

**Open Solicitation Plan  
For**

**Open Solicitation # 1075640 - Child Welfare Services Outpatient Behavioral Health and Supportive Services for  
Children, Adolescents and Families**

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. Additionally, the Open Solicitation packet will be posted in DHHS, Contract Management Team (CMT) website.
- (2) Application Process – Vendors interested in applying to provide the requested services can obtain a copy of the Open Solicitation packet by visiting DHHS, CMT website at <http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. 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 G**) 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 IV. 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 the needs of the County, contractor expertise, appropriateness of services, 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.
- (8) Changes to Forms - At the request of the Office of Procurement, the County may update the Open Solicitation Form contract with updated versions of the forms listed below without issuing an amendment to the Open Solicitation:
  - (a) General Conditions of Contract Between County & Contractor (PMMD-45);
  - (b) Minority Business Program & Offeror’s Representation (PMMD-90);
  - (c) Minority-owned Business Addendum to the General Conditions of Contract between County and Contractor (PMMD-91)
  - (d) Minority, Female, Disabled (MFD) Person Subcontractor Performance Plan (PMMD -65)

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- (e) Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor, and Wage Requirements Law Certification (PMMD-177); and
- (f) Business Associate Agreement.

The updated forms will be applicable to new contracts entered into after the date they are added to the open solicitation; forms attached to previously executed contracts will remain in effect for these contracts unless formally amended by contract amendment.

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Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families

### **NOTICE TO VENDORS**

DHHS is seeking experienced and qualified entities that can assist the County in provision of outpatient behavioral health and supportive services for children, adolescents and families. The County has a need to contract with qualified organizations, groups and agencies or some combination thereof that can assist DHHS with providing outpatient behavioral health and supportive services providers to assist the County in providing services to children, youth and families and other relatives or within the foster care system of care ("Clients").

A complete description of the Scope of Services is listed in the Open Solicitation packet. You may obtain a packet by visiting DHHS website

<http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>

The County will compensate the Contractor for services rendered at a pre-determined rate listed at

<http://montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>

This rate is inclusive of all administrative costs such as telephone, office supplies, computer usage, mileage, etc. This rate applies to all services provided to the County by the Contractor under the resulting Contract.

The County will enter into a contract with all applicants who meet the minimum qualifications as described in the Form Contract (Article IV., 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 Teresa Blair, Contract Monitor, Child Welfare Services, at (240) 777-1713.~~

~~Questions related to the application/contract process and insurance requirements may be directed to Tania Muñoz Senior Contract Manager, at (240) 777-3865.~~

Any prospective vendor questions regarding the Open Solicitation process or services to be provided should be emailed to:  
HHS.Open.Solicitations@montgomerycountymd.gov

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Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families

### 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. Attachment A, “General Conditions of Contract Between County & Contractor”;
    - b. Attachment B, “Business Associate Agreement”;
    - c. Attachment C, “Minority Business program & Offeror’s Representation” – this optional 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”, and “Wage Requirements Law Certification”;
    - f. Attachment F, “Scope of Services Selection Form”; An Applicant may propose to provide one, some, or all of the services listed in the three scope areas: Scope 1 – Outpatient Behavioral Health Services; Scope 2 – Academic Tutoring; and, Scope 3 – Parenting Skills Development/Coaching; and
    - g. Attachment G, “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 services for children, youth and families (“clients”) (e.g., child development; family systems, evidence-based/promising practices, etc.); knowledge of and experience with trauma-informed practices; knowledge of and experience with outpatient behavioral health services. This information must be provided in no more than four (4) 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 who would provide any of the direct services under the Contract resulting from this Open Solicitation along with an organizational chart, if applicable, demonstrating chains of command, lines of supervision, and roles/responsibilities of each person proposed to provide services.
- D. Certificate(s) of Insurance – This provides evidence of meeting the insurance requirements set forth in Article IX. 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 other required certifications to provide therapy/counseling services, psychiatric diagnostics, medication monitoring, psychological testing/evaluation and therapeutic mentoring. This is not required for those applying to provide academic tutoring or parenting skills development/coaching services. If an agency, organization, or group practice is applying please provide a list of all persons/practitioners who will provide services, under the Contract resulting from this Open Solicitation, along with each person’s specialty and license, and language proficiency, if any.

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- 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 the provision of services relevant to the specific scope of services you are applying for under this Open Solicitation.
- K. Proof of Good Standing with the State of Maryland Department of Assessments and Taxation Business Services (<http://charter.dat.maryland.gov/>) if applicable.

