

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**LEASE AGREEMENT
201 E Main Street Durham, NC 27701**

This **LEASE** made and entered into this 1st day of July, 2019 by and between the **COUNTY OF DURHAM**, a political subdivision of the State of North Carolina, hereinafter “**Landlord**,” and **STATE OF NORTH CAROLINA, through the North Carolina Department of Agriculture & Consumer Services**, hereinafter “**Tenant**.”

WITNESSETH:

WHEREAS, the Department of Administration has delegated to the Department of Agriculture the authority to execute this lease agreement by a memorandum dated the 26th day of March, 1982; and

WHEREAS, in support of its agreement with the State of North Carolina Department of Agriculture and Consumer Services to provide Forest Service benefits to the residents of Durham County, the County Board of Commissioners desires to continue to provide office space to Forest Service employees;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, including, without limitation, other good and valuable consideration, Landlord does hereby let and lease unto Tenant and Tenant hereby takes and leases from Landlord for and during the period of time and subject to the terms and conditions hereinafter set out certain space in Durham County, North Carolina, more particularly described as follows and in Exhibit A:

Durham County Administrative Building II Durham, NC 27701
Rooms 550, 551, 552, 553, and 554, totaling 1254 square feet.

**THE TERMS AND CONDITIONS OF THIS LEASE AGREEMENT ARE AS
FOLLOWS:**

1. Demise of Premises: Landlord does hereby lease unto Tenant and Tenant hereby leases from Landlord the Premises pursuant to the terms set forth in this Lease Agreement. Tenant shall be provided access cards and shall be responsible for the safe keeping of the cards and building security rules provided by the Landlord. Two surface parking spaces located in the parking area accessed by Roxboro Street are assigned to the Tenant and are included in this lease agreement.
2. Use of Premises: Tenant shall use and occupy the Premises for the sole purpose of providing office and storage space for assigned Forest Service staff. Tenant shall not use or allow the Premises to be used for any purpose or in any manner which shall be unlawful or shall constitute a public or private nuisance or hazard. Tenant shall comply with all applicable laws, ordinances, orders, rules and regulations prescribed by lawful

governmental authority relating to the Premises, including those concerning cleanliness, safety, occupancy and use of the Premises.

3. Commencement, Term and Renewal: The Term of this Lease shall commence on the date first written above and shall expire on June 30, 2020, unless terminated sooner as provided herein (hereinafter the "Term"). The Term of the Lease may be renewed for 4 consecutive one-year periods upon Tenant's written request, provided to Landlord at least 90 days prior to the termination of the then current Term, in Landlord's sole discretion (hereinafter the "Lease Renewal"). All terms and conditions of this Lease shall continue for all Lease Renewal Terms.
4. Base Rent: Beginning on July 1, 2019 the Tenant shall pay to the Landlord the annual rental amount of \$1.00.
5. Assignment and Sublease: Tenant shall not assign, mortgage or encumber this Lease, the Premises or any improvements on the Premises, nor sublet the Premises or any part thereof. Any attempted assignment, mortgage, encumbrance or subletting shall be null and void.
6. Title to Improvements: Alterations and permanent improvements to the Premises shall immediately become and be the sole and absolute property of Landlord and shall remain on the Premises and shall not be removed unless otherwise determined by Landlord; and, at the expiration or sooner termination of this Lease, the same shall be surrendered to Landlord in good condition and repair, reasonable wear and tear excepted, unless otherwise determined by Landlord.
7. Repairs, Maintenance and Utilities:
 - (a) Tenant agrees and hereby stipulates with Landlord that the Premises are in good and tenable condition on the commencement of this Lease. Tenant accepts the Premises in "as is" condition.
 - (b) Tenant shall not permit, allow or cause any act or deed to be performed upon, in or about the Premises which shall cause or be likely to cause injury to any person or to the Premises, the building or improvements located thereon. Tenant shall at all times keep the Premises in a neat and orderly condition.
 - (c) Landlord shall, at Landlord's own cost and expense, during the term of this Lease provide maintenance and repairs to the Premises including but not limited to:
 - (i) Maintenance, repairs or replacement of the roof, sidewalls, structural supports, exterior windows and foundation of the Premises;
 - (ii) Pest control services;
 - (iii) Janitorial services.
 - (iv) Repairs and maintenance of the plumbing and mechanical equipment including electrical systems and HVAC.

However, in no event shall Landlord be responsible for (and Tenant will be responsible for):

