

**CONTRACT # \_\_\_\_\_**  
**CONTRACT FOR RECREATION OFFICIATING SERVICES**

This Contract is between Montgomery County, Maryland (the County) and \_\_\_\_\_ (the "Contractor").

**Article I - SCOPE OF WORK**

A. The Contractor must provide the following officiating services: \_\_\_\_\_

1. RULES - The Contractor must 1) assign up to \_\_\_\_\_ officials per game, according to league rules published by the County; 2) impartially make all decisions of play during the game; and 3) sign the official scorecards following each game officiated.
2. GAMES - The Contractor must provide officials for scheduled games. All leagues are scheduled for multiple games. The County reserves the right to schedule single games due to make-ups, rescheduling, forfeiture, officials' failure to show up, or for any other reason in the County's discretion. The Contractor must provide officials for all rescheduled games about which the Assignment Commissioner receives oral notice 24 hours before game time.

The County will furnish the Contractor printed schedules including leagues, names of teams, locations of playing sites, dates and hours, at least ten days before the first game on the schedule and is responsible for notifying the Assignment Commissioner by oral communication of any schedule changes.

Officials may request cancellation of games due to inclement weather or gym/field conditions. The County will determine to accept or reject the request within 15 minutes of received request. The County has the sole responsibility to cancel or suspend games.

3. DATES - League games are generally played on \_\_\_\_\_. Games must begin as scheduled by the County. Officials must arrive at a game site at least 20 minutes before the starting time of the scheduled game to check the safety and condition of the playing facility. Make-up games are generally scheduled on game days, but occasionally games may be made up on other days. Make-up days will be scheduled as needed to complete the playing season. Make-up or playoff dates may extend beyond the initial season conclusion date provided on the schedule.
4. REPORTS - The Contractor must provide written reports of game details or responses to complaints, protests, ejections, suspensions or other inquiries, when requested by the County. The Contractor must provide a response within seven working days from receipt of the County's inquiry. Officials are required to report all scores to the County within forty-eight (48) hours of competition. Officials are required to sign in on the official score books at each game site.
5. ASSIGNMENT COMMISSIONER - The Contractor must designate an Assignment Commissioner. The Assignment Commissioner must obtain the league schedules, and the County will provide him/her with notifications of cancellations or rescheduled games. The Assignment Commissioner must assign officials to all scheduled and rescheduled games. The Assignment Commissioner must have an answering service or a message recorder to receive revised schedules and cancellations.
6. FORFEITED GAME/GAME TERMINATED EARLY FEES - If the County notifies the Assignment Commissioner of a canceled game more than 90 minutes before the scheduled game, the Contractor will not be entitled to a forfeited game/game terminated early fee. If the County notifies the Assignment Commissioner of a canceled game less than 90 minutes before the scheduled game, the Contractor will be entitled to a forfeited game/game terminated early fee as listed in Attachment B. If multiple games are cancelled in a single day, the Contractor is entitled to only one forfeited game/game terminated early fee per day.

7. OTHER - The Contractor must have sufficient officials to cover the number of games scheduled, as detailed in Attachment B.

Harassment or abuse of an official by a team, player, or spectator may result in disciplinary action by the County. The official must document the incident. The Contractor, after notice to and approval by the County, may refuse to officiate a subsequent game involving that team, player, or other person. Confirmed harassment or abuse by an official towards a team, player, or spectator will result in the official being banned from performing any work under this Contract.

The County reserves the right to disqualify an official based on performance.

The Contractor must provide officials who are appropriately attired and equipped for each game. The Contractor must provide all supplies and equipment, except those supplies and equipment that the County agrees in writing to provide to the Contractor.

It is understood that, although this Contract is being executed as an indication that the Contractor meets the qualifications established for this service, it is no guarantee that the Contractor will be assigned any games under the Contract. The County reserves the right to assign games based upon location, anticipated need of the games, and the per game fee.

## **Article II - INSURANCE**

The Contractor must, at all times, maintain insurance, as specified in Mandatory Insurance Requirements (Attachment D), which are incorporated into and made a part of this Contract. These requirements supersede the insurance requirements contained in Provision 21 of the General Conditions of Contract Between County and Contractor (Attachment C).

