

**Open Solicitation Plan  
For**

**Open Solicitation (1035882) – Early Childhood Consultants- Mental Health Consultation, Training and  
Technical Assistance**

As required by Montgomery County Procurement Regulations, Code of Montgomery County Regulations (COMCOR), Section 11B.00.01, et seq., Section 4.1.6.3 (a), the Department of Health and Human Services (DHHS) is submitting this Open Solicitation Plan for approval by the Director, Office of Procurement, Montgomery County.

Section 4.1.6.3 Procedure

- (1) Public Notice – Notice for this solicitation will be posted on the Montgomery County (County), Office of Procurement website.
- (2) Application Process – The DHHS, Contract Management Team (CMT) will mail out the solicitation packet for this Open Solicitation to all providers who express an interest in applying to provide the requested services. The solicitation packet includes the following: 1) the Notice to Vendors; 2) the Instructions; and 3) the pre-approved Form Contract including the General Conditions of Contract Between County and Contractor and all other attachments. Applicants will be required to sign the Application Form (Attachment K, to the pre-approved Form Contract), stating that they have received the solicitation packet and understand the requirements of this Open Solicitation.
- (3) Criteria for accepting or rejecting applications – The solicitation packet contains the minimum qualifications (set forth in Article III., Minimum Qualifications of the Pre-Approved Contract) for services upon which applicants will be accepted. Applications will be reviewed by DHHS staff for acceptance or rejection, based on the minimum qualifications.
- (4) All applicants meeting the minimum qualifications listed in the Pre-Approved Contract will be eligible to receive a contract to provide the services described in the Open Solicitation. The County makes no guarantee that any single contractor will receive referrals or serve clients under a contract resulting from this Open Solicitation. Client referrals will be based on contractor expertise, appropriateness of services (as identified in the Early Childhood Services (ECS) Policies and Procedures and the Montgomery County Child Care Resource and Referral Center Policies and Procedures) provider availability, geographic location, language and the ability to perform the services in the given timeframe.
- (5) Pre-Approved Form Contract – Applicants will be required to execute a contract with the County using the Pre-Approved Form Contract (the Form Contract), including the General Conditions of Contract Between County and Contractor (“General Conditions”), without modification.
- (6) Cost – The cost of contracts will not exceed available appropriations. Funds will be encumbered in purchase orders issued under the contracts by DHHS.
- (7) Cancellation – The County reserves the option to cancel this Open Solicitation at any time. Award of a contract under this Open Solicitation is subject to fiscal appropriations.

**OPEN SOLICITATION #1035882  
NOTICE TO VENDORS**

**Early Childhood Consultants-Mental Health Consultation, Training and Technical Assistance**

The County's Department of Health and Human Services (DHHS) is mandated by the State of Maryland as the Lead Agency to provide Mental Health Consultation, Training and Technical Assistance for the Early Childhood Services (ECS) programs.

DHHS is seeking experienced and qualified entities that can assist the County in provision of such services. The County has a need to contract with qualified organizations, groups, agencies or individuals, or some combination thereof that can assist DHHS with providing early childhood consultants to assist the County in providing services to children from birth to age five through mental health consultation services, as well as provide training and technical assistance to County staff.

A complete description of the Scope of Services is listed in the Open Solicitation packet. You may obtain a packet by contacting the Contract Management Team at 240-777-1562, requesting Open Solicitation #1035882, and providing your name or a contact name, your email, your complete address, and your telephone number.

The rates for the services under Open Solicitation #1035882, are set by the County and published at <http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. The current County rates will be provided to potential vendors upon request of an Open Solicitation application packet.

The County will enter into a contract with all applicants who meet the minimum qualifications as described in the Form Contract (Article III., Minimum Qualifications) and are found to be a responsible organization. The County will sign the contract and return a copy to the applicant. The Form Contract with all Attachments will constitute the entire Contract. The applicant must sign the County's Form Contract which includes the General Conditions of Contract Between County and Contractor, and other Attachments, as written with no modification.

Questions related to the technical information in this Open Solicitation should be directed to Portia Willis, Program Manager, Early Childhood Services Program, at 240-777-1331.

Questions related to the application/contract process and insurance requirements may be directed to Dandria Clark, Senior Contract Manager, at 240-777-1251.

**INSTRUCTIONS TO VENDORS**

**I. Submission Documents:** The following items must be submitted:

**A. Form Contract** – Attachments of the form contract must be filled out correctly and submitted. Please follow these steps:

1. Sign the Form Contract – If the applicant is a corporation, an officer of the corporation with authority to sign contracts for the corporation must sign the Form Contract.
2. PLEASE DO NOT PUT A DATE IN THE PARAGRAPH AT THE TOP OF THE SIGNATURE PAGE. ENTER A DATE ONLY IN THE SIGNATURE BLOCK.
3. Submit all the pages of the Form Contract (not just the signature page), including the completed attachments listed below:
  - a. General Conditions of Contract Between County & Contractor, (Attachment A);
  - b. Business Associate Agreement, (Attachment B);
  - c. \*Optional\* Attachment C, “Minority Business program & Offeror’s Representation” – this form may be filled out and submitted if applicable to the applicant’s organization;
  - d. Attachment D, “Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor,” and “Minority, Female Disabled (MFD) Person Subcontractor Performance Plan” – Please submit your MFD plan or request a waiver;
  - e. Attachment E, “Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor”;
  - f. Attachment F, Early Childhood Mental Health Consultation (ECMHC Policies and Procedures (applicable only to Scope 1, Mental Health Consultation);
  - g. Attachment G, MCCRRC Training Policies and Procedures (applicable only to Scope 2, Training);
  - h. Attachment H, MCCRRC Technical Assistance Policies and Procedures (applicable only to Scope 3, Technical Assistance); and,
  - i. Attachment I, Affidavit for Criminal Background Check.
  - j. Scope Selection Form, (Attachment J);
  - k. Attachment K, “Application Form”, Please complete the Application Form in its entirety. Applicants must check off profit or non-profit designation and designate which services they will be providing;

**B. Narrative** – A description of your organization’s area of specialty, knowledge of and experience with provision of early childhood services to children birth through age five, knowledge of and experience with mental health consultation, training and technical assistance. This information must be provided in no more than eight double-spaced typewritten pages, using Times New Roman 12 point font.

**C. Resume** – If applying as an individual, please provide a copy of your up-to-date resume. If an agency or organization is applying, please provide a copy of an up-to-date resume for each person

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who would provide mental health consultation, training and technical assistance services under the Contract resulting from this Open Solicitation.

- D. Certificate(s) of Insurance – This provides evidence of meeting the insurance requirements set forth in Article VIII. of the Pre-Approved Form Contract. Contact your insurance broker to obtain the Certificate.
- E. Licenses – If applying as an individual, please provide a copy of your current Maryland State licenses or approvals to provide mental health consultation and training (this is not required for those applying to provide technical assistance only). If an agency or organization is applying, please provide a copy of an up-to-date license for each person who would provide services under the Contract resulting from this Open Solicitation.
- F. Financial Information – Please provide a copy of your agency’s most recent audited financial statement. In the case of a sole proprietor, an applicant can submit the prior year’s tax return. All applicants must submit additional data as requested by the County to help determine financial responsibility and resolve any questions concerning their financial soundness.
- G. Proof of legal name – Please provide the articles of incorporation and articles of amendment if applicable.
- H. Proof of tax – Please provide a W-9 Tax form or a copy of Social Security card if an individual or Sole Proprietorship is applying under this Open.
- I. Proof of tax-exempt status – Please provide a determination letter from the IRS if applicable
- J. References- Please provide three (3) references including name, address, and phone number which highlight accomplishments for provision of services to children from birth to five (5) years of age.

## II. Instructions:

- A. As directed above in Section I., please complete, attach, and send all Submission Documents to:  
Montgomery County  
Portia Willis, Program Manager, Early Childhood Services Program  
7300 Calhoun Place, Suite 700  
Rockville, Maryland 20855
- B. If your application meets the Minimum Qualifications stated in the Pre-Approved Form Contract and your organization is found to be responsible, your application will be accepted and approved and the County will execute the contract and return a copy to you. Once you receive notice from the County that the contract has been executed, an executed purchase order from the County, a request for services from the County and have completed and passed the criminal and Child Protective Services (CPS) background check, you may begin to provide services to clients.
- C. A copy of the County’s General Conditions of Contract Between County and Contractor (“General Conditions”) is included with the solicitation packet. The County’s General Conditions will be attached as Attachment A to any contract that results from this Open Solicitation and includes terms and conditions that the County requires of Contractors.

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- D. Each applicant must clearly state, using Attachment J, the specific scope(s) of services to be provided in its application to the County.
- D. An Applicant may propose to provide one, some, or all of the services listed in the three scope areas: Mental Health Consultation – Scope 1; Training – Scope 2; and Technical Assistance – Scope 3. No Contractor will be guaranteed clients or work. Clients and work will be assigned to the Contractor(s), based on the designated scope area as described in the Contractor's resulting contract. Applicants will not receive preference in the award process for offering to provide services under more than one scope of service. The County reserves the right to increase or decrease the minimum or maximum number of hours specified in each scope based on the availability of funding. Payment will be made only for services provided in accordance with the scope(s) authorized under the resulting contract.
- F. Award of a contract under this Open Solicitation is subject to the appropriation and encumbrance of funding.
- G. The County reserves the right to cancel this Open Solicitation at any time.