## **II. Instructions:**

- A. As directed above in Section I., please complete, attach, and send all Submission Documents to:  
Teresa Blair, Contract Monitor, Child Welfare Services  
Montgomery County DHHS  
1301 Piccard Drive, 4th Floor  
Rockville, MD 20850
- B. The County will enter into a contract with all applicants who meet the minimum qualifications as described in the Form Contract (Article IV., Minimum Qualifications) and are found to be a responsible organization. If your application is accepted and approved, and your organization is found to be responsible, 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.
- D. 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.
- E. Award of a contract under this Open Solicitation is subject to the appropriation and encumbrance of funding.
- F. The County reserves the right to cancel this Open Solicitation at any time.
- G. The Contractor must notify the contract monitor of any changes in organization/business name and status (e.g., sole proprietorship/solo practitioner vs. group practice/entity) immediately.

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### BACKGROUND

The County seeks qualified, experienced, and culturally competent entities and private practitioners to provide a program of outpatient behavioral health and supportive services to children, adolescents, and families (“clients”) referred by the Montgomery County Department of Health and Human Services (DHHS) Child Welfare Services (CWS), who exhibit behavioral, mental health, parenting and/or learning challenges. Services to clients must be community-based, child-centered and family-focused. County referred-clients reflect the cultural diversity of Montgomery County and many clients will be in out-of-home care or are at risk of being removed from their homes.

The Contractor must work with DHHS Case Managers and existing service providers to provide services to the clients. In some cases, the referrals will be part of an overall Service Plan or Plan of Care. As a result, the Contractor must demonstrate the ability to function as part of a multi-disciplinary and/or inter-agency service delivery team. Services must be provided in a facility that is convenient to public transportation and handicapped accessible, or may be home-based, if appropriate. Service providers must have the required licenses and/or certifications by the State of Maryland before providing services to the clients under the resulting contracts. The Contractor must provide therapeutic and educational support services in an evidence-based or documented “best practice” methodology that preserves supports and promotes healthy families, family education and empowerment. The services required by the County under contracts resulting from Open Solicitation # 1075640 include the following categories:

- **Scope 1 - Outpatient Behavioral Health Services**
- **Scope 2 - Academic Tutoring**
- **Scope 3 - Parenting Skills Development/Coaching**

### INTENT

The County intends to award multiple contracts under Open Solicitation # 1075640. The County does not guarantee that any Contractor will receive a minimum number of clients or any referrals from the County for provision of these services. Contractor assignments will be based on client’s requests and service needs, geographic location, language, Contractor’s ability to provide the services needed and availability to meet the client’s need, as determined by the County. The County will confirm the Contractor’s availability with the Contractor prior to formally assigning or referring the client to the Contractor for services. Applicants will not receive preference in the award process for offering to provide services under more than one scope of services. 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.

## **I. SCOPE OF SERVICES**

### *SCOPE 1: Outpatient Behavioral Health Services*

A) The Contractor must provide a program of outpatient behavioral health services approved by the County to clients referred by the County based on the Contractor’s area(s) of expertise. The Contractor must provide therapeutic and educational support services in an evidence-based or documented “best practice” methodology that preserves supports and promotes healthy families, family education and empowerment. Services can be one or more of the specified services listed within this scope of services: individual, family, and group therapy and/or counseling services; court-related services; treatment planning; psychological testing/evaluation; therapeutic mentoring; psychiatric diagnostic services and medication monitoring; and, crisis stabilization:

- 1) Therapy/Counseling: The Contractor must provide child-centered, family-focused family therapy services, integrated with group therapy services and individual therapy services to County-referred clients when these services are determined to be appropriate by the Contractor and the County case manager for each client in consultation with the Contractor. Other services may include individual and family pre-adoption counseling and

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supportive services to address issues and concerns pertaining to anxiety, ambivalence, uncertainty and/or fear regarding the adoption process.

- 2) Crisis Stabilization: The Contractor must provide crisis intervention assessments and services to stabilize youth in their environment (foster home or within their natural or non-traditional living situation). Referrals are made by CWS staff and are approved by a CWS Gatekeeper. Following an assessment, recommendations are made for a treatment service or intervention that is most therapeutically appropriate for the child, bio-family, kinship caretaker, or foster family. Upon the County's approval of the referral, the Contractor must develop an individualized treatment plan with youth and adult caretakers, which will address the issue(s) that may have contributed to the current crisis. The Contractor must assist families in accessing additional support services that will continue to help the child or adolescent in maintaining a pre-crisis level of functioning within their home or community setting, in addition to strengthening the family's overall relational needs.
- 3) Therapeutic Mentoring: The Contractor must provide therapeutic mentoring services to assist CWS referred clients who have trauma histories as well as mental health and/or behavioral challenges. The ultimate goal of therapeutic mentoring is to facilitate and support a child's development of skills that will allow for positive experiences in the home, school and community. Gains will be measured by improved adjustment in the areas of family relationships, peer relationships, social/personal interactions, enhanced vocational or educational interests, and basic life skills. The Contractor's therapeutic mentoring model must be clearly described in the narrative in Section B of Submission Documents (under Instructions to Vendor section of the Open Solicitation), including but not limited to evidence-based or promising practice platform, unpaid vs. paid mentors, therapeutic qualifications/training possessed by mentors, treatment planning, group vs. individual activities, etc.
- 4) Psychological Evaluation/Testing Services: The Contractor must provide: 1) specialized parenting capacity evaluations that assess the quality of the parent/caregiver-child relationship, children's social, emotional and developmental status, and parent's/caregiver's capacity to recognize and respond to their children's physical, social and emotional needs over time; 2) evaluation services to clarify or confirm diagnoses and make treatment recommendations; 3) expert witness testimony; and/or, 4) other Juvenile court-related services not covered by Medical Assistance. When parents are referred for court-ordered psychological assessments as individuals, attachment issues should be taken into account. Evaluation of the whole family system or family subsystems will be requested, as needed, on a case-by-case basis.
- 5) Psychiatric Diagnostic Services and Medication Monitoring: The Contractor must provide psychiatric assessment and diagnostic services; prescribe medication; and, medication monitoring services for referred clients who may require assistance and monitoring related to safe administration of medications. The Contractor must comply with all state laws, regulations, policies and procedures in the medication monitoring process including but not limited to COMAR (10.47.07 Prescription Drug Monitoring Program.)

