

State of Alabama)
County of Baldwin)

CONTRACT FOR SALE/PURCHASE OF GOODS

This Contract for Sale/Purchase of Goods is made and entered into by and between the County of Baldwin (hereinafter called "COUNTY"), acting by and through its governing body, the Baldwin County Commission, and **Smith Scrap Metal, LLC**, (hereinafter referred to as "BUYER").

WITNESSETH:

Whereas, at its regular meeting on Tuesday, July 17, 2018, the COUNTY authorized staff to solicit bids for the Annual Scrap Metal and White Good Recycling Services; and

Whereas, BUYER presented the highest bid price the sale/purchase of Scrap Metal and White goods from the County. Therefore, COUNTY wishes to retain BUYER, to provide those services hereinafter set out under the following terms and conditions.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, BUYER and COUNTY do hereby agree as follows:

I. Definitions The following terms shall have the following meanings:

- A. COUNTY: Baldwin County, Alabama
- B. COMMISSION: Baldwin County Commission
- C. BUYER: Smith Scrap Metal, LLC

II. Obligations Generally. This document shall serve as the binding contract for the Buyer's purchase of goods from the County. All purchase transactions shall be commenced and completed in a timely manner as, and at the times, herein set out.

III. Recitals Included. The above recitals and statements are incorporated as part of this Contract, and shall have the effect and enforceability as all other provisions herein.

IV. Professional Qualifications. For the purpose of this Contract, the BUYER represents and warrants to the COUNTY that it possesses both

the necessary equipment, resources and the professional, technical, and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

V. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.

VI. Representation/Warranty of Certifications, Etc. BUYER represents and warrants that BUYER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that BUYER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.

VII. Legal Compliance. BUYER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations whether or not said law or regulation is mentioned herein.

VIII. Independent Contractor. BUYER acknowledges that it is an independent contractor, and BUYER shall at all times remain as such in performing the services under this Contract. BUYER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that BUYER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. BUYER is not entitled to unemployment insurance benefits, and BUYER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.

IX. No Agency Created. It is neither the express nor the implied intent of BUYER or COUNTY to create an agency relationship pursuant to this Agreement. Therefore, the BUYER does not in any manner act on behalf of COUNTY, and the creation of such a relationship is prohibited and void.

X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be

deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XI. Entire Agreement. This Contract represents the entire and integrated agreement between COUNTY and BUYER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

XII. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by BUYER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

XIII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by BUYER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIV. Ownership of Documents/Work. The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration. BUYER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY.

XV. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

BUYER: Smith Scrap Metal, LLC
 2637 Bear Fork Rd.
 Eight Mile, AL 36612
 Attn: Mitch Smith

COUNTY: Baldwin County Commission
 c/o Chairman
 312 Courthouse Square

Suite 12
Bay Minette, AL 36507

XVI. Services to be Rendered. BUYER is retained by the COUNTY as a professionally-qualified **contractor**. The general scope of work for the services shall include all the terms and Conditions of **“Competitive Bid #WG18-29,”** the same being expressly incorporated herein by reference, and without limitation will encompass:

“All provision and conditions and/or specifications listed/stated in Competitive Bid #WG18-29 named, Annual Scrap Metal and White Good Recycling Services for the Baldwin County Commission.”

A. BUYER will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc., as requested. Additionally, BUYER will meet with COUNTY as needed or requested.

B. BUYER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract. Notwithstanding this requirement, BUYER shall closely coordinate the subject services with the COUNTY and designated personnel.

C. BUYER represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XVII. General Responsibilities of the COUNTY.

A. The COUNTY shall provide reasonable notice to BUYER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of BUYER’s services hereunder or any defect or nonconformance in the work of BUYER.

B. The COUNTY **shall not** be responsible to pay BUYER for services rendered herein.

XVIII. Termination of Services. The COUNTY or BUYER may terminate this Contract, with or without cause or reason, by giving thirty (30) days written notice of such to the other party. Upon receipt of such notices, BUYER shall discontinue its work to the extent specified in the notice.

In the event of termination, the BUYER shall pay COUNTY for any scrap metal or white goods collected from COUNTY pursuant to this Contract prior to the date of termination.

