Contractor shall remove all building materials, rubbish, debris, and trash from the site.

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- d) Using the findings presented in Exhibit B – Report for Asbestos Inspection and Universal Waste Assessment Services, the Contractor shall take all necessary and reasonable precautions to safeguard workers during demolition activities, and shall dispose of all debris and material removed from demolition sites in a permitted landfill in accordance with applicable Federal, State and Local requirements. Burning of any debris resulting from demolition is prohibited.
- e) Prior to demolition, the Contractor shall dispose of or recycle all equipment containing mercury, PCBs and/or CFCs in accordance with all Federal, State and local regulations. This shall include hazardous materials detailed in Exhibit B– Report for Asbestos Inspection and Universal Waste Assessment Services. The Contractor shall provide the City with written approval from the landfill(s) or recycling facilities documenting acceptance of such materials.
- f) Based on the age of these structures, the Contractor shall assume that lead-based paint may be present and shall take any necessary precautions to safeguard workers during demolition activities pursuant to all applicable State and Federal regulations.
- g) Work shall be performed in such a manner as not to endanger the safety of the workmen or the public, or cause damage to nearby structures.
- h) The Contractor shall be responsible for obtaining any required Building Demolition Permit(s) from the City/County Inspections Department and coordinating with the City Department of Public Works Engineering Division for any required inspections.
- i) The Contractor shall install any necessary erosion and sedimentation control measures in accordance with applicable State and/or local requirements prior to the start of demolition activities. Any such required measures shall be maintained until demolition activities are complete and the site has been stabilized.
- j) The Contractor shall coordinate with service providers to perform all work necessary to ensure disconnection of all services such as water, sewer, electrical and gas prior to beginning demolition activities. This shall include coordination with the power company for removal of any existing power poles.

TASK 3: Asbestos Abatement.

- a) Activities involving the removal of Asbestos Containing Materials (ACM) must be performed in accordance with the Environmental Protection Agency regulation 40 CFR, part 61, Subpart M, Final Rule National Emissions Standards for Hazardous Air Pollutants (NESHAP) and other applicable regulations prior to building demolition.
- b) When required for structures that contain ACM, as indicated in Exhibit B – Report for Asbestos Inspection and Universal Waste Assessment Services, the Contractor shall prepare an asbestos removal specification by a North Carolina licensed asbestos abatement contractor, and remove all Regulated Asbestos Containing Materials (RACM) according to applicable regulations prior to demolition activities.
- c) The contractor shall provide the required notification to and obtain any required permits from the North Carolina Department of Environment and Natural Resources (NCDENR), Health Hazards Control Unit (HHCU) prior to demolition activities.
- d) The Contractor shall provide the City with written documentation of asbestos abatement activities and ACM disposal.

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TASK 4: Site Restoration.

- a) Following demolition, disturbed areas shall be graded, filled and seeded as necessary to stabilize the site and provide desired topography, soil profiles, and functioning drainage patterns to ensure that any existing stormwater system can be maintained. This shall include gravel or dirt driveways. The site shall be graded to drain such that no water will collect or stand.
- b) The Contractor shall be responsible for providing clean fill, free of rocks and debris, as necessary to fill voids, depressions or holes that are created as a result of the demolition activities.
- c) The demolition sites shall be compacted, graded and free of protrusions, demolition debris and abrupt edges.

TASK 5: Well and Septic System Abandonment.

- a) The Contractor shall provide abandonment of any onsite well(s) by a North Carolina Certified Well Contractor pursuant to applicable State and Local well construction standards. This shall include obtaining any required State and/or County Health Department approvals.
- b) Prior to demolition, septic tanks shall be pumped by a permitted septage management firm and all septage shall be transported to an approved septage disposal facility. Septic tanks and laterals shall be removed, disposed and/or abandoned in place in accordance with applicable State and Local requirements. Sewer laterals and water lines serving the demolished structures shall extend vertically to finished grade and shall be capped with an approved plumbing device. This shall include obtaining any required State and/or County Health Department approvals.
- c) The Contractor shall provide the City with a written record of all septic systems and wells abandoned, and copies of any approvals issued by State and/or Local agencies.

In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor. All work listed in Sec. 2 shall be completed no later than ninety (90) days following issuance of Notice to Proceed (NTP).

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor’s Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City, including, but not limited to: a cover letter explaining the list of work performed during the invoice time period, the anticipated list of work to be done in the next 30 days, and a list of any work items that will cause noise during the next 30 days. Invoices shall contain itemized charges that correspond to Tasks 1-5 in Sec. 2. Within thirty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

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The City shall pay the Contractor for the Work on a lump sum basis in accordance with the fees listed below for each property based upon the successful completion of all the demolition activities at the subject property:

Property Address	Unit Price
3214 Ellis Chapel Rd, Bahama, NC	\$14,700.00
3124 Ellis Chapel Rd, Bahama, NC	\$23,730.00
3414 Pat Tilley Rd, Bahama, NC	\$12,172.00
2621 Roberts Rd, Bahama, NC	\$13,407.00
110 Saddlebrook Dr, Bahama, NC	\$8,843.00
7720 Jock Rd, Bahama, NC	\$2,900.00
1507 Goodwin Rd, Durham, NC	\$19,360.00
1509 Goodwin Rd, Durham, NC	\$22,233.50
3601 Wishart St, Durham, NC	\$15,776.50
TOTAL PRICE	\$133,122.00

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Prompt Payment to Subcontractors.

- (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

- (b) If the individual assigned to administer this contract for the City (in this section, titled “Prompt Payment to Subcontractors,” he or she will be referred to as the “Project Manager”) determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be
 - (i) the amount of interest due to the Subcontractor under subsection (a), and/or
 - (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.
 This subsection (b) does not limit any other rights to withhold payments that the City may have.

- (c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

- (d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

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Sec. 7. Insurance Requirements. The Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

- (a) Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- (b) Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.
- (c) Worker's Compensation & Employers Liability – Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.
- (d) Additional Insured – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'City of Durham as its interest may appear'.
- (e) Certificate of Insurance – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn:
101 City Hall Plaza
Durham, NC 27701
- (f) Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse City of Durham as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham's Risk Manager.

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Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in Section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this contract:

Exhibit A – Parcel Maps, containing 8 pages, plus cover sheet.

Exhibit B - Report for Asbestos Inspection and Universal Waste Assessment Services, containing 111 pages, plus cover sheet.

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Lori Montgomery, PE – Department of Water Management
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919) 560-4479
Email: Lori.Montgomery@DurhamNC.gov

To the Contractor:

Clarence Mann
Vistabution, LLC
8315 Six Forks Road
Raleigh, NC 27615
The fax number is 919-861-0849
Email: cmann45@bellsouth.net

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification.

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

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(b) Definitions. As used in subsections “a” above and “c” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. E-Verify Compliance. The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

Sec. 13. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. “Agent for Service of Process” means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

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(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

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(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City’s Manager’s Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor’s services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 14. Termination for Convenience (“TFC”).

(a) *Procedure.* Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice.

(b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate.

(c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

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IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

_____ By: _____

preaudit certificate, if applicable _____

Vistabution, LLC

By: _____ (SEAL)
Manager

State of _____

ACKNOWLEDGMENT BY
VISTABUTION, LLC

County of _____

I, a notary public in and for said county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of Vistabution, LLC, a limited liability company organized and existing under the laws of the State of _____, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract on behalf of the company. This the _____ day of _____, 20_____.

My commission expires:

Notary Public