#### *SCOPE 2: Academic Tutoring*

- B) The Contractor must provide a range of academic tutorial services that will include interdisciplinary assessment and services to clients who are experiencing problems in academic performance due to educational deficits, learning disabilities, and/or other developmental issues that impact learning. The therapeutic and educational support services provided by the Contractor must be provided in an evidence-based or documented "best practice" methodology that preserves, supports and promotes healthy families, family education and empowerment. The Contractor must offer individualized tutoring based on individual client needs and a learning assessment utilizing a County-approved assessment instrument to identify academic benchmarks that need to be strengthened. Academic tutorial services will be provided for students in grades K-12. The Contractor must provide pre- and post-testing and evaluations for each client. The Contractor must develop an Individual Learning Plan (ILP) with each student to identify learning goals and to determine

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the best instructional method to assist students in achieving specific and/or measurable goals, and must monitor academic progress via student progress reports and/or report cards provided by the child's CWS case manager, foster parent, relative caretaker or biological parent. The ILP must include projected timeframes for student achievement of measurable progress and/or goals. The Contractor must work collaboratively with biological parents, foster parents, and/or relative caretakers and CWS case managers to address student needs relative to curriculum requirements, the academic tutoring process, and overall educational success. Provision of tutoring services may be provided in the child's home only when an adult caretaker is present with "line of sight" observation capability. Provision of tutorial services in the tutor's home is strictly prohibited. Tutoring services may otherwise be provided at the tutor's business location or a public location such as a school or library.

#### *SCOPE 3: Parenting Skills Development/Coaching*

- C) The Contractor must provide individual evidence-based parenting skills education that teaches effective family management strategies and parenting skills including skill encouragement, setting limits/positive discipline, monitoring, problem solving, positive involvement and the likelihood of child maltreatment, in order to reduce antisocial and behavior problems in children. The therapeutic and educational support services provided by the Contractor must be provided in an evidence-based or documented "best practice" methodology that preserves, supports and promotes healthy families, family education and empowerment. Research suggests improving fundamental parenting practices will reduce the likelihood of problem behaviors in children. One way to enhance the parent-child relationship is through parent training and family strengthening programs. Evidence-based parenting education programs are those that have been studied in both controlled, clinical trials and community settings and have demonstrated specific, expected outcomes. The Contractor must provide parenting skills development /coaching sessions for all age ranges.

## II. ADMINISTRATIVE AND QUALITY ASSURANCE REQUIREMENTS

- A) The Contractor must abide by all applicable Federal, State, and Local laws and regulations, and all applicable guidelines, policies, and procedures established by the County in the provision of services under this Contract.
- B) During the Contractor's initial assessment of a client, the Contractor must provide a Service Agreement to each client, approved by the County, which describes the Contractor's organization, the program or services being offered and discloses the contractual relationship with the County. If translation services are required for non-English-speaking clients, the County will recommend an existing contractor for those services and cost for these services will be covered by the County. The document must include:
- 1) a statement that CWS will randomly review client service records for contract monitoring purposes;
  - 2) a copy of a client/family service agreement;
  - 3) confidentiality disclosures and agreements; and,
  - 4) client grievance procedures.
- C) All organizations, clinicians and/or professionals providing direct services under this Contract must meet minimum professional requirements of the State of Maryland for the professional licenses held and maintain their credentials in good standing, as required by the professional discipline.
- D) For outpatient behavioral health services, the Contractor must provide the following:
- Crisis Stabilization – 24/7 access
  - Be available at a range of times that accommodate the varying schedules of clients/families and offer opportunities for flexible scheduling
  - All applicants must indicate their service delivery days/hours, including weekday and weekend, in the Application Form-Attachment G.



