

**COUNTY OF MONTGOMERY, NORTH CAROLINA :: DEPARTMENT OF ADMINISTRATION - FINANCE OFFICE  
VENDOR GENERAL TERMS AND CONDITIONS -- FOR BUSINESSES THAT SELL GOODS AND/OR SERVICES**

**1) Parties to the Agreement.**

County of Montgomery, North Carolina shall hereafter be referred to as "County". The business shall be referred to as "Vendor".

**2) Relationship of the Parties.**

The relationship of the parties established by this agreement is solely that of independent contractor and nothing contained in this agreement shall (i) be construed to give any party the power to direct or control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other. The Vendor shall be fully and solely responsible for its own acts, omissions, and those of its employees, officers, agents and subcontractors. All personnel supplied by Vendor subcontractors shall be considered employees or agents of Vendor. The Vendor shall be responsible for the payment of all salaries, withholding taxes, worker's compensation, disability benefits and other compensation and related taxes for such persons.

**3) Term of Relationship.**

Once the Vendor is approved by the County, the term for this agreement shall begin when both the County agrees to purchase materials or services from the Vendor and the Vendor agrees to provide materials or services to the County. The agreement shall terminate when either the County has not purchased from the Vendor for a reasonable amount of time or the Vendor no longer agrees to provide materials or services to the County. With appropriate notice to the County, the Vendor may extend or cancel this agreement.

**4) Contracting Authority.**

The Vendor represents and warrants that it is a business, validly existing, in good standing under the laws of the state of North Carolina, (if a corporation) duly incorporated, and is qualified to do business in North Carolina; it has all the requisite corporate power and authority to execute, deliver and perform its obligations under this agreement. The execution, delivery, and performance of this agreement has been duly authorized by Vendor. No approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this agreement. In connection with its obligations under this agreement, the Vendor shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses. The Vendor shall not violate any agreement with any third party by entering into or performing this agreement.

**5) Independent Contractor Status.**

The Vendor shall be responsible for supervising their employees, and shall be solely responsible for their pay and any benefits, government forms and reports, social security payments, and other necessary paperwork, all of which shall be available to the County for inspection within 30 days of request. Vendor shall comply with all state, federal, or local laws, ordinances, codes, rules, or regulations bearing on the conduct of the work including equal opportunity employment laws, OSHA regulations, minimum wage and hour regulations as set forth in the Fair Labor Standards Act, and National Fire Protection Association regulations.

**6) Employees.**

- (a) The Vendor shall comply with all federal and State laws relating to equal employment opportunity. When conducting business on County property, the Vendor's employees shall at all times maintain a good personal appearance and conduct themselves in a manner which reflects credit on their employer and the County. Such employees shall obey all established rules. At any time, the County has the right to require immediate removal and replacement of any such employee deemed unsatisfactory for any justifiable reason.
- (b) In the event a report is received by the Vendor alleging any employee(s) was discourteous, belligerent, profane, or in any way intimidating, either physically or verbally, the Vendor will submit a written report to the County that outlines the complete details of the incident. This report shall include the nature of the incident, time, date, location, and name, address, telephone number of the person alleging the violation. This report will also include the name and title of the Vendor's employee and what disciplinary action, if any, the Vendor's supervisor took.
- (c) The Vendor will be responsible for verification of any employee's eligibility to legally work in the United States. The Vendor shall not knowingly employ or contract with an illegal immigrant to perform work under this agreement or enter into agreement with a subcontractor who fails to certify to the Vendor that the subcontractor shall not knowingly employ or contract with an illegal immigrant to perform work under this agreement. A violation of this section shall render this agreement void.

**7) Harassment.**

The County will not tolerate or condone acts of harassment based upon race, gender, religion, national origin, color, age, or disability.

**8) Sales/Use Taxes.**

- (a) When providing a combination of services and goods in association with a project and the cost of such goods exceeds \$500 to complete the Vendor's responsibility within the project, the Vendor shall maintain a list of purchases to share with the County such that the County may request a refund of sales and use taxes paid. This list maintained by the Vendor shall contain the following individual components:
- (1) name of the individual or business from whom goods are purchased,
  - (2) the amount of State sales taxes,
  - (3) the amount of County sales taxes,
  - (4) name of County where goods were obtained (usually where the goods either were picked up or were delivered), and
  - (5) total amount of purchase.
- (b) If eligible for refunds of all sales and use taxes paid, the Vendor and all subcontractors shall:
- (1) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this agreement, pursuant to G.S. 105-164.14; and
  - (2) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports and from all requests for payment from the County.

**9) Public officers or employees benefiting from public contracts; exceptions. (G.S. 14-234)**

(a) With respect to North Carolina General Statutes (G.S.) 14-234, the Vendor agrees to report to the County any known deviation from the following law:

- (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.
- (2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.
- (3) No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.

(a1) For purposes of this section:

- (1) As used in this section, the term "public officer" means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.
- (2) A public officer or employee is involved in administering a contract if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.
- (3) A public officer or employee is involved in making a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.
- (4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.
- (5) A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.