XIX. Compensation Limited. No compensation is to be paid to the BUYER under this Contract. Any and all additional expenditures or expenses of BUYER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by BUYER or paid by COUNTY.

XX. Payment to County.

- A.** Compensation to the COUNTY for purchased Scrap Metal and White Goods transported by Buyer shall be paid at **\$112.00** per net ton.
- B.** Compensation to the COUNTY for purchased Scrap Metal and White Goods self-hauled by the County shall be paid at **\$127.00** per net ton.
- C.** Compensation to the COUNTY for purchased Heavy Scrap Metal Goods transported by Buyer shall be paid at **\$132.00** per net ton.
- D.** Compensation to the COUNTY for purchased Heavy Scrap Metal Goods self-hauled by the County shall be paid at **\$147.00** per net ton.
- E.** Compensation to the COUNTY for purchased Sheet Aluminum Metal Goods transported by Buyer shall be paid at **\$207.00** per net ton.
- F.** Compensation to the COUNTY for purchased Sheet Aluminum Metal Goods self-hauled by the County shall be paid at **\$222.00** per net ton.

XXI. Method of Payment. BUYER shall submit settlement reports to the COUNTY of anticipated payment for purchased Scrap Metal and White Goods. BUYER will send the COUNTY a copy of BUYER's weights and grading for the purpose of verifying BUYER's settlement reports.

Payment shall be made to the COUNTY within thirty (30) days of the approval of the settlement report submitted by the BUYER. The COUNTY agrees to review and approve settlement reports for payment in a timely manner.

XXII. Effective and Termination Dates. This Contract shall be effective and commence immediately upon the same date of its full execution, and the same shall terminate upon the expiration of twelve (12) months or upon a written notification thereof received by either party within the required thirty (30) day period. [Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.]

XXIII. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason on an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIV. Indemnification. To the fullest extent allowed by law, BUYER shall indemnify, defend and hold COUNTY and its Commissioners, affiliates, employees, agents, and representatives (collectively "County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees, and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon County, as a result of or in any manner related to provision of services hereunder, or any act or omission, by BUYER. BUYER shall provide the COUNTY with proof of general liability coverage including the COUNTY as an additional insured. This indemnification shall survive the expiration or termination of this agreement.

XXV. Number of Originals. This Contract shall be executed with three (3) originals, both of which are equally valid as an original.

XXVI: Governing Law: This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

XXVII: Insurance: Prior to performing services pursuant to this Contract, BUYER shall carry, with insurers satisfactory to COUNTY, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees

and supervisors participating in the work at the subject property site. All liability insurance shall name the County as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to County in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against County and County Representatives. Should BUYER fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, County may, at its option, suspend this Contract until insurance is obtained, terminate this Contract immediately without further action, or hold BUYER in material default and pursue any and all remedies available.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the last day of execution by the COUNTY as written below.

COUNTY

ATTEST:

_____/_____
FRANK BURT, JR. /Date
Chairman

_____/_____
RONALD J. CINK /Date
County Administrator/Budget Director

State of Alabama)

County of Baldwin)

I, _____, a Notary Public in and for said County, in said State, hereby certify that, Frank Burt, Jr., whose name as Chairman of the Baldwin County Commission, and Ronald J. Cink, whose name as County Administrator/Budget Director, are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Services, they, as such officers and with full authority, executed same knowingly and with full authority to do so on behalf of said Commission.

Given under my hand and official seal, this the day of _____, 2018.

Notary Public
My Commission Expires

SIGNATURE AND NOTARY PAGE TO FOLLOW

BUYER:

Smith Scrap Metal, LLC

_____/_____
By _____/Date
Its _____

State of _____)

County of _____)

I, _____, a Notary Public in and for said County and State, hereby certify that _____, as _____ of Smith Scrap Metal, LLC, whose name is signed to the foregoing in that capacity, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Contract for Sale/Purchase of Goods, he executed the same voluntarily and with full authority on the day the same bears date for and as an act of said Smith Scrap Metal, LLC.

GIVEN under my hand and seal on this the _____ day of _____, 2018.

Notary Public
My Commission Expires