

# TURNER CONSTRUCTION COMPANY

## PURCHASE CONTRACT GOODS

Contractor Controlled Insurance Program (CCIP)  
Excluded Subcontractor

Project Name: Cleveland Medical Mart and Convention Center

Subcontractor: WADE AND GATTON NURSERIES

Contract Number: 17110D0

P. O. Number: PO-008

Date: 11/15/2011

Work: BP-47a - Tree Procurement

### **NOTE: Instructions for Executing Purchase Contracts:**

The Subcontractor is to:

1. **Make no marks whatsoever on this purchase contract, viz., erasures, additions, eliminations, interlineations, or marginal notes.**
2. Authorized representative shall initial wherever "Initialed" stamp appears.
3. Authorized representative shall sign where indicated, print name under signature including title.
4. Have signature witnessed.
5. Return all copies to Turner Construction Company, and be certain that they are not folded or rolled.
6. Return all copies to Turner Construction Company, and be certain that each copy is **STAPLED**.

After execution, one signed copy of the Purchase Contract will be sent to the Seller.

Date: 11/15/2011

Purchase Contract Number 17110D0 - PO-008

This number must appear on all invoices, correspondence and packages

## TURNER CONSTRUCTION COMPANY PURCHASE CONTRACT GOODS

Mark and Deliver Material Specified below to:	Mail Invoices <u>3</u> copies and Shipping Lists to:
<b>Turner Construction Co.</b>	<b>Turner Construction Company</b>
<b>Cleveland Medical Mart &amp; Convention Center</b>	<b>1370 Ontario Street, Suite 900</b>
<b>1 St. Clair Avenue</b>	<b>Cleveland, OH 44114</b>
<b>Cleveland, OH 44114</b>	<b>Attn.: Peter Mitnick</b>

**Seller: Wade and Gatton Nurseries**  
**1288 Gatton Rocks Road**  
**Bellville, OH 44813**

**Attn: Brian Wade**  
**Phone: 419-883-3191**

TURNER CONSTRUCTION COMPANY ("TURNER") AGREES TO PURCHASE FROM SELLER WHO AGREES TO SELL, MARK AND DELIVER TO TURNER F.O.B. 1 ST CLAIR AVE., CLEVELAND, OH 44114 THE GOODS SPECIFIED HEREIN BELOW SUBJECT TO THE TERMS AND CONDITIONS OF THIS PURCHASE CONTRACT.

(Complete appropriate box)

Sales Taxes:  Applicable (see detail below)

Exempt Project

Payment Terms: NET 45 days

**Project Name: Cleveland Medical Mart and Convention Center**  
**Contract Number: 17110D0**  
**RE: BP-47a - Tree Procurement**

This Purchase Contract Agreement is your authorization to provide BP-47a - Tree Procurement as directed by Turner and in accordance with the following exhibits and attachments:

- Exhibit "A" - Purchasing Requisition Tree Procurement - Bid Package 47Aa, dated 11/14/2011
- Attachment 1 - Plant Procurement Specification Section 32 93 00
- Attachment 2 - 11/10/2011 Memorandum re: Tagging of Trees
- Attachment 3 - Subcontractors Additional Provisions
- Exhibit "K" - Sales and Use Tax Construction Contract Exemption Certificate

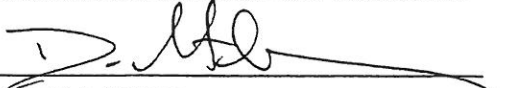
In accordance with the above and the terms and conditions of this Purchase Contract, Turner Construction Company agrees to pay Wade and Gatton Nurseries the sum of THIRTY-THREE THOUSAND SEVEN HUNDRED AND 00/100 (\$33,700.00).

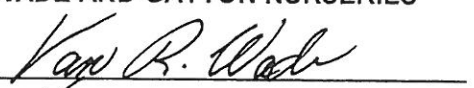
**When submitting invoices, please refer to the above referenced Purchase Contract Number.**

Please acknowledge your receipt and acceptance of this Purchase Contract by signing and returning ALL three (3) copies to Turners' Cleveland Office, 1422 Euclid Ave., Suite 1400, Cleveland, OH 44115, Attn.: Purchasing. After further execution, one (1) copy will be returned to you for your file.