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Early Childhood Consultants-Mental Health Consultation, Training and Technical Assistance

### BACKGROUND/INTENT

1. Montgomery County through its Department of Health Human Services, seeks experienced and qualified culturally competent entities, including agencies and individuals who have specific knowledge in providing services to early childhood programs. In 2000, the Montgomery County Executive, Montgomery County Public Schools (MCPS), and the Montgomery County Collaboration Council for Children, Youth and Families convened a broadly representative committee of nearly 100 participants to develop a plan for a comprehensive, integrated early childhood service system. The Montgomery County Council accepted the early Childhood Initiative Comprehensive Plan that was the result of this initiative. The mission of the DHHS Division of Early Childhood Services (ECS) is that “All children from before birth to age five (5) will attain their full potential through quality early care and nurturance, participation in appropriate programs, and the commitment of their families and communities.”
2. The County offers Early Childhood Mental Health Consultation (ECMHC) services, training and technical assistance consultation to over 1,000 registered family child care providers and over 471 child care centers. With funding from the Maryland State Department of Education (MSDE), the County supports the child care community. The Montgomery County Child Care Resource and Referral Center (MCCCRRC) offers training and technical assistance to child care providers related to local and state initiatives. ECMHC services promote social-emotional development of children and addresses children’s challenging behavior, builds the capacity of child care staff and parents to manage behavior, identify and make referrals for children needing more intensive intervention and promote kindergarten readiness.
3. The Montgomery County Child Care Resource & Referral Center (MCCCRRC), with funding through the Maryland Family Network, develops a comprehensive training plan for child care providers that meets licensing regulations, local and state mandates, local and state initiatives, and local, state and national trends to develop a well designed system of training for early childcare and education professionals. The County supports the child care community through the MCCCRRC by offering Maryland State approved training and Continuing Education Units (CEU) to family child care providers and child care center staff throughout Montgomery County.
4. MCCCRRC also offers technical assistance to family child care and center programs which support licensing, quality enhancements, business support, program development and professional development planning. Technical assistance services may be provided in small group sessions, on-site consultation, face-to-face meetings and support using technology.
5. The County receives funds for ECS through a grant from the Maryland State Department of Education (MSDE) on an annual basis. ECS services are provided through consultants, directors and Licensed Family Child Care Providers (LFCCP) and public agency staff.
6. Early Childhood Consultants Services required by the County include the following scopes of service listed below:
  1. Early Childhood Mental Health Consultation – Scope 1
  2. Training – Scope 2
  3. Technical Assistance – Scope 3

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### TERMS AND CONDITIONS

#### I. SCOPE OF SERVICES

Scope 1: Early Childhood Mental Health Consultation

- A. The Contractor must provide Early Childhood Mental Health Consultation services for the County's child care provider community. The mental health consultation services must utilize a hybrid approach per Maryland State Department of Education Standards for Early Childhood Mental Health Consultation found at [http://marylandpublicschools.org/NR/rdonlyres/5B3956EA-2AB2-43CF-BBEB-A310BF739236/29896/ECMHguide\\_082611.pdf](http://marylandpublicschools.org/NR/rdonlyres/5B3956EA-2AB2-43CF-BBEB-A310BF739236/29896/ECMHguide_082611.pdf)

Early Childhood Mental Health Consultation Services will be provided at the request of the County to licensed child care programs in Montgomery County. The frequency and intensity of services will vary and can range from between one (1) to four (4) months of service. Depending on the intensity of need and progress of the child care program, services may be provided beyond four (4) months, but a request to do so must be submitted by the Contractor in the 3<sup>rd</sup> month of providing services. The Contractor's request must cite the specific goals and/or outcomes that will be achieved with the additional time requested. All services must be delivered primarily on location at the child care program. All intakes will be received through the County's ChildLink Line. An intake can come from a licensed child care program or family attending the licensed child care program. The need and frequency of services will be determined by the Consultant (Contractor) in collaboration with the County by completing a partnership agreement with the director of the childcare program that will define both the number of hours and months of consultation. When the County is seeking consultants to deliver services the County will adhere to Attachment F, Early Childhood Mental Health Consultation Policies and Procedures in making the request for services. The Contractor must provide the following services to the childcare program and/or families referred by the County and as determined by intake referrals:

1. Mental Health Consultation: The Contractor must provide the following services as specified in the referral for service received from the County:
  - a. Observing children about whom the child care provider staff/family may have concerns;
  - b. Consulting with the child care provider staff/family to develop strategies for intervention with the child;
  - c. Consulting with staff about recommended changes to the classroom environment and program practices to promote children's socio-emotional development;
  - d. Providing information for families of children and child care staff on child development, team building, stress management, and other topics relevant for the child care site;
  - e. Modeling child-staff interventions;
  - f. Completing required County's Early Childhood Services forms for screening and assessment within 14 business days of completing the screening/assessment (included but not limited to Preschool Mental Health Climate Scale);

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- g. Meeting with child care provider directors and staff and family members;
- h. Offering referrals and linkages to additional services; and,
- i. Documenting monthly activities in the Maryland State Department of Education Data Collection System known as Outcomes Monitoring System (OMS).

**SCOPE 2: Training**

B. Training services will be provided to the child care providers based on the comprehensive training plan developed by MCCRRC and child provider requests. Training can be provided via a one time workshop or through a comprehensive series of courses offered during the daytime, evening, weekday and/or weekends. The County makes no guarantee about the number of or length of or type of trainings to be requested. The County will send a work request to the Contractor based on the training topic needed and the Contractor's expertise on the topic. The County will follow MCCRRC Policies and Procedures as set forth in Attachment I in requesting training services:

- 1. Training: Upon request from the County, the Contractor must develop and deliver training to childcare providers in the following subjects:
  - a. Core of Knowledge Domains (Child Development, Curriculum, Special Needs, Professionalism, Community, Health, Safety & Nutrition);
  - b. Maryland Model for School Readiness;
  - c. Healthy Beginnings;
  - d. Social & Emotional Foundation of Early Learning;
  - e. Child Care administrative practices ;
  - f. Pre-Service MSDE mandated courses (infant/toddler, preschool, school age, administrative, and communication); and,
  - g. Other grant compliance mandated training specified by the grantor, Maryland State Department of Education through the Maryland Family Network yearly.
    - The two types of trainings are as follows:
      - i. TIER 1: Delivery of training
      - ii. TIER 2: Development and delivery of comprehensive series training

**SCOPE 3: Technical Assistance**

C. Technical assistance services will be provided on an as needed basis when requested by the child care community or as determined by availability of staff of MCCRRC using the Training Policies and Procedures, Attachment H. Services may range from phone calls to onsite consultation with frequency of services determined by the needs of the childcare program and Contractor and as approved by the County. The County makes no guarantee about the number of or length of or type of technical assistance to be requested. The County will send a work request based on the technical assistance



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required and Contractor's expertise in providing the services required. The County and the Contractor will follow MCCRRC Policies and Procedures as set forth in Attachment H.

1. Technical Assistance: Upon request from the County, the Contractor must provide technical assistance to the child care providers by either:
    - a. Phone/email consultation;
    - b. Onsite consultation (including observation, assessment, use of evaluation tools and modeling);
    - c. Video conferencing;
    - d. One-on-one meetings; and,
    - e. Facilitation of group sessions.
  
  2. Technical Assistance Subjects: Upon request from the County, the Contractor must provide technical assistance services in the following areas:
    - a. Accreditation;
    - b. Quality Rating Improvement Systems;
    - c. Health and safety;
    - d. Inclusive child care;
    - e. Business growth and sustainability;
    - f. Leadership;
    - g. Curriculum and Program Development; and
    - h. Pursuing higher education.
- D. The County will request services and assign clients to the Contractor according to Policies and Procedures for Early Childhood Mental Health Consultation Policies and Procedures (Attachment F) and MCCRRC Policies and Procedures (Attachment G and Attachment H). The County maintains the right to update and change ECMHC Policy and Procedures or MCCRRC Policies and Procedures in order to ensure the efficient provision of quality services. In the event that ECMHC Policy and Procedures or MCCRRC Policies and Procedures impacting service delivery from the Contractor is changed, the Contractor will be notified in writing and will be expected to comply with changes within a reasonable time frame as defined by the County.
- E. Contractors must make referrals to County programs and/ or other community resources that will further offer support to the child care program/family.
- F. All organizations, clinicians and or professionals providing services under this Contract must meet minimum professional requirements of the State of Maryland for the professional licenses held, maintain their credentials in good standing as required by the professional discipline and receive regular face to face supervision, meetings and observations.
- G. The Contractor must adhere to ECMHC and MCCRRC policies and procedures in the provision of services under this Contract.