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- E) 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.
- F) 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, substance abuse treatment records, educational records, and child abuse/neglect information. The Contractor must complete, sign and agree to adhere to the provisions stated in the Business Associate Agreement attached to this Contract for Scope I only. (Attachment B)
- G) All Contractors must have their own service delivery location(s) outside County-owned or County-leased space.
- H) Contractors must have a primary business location within Montgomery County OR describe, to the County's satisfaction, how services will be made available to County-referred clients in a manner that is timely, convenient, accessible and otherwise consistent with "best practice" procedures.

### **III. STAFFING REQUIREMENTS**

- A) With the exception of a sole proprietor, the Contractor must ensure that all staff vacancies are 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) Scope 1, Outpatient Behavioral Health Services – The Contractor must provide direct management support and regular supervision of staff, for all work requested by the County, to ensure continuous quality service delivery. The Contractor must:
  - a. Obtain copies of all resumes, licenses, background clearances, references and credentials for all staff who perform work under this Contract prior to the execution of this Contract and maintain on file;
  - b. Maintain regular communication with the County Case Manager and/or the Contract Monitor, including communication of contracting issues and/or issues related to families served as they arise; and
  - c. Provide regular supervision of all staff providing direct services under this Contract.
- C) Scope 2, Academic Tutoring – To ensure that all designated Academic Tutors meet the following requirements and to ensure continuous quality service delivery, the Contractor must:
  - a. Obtain copies of all resumes, background clearances, references and credentials for all staff who perform work under this Contract prior to the execution of this Contract and maintain on file.
  - b. Communicate, in writing, at a minimum of once a month with the County Case Manager and/or the Contractor monitor to report on tutoring progress and to report any issues or barriers that have arisen that may interfere with the continuation of services.

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D) Scope 3, Parenting Skills Development/Coaching – To ensure that all designated Parenting Skills Development Trainers/Coaches meet the following requirements and to ensure continuous quality service delivery, the Contractor must:

- a. Obtain copies of all resumes, background clearances, references and credentials for all staff who perform work under this Contract prior to the execution of this Contract and maintain on file.
- b. Communicate, in writing at minimum of once a month, with the County Case Manager and/or the Contract monitor to report on parenting skills development progress and to report any issues or barriers that have arisen that may interfere with the continuation of services.

## IV. MINIMUM QUALIFICATIONS

All applicants under Open Solicitation # 1075640 meeting the minimum requirements listed below will be eligible to receive a contract under the Open Solicitation. The Contractor must possess and maintain, throughout the term of this Contract, the following minimum qualifications and comply with the requirements listed below, as applicable, to the services to be provided by the Contractor:

A) Scope 1. Outpatient Behavioral Health – In the provision of direct professional services, the Contractor must provide staff who meet the following requirements:

1. The Contractor's staff must possess the following credentials where applicable:

The Board of Examiners of Psychologists

<http://dhmh.maryland.gov/psych>

The Board of Social Work Examiners

<http://dhmh.maryland.gov/bswe/Pages/default.aspx>

Board of Professional Counselors and Therapists

<http://dhmh.maryland.gov/bopc>

Maryland Board of Physicians

<http://mbp.state.md.us>

2. Must be a licensed professional with a current State of Maryland clinical license and have a minimum of five (5) years of experience working with children, youth and families.
3. Possess experience writing reports for Juvenile Court proceedings and providing expert witness testimony.
4. Provide three (3) professional letters of recommendation.

B) Scope 2. Academic Tutoring – In the provision of direct professional services, the Contractor must provide staff who:

1. Possess, at a minimum, a Bachelor's degree in education or a degree in an area of academic focus relative to the tutoring course of study from an accredited college or university in the United States.
2. Have a minimum of five (5) years' experience working as an academic tutor for K-12 with three of the past five years providing tutoring and/or academic supportive services to youth in K-12 who are at academic risk.
3. Possess experience writing reports for Juvenile Court proceedings and providing expert witness testimony.
4. Must provide three (3) letters of recommendation from past clients.