(b) Subdivision (a)(1) of this section does not apply to any of the following:

- (1) Any contract between a public agency and a bank, banking institution, savings and loan association, or with a public utility regulated under the provisions of Chapter 62 of the General Statutes.
- (2) An interest in property conveyed by an officer or employee of a public agency under a judgment, including a consent judgment, entered by a superior court judge in a condemnation proceeding initiated by the public agency.
- (3) Any employment relationship between a public agency and the spouse of a public officer of the agency.
- (4) Remuneration from a public agency for services, facilities, or supplies furnished directly to needy individuals by a public officer or employee of the agency under any program of direct public assistance being rendered under the laws of this State or the United States to needy persons administered in whole or in part by the agency if: (i) the programs of public assistance to needy persons are open to general participation on a nondiscriminatory basis to the practitioners of any given profession, professions or occupation; (ii) neither the agency nor any of its employees or agents, have control over who, among licensed or qualified providers, shall be selected by the beneficiaries of the assistance; (iii) the remuneration for the services, facilities or supplies are in the same amount as would be paid to any other provider; and (iv) although the public officer or employee may participate in making determinations of eligibility of needy persons to receive the assistance, he or she takes no part in approving his or her own bill or claim for remuneration.

(b1) No public officer who will derive a direct benefit from a contract entered into under subsection (b) of this section may deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract.

**10) Agreement Monitoring.**

The County shall have the right to audit the Vendor's compliance with the terms and conditions of this agreement, including but not limited to all provisions related to payment and performance. The County shall have the right to conduct such audits, either through its own staff or through an independent auditor, at such times as the County deems appropriate. The Vendor shall fully cooperate with all such audits, and shall make available for copying and inspection all books and records requested by the County or its designated agent. The Vendor shall further allow the County or its designated agent to inspect the Vendor's facilities in connection with such audits. The County shall pay its own expenses relating to such audits, but shall not have to pay any expenses or additional costs of the Vendor. Notwithstanding the foregoing, in the event an audit reveals an overcharge to the County in excess of \$10,000 or a failure to perform services that has cost the County more than \$10,000, the Vendor shall reimburse the County for all costs relating to the audit, including but not limited to internal staff hours and amounts paid to an outside auditor.

**11) Indemnification.**

To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless the County and the County's officers, agents and employees from and against any and all loss, damages, obligations, liabilities and expenses (including reasonable attorneys' fees) that arise directly or indirectly from:

- (a) Any act(s) of negligence or willful misconduct by Vendor or any of its agents, employees or subcontractors (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal; or
- (b) Any claims seeking payment for labor or materials provided by the Vendor under this agreement.

**12) Insurance and Bonding.**

Throughout the term of this agreement, the Vendor and all subcontractors shall maintain minimum applicable insurance coverage as required by law. In the event the Vendor fails to procure and maintain minimum amounts of insurance coverage at any point during the term of this agreement, the County shall be entitled to terminate this agreement upon three (3) days written notice to the Vendor (unless the Vendor cures all such deficiencies and supplies the County with written documentation of such cure by the end of said three-day period).

**13) Damage to Equipment or Facilities.**

The Vendor shall be responsible for any damage to or loss of the County's equipment or facilities arising out of an act or omission of the Vendor or its authorized user and deemed reasonable by either (1) both County and Contractor, (2) mediator, or (3) court/judge.

**14) Licenses.**

The Vendor shall properly obtain all valid licenses and certificates required for performance of the work. Licenses and certificates required for this agreement may include, by way of illustration and not limitation, the following:

- (a) a valid business license;
- (b) a professional license or certificate in the field of specialty area if required; and
- (c) any additional licenses pertaining to participating in this agreement work.

**15) Date and Time Warranty.**

The Vendor warrants that the product(s) and service(s) furnished pursuant to this agreement ("product" includes, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) that perform any date and/or time data recognition function, calculation, or sequencing will support a four digit year format and will provide accurate date/time data and leap year calculations. This warranty shall survive the termination or expiration of this agreement.

**16) Confidentiality and Public Records.**

The Vendor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential or sensitive personal information, it will safeguard and not further disclose the information except as otherwise provided in this agreement. Under public records laws, any information, data, instruments, documents, studies or reports given to, prepared by, or assembled by the Vendor under this agreement and not restricted as to its distribution by federal or state regulations shall be available for public inspection once made available to the County.

**17) Misuse of Confidential Information. (G.S. 14-234.1)**

The Vendor agrees to report to the County any known deviation from the following law:

(a) It is unlawful for any officer or employee of the State or an officer or an employee of any of its political subdivisions, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information which was made known to him in his official capacity and which has not been made public, to commit any of the following acts:

- (1) Acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or official action; or
- (2) Intentionally aid another to do any of the above acts.

**18) Certification Regarding Collection of Taxes.**

(a) G.S. 143-59.1 bars the County from entering into agreement with Vendors that meet one of the conditions of G.S. 105-164.8(b) or other applicable conditions and yet refuse to collect use taxes on sales of tangible personal property to purchasers who reside in North Carolina. The conditions include:

- (1) maintenance of a retail establishment or office;
- (2) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and
- (3) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means.