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- H. The Contractor must not provide any services under this Contract until the County issues a Purchase Order, written Notice-to-Proceed (NTP) and the Contractor receives and accepts a request for services from the County.
- I. The County makes no guarantee about the number of requests for services. The County will assign the Contractor to provide services based on need, the ability of the Contractor to provide the services needed and the availability of the Contractor to meet the client's need. The client's needs are then determined by the County. The County will confirm the Contractor's availability with the Contractor prior to formally assigning the client to the Contractor for services. Contractor assignments will be based on client requests, provider (Contractor) availability, geographic location, and language.
- J. For mental health consultation services, the Contractor must be available Monday through Friday during child care center hours of operation. For training and technical assistance, the Contractor must be available weekday, weekend, daytime and/or evening hours.
- K. All services are to be delivered County-wide. Training and technical assistance services may be requested by the County for up to one year and may be ongoing or on an as needed basis. The frequency and intensity of mental health consultation services will vary and can range between one (1) to four (4) months. Depending on the intensity of need and progress of the Child Care Program and the child/family being served, an extension of services may go beyond four (4) months, but a request to do so must be submitted to the County by the Contractor in the 3<sup>rd</sup> month of service provision citing specific goals and/or outcomes that will be achieved with the additional time requested.
- L. The Contractor must abide by all applicable federal, state and local labor laws and regulations and all applicable federal, state and local tax laws and regulations in the hiring and management of all who are employed to provide services to the County. In addition, the Contractor must provide direct management of all work requested by the County under this Contract through regular contract monitoring meetings and regular communication to the ECS Program Manager about staff.
- M. The Contractor must abide by applicable ethical and legal standards for protection of patient health information under the Health Insurance Portability and Accountability Act (HIPAA), and other laws and regulations governing the privacy of medical records and substance abuse treatment records. The Contractor must complete, sign and agree to adhere to the provisions stated in the Business Associate Agreement attached to this Contract. (See Attachment B to this Contract.)
- N. The Contractor must abide by all applicable federal, state, and local laws and Regulations for the services provided under this Contract. The Contractor must also provide services under this Contract in accordance with the Early Childhood Services Policies and Procedures, guidelines, and timeframes.

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**II. STAFFING**

- A. The Contractor must ensure that all staff vacancies will be filled promptly. If an unfilled vacancy is impacting service provision, the Contractor must provide documentation to the Contract Monitor of all efforts to hire staff so that services are provided in a timely and efficient manner.
  
- B. The Contractor must provide all personnel providing services under this Contract with training in the policies and procedures governing Early Childhood Mental Health Consultation Services (Scope 1-Mental Health Consultant only) and MCCRRC Policies and Procedures (Scope 2 – Training and Scope 3- Technical Assistance only).
  
- C.1. The Contractor must provide direct management support listed below for all work requested by the County to ensure continuous quality service delivery (Scope 1- Mental Health Consultation only):
  - a. Attendance by key personnel identified by the County’s Contract Monitor at regular contract meetings as requested by the County;
  - b. Regular communication to the ECMHC project contract monitor, including communication of contracting issues and/or issues related to families served as they arise;
  - c. Submission of copies of all resumes, licenses, background clearances and degrees for all personnel who perform work under this Contract to the County’s ECMHC Contract Monitor within 15 days of execution of this Contract and, for new personnel, within 15 days of hire, and provide a copy of professional licenses yearly or as renewed for the purposes of audits;
  - d. Regular supervision of all staff providing direct services under this Contract. Supervision sessions must occur at a minimum of one time per month of individual face-to-face supervision, and may be more frequent if indicated by licensing guidelines, or if there is a reoccurring performance issue which indicates a need for an increase in supervision. The Contractor must provide documentation of such sessions monthly in an approved format to the County;
  - e. If the Contractor is an organization, group or agency, the Contractor must name an administrative representative/designee to represent them fully as a liaison to the County related to the work provided under this Contract;
  - f. Attend regular monthly meetings sponsored by ECS to ensure that the Contractor’s personnel providing services under this Contract are aware of any developments that could affect service delivery. Attendance at these meetings is required in order for the Contractor to receive referrals for services. Missing two consecutive meetings will result in the suspension of referrals and a face-to-face meeting with the County’s Contract Monitor must occur before the Contractor will be eligible to receive future referrals for services; and,
  - g. Utilize the State of Maryland data system Outcome Monitoring System (OMS). The County will secure proper parental authorization prior to the Contractor providing consultation services as it relates to capturing data in the OMS system.

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Once consent is given, the Contractor will be directed to input data specific to the consultation. The County will be responsible for opening and closing a case in the OMS and the Contractor must enter County requested data as directed by the County.

- C. 2. The Contractor must provide direct management support listed below for all work requested by the County to ensure continuous quality service delivery (Scope 2-Training and Scope 3-Technical Assistance only):
- a. The Contractor must attend scheduled meeting with MCCCRRRC staff (trainer—once a year, technical assistance consultants- bi-monthly);
  - b. The Contractor must communicate at a minimum once a month with the Training & Technical Assistance Director including communication of contracting issues and/or issues related to training or technical assistance cases as they arise; and,
  - c. The Contractor must submit copies of all resumes, licenses, credentials, approval and degrees for all personnel who perform work under this Contract within 15 days of execution of this Contract and, for new personnel, within 15 days of hire, and provide a copy of professional licenses yearly or as renewed for the purposes of audits.
- D. The parties understand, stipulate and agree that neither the Contractor nor the employees, agents and subcontractors of the Contractor are employees, agents or subcontractors of the County and, further, that the Contractor is acting in the capacity of an independent contractor and shall not have the right to make any commitments for or on behalf of the County.

### III. MINIMUM QUALIFICATIONS

The Contractor must possess and maintain throughout the term of the Contract the following minimum qualifications and comply with the requirements listed below as applicable to the services to be provided by the Contractor:

- A.1. In the provision of direct professional services (Scope 1-Mental Health Consultation), the Contractor must provide personnel who:
- a. Meet the minimum professional requirements as set forth by the Standards for the State of Maryland ECMHC Standards at [http://marylandpublicschools.org/NR/rdonlyres/5B3956EA-2AB2-43CF-BBEB-A310BF739236/29896/ECMHguide\\_082611.pdf](http://marylandpublicschools.org/NR/rdonlyres/5B3956EA-2AB2-43CF-BBEB-A310BF739236/29896/ECMHguide_082611.pdf)
  - b. Persons providing mental health consultation services (“consultant”) must have a minimum of a Bachelors degree, preferably in a human-services related field such as psychology, special education, social work or counseling;
  - c. 5 years of experience working with children from 0-5 years of age;
  - d. If a consultant’s degree is not in a human-services related field, the consultant must have accumulated credits at the undergraduate, graduate, or professional development level in a human-services related discipline or field and have at minimum five (5) years of experience of services working with children from ages 0-5 and have completed The Early Childhood Mental Health Certificate Program at [http://www.marylandpublicschools.org/msde/divisions/child\\_care/program/ECMH.htm](http://www.marylandpublicschools.org/msde/divisions/child_care/program/ECMH.htm)

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and;

- e. Provide three (3) letters of recommendation from past clients. The Contractor must secure or obtain permission from clients to share recommendations with DHHS.

A.2. In the provision of direct professional services (Scope 2-Training), the Contractor must provide personnel who:

- a. Meet the minimum professional requirements as set forth by Maryland State Department of Education-Office of Child Care at <http://www.marylandpublicschools.org/NR/rdonlyres/FF4D42D2-46A0-44E6-9CEC-546C5641F978/22021/COMAR13A1408ChildCareTrainingApprovalDSD0406091.pdf> which at a minimum requires an Associate's, Bachelor's, Master's or Doctoral degree from an accredited college or university;
- b. Have five (5) years experience working in a child care setting; or four (4) years supporting child care programs; or has one (1) year experience as an instructor at college or university level;
- c. Have completed State of Maryland's Trainer Orientation (Contractor can contact Maryland State Department of Education, Office of Credentialing for schedule at [credentialocc@msde.state.md.us](mailto:credentialocc@msde.state.md.us));
- d. Provide one (1) letter of reference from Maryland State Department of Education stipulating no non-compliance issues in the past 2 years;
- e. Provide three (3) letters of recommendations from past clients. The Contractor must secure or obtain permission from clients to share recommendations with DHHS;
- f. Complete MSDE approved Train the Trainer training found on Maryland State Department of Education's website at [http://www.marylandpublicschools.org/NR/rdonlyres/EC34ABE7-4719-481B-8929-B752D719A350/26995/TOTorgs\\_Dec10.pdf](http://www.marylandpublicschools.org/NR/rdonlyres/EC34ABE7-4719-481B-8929-B752D719A350/26995/TOTorgs_Dec10.pdf)); and,
- g. Complete 12 hours of training related to adult learning or early childhood education each year.

A.3. In the provision of direct professional services (Scope 3-Technical Assistance), the Contractor must provide personnel who:

- a. Meet the minimum professional requirements as set forth by the Maryland Family Network and MSDE- OCC at <http://www.marylandpublicschools.org/NR/rdonlyres/FF4D42D2-46A0-44E6-9CEC-546C5641F978/22021/COMAR13A1408ChildCareTrainingApprovalDSD0406091.pdf>
- b. Have three (3) years experience working in a child care setting; or four (4) years supporting child care programs; or has one (1) year experience as an instructor at college or university level;
- c. Has knowledge of the child care delivery system, quality improvement areas, inclusive child care, health, and business expansion and sustainability;
- d. Provide three (3) letters of recommendations from past clients. The Contractor must secure or obtain permission from clients to share recommendations with DHHS; and,
- e. Complete twelve (12) hours of training related to adult learning, or specialized subject matter each year.