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- C) Scope 3. Parenting Skills Development/Coaching – In the provision of direct professional services, the Contractor must provide staff who:
1. Possess, at a minimum, a Bachelor's degree in human services, psychology, social work, counseling or early childhood development from an accredited college or university in the United States.
  2. Have a minimum of four (4) years' experience working as a parenting skills development consultant/coach utilizing evidence-based parenting curriculum resources.
  3. Have experience working with children and families in child welfare systems of care.
  4. Possess experience writing reports for Juvenile Court proceedings and providing expert witness testimony.
  5. Must provide three (3) letters of recommendation from past clients.
- D) All Contractors must comply with the County's mandatory insurance requirements as set forth under Article IX of this Contract and must provide an insurance certificate(s) evidencing the required insurance coverage.
- 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) The Contractor must comply with DHHS Background Clearance policy requirements for staff, subcontractor and volunteers serving clients (please see link below for policy)  
<http://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>.
- G) The Contractor must also complete a Child Protective Services (CPS) Background Clearance for all staff providing services under the Contract online via the Department of Human Resources (DHR) website:  
<http://dhr.maryland.gov/child-protective-services/child-protective-services-background-search-the-central-registry/> Once the CPS online form has been completed, the Contractor must provide CWS with the signed and notarized original document by submitting it to the attention of the Contract Monitor Teresa Blair, Child Welfare Services, 1301 Piccard Dr., 4<sup>th</sup> Floor, Rockville, MD 20850.
- H) If sole proprietor, please contact the Contract Monitor to coordinate the Background Clearances before applying for services under this Open Solicitation.
- I) The Contractor must ensure that no staff who have a verified history of child physical abuse, neglect or sexual abuse, provide services under this Contract.
- J) All applicants must accept the County's fee structure that is detailed in Article VI Compensation of this Contract.

## V. REPORTS

The Contractor must provide reports to the County, in a format approved by the County, no later than fifteen calendar days following the month in which services were provided. These reports must accompany the monthly invoice and must include the following information, as applicable to the services provided, at a minimum:

### A) Scope 1 Outpatient Behavioral Health Services Reports:

- a. For Therapy/Counseling, Crisis Stabilization, and Therapeutic Mentoring - Client reports must be issued to the social worker, monthly, to update continuing progress and must be issued upon discharge/case closure to summarize services rendered and/or outcomes achieved for entire service delivery period.
- b. For Psychological Evaluation/Testing Services and Psychiatric Diagnostic Services – Client reports must be issued to the County's social worker upon completion of each case evaluation/diagnostic.

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- c. Client names, services provided and billing dates must be reflected on the submitted invoices which will be confirmed by the County's Social Worker.
- d. Staffing update on criminal background changes or new hires must be submitted to Contracts Monitor with the monthly invoices.

#### **B) Scope 2 Academic Tutoring Reports:**

- a. Brief summary of client services provided during billing month.
- b. Update on client progress and academic learning plan.
- c. Dates of client tutoring session(s) and billing hours.
- d. Comprehensive summary upon discharge/case closure to summarize services rendered and/or outcomes achieved for entire service delivery period.
- e. Staffing update on criminal background changes or new hires.

#### **C) Scope 3 Parenting Skills Development/Coaching Reports:**

- a. Brief summary of client services provided during billing month.
- b. Update on client progress and action plan.
- c. Dates of client consultation/session(s) and billing hours.
- d. Comprehensive summary upon discharge/case closure to summarize services rendered and/or outcomes achieved for entire service delivery period.
- e. Staffing update on criminal background changes or new hires.

## **VI. 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, mileage, etc. This rate applies to all services provided to the County by the Contractor under this Contract.
- B) The compensation for the services required under this Open Solicitation will be on a per hour, per day, or per unit of service basis. These rates are established for the Contractor by the Department of Health and Human Services. Providers must send monthly invoices to the County for services rendered. Providers must pursue payments for any Medical Assistance, insurance reimbursements, or other third party benefits or sources of funds under which services are billable, prior to invoicing the County. Payments received by Contractors from such sources are to be considered as partial payment and must be deducted from invoices submitted to the County. Under no circumstances will payment exceed the established rates. The County will be the last source of payment for services provided under this Contract.
- C) The County may at its option and as fiscal appropriation allows, adjust the rates for the contracts resulting from Open Solicitation # 1075640 at the beginning of the County's Fiscal Year. The Contractor is responsible for checking the website listed above at the beginning of each fiscal year (beginning July 1) to obtain a copy of the County's current approved rates.
- D) Services must not be performed, under this Contract, prior to the execution of a County Purchase Order and Notice(s) to Proceed (NTP) and the Contractor's receipt of said County Purchase Order containing a maximum compensation amount. Compensation must not exceed funds appropriated by the County and encumbered in the County Purchase Order issued to the Contractor.

## OPEN SOLICITATION #1075640

Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families

- E) No minimum number of hours of service is guaranteed to any Contractor under this Contract. Payment will be made only for services provided in accordance with the scope(s) authorized under the resulting contract. The County will not provide compensation for a client's missed appointment.

### VII. INVOICES

The Contractor must submit monthly invoices and supporting documentation in a format approved by the County no later than the fifteenth calendar days 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 VI, Compensation, above. All required reports and other supporting documentation must be provided with the Contractor's monthly invoice. Invoices must be sent to the Contract Monitor designated by the County.

### VIII. TERM

This Contract shall become effective on the effective date indicated on the signature page, page 13 of the Contract, 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.