(b) The Vendor certifies that it and all of its affiliates (if any) collect all required sales and use taxes.

**19) Drug Free Workplace.**

The Vendor shall provide a drug-free workplace during the performance of this agreement. This obligation is met by:

- (a) Notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Vendor's workplace and specifying the actions that will be taken against its employees for violations of such prohibition;
- (b) Establishing a drug-free awareness program to inform its employees about (i) the dangers of drug abuse in the workplace, (ii) the Vendor's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- (c) Notifying each of its employees that as a condition of employment, the employee will (i) abide by the terms, and (ii) notify the Vendor of any criminal drug statute conviction for a violation occurring in the workplace not later than ten (10) days after such conviction;
- (d) Imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, a Vendor employee convicted of drug crime; and
- (e) Making a good faith effort to continue to maintain a drug-free workplace for employees.
- (f) Notifying its employees that failure to comply with the above drug-free workplace requirements during the performance of this agreement shall be grounds for suspension or termination.

**20) Non-Discrimination.**

The Vendor agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, gender, age, national origin, or disability.

**21) Lobbying.**

The Vendor certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid by or on behalf of the Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federally funded contract, grant, loan, or cooperative agreement, the Vendor shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (c) The Vendor shall require that the language of this certification be included in the award document for sub awards at all tiers (including subcontracts, sub grants and contracts under grants, loans, and cooperative agreement) who receive federal funds of \$100,000.00 or more and that all sub recipients shall certify and disclose accordingly.
- (d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

## 22) Environmental Tobacco Smoke.

Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity. The Vendor further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-grantees shall certify accordingly.

## 23) Governing Law and Jurisdiction.

The parties acknowledge that this agreement is made and entered into in the State of North Carolina, and will be performed in the State of North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this agreement, and that North Carolina law shall govern the interpretation and enforcement of this agreement and any other matters relating to this agreement (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this agreement shall be brought in a state or federal court sitting in Montgomery County, North Carolina. The parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Montgomery County, North Carolina.

## 24) Miscellaneous Provisions.

(a) County Not Liable for Delays. It is agreed that the County shall not be liable to the Vendor, its agents, representatives, or any subcontractor for or on account of any stoppages or delays in the performance of any obligations of the County or any other party hereunder.

(b) Force Majeure. The Vendor shall not be excused from performance under this agreement by virtue of force majeure events. The Vendor shall take precautions sufficient to ensure that force majeure events (including but not limited to fire, flood, earthquake, hurricane, elements of nature, strikes, labor disputes, and acts of God) do not result in any failure or delay in the performance of the Vendor's obligations pursuant to this agreement. Failure to comply with this provision will constitute a default under this agreement, and grounds for immediate termination. The Vendor shall not be liable for any failure or delay in the performance of its obligations pursuant to this agreement and such failure or delay shall not be deemed a default of this agreement or grounds for termination hereunder if all of the following conditions are satisfied in that such failure or delay:

- (1) Could not have been prevented by reasonable precaution;
- (2) Cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- (3) If, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

An event, which satisfies all of the conditions set forth above, shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the Vendor shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as the following criteria are met:

- (1) such Force Majeure Event continues and
- (2) the Vendor continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

Upon the occurrence of a Force Majeure Event, the Vendor shall immediately notify the County by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Vendor from performing its obligations for more than five (5) days, the County shall have the right to terminate this agreement by written notice to Vendor. Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse the Vendor from the performance of its obligations under this agreement.

(c) No Publicity. No advertising, sales promotion or other materials of the Vendor or its management or its agents or representatives may identify or reference this agreement or the County in any manner without the County's prior written consent. As a condition of entering into this agreement, the Vendor further agrees to refrain from making any statement to the media regarding the subject matter of this agreement or the County's position on any issue relating to this agreement absent the County's prior written approval. Failure to comply with this Section by the Vendor shall constitute a material breach and, without limiting any other remedies the County may have, shall entitle the County to terminate this agreement for default.

(d) Approvals. All approvals or consents required under this agreement must be in writing.

(e) Waiver. No delay or omission by either party to exercise any right or power it has under this agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this agreement shall be effective unless in writing and signed by the party waiving the rights.

(f) Survival of Provisions. Those sections of this agreement and the attachments, which by their nature would reasonably be expected to continue after the termination of this agreement, shall survive the termination of this agreement.

(g) Severability. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this agreement shall not affect the validity of the remaining portion of this agreement so long as the material purposes of this agreement can be determined and effectuated. If any provision of this agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

(h) No Bribery. The Vendor certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed or attempted to bribe an officer or employee of the County in connection with this agreement.

(i) Familiarity and Compliance with Laws and Ordinances. The Vendor agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to its services. Vendor further agrees that it will at all times during the term of this agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all applicable OSHA regulations.

(j) Taxes. The Vendor shall pay all applicable federal, state and local taxes, which may be chargeable against the performance of its services.