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- B. All Contractors must accept the County's fee structure detailed in Article V., Compensation of this Contract.
- C. All Contractors must comply with the County's mandatory insurance requirements as set forth under Article VIII of this Contract and must provide an insurance certificate(s) evidencing the required insurance coverage.
- D. All Contractors must be financially sound and must demonstrate their financial soundness by submitting to the County their most recent audited financial statements. In the case of a sole proprietor, an applicant can submit the prior year's tax return. All Contractors must submit additional data as requested by the County to help determine financial responsibility and resolve any questions concerning their financial soundness.
- E. All organizations, clinicians and/or professionals must meet minimum professional requirements of the State of Maryland, maintain their credentials in good standing as required by his/her professional discipline and receive regular face to face supervision, meetings and observations.
- F. For all employees, volunteers and/or subcontractors ("Personnel") who will come into contact with clients served under this Contract, the Contractor must obtain the following prior to services being delivered:
  - 1. An FBI Identification Record/Criminal History.
  - 2. A Child Protective Services Program (CPS) report based on the Personnel's state of residence for the past seven years. If the Personnel, has lived in the state of Maryland for the past seven years, the County may assist with the CPS report.
- G. Prior to services being delivered, the Contractor must provide a signed affidavit to the County that assures that the records listed under Section III .F., were obtained, are available to the County upon request and the Contractor has cleared Personnel to come in contact with clients. The required affidavit format is attached (Attachment I) to this Contract.
- H. The Contractor must ensure that no Personnel who has a verified history of child physical abuse, neglect or sexual abuse, provides services under this Contract.
- I. The Contractor must require all Personnel to inform them of any change to their criminal history. The Contractor must inform the County immediately of any change to any Personnel's criminal or CPS history and certify that Personnel can continue to or will no longer provide services under this Contract. This notification must also be included in the monthly report per Section IV., Reports, A. Monthly Report.
- J. Throughout the term of this Contract, the Contractor must submit additional affidavits for new Personnel who will come into contact with clients served under this Contract. New Personnel includes an ex-employee, ex-volunteer and former subcontractor who is rehired after any amount of time worked outside of the Contractor's business.

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**IV. REPORTS**

- A. Monthly Report - The Contractor must provide monthly reports to the County in a format approved by the County, no later than fifteen days following the end of each month. These reports must accompany the monthly invoice and must include the following information, as applicable to the services provided, at a minimum:

Mental Health Consultant:

- a. Cover sheet which includes challenges and breakthroughs for the child and/or child care provider, start date of consultation, and number of visits to the child care provider site;
- b. Documentation in OMS;
- c. Supervision with dates and duration;
- d. Activity Sheets for Consultants; and,
- e. Action plan for the program and/or child.

Training Reports:

- a. Copies of all training materials required by MSDE per Article 1, Scope of Services, Scope 2: Training, Paragraph B.1.(Tier 1 only) and Attachment G, for Tier 1 delivery of training;
- b. No reports applicable for Tier 2; and,  
Technical Assistance;
  - a. Contact Log; and,
  - b. Site Visit Log.

**V. COMPENSATION**

- A. The County will compensate the Contractor for services rendered at a pre-determined rate listed at <http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html> This rate is inclusive of all administrative costs such as telephone, office supplies, computer usage, etc. This rate applies to all services provided to the County by the Contractor in the course of providing Early Childhood Services. This fixed hourly fee rate also applies to regular monthly meetings that the County requires the Contractor to attend as stipulated in Article II, Paragraph C1., Subparagraphs a., and f and. and Article II, Paragraph C2, subparagraph a.
- B. No services will be performed or compensated under this Contract prior to the execution of a County Purchase Order and Notice(s) to Proceed and the Contractor's receipt of said County Purchase Order containing a maximum compensation amount.
- C. Compensation must not exceed funds appropriated by the County and encumbered into the County Purchase Order issued to the Contractor.
- D. No minimum number of hours of service is guaranteed to any Contractor under this Contract.

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**VI. INVOICES**

The Contractor must submit monthly invoices and supporting documentation in a format approved by the County no later than the fifteenth day following the end of each month. Upon receipt, acceptance and approval of the Contractor's invoice, the County will make payment, net 30 days, at the rates set forth in Article V, Compensation, above. All required reports and other supporting documentation must be provided with the Contractor's monthly invoice. Invoices must be sent to the Program Monitor designated by the County.

**VII. TERM**

This Contract shall become effective on the date indicated on the Signature Page (Page 14) of this Contract, by the County's Director, Office of Procurement, and shall be for a two-year term. Before the Contract term ends, the Director may, (but is not required to) renew this Contract for an additional term, if the Director determines that renewal is in the best interest of the County. The Contractor's satisfactory performance does not guarantee renewal of this Contract. The Director may exercise this option to renew two (2) times for up to two (2) years each. Substantial non-compliance or substantial non-satisfactory performance, as determined in the sole discretion of the County, may lead to a work improvement plan or early termination of the Contract.

**VIII. GENERAL CONDITIONS AND INSURANCE**

The General Conditions of Contract Between Contractor and County ("General Conditions") are incorporated by reference and made part of this Contract as Attachment A. The following insurance requirements supersede those outlined in Provision 21 of the General Conditions:

Prior to the execution of the contract by the County, the Contractor must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of **one million dollars (\$1,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations
- Sexual Misconduct*

Professional Liability

Professional liability insurance covering errors and omissions and negligent acts committed during the period of contractual relationship with the County with a limit of liability of at least



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*one million dollars (\$1,000,000)* per claim and aggregate and a maximum deductible of \$25,000. Contractor/proposer agrees to provide a one-year discovery period under this policy.

Workers' Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

***Bodily Injury by Accident - \$100,000 each accident***

***Bodily Injury by Disease - \$500,000 policy limits***

***Bodily Injury by Disease - \$100,000 each employee***

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County, Maryland  
DHHS / CMT / Dandria Clark  
401 Hungerford Drive, 6<sup>th</sup> floor  
Rockville, Maryland 20850

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Technical Assistance

IX. PRIORITY OF DOCUMENTS

The following documents are incorporated by reference and made a part of this Contract and are listed in the following order of precedence to be applied in the event of a conflict in their terms:

- A. This Contract Document;
- B. The General Conditions of Contract Between County and Contractor (Attachment A);
- C. Business Associate Agreement (Attachment B);
- D. Minority Business Program & Offeror's Representation (Attachment C.);
- E. Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor and Minority, Female Disabled Person Subcontractor Performance Plan (Collectively, Attachment D);
- F. Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor (Attachment E);
- G. Early Childhood Mental Health Consultation Policies and Procedures for (Attachment F- applicable only to Scope 1, Mental Health Consultant);
- H. MCCRRC Policies and Procedures (Attachment G- applicable only to Scope 2, Training );
- I. MCCRRC Policies and Procedures (Attachment H-applicable only to Scope 3. Technical Assistance); and,
- J. Affidavit for Criminal Background Check (Attachment I).
- K. Scope Selection Form (Attachment J);
- L. Application Form (Attachment K);

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 Early Childhood Consultants-Mental Health Consultation, Training and  
 Technical Assistance  
 Signature Page – Open Solicitation #1055882

This Contract, which incorporates by reference: the Instructions to Vendors, the completed Application Form, the Notice to Vendors, the Approved Form Contract with applicable Attachments A, B, C, D, E, F, G, H, I, J, and K copies of which have been provided to the Contractor, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (the “Contractor”) and Montgomery County, Maryland (the “County”). This Contract will become effective on \_\_\_\_\_ by signature of the Director, Office of Procurement. This Contract and any renewals or extensions of this Contract are subject to the appropriation of funds.

**SIGNATURE PAGE**

*Part A: Contractor's Offer to Provide Services:*  
 (Prospective Contractor Must Complete)

Contracting Corporation, Partnership, Limited Liability Company OR Proprietorship

\_\_\_\_\_  
 Agency Name

\_\_\_\_\_  
 Signature\*

\_\_\_\_\_  
 Typed

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

*Part B: County Acceptance:*

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_  
 Cj gttk'Dtcpuqp, Director  
 Qhleg'qhl'Rtqewtgo gpv

\_\_\_\_\_  
 Date

RECOMMENDATION

\_\_\_\_\_  
 Uma S. Ahluwalia, Director  
 Department of Health and Human Services

\_\_\_\_\_  
 Date

This form has been approved as to form and legality by the Office of the County Attorney.

**\* Must be signed by corporate officer or person legally authorized to bind organization to a contract.**

## GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

### 1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

### 2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq., and 47 U.S.C., ch. 5.

### 3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Md. State Finance and Procurement Article, Section 13-101, et. seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section.

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages.

The contractor agrees to comply with the requirements of the Displaced Service Workers Protection Act, which appears in County Code, Chapter 27, Human Rights and Civil Liberties, Article X, Displaced Service Workers Protection Act, §§ 27-64 through 27-66.

### 4. ASSIGNMENTS AND SUBCONTRACTS

The contractor must not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by the Director, Office of Procurement, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

### 5. CHANGES

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

### 6. CONTRACT ADMINISTRATION

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:

- (1) serve as liaison between the County and the contractor;
- (2) give direction to the contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
- (5) accept or reject the contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement, and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Office of Procurement;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

- B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

#### 7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

#### 8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

#### 9. DOCUMENTS, MATERIALS AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

#### 10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

#### 11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

#### 12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b).
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code.