## **Article III - COMPENSATION**

A. The County will pay fees to the Contractor as specified in Attachment B, subject to the following:

1. The Contractor must submit invoices to [Rec.Payable@montgomerycountymd.gov](mailto:Rec.Payable@montgomerycountymd.gov) within 10 days after the end of each month for goods and/or services provided during that month. Invoices must be in a form acceptable to the County.

B. Annual Price Adjustment: Prices quoted are firm for a period of one year after execution of the contract. Any requests for price adjustment, after this one year period, is subject to the following:

1. Approval or rejection by the Director, Office of Procurement, or designee.
2. Must be submitted in writing to the Director, Office of Procurement, and accompanied by supporting documentation justifying the Contractor's request. A request for any price adjustment may not be approved unless the Contractor submits to the County sufficient justification to support that the Contractor's request is based on its net increase in costs in delivering the goods/service to the County under the Contract terms.
3. Must be submitted sixty (60) days prior to the Contract anniversary date.
4. May not be approved in an amount that exceeds the annual percentage change of the Consumer Price Index (CPI) for the twelve month period immediately prior to the date of the request. The request must not exceed the CPI for all urban consumers issued for the Washington-Baltimore, DC-MD-VA-WV Metropolitan area by the United States Department of Labor, Bureau of Labor Statistics, for ALL ITEMS.
5. The County will approve only one price adjustment for each Contract year, if a price adjustment is approved.
6. Should be effective sixty (60) days from the date of receipt of the Contractor's request.

7. Must be executed by written Contract amendment.

#### **Article IV - CONTRACT ADMINISTRATOR**

The Contract Administrator for this Contract is: Allison Cohen, 2425 Reedie Drive, 10<sup>th</sup> Floor, Wheaton, Maryland 20902 at Allison.Cohen@montgomerycountymd.gov.

#### **Article V-TERM**

The term of this Contract begins upon signature of the Director, Office of Procurement, and ends on August 31, 2028.

#### **Article VI – OFFICIALS’ TRAINING**

The Contractor must be sure that all officials are adequately trained in the league rules and safety procedures. Officials for youth leagues (under 18 years old) must have successfully completed the Centers for Disease Control and Prevention’s Free Concussion Training Course.

#### **Article VII - INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor must defend and indemnify the County from any claim made, or on any suit or proceeding brought, against the County based on infringement of copyright, trade name or trademark or other intellectual property or privacy right of a similar nature. This is in addition to the requirements of the indemnification provision in the General Conditions of Contract Between County and Contractor ("General Conditions") – Attachment C.

#### **Article VIII - TERMINATION/DAMAGES**

- A. Liquidated Damages: The Contractor will be penalized 10% of per game cost for every ten minutes, up to 30 minutes, that an official is tardy for a scheduled game. If the Contractor's officials are 1/2 hour or more tardy, or fail to appear for a game, the County will impose against the Contractor liquidated damages in the amount of the per game official charge and the associated facility costs (including tournament and post-season play). The Contractor agrees that the County is damaged by any tardiness or failure of Contractor's officials to appear, and that the amount of damages is difficult to determine. The parties agree that this liquidated damage provision is fair and reasonable, and is intended to compensate the County only for the disruption of the County's program caused by tardy or missing officials, and is not intended to compensate the County for the cost of obtaining substitute performance, or as a penalty.
- B. In addition to the County's right to impose liquidated damages, the County may totally or partially terminate one or more games for which services are required under this Contract without first providing the Contractor with the opportunity to cure the default for any Contractor default, including the failure to provide the required number of officials for a game. In the event of a partial termination for cause under this section, the County may charge the Contractor 1) the administrative cost of procuring the officiating service; and 2) the difference between the Contract price for the officiating service and the price of the substitute performance.
- C. These remedies supplement the remedies in the General Conditions.