**TURNER CONSTRUCTION COMPANY**

**WADE AND GATTON NURSERIES**

  
 \_\_\_\_\_  
 David A. Gruver  
 Purchasing Manager, CMMCC

  
 \_\_\_\_\_  
 VAN R. WADE - owner

(Print Name and Title)

INITIALED

Turner: DAG

Subctr: WAN

## Terms and Conditions

- 1 INTEGRATION: This Purchase Contract, including all writings attached hereto and writings incorporated herein by reference, if any, is intended by Turner and Seller as the final, complete and exclusive statement of all of the terms of their agreement respecting the goods identified in this Purchase Contract.
- 2 NO MODIFICATION: This Purchase Contract may not be amended or modified except in writing signed by Turner.
- 3 NOTICE OF OBJECTION: Notice is hereby given pursuant to Section 2207 of the Uniform Commercial Code ("Code") of Turner's objection to all terms and conditions in addition to and different from these Terms and Conditions contained in any written acceptance or order confirmation which may be issued by Seller.
- 4 VARIATION BY AGREEMENT: Any of these Terms and Conditions which may conflict with the normal operation of any provision of the Code shall constitute a variation by agreement and have precedence.
- 5 CASUALTY TO GOODS: Should loss or damage to the goods or any part thereof occur before Turner takes delivery and possession at the destination stated in this Purchase Contract, Seller shall replace the goods or such part thereof as Turner demands at the destination at the same price stated in this Purchase Contract.
- 6 NON CONFORMING GOODS: Turner shall have the absolute right to reject any and all goods which fail in any respect to strictly conform to the requirements of this Purchase Contract which right may be exercised by Turner at any time regardless of any inspection, taking possession of, and payment for such goods by Turner, none of which acts shall constitute acceptance of such goods by Turner. Goods which fail to strictly conform to the requirements of this Purchase Contract may be accepted by Turner only by writing signed by Turner expressly stating Turner's acceptance of such goods. Seller shall promptly remove all rejected goods at Seller's sole cost and expense.
- 7 WARRANTY: Seller warrants that all goods sold and delivered to Turner (a) shall be free from defects in design, materials, workmanship and title and b) shall strictly conform to the requirements and specifications of this Purchase Contract, including any sample, model, drawing or technical specification(s) furnished by Seller to and approved by Turner. In the event this Purchase Contract does not set forth technical requirements or specifications, Seller warrants, in addition to (a) above, that the goods shall be fit for the particular use and purpose for which the goods are required by Turner, knowledge of which use and purpose Seller expressly admits. Seller's warranties shall be in full force and effect for a period of one (1) year from the date on which the goods are installed or placed in use or operation, whichever date is the later, or for such longer period as may be stated in Seller's standard warranty, if any, or for such longer period as may be permitted by law. Approval by Turner of any sample, model, drawing or technical specification(s) furnished by Seller shall not release or relieve Seller of its warranty obligations nor affect Turner's absolute right to reject. At any time, goods which fail to strictly conform to the requirements of this Purchase Contract. Any and all goods which fail to strictly conform to the requirements of this Purchase Contract, including Seller's warranty (ies), shall be removed, replaced and reinstalled at the sole cost and expense of Seller and Seller shall be liable for and pay the full cost and expense of making good all work damaged or destroyed by reason of Seller having sold and delivered such goods.
- 8 TIME OF ESSENCE: Time is of the essence in this Purchase Contract. All dates and times stated herein by which Seller shall ship and deliver the goods, submit samples, models, drawings and specifications to Turner, and comply with any Special Instructions shall be strictly adhered to by Seller. Should Seller fail to so adhere to any such date and time requirement or should Turner be insecure as to Seller's ability to so adhere, Turner shall have the right to require Seller, at Seller's sole cost and expense, to work or cause to be worked overtime or premium time hours and/or to ship the goods by the most expeditious means available as determined solely by Turner.
- 9 CONDITION PRECEDENT: Turner shall have no duty to make any payment, progress or final, to Seller for any and all of the goods identified in this Purchase Contract unless and until Turner receives payment for such goods from the Owner of the project in or on which the goods are to be installed or used and Seller expressly acknowledges and agrees that the duty of Turner to make any such payment to Seller is subject to and shall not exist until occurrence and satisfaction of the condition precedent that Turner receives payment for the goods from the said Owner.
- 10 TERMINATION: Turner shall have the right to terminate this Purchase Contract, in whole or in part, at any time and without cause by written notice to Seller, and Seller shall immediately cease work hereunder on receipt of such notice. If the goods identified in this Purchase Contract are specially manufactured goods, and provided that Seller is not in breach of any duty or warranty of this Purchase Contract, Turner shall pay Seller all actual costs of manufacturing all conforming finished goods in Seller's possession or in shipment and goods in process of manufacture as of the date of Seller's receipt of notice of termination. If the goods are stock goods rather than specially manufactured goods, and provided Seller is not in breach of any duty or warranty hereunder, Turner shall only pay to Seller its reasonable restocking cost(s). In no event shall Turner pay Seller or be liable to Seller for loss of any anticipated profits or consequential or incidental damages.
- 11 CHANGES: Turner shall have the right to order changes at any time and from time to time in and to the quantity (ies), specifications, drawings, requirements and time for delivery of and for the goods identified in this Purchase Contract, and Seller shall comply with all such written orders issued by Turner. Should any such order(s) cause an increase or decrease in the purchase price of the goods or the time for Seller's performance of any duty or warranty hereunder, the price and/or time shall be equitably and accordingly adjusted, provided, however, that any claim by Seller for an increase in the purchase price of the goods and/or the time for Seller to perform hereunder shall be submitted in writing to Turner within ten (10) days of the date on which Turner issued its written order hereunder or shall be barred. No increase in the purchase price of the goods or the time for Seller to perform hereunder shall be binding on Turner unless and until such change(s) is accepted by Turner in writing.
- 12 INDEMNITY: Seller warrants that it is fully vested with the right to sell and deliver the goods identified in this Purchase Contract and that neither the sale of the goods nor their use by Turner or persons in privity with Turner shall infringe any patent. Seller shall defend, save harmless and indemnify Turner and persons in privity with Turner from any and all claims, demands, judgments, liabilities, costs, fees and expenses, including attorneys' fees, arising out of and in connection with any breach of this warranty and any allegation that the sale and/or use of the goods identified in this Purchase Contract infringes any patent.
- 13 DUTY TO COOPERATE: Seller shall fully cooperate with Turner in prosecuting or defending against any claim(s) against or by any third party (ies) the subject matter of which has to do with the goods identified in this Purchase Contract.
- 14 COMPLIANCE: Seller shall fully comply with all laws, rules, ordinances and regulations applicable to and affecting the manufacture, sale, shipment and delivery of the goods identified in this Purchase Contract.
- 15 NO ASSIGNMENT: Neither this Purchase Contract nor any duty of Seller hereunder may be assigned or delegated by Seller without written consent of Turner.
- 16 GOVERNING LAW: This Purchase Contract shall be governed by the laws of the state in which this Purchase Contract is signed on behalf of Turner.
- 17 TRANSPORTATION CHARGES: Any separate statement of transportation charges does not alter the delivery terms herein stated.