In addition, the contractor must comply with the political contribution reporting requirements currently codified under the Election Law at Md. Code Ann., Title 14.

#### 13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

20. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

21. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

TABLE A. - INSURANCE REQUIREMENTS  
(See Paragraph #21 Under the General Conditions of Contract  
Between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by Accident (each)	100	100	100	See Attachment
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See Attachment
each occurrence	300	500	1,000	
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder  
Montgomery County Maryland (Contract #)  
Office of Procurement  
Rockville Center  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850-4166

\*Professional services contracts only

**(Remainder of Page Intentionally Left Blank)**

TABLE B. - INSURANCE REQUIREMENTS  
 (See Paragraph #21 Under the General Conditions of Contract  
 Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder  
 Montgomery County Maryland (Contract #)  
 Office of Procurement  
 Rockville Center  
 255 Rockville Pike, Suite 180  
 Rockville, Maryland 20850-4166

**(Remainder of Page Intentionally Left Blank)**



**22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT**

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

**23. NON-CONVICTION OF BRIBERY**

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

**24. NON-DISCRIMINATION IN EMPLOYMENT**

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

**25. PAYMENTS**

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

The County is expressly permitted to pay the vendor for any or all goods, services, or construction under the contract through either a procurement card ("p-card") or a Single Use Account ("SUA") method of payment, if the contractor accepts the noted payment method from any other person. In that event, the County reserves the right to pay any or all amounts due under the contract by using either a p-card (except when a purchase order is required) or a SUA method of payment, and the contractor must accept the County's p-card or a SUA method of payment, as applicable. Under this paragraph, contractor is prohibited from charging or requiring the County to pay any fee, charge, price, or other obligation for any reason related to or associated with the County's use of either a p-card or a SUA method of payment.

**26. PERSONAL PROPERTY**

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

**27. PROTECTION OF PERSONAL INFORMATION BY GOVERNMENT AGENCIES**

In any contract under which Contractor is to perform services and the County may disclose to Contractor personal information about an individual, as defined by State law, Contractor must implement and maintain reasonable security procedures and practices that: (a) are appropriate to the nature of the personal information disclosed to the Contractor; and (b) are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction. Contractor's requirement to implement and maintain reasonable security practices and procedures must include requiring any third-party to whom it discloses personal information that was originally disclosed to Contractor by the County to also implement and maintain reasonable security practices and procedures related to protecting the personal information. Contractor must notify the County of a breach of the security of a system if the unauthorized acquisition of an individual's personal information has occurred or is reasonably likely to occur, and also must share with the County all information related to the breach. Contractor must provide the above notification to the County as soon as reasonably practicable after Contractor discovers or is notified of the breach of the security of a system. Md. Code Ann., State Gov't. § 10-1301 through 10-1308 (2013).

**28. TERMINATION FOR DEFAULT**

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

29. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

30. TIME

Time is of the essence.

31. WORK UNDER THE CONTRACT

Contractor must not commence work under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

32. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

**THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.**

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is made by and between Montgomery County, Maryland (hereinafter referred to as “Covered Entity”), and \_\_\_\_\_ (hereinafter referred to as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

### **I. GENERAL**

A. Covered Entity has a business relationship with Business Associate that is memorialized in Montgomery County Contract # \_\_\_\_\_ (the “Underlying Agreement”), pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996, including all pertinent regulations (45 CFR Parts 160 and 164), issued by the U.S. Department of Health and Human Services, including Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as codified in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), and including any and all applicable Privacy, Security, Enforcement, or Notice (Breach Notification) Rules or requirements (collectively, “HIPAA”), as all are amended from time to time; and

B. The performance of the Underlying Agreement may involve the creation, exchange, or maintenance of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

C. For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA; and

D. This Agreement articulates the obligations of the Parties as to use and disclosure of PHI. It does not affect Business Associate’s obligations to comply with the the Maryland Confidentiality of Medical Records Act (Md. Code Ann., Health-General I §§4-301 *et seq.*) (“MCMRA”) or other applicable law with respect to any information the County may disclose to Business Associate as part of Business Associate’s performance of the Underlying Agreement; and

E. This Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof; and

F. The above premises having been considered and incorporated by reference into the sections below, the Parties, intending to be legally bound, agree as follows:

### **II. DEFINITIONS.**

A. The terms used in this Agreement have the same meaning as the definitions of those terms in HIPAA. In the absence of a definition in HIPAA, the terms have their commonly understood meaning.

B. Consistent with HIPAA, and for ease of reference, the Parties expressly note the definitions of the following terms:

1. "Breach" is defined at 45 CFR § 164.402.
2. "Business Associate" is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean \_\_\_\_\_.
3. "Covered Entity" is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean the County.
4. "Designated Record Set" is defined at 45 CFR § 164.501.
5. "Individual" is defined at 45 CFR §§ 160.103, 164.501 and 164.502(g), and includes a person who qualifies as a personal representative.
6. "Protected Health Information" or "PHI" is defined at 45 CFR § 160.103.
7. "Required By Law" is defined at 45 CFR § 164.103.
8. "Secretary" means the Secretary of the U.S. Department of Health and Human Services or designee.
9. "Security Incident" is defined at 45 CFR § 164.304.
10. "Unsecured Protected Health Information" or "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology, as specified by the Secretary in the guidance as noted under the HITECH Act, section 13402(h)(1) and (2) of Public Law 111-5, codified at 42 U.S.C. § 17932(h)(1) and (2), and as specified by the Secretary in 45 CFR 164.402.

### **III. PERMISSIBLE USE AND DISCLOSURE OF PHI**

A. Except as otherwise limited in this Agreement, or by privilege, protection, or confidentiality under HIPAA, MCMRA, or other applicable law, Business Associate may use or disclose (including permitting acquisition or access to) PHI to perform applicable functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement. Moreover, the provisions of HIPAA are expressly incorporated by reference into, and made a part of, this Agreement.

B. Business Associate may use or disclose (including permitting acquisition or access to) PHI only as permitted or required by this Agreement or as Required By Law.

C. Business Associate is directly responsible for full compliance with the relevant requirements of HIPAA.

D. Business Associate must not use or disclose (including permitting acquisition or access to) PHI other than as permitted or required by this Agreement or HIPAA, and must use or disclose PHI only in a manner consistent with HIPAA. As part of this, Business Associate must use appropriate safeguards to prevent use or disclosure of PHI that is not permitted by this Agreement or HIPAA. Furthermore, Business Associate must take reasonable precautions to protect PHI from loss, misuse, and unauthorized access, disclosure, alteration, and destruction.

E. Business Associate must implement and comply with administrative, physical, and technical safeguards governing the PHI, in a manner consistent with HIPAA, that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

F. Business Associate must immediately notify Covered Entity, in a manner consistent with HIPAA, of: (i) any use or disclosure of PHI not provided for by this Agreement, including a Breach of PHI of which it knows or by exercise of reasonable diligence would have known, as required at 45 CFR §164.410; and, (ii) any Security Incident of which it becomes aware as required at 45 CFR §164.314(a)(2)(i)(C). Business Associate's notification to Covered Entity required by HIPAA and this Section III.F must:

1. Be made to Covered Entity without unreasonable delay and in no case later than 14 calendar days after Business Associate: a) knows, or by exercising reasonable diligence would have known, of a Breach, b) becomes aware of a Security Incident, or c) becomes aware of any use or disclosure of PHI not provided for by this Agreement;

2. Include the names and addresses of the Individual(s) whose PHI is the subject of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement. In addition, Business Associate must provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

3. Be in substantially the same form as Exhibit A hereto;

4. Include a brief description of what happened, including the date of the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, if known, and the date of the discovery of the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

5. Include a description of the type(s) of Unsecured PHI that was involved in the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);

6. Identify the nature and extent of the PHI involved, including the type(s) of identifiers and the likelihood of re identification;

7. If known, identify the unauthorized person who used or accessed the PHI or to whom the disclosure was made;

8. Articulate any steps the affected Individual(s) should take to protect him or herself from potential harm resulting from the Breach, Security Incident, or use or disclosure of PHI not permitted by this Agreement;

9. State whether the PHI was actually acquired or viewed;

10. Provide a brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, to mitigate losses, and to protect against any further Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

11. Note contact information and procedures for an Individual(s) to ask questions or learn additional information, which must include a toll-free telephone number of Business Associate, along with an e-mail address, Web site, or postal address;

and

12. Include a draft letter for the Covered Entity to utilize, in the event Covered Entity elects, in its sole discretion, to notify the Individual(s) that his or her PHI is the subject of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement that includes the information noted in Section III.F.4 – III.F.11 above.

G. Business Associate must, and is expected to, directly and independently fulfill all notification requirements under HIPAA.

H. In the event of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, Business Associate must mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

I. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to ensure that any agent, subcontractor, or employee to whom it provides PHI (received from, or created or received by, Business Associate on behalf of Covered Entity) agrees to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.

J. Business Associate must ensure that any contract or other arrangement with a subcontractor meets the requirements of paragraphs 45 CFR §164.314(a)(2)(i) and (a)(2)(ii) required by 45 CFR § 164.308(b)(3) between a Business Associate and a subcontractor, in the same manner as such requirements apply to contracts or other arrangements between a Covered Entity and Business Associate.