#### **Article IX - NO SOLICITATION**

While performing services under this Contract, the Contractor and its employees, agents, and independent contractors must not solicit participants or participate in any activity that may create the appearance of favoritism for one team or individual.

#### **Article X – BACKGROUND SCREENING**

Any Contractor (including any of the Contractor’s employees or subcontractors) must, at the Contractor’s own expense, apply for and successfully pass a criminal background investigation. All required fingerprinting and other requirements related to the criminal background check must be completed before the Contractor may begin providing services under this Contract. This Contract may be terminated at no cost to the County

if the Contractor (including any of Contractor's employees or subcontractors) is the subject of pending charges, or has been convicted of a crime or attempting a crime identified in Maryland Code Ann., Family Law Article, Section 5-560 et seq. (2014, as amended).

**Article XI – GENERAL CONDITIONS**

The attached General Conditions of Contract Between County and Contractor (Attachment C) are incorporated by reference into, and made a part of, this Contract.

**Article XII – PRIORITY OF DOCUMENTS**

The following documents are incorporated by reference into and made a part of this Contract and are listed in order of legal precedence below in the event of a conflict in their terms: 1) This Contract document a) the General Conditions of Contract Between County and Contractor (Attachment C); 2) the Mandatory Insurance Requirements (Attachment D); 3) the Recreation Officiating Application Information Sheet (Attachment A); and 4) the Fee Schedule (Attachment B).

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SIGNATURES

**CONTRACTOR**

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

Street: \_\_\_\_\_

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

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

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

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

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

**MONTGOMERY COUNTY, MARYLAND**

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

Avinash G Shetty, Director  
Office of Procurement

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

**RECOMMENDED**

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

Adriane Clutter, Acting Director  
Department of Recreation

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

**THIS CONTRACT HAS BEEN PRE-APPROVED AS  
TO FORM BY THE OFFICE OF THE COUNTY  
ATTORNEY AND MAY NOT BE MODIFIED.**

**ATTACHMENT A**

**RECREATION OFFICIATING APPLICATION INFORMATION SHEET**

Legal Name of Corporation: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

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

Address (Business): \_\_\_\_\_  
Street City State Zip

I am interested in officiating in the following sport(s):

☐ Basketball ☐ Soccer ☐ Futsal ☐ Softball ☐ Flag Football ☐ Volleyball

**EDUCATION/LICENSES/CERTIFICATIONS (required by all officials)**

Education/License/Certifications	Issuing Organization

**OFFICIATING EXPERIENCE (list all relevant)**

Employer/League	City, State	From	To

REFERENCES (Please give the contact information for three persons to whom we may contact regarding your qualifications and abilities)

Name	Organization	Email Address

\_\_\_\_\_  
Signature of Person Authorized to Sign Application

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Person Authorized to Sign Application

**THIS APPLICATION AND ATTACHMENTS ARE INCORPORATED AND MADE PART OF ANY CONTRACT RESULTING FROM THIS SOLICITATION.**

## ATTACHMENT B

### FEE SCHEDULES

All fees are based on requested number of officials. If the Contractor provides a different number of officials requested, the County will pay the lesser of the per official fee.

#### I. BASKETBALL

- A. The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to two (2) officials per game. Each location may have as many as twelve (12) games per day at as many as sixty (60) locations scheduled concurrently on any playing day. The fees are per official per game for Rising Star, Adult and High School (9<sup>th</sup> through 12<sup>th</sup> Grade).
1. Two (2) Officials per game per official fee \$ 48.50
  2. One (1) Official All Games \$ 51.00
  3. Three (3) Officials per game per official fee \$ 45.50
  4. Forfeited Game/Game Terminated Early Fee \$ 48.50
- B. The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to two (2) officials per game. Each location may have as many as twelve (12) games per day at as many as sixty (60) locations scheduled concurrently on any playing day. The fees are per official per game for 3<sup>rd</sup> through 8<sup>th</sup> Grade.
1. Two (2) Officials per game per official fee \$ 48.50
  2. One (1) Official All Games \$ 51.00
  3. Official per Game for Specialized Leagues \$ 45.50
  4. Forfeited Game/Game Terminated Early Fee \$ 48.50
- C. Elementary grades Kindergarten through 2<sup>nd</sup> require only one (1) official per game. Each location may have as many as sixteen (16) games per day at as many as twenty (20) location scheduled concurrently on any playing day.
1. One (1) Official per Game \$ 32.25
  2. Forfeited Game/Game Terminated Early Fee \$ 32.25



## II. FUTSAL

- A. The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to one (1) official per game. Each location may have as many as ten (10) games per day at as many as two (2) locations scheduled concurrently on any playing day. All fees are per referee.