### IX. GENERAL CONDITIONS AND INSURANCE

The General Conditions of Contract Between County and Contractor ("General Conditions") are incorporated by reference and made a part of this Contract as Attachment A. However, Paragraph 21, Insurance of the General Conditions is superseded by the following insurance requirements, applicable to each Scope:

#### *Scope 1 - Outpatient Behavioral Health Services*

*Therapy, Counseling, Psychological Evaluation/Testing, Psychiatric Diagnostic Services, Medication Prescription and Monitoring*

Prior to the execution of the contract by the County, the proposed awardee/contractor must obtain, at their own cost and expense, the following *minimum* (not maximum) insurance coverage with an insurance company/companies licensed to conduct 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 proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of proposed awardee / contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary.

#### Commercial General Liability

In an amount of not less than **one million dollars (\$ 1,000,000)**, for bodily injury and property damage coverage including the following coverages:

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

## OPEN SOLICITATION #1075640

Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families

### Professional Liability (Medical Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract in an amount of not less than:

<b><i>Each Claim</i></b>	<b><i>\$1,000,000</i></b>
<b><i>Annual Aggregate</i></b>	<b><i>\$3,000,000</i></b>

*In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of one (1) year beginning at the time work under this Contract is completed.*

### Worker's 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 included as an additional insured on Contractor's commercial general, automobile insurance, and contractor's excess/umbrella insurance if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the minimum insurance coverage specified.

### 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  
HHS / Tania Muñoz  
401 Hungerford Drive, 6t floor  
Rockville, Maryland 20850

### *Scope 2 - Academic Tutoring*

Prior to the execution of the contract by the County, the proposed awardee/contractor must obtain, at their own cost and expense, the following *minimum* (not maximum) insurance coverage with an insurance company/companies licensed to conduct 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 proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a

## OPEN SOLICITATION #1075640

Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families

waiver of proposed awardee / contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary.

### Commercial General Liability

In an amount of not less than ***one million dollars (\$ 1,000,000)***, for bodily injury and property damage coverage including the following coverages:

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

### Worker's 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 included as an additional insured on Contractor's commercial general, automobile insurance, and contractor's excess/umbrella insurance if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the minimum insurance coverage specified.

### 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  
HHS / Tania Muñoz  
401 Hungerford Drive, 6t floor  
Rockville, Maryland 20850

### *Scope 3 - Parenting Skills Development / Coaching*

Prior to the execution of the contract by the County, the proposed awardee/contractor must obtain, at their own cost and expense, the following *minimum* (not maximum) insurance coverage with an insurance company/companies licensed to conduct 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 proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of proposed awardee / contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary.

## OPEN SOLICITATION #1075640

Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families

### Commercial General Liability

In an amount of not less than **five hundred thousand dollars (\$ 500,000)**, for bodily injury and property damage coverage including the following coverages:

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

### Worker's 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 included as an additional insured on Contractor's commercial general, automobile insurance, and contractor's excess/umbrella insurance if used to satisfy the Contractor's minimum insurance requirements under this contract, for

liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the minimum insurance coverage specified.

### 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  
HHS / Tania Muñoz  
401 Hungerford Drive, 6t floor  
Rockville, Maryland 20850

## **X. 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. "General Conditions of Contract Between County & 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);



**OPEN SOLICITATION #1075640**

Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families

- F. “Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor”, and “Wage Requirements Law Certification” (Attachment E);
- G. “Scope of Services Selection Form” (Attachment F); and
- H. “Application Form” (Attachments G).

**OPEN SOLICITATION #1075640**

Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families

**Signature Page – Open Solicitation # 1075640**

This Contract, which incorporates by reference: the Instructions to Vendors, the Notice to Vendors, the Approved Form Contract with applicable Attachments **A, B, C, D, E, F and G**, 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

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

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

# **ATTACHMENT A**

## **Open Solicitation # 1075640**

### **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.

Montgomery County's Earned Sick and Safe Leave Law, found at Sections 27-76 through 27-82 of the County Code, became effective October 1, 2016. An employer doing business in the County, as defined under the statute, must comply with this law. This includes an employer vendor awarded a County contract. A vendor may obtain information regarding this law at <http://www.montgomerycountymd.gov/humanrights/>

#### **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**

## ATTACHMENT A

### Open Solicitation # 1075640

- 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

## ATTACHMENT A

### Open Solicitation # 1075640

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 minimum 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. The minimum limits of coverage listed shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County, nor shall failure by the County to request evidence of this insurance in any way be construed as a waiver of proposed awardee/contractor's obligation to provide the insurance coverage specified. 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.

# ATTACHMENT A

## Open Solicitation # 1075640

Contractor must provide to the County at least 30 days written notice of a cancellation of, or a material change to, an insurance policy. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. After consultation with the Department of Finance, Division of Risk Management, the Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

Please disregard TABLE A. and TABLE B., if they are replaced by the insurance requirements as stated in an attachment to these General Conditions of Contract between County and Contractor.