K. Pursuant to 45 CFR § 164.502(a)(4)(ii), Business Associate must disclose PHI to the Covered Entity, Individual, or Individual's designee, as necessary to satisfy a Covered

Entity's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of PHI.

L. To the extent applicable, Business Associate must provide access to PHI in a Designated Record Set at reasonable times, at the request of Covered Entity or as directed by Covered Entity, to an Individual specified by Covered Entity in order to meet the requirements under 45 CFR § 164.524.

M. A Business Associate that is a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of health plan, must not use or disclose PHI that is genetic information for underwriting purposes, in accordance with the provisions of 45 CFR 164.502.

N. To the extent applicable, Business Associate must make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to, pursuant to 45 CFR § 164.526, at the request of Covered Entity or an Individual.

O. Business Associate must, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

P. Business Associate must, upon request and with reasonable notice, furnish to Covered Entity security and privacy audit results, risk analyses, security and privacy policies and procedures, details of previous Breaches and Security Incidents, and documentation of controls.

Q. Business Associate must also maintain records indicating who has accessed PHI about an Individual in an electronic designated record set and information related to such access, in accordance with 45 C.F.R. § 164.528. Business Associate must document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Should an Individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. § 164.528, Business Associate must promptly provide Covered Entity with information in a format and manner sufficient to respond to the Individual's request.

R. Business Associate must, upon request and with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI that was provided to it by Covered Entity.

S. Business Associate must make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with HIPAA. Business Associate must make the aforementioned information available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate must comply and cooperate with any request for documents or other information from the Secretary directed to

Covered Entity that seeks documents or other information held or controlled by Business Associate.

T. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. § 164.502(j)(1).

U. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or the Underlying Agreement, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the limited purpose for which it was disclosed to the person, and the person must agree to notify Business Associate of any instance of any Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement of which it is aware in which the confidentiality of the information has been breached.

V. Business Associate understands that, pursuant to 45 CFR § 160.402, the Business Associate is liable, in accordance with the Federal common law of agency, for a civil money penalty for a violation of the HIPAA rules based on the act or omission of any agent of the Business Associate, including a workforce member or subcontractor, acting within the scope of the agency.

#### **IV. TERM AND TERMINATION.**

A. Term. The Term of this Agreement shall be effective as of the effective date of the Underlying Agreement, and shall terminate: (1) when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity; or, (2) if it is infeasible to return or destroy PHI, in accordance with the termination provisions in this Article IV.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, have the right to terminate this Agreement and to terminate the Underlying Agreement, and shall report the violation to the Secretary;

2. Have the right to immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible, and shall report the violation to the Secretary; or

3. If neither termination nor cure is feasible, report the violation to the Secretary.



4. This Article IV, Term and Termination, Paragraph B, is in addition to the provisions set forth in Paragraph 27, Termination for Default of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement, in which "Business Associate" is "Contractor" and "Covered Entity" is "County" for purposes of this Agreement.

C. Effect of Termination.

1. Except as provided in Section IV.C.2, upon termination or cancellation of this Agreement, for any reason, Business Associate must return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision applies to PHI that is in the possession of a subcontractor(s), employee(s), or agent(s) of Business Associate. Business Associate must not retain any copies of the PHI.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate must provide to Covered Entity written notification of the nature of the PHI and the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate must extend the protections of this Agreement to such PHI and limit further use(s) and disclosure(s) of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement survive termination of this Agreement with regard to such PHI.

3. Should Business Associate violate this Agreement, HIPAA, the Underlying Agreement, the MCMRA, or other applicable law, Covered Entity has the right to immediately terminate any contract then in force between the Parties, including the Underlying Agreement.

**V. CONSIDERATION.** Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be reasonably, justifiably, and detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

**VI. CAUSES OF ACTION IN THE EVENT OF BREACH.** As used in this paragraph, the term "breach" has the meaning normally ascribed to that term under the Maryland law related to contracts, as opposed to the specific definition under HIPAA related to PHI. Business Associate hereby recognizes that irreparable harm will result to Covered Entity in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in this Agreement, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of this Agreement. Furthermore, in the event of breach of this Agreement by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The causes of action

contained in this Article VI are in addition to (and do not supersede) any action for damages and/or any other cause of action Covered Entity may have for breach of any part of this Agreement. Furthermore, these provisions are in addition to the provisions set forth in Paragraph 18, "Indemnification", of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement in which "Business Associate" is "Contractor" and "Covered Entity" is "County", for purposes of this Agreement.

**VII. MODIFICATION; AMENDMENT.** This Agreement may be modified or amended only through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement, from time to time, as is necessary for Covered Entity to comply with the requirements of HIPAA, including its Privacy, Security, and Notice Rules.

**VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES.** Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement, along with the Underlying Agreement, shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement, by its title, date, and substance and specifically state that the provisions of the later written agreement shall control over this Agreement and Underlying Agreement. In any event, any agreement between the Parties, including this Agreement and Underlying Agreement, must be in full compliance with HIPAA, and any provision in an agreement that fails to comply with HIPAA will be deemed separable from the document, unenforceable, and of no effect.

**IX. COMPLIANCE WITH STATE LAW.** The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If HIPAA conflicts with another applicable law regarding the degree of protection provided for Protected Health Information, Business Associate must comply with the more restrictive protection requirement.

**X. MISCELLANEOUS.**

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA.

B. Regulatory References. A reference in this Agreement to a section in HIPAA means the section in effect, or as amended.

C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Joy Page, Esq.  
Deputy Privacy Official  
Montgomery County, Maryland  
401 Hungerford Drive, 7<sup>th</sup> Floor  
Rockville, Maryland 20850

(240) 777-3247 (Voice)  
(240) 777- 3099 (Fax)

Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

D. Maryland Law. This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Maryland, without regard to choice of law principles.

E. Incorporation of Future Amendments. Other requirements applicable to Business Associates under HIPAA are incorporated by reference into this Agreement.

F. Penalties for HIPAA Violation. In addition to that stated in this Agreement, Business Associate may be subject to civil and criminal penalties noted under HIPAA, including the same HIPAA civil and criminal penalties applicable to a Covered Entity.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**FORM OF NOTIFICATION**

This notification is made pursuant to Section III.F of the Business Associate Agreement between:

- Montgomery County, Maryland, (the “County”) and
- \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies the County that there has been a Breach, Security Incident, or use or disclosure of PHI not provided for by the Business Associate Agreement (an “Incident”) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the Incident:

\_\_\_\_\_  
\_\_\_\_\_

Date of the Incident: \_\_\_\_\_

Date of discovery of the Incident: \_\_\_\_\_

Does the Incident involve 500 or more individuals? Yes/No

If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the Incident:

\_\_\_\_\_

Names and addresses of individuals affected by the Incident:

(Attach additional pages as necessary) \_\_\_\_\_

The types of unsecured PHI that were involved in the Incident (such as full name, Social Security number, date of birth, home address, account number, or disability code):

\_\_\_\_\_  
\_\_\_\_\_

Description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against any further Incidents:

\_\_\_\_\_  
\_\_\_\_\_

---

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

MINORITY BUSINESS PROGRAM & OFFEROR'S REPRESENTATION

It is the policy of the County to recruit actively, minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 - "Minority Contracting", Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor (who is not a certified MFD firm) must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Office of Procurement, or his/her designee, who may waive this requirement.

A sample of the MFD Report of payment Received is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Office of Procurement, or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the MFD Program, Office of Business Relations and Compliance at (240) 777-9912.

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Offerors are encouraged (but not required) to complete the following:

I hereby represent that this is a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

Attach one of the following certification documents from: Maryland Department of Transportation (MDOT); Virginia Small, Women & Minority-Owned Business; Federal SBA 8(a); MD/DC Minority Supplier Development Council, Women's Business Enterprise National Council; or City of Baltimore.

## Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor

A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.

B. Contractor must subcontract a percentage goals listed below of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Business Program Manager. The letter must explain why a waiver is appropriate. The Director of the Office of Procurement or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.

For Goals by each purchasing category, please refer to [www.montgomerycountymd.gov/mfd](http://www.montgomerycountymd.gov/mfd)

C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.

D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.

E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.

F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.

G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.

If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Office of Procurement must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.



**MONTGOMERY COUNTY, MARYLAND**  
MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR  
PERFORMANCE PLAN

Contractor's

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

CONTRACT NUMBER/PROJECT DESCRIPTION: \_\_\_\_\_

A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

B. This Plan covers the life of the contract from contract execution through the final contract expiration date.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is \_\_\_\_\_% of the total dollars awarded to Contractor.