1. One (1) Official per Game for Ten (10) Minute Halves	\$ 22.00
2. One (1) Official per Game for Fifteen (15) Minute Halves	\$ 40.00
3. One (1) Official per Game for Twenty (20) Minute Halves	\$ 50.00
4. One (1) Official per Game for Twenty-Five (25) Minute Game	\$ 22.00
5. Forfeited Game/Game Terminated Early Fee	\$ game rate

## III. SOCCER

- A. The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to three (3) officials per game. Each location may have as many as six (6) games per day at as many as seventeen (17) locations scheduled concurrently on any playing day. All fees are per referee for single games.

1. One (1) Referee for Forty-Five (45) Minute Halves	\$ 95.00
2. Two (2) Referees for Forty-Five (45) Minute Halves	\$ 74.00
3. Three (3) Referees for Forty-Five (45) Minute Halves	\$ 70.00
4. One (1) Referee and Two (2) Asst. Referees for Forty-Five (45) Minute Halves	\$72 per Ref/\$62 per AR
5. One (1) Referee for Forty (40) Minute Halves	\$ 87.00
6. Two (2) Referees for Forty (40) Minute Halves	\$ 69.00
7. Two (2) Referees for Twenty-Five (25) Minute Halves	\$ 45.00
8. Forfeited Game/Game Terminated Early Fee	\$ game rate

- B. The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to three (3) officials per game. Each location may have as many as six (6) games per day at as many as seventeen (17) locations scheduled concurrently on any playing day. All fees are per referee for two (2) or more games.

1. One (1) Referee for Forty-Five (45) Minute Halves	\$ 87.00
2. Two (2) Referees for Forty-Five (45) Minute Halves	\$ 69.00
3. Three (3) Referees for Forty-Five (45) Minute Halves	\$ 66.00
4. One (1) Referee and Two (2) Asst. Referees for Forty-Five (45) Minute Halves	\$68 per Ref/\$58 per AR
5. One (1) Referee for Forty (40) Minute Halves	\$ 80.00
6. Two (2) Referees for Forty (40) Minute Halves	\$ 64.00
7. One (1) Referee for Twenty-Five (25) Minute Halves	\$ 50.00
8. Two (2) Referees for Twenty-Five (25) Minute Halves	\$ 45.00
9. Forfeited Game/Game Terminated Early Fee	\$ game rate

#### IV. SOFTBALL

- A. The Contractor must assign one certified official to cover the number of games scheduled according to league rules published by the County. Unless notified by the County, the games shall be umpired under the ASA, NSA, ISA, or USSSA rules, whichever is appropriate. The Contractor must provide rules interpretation at the scheduled team managers' meeting(s) if requested. Leagues run 5 to 24 weeks. Each day may have as many as thirty-two (32) games scheduled. Prices should be based on one umpire officiating one to four games per night.

1. Two (2) Officials per Game	\$ <u>39.00</u>
2. One (1) Official per Game for Pick-Up or Drop-In	\$ <u>39.00</u>
3. One (1) Official per Game for Regular Co-Rec	\$ <u>39.00</u>
4. One (1) Official per Game for Women under 40	\$ <u>39.00</u>
5. One (1) Official per Game for Men's 50+, 55+, 60+, Women's 40+	\$ <u>39.00</u>
6. One (1) Official per Game for Men's "C", "C/D", "D"	\$ <u>39.00</u>
7. One (1) Official per Game for Specialized Leagues	\$ <u>39.00</u>
8. One (1) Official per Game for Pre-Season or Training Tournament	\$ <u>39.00</u>
9. Sanction Fee per Team	<u>\$based on league rate</u>

#### V. FLAG FOOTBALL

- A. The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Leagues require up to three (3) officials per game. Each location may have as many as ten (10) games per day at as many as four (4) locations scheduled concurrently on any playing day. The fees are per official per game.