INITIALED

Turner: DAG

Subctr: MM

- 18 RIGHTS CUMULATIVE: These Terms and Conditions are not intended and shall not in any way be construed to limit or restrict, Turner's rights and remedies at law and in equity, all of which rights and remedies are fully reserved by Turner. Any failure or forbearance by Turner to enforce any of these Terms and Conditions or any of its rights and remedies at law or in equity shall not constitute and shall not be asserted by Seller as a waiver or relinquishment by Turner of any of its rights and remedies under this Purchase Contract, at law and in equity.
- 19 ETHICS: Turner has a longstanding reputation for honesty and integrity in its business dealings and for its corporate policies promoting lawful and ethical behavior. Turner is committed to upholding that reputation and has adopted a Standard of Business Conduct Policy Statement which governs the actions of all of its employees. Pursuant to that Policy Statement, Turner employees are prohibited from accepting bribes or kickbacks in any form and, further, are prohibited from accepting goods or services provided by a Seller for the personal benefit of the employee, his or her relatives, or any entity in which the employee or his or her relatives has a personal interest. This prohibition includes, but is not limited to, work performed on an employee's residence and applies regardless of whether the beneficiary of the goods or services pays for them. Therefore, if the Seller offers or provides a bribe or kickback to any employee, or offers or provides goods or services to any employee, his or her relatives, or any entity in which the employee or his or her relatives has a financial interest, the Seller will be considered to be in material breach of this Purchase Contract. Seller undertakes the commitment to advise Turner of any action by any entity or person associated with the project that Seller believes violates any applicable law, rule or regulation. Seller's violation of any of the foregoing shall be considered as Seller's failure to perform its obligations under the terms and conditions of this Purchase Contract. Such failure shall be considered adequate and justifiable grounds for Turner to effectuate its rights and remedies under the provisions of Article 10 of this Purchase Contract.

INITIALED  
Turner: DAG  
Subctr: PAW