D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor :

This subcontractor will provide the following goods and/or services:

\_\_\_\_\_

\_\_\_\_\_

2. Certified by: \_\_\_\_\_  
Subcontractor Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN      ASIAN AMERICAN      DISABLED PERSON  
FEMALE                      HISPANIC AMERICAN      NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

3. Certified by: \_\_\_\_\_  
Subcontractor Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN      ASIAN AMERICAN      DISABLED PERSON  
FEMALE                      HISPANIC AMERICAN      NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

4. Certified By: \_\_\_\_\_  
Subcontractor Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services:

\_\_\_\_\_  
\_\_\_\_\_

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_  
MFD Program Officer

Date: \_\_\_\_\_

\_\_\_\_\_  
MFD Program Officer

Date: \_\_\_\_\_

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_  
Director  
Cherri Branson  
Office of Procurement

Date: \_\_\_\_\_

\_\_\_\_\_  
Director  
Cherri Branson  
Office of Procurement

Date: \_\_\_\_\_

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. \_\_\_\_\_) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: \_\_\_\_\_

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
Cherri Branson, Director, Office of Procurement

\_\_\_\_\_  
Date

Section 7.3.3.4(a) of the Procurement Regulations requires:  
The Contractor must notify the Director, Office of Procurement of any proposed change to the Subcontractor Performance Plan.

Wage Requirements for Services Contract  
Addendum to The General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Wage Requirements Law, found at Section 11B-33A of the Montgomery County Code (“WRL” or “11B-33A”). A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the WRL, subject to the exceptions for particular contractors noted in 11B-33A (b) and for particular employees noted in 11B-33A (f).
- B. Conflicting requirements (11B-33A (g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- C. A nonprofit organization that is exempt from the WRL under 11B-33A (b)(3) must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees. Section 11B-33A (c)(2).
- D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement in 11B-33A.
- E. Each contractor and subcontractor covered under the WRL must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices approved and/or supplied by the County, informing employees of the wage requirements. Section 11B-33A (h).
- F. An employer must comply with the WRL during the initial term of the contract and all subsequent renewal periods, and must pay the adjusted wage rate increase required under 11B-33A (e)(2), if any, which is effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.
- G. An employer must not discharge or otherwise retaliate against an employee for asserting any right, or filing a complaint of a violation, under the WRL.
- H. The sanctions under Section 11B-33 (b), which apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements of the WRL.
- I. The County may assess liquidated damages for any noncompliance by contractor or its subcontractor with the WRL based on the rate of 1% per day of the total contract amount, or the estimated annual contract value of a requirements contract, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. If the County determines, as a result of a WRL audit that the Contractor has violated requirements of the WRL, including but not limited to the wage requirements, the County will assess the Contractor for the cost incurred by the County in conducting the audit. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action against the violating contractor or subcontractor enforce the payment of wages due under the WRL and recover from the Contractor or subcontractor any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation by the Contractor or subcontractor arising from the employee asserting any right, or filing a complaint of violation, under the WRL.
- J. The County has established a program of random audits to assure compliance with the WRL. The Director may conduct an on-site inspection(s) for the purpose of determining compliance. Some of the documents that may be required during an audit are listed on the Wage Requirements Law FAQ web page: <http://www.montgomerycountymd.gov/PRO/DBRC/WRL.html>
- K. The Contractor is in breach of this contract if the Contractor fails to submit timely documentation demonstrating compliance with the WRL to the satisfaction of the Director, including: the Wage Requirements Law Payroll Report Form (PMMD-183), which is required to be submitted by the end of the month (January, April, July, October) following each quarter; documents requested in conjunction with a random or compliance audit being conducted by the County; or documents otherwise requested by the Director. In the event of a breach of contract under this paragraph, or for any other violation of the WRL, the County may assess against, or withhold from payment to, Contractor, the liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a

result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

L. For any questions, please contact the Wage Requirements Law Program Manager at 240-777-9918 or [WRL@montgomerycountymd.gov](mailto:WRL@montgomerycountymd.gov) .

[Remainder of Page Intentionally Left Blank]

Contract # \_\_\_\_\_

**Wage Requirements Law Certification**

(Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number			Fax Number		
E-Mail Address					

Provide, in the spaces below, the contact name and information of the individual designated by your firm to monitor your compliance with the County’s Wage Requirements Law, unless exempt under Section 11B-33A (b) (see Section B. below):

Contact Name			Title		
Phone Number			Fax Number		
E-mail Address					

In the event that you, the “Offeror,” are awarded the contract and become a Contractor, YOU MUST MARK  or  in ALL BOXES BELOW that apply.

A. Wage Requirements Compliance

This Contractor, as a “covered employer”, will comply with the requirements under County Code Section 11B-33A, “Wage Requirements” (“Wage Requirements Law” or WRL”). Contractor and its subcontractors will pay all employees not exempt under the WRL, and who perform direct measurable work for the County, the required wage rate effective at the time the work is performed. The offer price(s) submitted under this solicitation include(s) sufficient funds to meet the requirements of the WRL. A “covered employer” must submit (preferably via email) quarterly (by the end of January, April, July, and October for the quarter ending the preceding month) certified payroll records for each payroll period and for all employees of the contractor or a subcontractor performing services under the County contract governed by the Wage Requirements Law, to the Division of Business Relations and Compliance, Attn: Wage Requirements Law Program Manager. These payroll records must include the following: name; position/title; gender/race (for contracts awarded after October 1, 2015); daily straight-time hours worked; daily overtime hours worked; straight-time hourly pay rate; overtime hourly pay rate; both employer and employee share of health insurance premium; and total gross wages paid for each period. A sample of the Payroll Report Form can be found at the link below.

(<http://www.montgomerycountymd.gov/PRO/DBRC/WRL.html>). In lieu of the quarterly Payroll Report Form, payroll registers generally satisfy the requirement. Late submission or non-submission of this information, or any other violation of the WRL, may result in the County withholding contract payments and additional actions by the County, including but not limited to: assessing liquidated damages, terminating the contract, or otherwise taking action to enforce the contract or the Wage Requirements Law. The Contractor must ensure that NO Social Security number of any person, other than the last four digits, is included on the quarterly report.

B. Exemption Status (if applicable)

This Contractor is exempt from Section 11B-33A, “Wage Requirements,” because it is:

- 1. Reserved – [Intentionally left blank].
- 2. a contractor who, at the time a contract is signed, has received less than \$50,000 from the County in the most recent 12-month period, and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Section 11B-33A (b)(1);
- 3. a public entity. Section 11B-33A (b)(2).
- 4. a non-profit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Section 11B-33A (b)(3) (**must complete item C below**).

5. an employer expressly precluded from complying with the WRL by the terms of any federal or state law, contract, or grant. Section 11B-33A (b)(7) (**must specify the law, or furnish a copy of the contract or grant**).

C. Nonprofit Wage & Health Information  
 This Contractor is a non-profit organization that is exempt from coverage under Section 11B-33A (b)(3). Accordingly, the contractor has completed the 501 (c)(3) Nonprofit Organization’s Employee’s Wage and Health Insurance Form, which is attached. See Section 11B-33A (c)(2).

D. Nonprofit’s Comparison Price(s) (if desired)  
 This Contractor is a non-profit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the blanket-cost quotation sheet on which it is submitting its price(s) in the RFP, and is submitting on this duplicate form its price(s) to the County had it not opted to pay its employees the hourly rate specified in the WRL. For proposal evaluation purposes, this price(s) will be compared to price(s) of another nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the WRL. This revised information on the duplicate cost sheet must be clearly marked as your nonprofit organization comparison price(s). In order for the County to compare your price(s), the revised information on the duplicate cost sheet must be submitted with your offer on or before the offer opening date, must show how the difference between your nonprofit organization price(s) and other organization comparison price(s) was calculated. Section 11B-33A (c)(2).

E. Sole Proprietorship  
 Sole Proprietorships are subject to the WRL. In order to be excused from the posting and reporting requirements of the WRL, the individual who is the sole proprietor must sign the certifications below in order to attest to the fact that the Sole Proprietorship:

- (1) is aware of, and will comply with, the WRL, as applicable;
- (2) has no employees other than the sole proprietor; and
- (3) will inform the Montgomery County Office of Business Relations and Compliance if the sole proprietor employs any workers other than the sole proprietor.

**Contractor Certification**

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or printed name		Date	



501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number		E-Mail	

Please provide below the employee labor category of all employee(s) who will perform direct measurable work under this contract, the hourly wage the organization pays for that employee labor category, and any health insurance the organization intends to provide for that employee labor category:

Employee Labor Category	Wage per Hour	Name of Health Insurance Provider(s) and Plan Name* (e.g. ABC Insurer, Inc. , HMO Medical and Dental)

\* IF NO HEALTH INSURANCE PLAN IS PROVIDED PLEASE STATE "NONE".

**ATTACHMENT F**

**Early Childhood Mental Health Consultation Polices and Procedures**

**Initiating Services**

1. The County's staff will conduct an intake which will gather specifics of the potential client's needs.
2. The County will make an initial assessment of time required for services, location and/or specific expertise needed, and current availability of the contractor to take the assignment/referral.
3. The County will initiate contact with the Contractor(s) regarding provisions of the specific request via email with specific information pertaining to the request.
4. Should there be specifics pertaining to the client such as language or a specific disability that a potential contractor has significant experience then the County reserves the right to send those referrals to those contractors only.
5. The contractor must respond to the request for services via email indicating that they will accept the intake.
6. If two or more contractors respond to the request, then the contractor who responded first will receive the intake.
7. Should two contractors respond at the same time and there is both capacity and time, then the County will consult with both contractors to make them aware that both responded and that based on the clients selection, that contractor will receive the referral. select which contractor will be assigned the intake.
8. In the event there is a contractor serving a client and another referral comes in from the existing client, priority may given to the existing contractor for continuity of services, cost and or total of hours.
9. In the event the contractor is serving a client and multiple intakes continue to be made for services, and capacity, quality and/or cost become an issue, the County may selects another contractor to offer services in order to avoid the client waiting for a service.
10. Where they may be two or more contractors rendering ECMH consultation services at the same center it is expected that there be a collaborative relationship to ensure quality services.
11. The contractor must make every effort to initiate services required by the County within 1 week of receipt of the intake.
12. The Contractor will complete a partnership agreement that will indicate:
  - a. Duration of consultation (not to exceed 4 months)
  - b. Number of hours of service to be rendered weekly
13. The Contractor will conduct (when applicable) on-site observations , make telephone calls, complete assessments and coordinate meetings via face to face, email or telephone with parties associated with the case to develop, monitor and close an action plan for services.