- (i) any maintenance, repair or replacement required by this Lease to be made by Landlord that are rendered necessary by the negligence of or the abuse of Tenant its employees, agents, licensees or invitees; or
 - (ii) any damages resulting from Landlord's failure to make any repairs required by this Lease to be made by Landlord unless Tenant provides written notice to Landlord specifying the need for repairs and Landlord fails to make the repairs within thirty (30) days after Tenant gives notice.
 - (d) Landlord shall furnish all utilities, except telephone service.
 - (e) Landlord's Right of Access. Landlord reserves the right to enter the Premises at any time during the Term to perform its obligations under this Lease.
9. Personal Property of the Tenant. All personal property belonging to Tenant in or near the Premises or Property, shall be at the Tenant's sole risk, and the Landlord shall not be liable for any damage done to or loss of such personal property unless caused by Landlord's negligence or willful act. Landlord shall not be liable for damage or loss suffered by the Tenant arising from any act or omission of occupants of or visitors to the Premises or Property. Upon the expiration of the Term of this Lease, or termination of this Lease for any reason whatsoever, Tenant shall, on or before said date, remove all such personal property from the Premises, and all property not so removed shall be deemed abandoned by the Tenant.
10. Mechanic's Liens: Tenant shall not do or suffer anything to be done whereby the Premises may be encumbered by any mechanics or materialman's lien. Whenever and as often as any mechanic's lien is filed against said Premises purporting to be for labor or material furnished or to be furnished to Tenant, Tenant shall discharge same of record within ten (10) days after the date of filing. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or materialman's lien or other security interest of any kind whatsoever for any such labor or materials shall attach to or affect Landlord's interest in and to the Premises.
11. Insurance: Lessee shall be responsible for maintaining insurance coverage on all its personal property. Lessor shall be liable to Lessee for any loss or damages, not covered by insurance, suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement. Lessor shall not be responsible for any loss to or damages suffered by Lessee which are a result of things the Lessor has/had no control, including but not limited to, fire, leaking roof, break of or frozen water lines. Lessee shall be liable to Lessor for any loss or damages suffered by Lessor which are the direct result of the failure of Lessee to perform an act required by this lease, and provided that Lessor could have reasonably complied with said requirement.
12. Fire or Casualty: If the improvements on the Premises shall be damaged or destroyed by fire or other casualty during the term of this Lease or to the extent that they cannot be repaired or reconstructed at a cost of less than 50% of the fair market value of such improvements immediately before said damage or destruction, Landlord shall have the right to cancel this Lease. If said option to cancel is not exercised by Landlord, or if the improvements shall be damaged or destroyed by fire or other casualty to the extent that

they can be repaired or reconstructed at a cost of less than 50% of their fair market value immediately before said damage or destruction, and so long as such damage or destruction occurs prior to the termination or expiration of this Lease, Landlord shall, as soon as reasonably possible, effect the required repairs and reconstruction of the Premises to place them in substantially the same condition as existed immediately prior to such damage or destruction. Any other provisions contained herein notwithstanding, the Landlord shall be required and obligated to effect repairs or reconstruction only to the extent of any sums of money, if any, which are received by Landlord under Landlord's insurance coverage as a direct result of said fire or other casualty. Notice of cancellation pursuant to the terms of this section shall be given within thirty (30) days of the damage or destruction. Estimates of percentage of destruction shall be made in good faith by Landlord.

13. Event of Default:

- a.) The occurrence of any of the following shall constitute an Event of Default of this Lease:
 - (i) Any failure by Tenant to pay the rent hereunder, where such failure continues for three (3) days after written notice thereof by Landlord to Tenant.
 - (ii) Tenant abandons or vacates the Premises without written notification to the Landlord.
 - (iii) Failure by either party to observe and perform any obligation of this Lease, other than the failure to pay rent or make any other payment required to be made by Tenant hereunder, where such failure continues for thirty (30) days after written notice thereof by the non-breaching party to the breaching party; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period. A party shall not be deemed to be in default if that party shall within such period commence to cure and thereafter diligently prosecute the same to completion.
 - (iv) Failure of Tenant to comply with any security or privacy rules provided by the Landlord, including but not limited to unauthorized access to the Premises, theft or unauthorized use of personal information found or obtained on the Property.
- b.) Landlord's Remedies. The terms and conditions of this Lease shall be enforceable by Landlord by actions for specific performance or injunction in addition to any other remedies available at law or in equity. If an Event of Default has occurred, Landlord may, without further notice or demand, terminate this Lease, and Tenant immediately shall surrender the Premises to Landlord; and, if Tenant fails to do so, Landlord shall have the right, without waiving any other remedy for possession or arrears in payments, to enter upon and take control of the Premises and to expel or remove Tenant and any other person who may be occupying the Premises. Pursuit of any remedy under this Lease shall not preclude the pursuit of any other remedy provided for in this Lease or any other remedy provided in law or equity, nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any amounts due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions, and covenants contained in this Lease.

To the extent permitted by law, Tenant shall pay all costs and reasonable attorney's fees incurred by Landlord in the enforcement of this Lease arising out of any default on the part of Tenant.