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
Disease (policy limits)	500	500	500	Attachment
Disease (each employee)	100	100	100	
Commercial General Liability for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300 Attachment	500	1,000	See
Minimum Automobile Liability (including owned, hired and non owned automobiles)				
Bodily Injury				
each person	100	250	500	See
each occurrence	300	500	1,000	Attachment
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  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850 4166

\*Professional services contracts only

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**ATTACHMENT A**  
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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>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  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850 4166

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## ATTACHMENT A

### Open Solicitation # 1075640

#### 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. PAYMENT AUTHORITY

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.

#### 26. P-CARD OR SUA PAYMENT METHODS

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.

#### 27. 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.

#### 28. 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).

#### 29. 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



**ATTACHMENT A**  
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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.

**30. 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.

**31. TIME**

Time is of the essence.

**32. 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.

**33. 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.**

**ATTACHMENT B**  
**Open Solicitation # 1075640**

**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.

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2. "Business Associate" is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean [Insert Name of Business Associate].
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.

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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;

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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.

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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.

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**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.

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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.



**ATTACHMENT B**  
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**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

**ATTACHMENT B**  
**Open Solicitation # 1075640**

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

(INSERT NAME OF BUSINESS  
ASSOCIATE)

MONTGOMERY COUNTY, MARYLAND

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

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

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

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

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

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

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

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

**ATTACHMENT B**  
**Open Solicitation # 1075640**  
**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:

**ATTACHMENT B**  
**Open Solicitation # 1075640**

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

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

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

\_\_\_\_\_

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

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

**ATTACHMENT C**  
**Open Solicitation #1075640**

**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 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 Manager, Division 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.

**ATTACHMENT D**  
**Open Solicitation # 1075640**

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.

**ATTACHMENT D**  
**Open Solicitation # 1075640**

**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 : \_\_\_\_\_

**ATTACHMENT D**  
**Open Solicitation # 1075640**

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

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---

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:

---

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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:

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4. Certified By:

Subcontractor Name:

Title:



**ATTACHMENT D**  
**Open Solicitation # 1075640**

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

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

Circle MFD Type:

AFRICAN AMERICAN  
FEMALE

ASIAN AMERICAN  
HISPANIC AMERICAN

DISABLED PERSON  
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.

**ATTACHMENT D**  
**Open Solicitation # 1075640**

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.

**ATTACHMENT E**  
**Open Solicitation #1075640**

**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 (h)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. For an existing County Contract, if an applicable collective bargaining agreement (CBA) that existed prior to May 10, 2016, governs the parties, then that CBA controls. If the term of the CBA mentioned in the preceding sentence ends during the Contract, the WRL will then control.
- C. A nonprofit organization that is exempt from the WRL under 11B-33A (b)(3), must specify, in each bid or proposal, the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance coverage 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. Section 11B-33A (c)(3).
- 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 records necessary to show compliance; and conspicuously post notices approved and/or supplied by the County, informing employees of the requirements in 11B-33A. Section 11B-33A (i).
- 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. Section 11B-33A (e)(2).
- 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. Section 11B-33A (i)(3).
- 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. Section 11B-33A (i)(4).
- I. In the event of a breach of this contract as a result of a contractor’s or subcontractor’s violation of the WRL, the County may seek its available remedies, which include but are not limited to liquidated damages, withholding of payment, and recoupment of audit costs that are described below. The Contractor is jointly and severally liable for any noncompliance by a subcontractor. 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, including filing a complaint under the WRL. Section 11B-33A (i)(5). Furthermore, the contractor expressly acknowledges that the County may assess liquidated damages against the Contractor in the event that it, as a covered employer, fails to pay the required wage, or violates the wage reporting or payroll records reporting requirement found at 11B-33A (g), including its providing late or inaccurate payroll records.

**(i) Liquidated Damages**

The County may assess liquidated damages for any noncompliance by contractor or its subcontractor at 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. 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 the WRL are difficult to reasonably ascertain, and that

**ATTACHMENT E**  
**Open Solicitation #1075640**

the liquidated damages provided for in this paragraph is a fair and reasonable estimate of damages the County would incur as a result of contractor's or subcontractor's violation of the WRL.

(ii) Withholding of Payment

If the Director determines that a provision of the WRL has been violated, the Director must issue a written decision, including imposing appropriate sanctions and assessing liquidated damages (as outlined above) and audit costs (as outlined below), and may withhold from payment due the contractor, pending a final decision, an amount sufficient to: (a) pay each employee of the contractor or subcontractor the full amount of wages due under the WRL; (b) reimburse the County for audit costs; and (c) satisfy a liability of a contractor or subcontractor for liquidated damages.

(iii) Audit Costs

If the County determines, as a result of a WRL audit, that the Contractor has violated requirements of the WRL, the Contractor must reimburse to the County the cost incurred by the County in conducting the audit. Section 11B-33A (i)(2)(C).