**Continuation of Services**

1. Should the contractor have provided consultation services per the guidelines and there is a need for additional services beyond 4 months, then the contractor must contact the County's designee at the end of the 3<sup>rd</sup> month with specific outcomes to be achieved and a proposed timeline requesting an extension for consultation.
2. If it is agreed that additional services are warranted, then a new partnership agreement is to be completed with all parties to continue services and submitted to the County at the 4 month reporting period.

**Discontinuing of Services**

1. The County will provide written communication via email to the Contractor if services are to be discontinued before the contracted time period due to dissatisfaction services, request of the center and/or family and or any other possible situation that would influence the quality of services.

**ATTACHMENT G- MCCRRC POLICIES and PROCEDURES**

Training Expectations & Procedures

Trainer Expectations

- Respect and address the needs of all adult learners by utilizing appropriate teaching methodologies;
- Respect each learner's knowledge and experience;
- Provide accurate, updated information that reflects best practice in the field, and is supported by appropriately reference bibliographies and handouts;
- Recognize and respect cultural differences and personal values;
- Ensure all information presented is consistent with all applicable licensing and training regulations;
- Deliver training using approved MCCRRC format;
- Identify and provide training materials (to include but not limited to: chart tablets, markets, group activity materials);
- If requested through work request, provide technical assistance in the form of email, phone call, video conferencing or site visit

Training Procedures:

Tier 1: Delivery of Training

- 2-6 months prior to training delivery
  - MCCRRC will make a training request and determine if Technical Assistance is required using a work request form.
  - Contractor will accept/deny within 5 business days.
- 2-4 weeks prior to training delivery
  - MCCRRC will finalize training logistics and register all participants.
  - Contractor will provide MCCRRC with an electronic copy of all training materials (to include, but not limited to: power point, assessment, trainer's outline, classroom activities, and handouts).
- 1 week prior to training delivery
  - MCCRRC will provide the contractor with the final classroom count.
  - MCCRRC will provide chart stand, markers, and evaluations.
  - Contractor is responsible for providing their own audio/visual/media devices (to include but not limited to: lap top, in-focus projector, speakers, sound delivery system).
  - Contractor is responsible for providing copies of all classroom materials to all training attendees (to include but not limited to: power point in notes format with 3 slides, assessments, and handouts).
- Day of training delivery
  - Contractor is expected to arrive 30 minutes prior to beginning of the training.
  - MCCRRC will provide staff to oversee sign in and coverage of site.
  - Contractor is expected to return classroom to its original configuration.
  - Contractor is expected to return all evaluations and assessments to MCCRRC staff upon the completion of the training.

Tier 2: Development and Delivery of Comprehensive Series Training

- MCCRRC will make a training development with targeted completion date.

## Open Solicitation #1035882

- Contractor will accept/deny within 5 business days.
- MCCRRC will determine a time line and review progress on a routine schedule.
- Contractor is responsible for submitting:
  - Finalized presentation in Microsoft PowerPoint to include presenter notes and required slides as determined by MCCRRC.
  - Finalized instructor outline, assessment tool, agenda, and list of supplies in Microsoft Word as required by Maryland State Department of Education-Office of Credentialing to include, but not limited to, time limits, topics, activity, and bibliography.
  - Finalized handouts in Microsoft Word using MCCRRC format.
  - Scanned copies in adobe acrobat of articles with gained permission.
  - Video or audio files in QuickTime.
- 2-4 weeks prior to training delivery
  - MCCRRC will finalize training logistics and register all participants.
  - MCCRRC will provide the contractor with an electronic copy of all training materials (to include, but not limited to: power point, assessment, trainer's outline, classroom activities, and handouts).
- 1 week prior to training delivery
  - MCCRRC will provide the contractor with the final classroom count.
  - MCCRRC will provide chart stand, markers, and evaluations.
  - MCCRRC will provide all audio/visual/media devices (to include but not limited to: lap top, in-focus projector, speakers, sound delivery system).
  - Contractor is responsible for providing copies of all classroom materials to all training attendees (to include but not limited to: power point in notes format. with 3 slides, assessments, and handouts).
- Day of training delivery
  - Contractor is expected to arrive 30 minutes prior to beginning of the training.
  - MCCRRC will provide staff to oversee sign in and coverage of site.
  - Contractor is expected to return classroom to its original configuration.
  - Contractor is expected to return all evaluations and assessments to MCCRRC staff upon the completion of the training.

## **ATTACHMENT H-MCCCRRC POLICIES and PROCEDURES**

### Technical Assistance Expectations & Procedures

#### Technical Assistance Consultant Expectations

- Respect and address the needs of all adult learners by utilizing appropriate coaching methodologies;
- Respect each child care provider's knowledge and experience;
- Provide accurate, updated information that reflects best practice in the field, and is consistent with all applicable licensing and training regulations;
- Recognize and respect cultural differences and personal values;
- Provide technical assistance in the form of email, phone call, video conferencing or site visit.

#### Technical Assistance Procedures:

- MCCCRRC will make a technical assistance request using a work request form.
- Contractor will accept/deny within 5 business days.
- MCCCRRC will notify program/provider of consultant's name and contact info and in turn provide contact information to the contractor.
- Contractor will set up first meeting to gather information and complete appropriate paperwork.
  - Contractor will establish a file system using MCCCRRC format.
- Once information is gathered, contractor will conduct observations and assessments to identify goals.
- An action plan is developed between the provider/program and the contractor.
- Contractor will support program through a consultation methodology which includes site visits, phone calls, emails, and meetings as agreed upon with MCCCRRC and work request.
- Contractor will conclude consultation and request a closing survey from program/provider.

**ATTACHMENT I**

**AFFADAVIT**

I, \_\_\_\_\_ (printed name of affiant along with the of, title, or job designation, if applicable), make this affidavit and certify that per the terms and conditions \_\_\_\_\_ (contract #) that the following individuals have received an FBI Identification Record/Criminal History and a Child Protective Services Program (CPS) report based on the employee's state of residence for the past seven years:

- 1.
- 2.
- 3.
- 4.
- 5.

I swear that the information in this affidavit is personally known by me to be correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
**Signature of Affiant**

\_\_\_\_\_  
**Affiant (printed name)**

I, the undersigned Notary Public, do hereby affirm that \_\_\_\_\_ (printed name of affiant along with the of, title, or job designation, if applicable), personally appeared before me on the \_\_\_ day of December 20 \_\_, and signed the above Affidavit as his free and voluntary act and deed.

\_\_\_\_\_  
**Notary Public**

**ATTACHMENT J– SCOPE SELECTION FORM**

**OPEN SOLICITATION #1035882**

**The attached application is for the following scope(s) of service. Check all that apply:**

1. Mental Health Consultation – Scope 1 \_\_\_\_\_
2. Training – Scope 2 \_\_\_\_\_
3. Technical Assistance – Scope 3 \_\_\_\_\_

**ATTACHMENT K - APPLICATION FORM**

Please review and complete the following information for the above-referenced service(s). **If your organization is a group practice or other incorporated entity, please provide the names and professional license number of all medical providers who will be providing services under this Contract along with the type of service(s) each person will be providing. A blank form is attached for this purpose.** You must notify the County if your practice's legal status changes. **In addition, please supply information about your billing contact/service below.**

Please review and complete the following information. By signing this form you are signifying that you have received a copy of this Open Solicitation and understand the requirements of this Open Solicitation.

\_\_\_\_\_  
Name of Firm or Individual

\_\_\_\_\_  
Contact Name/Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Tax Identification Number (TIN)\*

\_\_\_\_\_  
Email Address

\*Note: If Applicant does not have a TIN, the County will request the Applicant's Social Security Number at the time of Contract award in order to make payments for services rendered by the Applicant in accordance with the resulting Contract.

Profit or Non-Profit (please check one) Profit  Non-Profit  [Indicate type of non-profit corporation, i.e., 503c(3)]

Please provide the required licensure information for each person and language proficiency, if applicable. Use additional copies of this page if necessary.

**License(s)/Degree(s)**

**Language Proficiency**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**Open Solicitation #1035882**

Please list all Providers who will be utilized to provide services under the County's contract with your organization. If more space is needed, please duplicate this form.

<u>Provider Name</u>	<u>Services(s)</u>	<u>License/Certifications</u>
_____	_____	_____
	_____	_____
	_____	_____
_____	_____	_____
	_____	_____
	_____	_____
_____	_____	_____
	_____	_____
	_____	_____