- c.) Tenant's Remedies. Upon the occurrence and during the continuance of any Event of Default by Landlord, Tenant shall have the right, in addition to all other rights and remedies available to Tenant at law or in equity, to terminate this Lease. No other property or assets of Landlord, disclosed or undisclosed, shall be subject to levy, execution, or the enforcement procedure for the satisfaction of Tenant's remedies. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, Landlord or its officers, elected officials, or their respective heirs, legal representatives, successors, and assigns on account of this Lease or any covenant, undertaking, or agreement in this Lease.
14. Termination: In the event Tenant is unable to use the Premises for the purpose of providing services during the lease period, then this Lease shall be immediately terminated. Upon Tenant giving notice of termination or at the expiration of this Lease, Tenant shall vacate and surrender the Premises to the Landlord within 30 days of the notice of termination or expiration of this Lease.
15. Condition of Premises Upon Termination: Upon the termination or expiration of this Lease, Tenant shall return the Premises to Landlord in substantially the same condition as received, ordinary wear and tear and approved improvements excepted.
16. Holding Over. In the event Tenant remains in possession after the expiration of the Term without the execution of a new lease, its tenancy shall be on a month-to-month basis and, shall otherwise be subject to all of the conditions, provisions and obligations of this Lease insofar as the same shall be applicable.
17. Indemnification: Tenant shall indemnify, defend and hold harmless Landlord, its agents and employees from any and all claims arising from Tenant's use of the Premises or from the conduct of Tenant's business or from any activity, work or things which may be permitted or suffered by Tenant in or about the Premises and shall further indemnify, defend and hold Landlord harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provision of this Lease or arising from any negligence of Tenant or any of its agents, or employees.
18. Sign Control. Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises or Property, including without limitation, the inside or outside of windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as additional rent hereunder, payable within ten (10) days of written demand by Landlord.
19. Telephone, Internet and Utilities: Tenant shall be responsible for the cost of telephone and Internet services rendered or supplied upon or in connection with the Premises, unless

otherwise agreed to in writing between the parties. All other utilities will be provided to the Premises by the Landlord.

20. Additions, Alterations, Changes and Improvements: Tenant shall not make, and shall not have the right to make any alterations, changes or improvements, structural or otherwise, in or to the Premises.
21. Easements, Restrictions and Rights of Way: The Premises are demised subject to all easements, restrictions and rights of way legally affecting the Premises.
22. Applicable Law: This Lease is entered into in North Carolina and shall be construed under the laws, statutes and ordinances of this State. All actions relating in any way to this Lease shall be brought in the General Court of Justice in the County of Durham and State of North Carolina.
23. Compliance with Laws: Tenant represents that it is and shall remain in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented.
24. Severability: The provisions of this Lease are independent covenants and should any provision or provisions contained in this Lease be declared by a court or other tribunal of competent jurisdiction to be void, unenforceable or illegal, then such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.
25. Notices: All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows: To the Landlord at **Durham County Government C/O General Services 310 S. Dillard Street, Durham North Carolina 27701** and the Lessee at **NCDA&CS, Property and Construction Division, ATTN: Real Property Agent, 1001 Mail service Center, Raleigh, NC 27699-1001**. Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.
26. Waiver: Failure or delay of either party to insist upon the strict performance of the covenants, agreements, or conditions of this Lease, or any of them, shall not be construed as a waiver or relinquishment of that party's right to enforce such, but the same shall continue in full force and effect.
27. Binding Effect/Entire Agreement: The covenants and agreements contained herein shall apply to and inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns. This Lease contains the entire agreement between the parties and no oral statements or representations or prior written matter not contained in this Lease shall have any force or effect. This Lease shall not be modified in any way except by a writing executed by both parties.
28. Remedies Cumulative: The remedies given to Landlord and Tenant are cumulative and not alternative and are in addition to any other rights Landlord and Tenant may have at law or in equity or otherwise.

29. Covenant of Title and Quiet Enjoyment: Landlord covenants and warrants to Tenant that Landlord has full right and lawful authority to enter into this Lease for the Term hereof and that, provided Tenant is not in default hereunder, Tenant's quiet and peaceable enjoyment of the Premises shall not be disturbed by anyone claiming through Landlord.
30. E-Verify. Tenant shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Tenant provides services utilizing subtenants said Tenant shall require the subtenant to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. Tenant shall verify, by affidavit, compliance of the terms of this section upon request by Landlord.
31. Dispute Resolution. The Parties agreed that all disputes, except for Summary Eviction, shall be subject to mediation according to the Rules of Mediation of the North Carolina Superior Court, prior to the filing of any litigation.

IN TESTIMONY WHEREOF, This Lease has been executed by the parties hereto, as of the date first above written.

For Landlord:

ATTEST:

COUNTY OF DURHAM

Monica Toomey
INTERIM CLERK TO THE BOARD

Wendell M. Davis
COUNTY MANAGER

Acknowledgement of Landlord:

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, _____, a Notary Public for _____ County, certify that Monica Toomey personally came before me this day and acknowledged that she is Clerk to the Board of the County of Durham, and that by authority duly given and as the act of the County, the foregoing instrument was signed in its name by its County Manager, sealed with its seal, and attested by herself as its Clerk to the Board.

Witness my hand and official seal, this the _____ day of _____, 2019

(SEAL)

Notary Public

My commission expires: _____

For Tenant:

ATTEST:

STATE OF NORTH CAROLINA

By: _____
Name: _____
Title: _____

BY: _____
Name: _____
Title: _____

Acknowledgement of Tenant:

STATE OF _____
COUNTY OF _____

I, a Notary Public in and for the aforesaid County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she _____ of the _____, a _____ corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____, sealed with its corporate seal and attested by _____ as its _____.

Witness my hand and notarial seal this ____ day of _____, 2019.

Notary Public

(SEAL)

My commission expires: _____