- J. The County must conduct, and the contractor or subcontractor must comply with, random or regular audits to assure compliance with the WRL. Section 11B-33A (i)(2). 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 14<sup>th</sup> day of the month following the end of each quarter (January, April, July, October); documents requested in conjunction with a random or regular audit by the County; or, documents otherwise requested by the Director. Section 11B-33A (g)(2).

If a contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under the WRL, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records or reports, and may postpone processing payments due under the contract or under an agreement to finance the contract.

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

**ATTACHMENT E**  
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**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", must comply with the requirements under Montgomery County Code Section 11B-33A, "Wage Requirements" ("Wage Requirements Law" or "WRL"). Contractor and its subcontractors must pay all employees not exempt under the WRL, and who perform direct measurable work for the County, the required gross wage rate effective at the time the work is performed. For employees who are not paid an hourly wage, Contractor's compliance with the WRL must be measured by dividing the amount paid to the employee each pay period by the number of hours worked by that employee during each pay period. A covered employer must not make any deduction for any item necessary for an employee to perform the essential job function unless the deduction is permitted by Executive Regulation. The offer price(s) submitted under this solicitation include(s) sufficient funds to meet the requirements of the WRL. A "covered employer" must submit, within 14 days after the end of each quarter (by the 14th 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 WRL. The payroll records must contain a statement signed by the contractor or subcontractor certifying that the payroll records are correct and the wage rates paid are not less than those required by the WRL. These payroll records must include the following: name, address and telephone number of the contractor or subcontractor; the name and location of the job; and each employee's name, current home address, daily straight time and overtime hours, total straight time and overtime hours for the payroll period, rate of pay, fringe benefits by type and amount, gross wages, race and gender of the employee, and the employer and the employee share of any health insurance premium provided to the employee. The Contractor must ensure that **NO** Social Security number of any person, other than the last four digits, is included on the quarterly report. A sample, blank Payroll Report Form, for your use and completion, can be found at: <http://www.montgomerycountymd.gov/PRO/DBRC/WRL.html> . The above must be submitted to the Division of Business Relations and Compliance, Attn: Wage Requirements Law Program Manager (preferably via email to [WRL@montgomerycountymd.gov](mailto:WRL@montgomerycountymd.gov)),

Each Contractor must: keep payroll records covering work performed on a contract covered by the WRL for not less than 5 years after the work is completed; and, subject to reasonable notice, permit the County to inspect the payroll

**ATTACHMENT E**  
**Open Solicitation #1075640**

records at any reasonable time and as often as the County deems necessary. If the Contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under the WRL, the County may deem invoices unacceptable until the Contractor or subcontractor provides the required records or reports, and may postpone processing payments due under the contract or under an agreement to finance the contract. A violation of the WRL, including the late submission or non-submission of the information noted above, may result in action by the County, including: (a) withholding contract payments, reducing payment amounts, or otherwise assessing damages against Contractor, in an amount sufficient to: (i) pay each employee of the Contractor or subcontractor the full amount of wages due under the WRL; (ii) reimburse the County for audit costs; or (iii) satisfy a liability of a contractor or subcontractor for liquidated damages; (b) terminating the contract; or, (c) otherwise taking action to enforce the contract or the WRL. Violation of the WRL may also result in a finding of non-responsibility for a future contract, or may form the basis for debarment or suspension.

**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). Also, the contractor must provide proof of its 501(c)(3) status (i.e. Letter from the IRS).

☐ **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 Solicitation, 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, and 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 employee other than the sole proprietor; and

**ATTACHMENT E**  
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- (3) will inform the Montgomery County Division of Business Relations and Compliance if the sole proprietor employs any worker 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, adhere to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or Printed Name		Date	

**ATTACHMENT E**  
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## 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 each 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. This information is collected for statistical reporting purposes only.

[illegible]

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



**ATTACHMENT F**  
**Open Solicitation #1075640**

**ATTACHMENT F -SCOPE OF SERVICES SELECTION FORM**

**Child Welfare Services Outpatient Behavioral Health and Supportive Services for Children, Adolescents and Families**

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

1. Scope 1 – Outpatient Behavioral Health Services \_\_\_\_\_
  
2. Scope 2 – Academic Tutoring Services \_\_\_\_\_
  
3. Scope 3 – Parenting Skills Development/Coaching Services \_\_\_\_\_

**ATTACHMENT G**  
**Open Solicitation #1075640**

**ATTACHMENT G - 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**

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

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

**ATTACHMENT G**  
**Open Solicitation #1075640**

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>
_____	_____	_____
	_____	_____
	_____	_____
_____	_____	_____
	_____	_____
	_____	_____
_____	_____	_____
	_____	_____
	_____	_____

**\*Please indicate business days / hours you will be available to provide client services:**

**\*Please describe location of where client services will be provided:**

**\*What provisions will be made to ensure client confidentiality (HIPAA) during service provision and for client record retention?**