1. One (1) Official per Game	\$ <u>42.00</u>
2. Two (2) Officials per Game	\$ <u>45.00</u>
3. Three (3) Officials per Game	\$ <u>48.00</u>
4. Forfeited Game/Game Terminated Early Fee	\$ <u>40.00</u>

#### IV. KICKBALL

- A. The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Unless notified by the County, the games shall be umpired under ASA, or USSSA rules, whichever is appropriate. The Contractor must provide rules interpretation at the scheduled team manager's meeting(s) if requested, at no cost to the County. Leagues run 4 to 16 weeks. Each day may have as many as thirty-two (32) games scheduled. Officials will be working one to four games per date. The fees are per official per game.

1. Two (2) Officials per Game	\$ 28.00
2. One (1) Official per Game for Pick-up or Drop-In	\$ 31.00
3. One (1) Official per Game for Regular Co-Rec	\$ 31.00
4. One (1) Official per Game for Women	\$ 31.00
5. One (1) Official per Game for Men	\$ 31.00
6. One (1) Official per Game for Youth	\$ 31.00
7. One (1) Official per Game for Youth/Parent/Adult	\$ 31.00
8. Sanction Fee per Team	\$ based on league rate

#### V. VOLLEYBALL

- A. The Contractor must have sufficient officials to cover the number of games scheduled according to league rules published by the County. Games consist of 2-3 games. Each game is limited to one hour. The fees are per official per game.

1. Two (2) Officials for Adult Games	\$ 45.00
2. One (1) Official for Adult Games	\$ 45.00
3. Two (2) Officials for Youth Games	\$ 25.00
4. One (1) Official for Youth Games	\$ 25.00
5. Forfeited Game/Game Terminated Early Fee	\$ based on league rate

ATTACHMENT C  
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. Through signature of this contract, the contractor certifies that the contractor has filed an initial statement with the Maryland State Board of Elections in compliance with MD Code Ann., Election Law, §14-104(b)(1), or is not required to file an initial statement as per MD Code Ann., Election Law, §14-104(c)(2).

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 County's prevailing wage law, as found at §11B-33C of the County Code, applies to certain construction and mechanical systems service contracts. To the extent applicable, the County's prevailing wage requirements are enumerated within this solicitation/contract in the "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor." If applicable to this contract, the Addendum will be attached to the contract, and will be incorporated herein by reference, and made a part thereof.

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.

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. The contractor must not employ any subcontractor that is a debarred or suspended person under County Code §11B-37. The contractor is fully responsible to the County for the acts and omissions of itself, its subcontractors and any persons either directly or indirectly employed by them. Nothing contained in the contract documents shall create any contractual

relation between any subcontractor and the County, and nothing in the contract documents is intended to make any subcontractor a beneficiary of the contract between the County and the contractor.

#### 5. CHANGES

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

#### 6. CONTRACT ADMINISTRATION

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

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

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

#### 7. COST & PRICING DATA

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

#### 8. DISPUTES

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

#### 9. DOCUMENTS, MATERIALS, AND DATA

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

#### 10. DURATION OF OBLIGATION

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

#### 11. ENTIRE AGREEMENT

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

#### 12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

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

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

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code. In addition, the contractor must comply with the political contribution reporting requirements currently codified under the Election Law at Md. Code Ann., Title 14.

#### 13. GUARANTEE

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

#### 14. HAZARDOUS AND TOXIC SUBSTANCES

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

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

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

#### 16. IMMIGRATION REFORM AND CONTROL ACT

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

individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

#### 17. INCONSISTENT PROVISIONS

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

#### 18. INDEMNIFICATION

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

#### 19. INDEPENDENT CONTRACTOR

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

#### 20. INSPECTIONS

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

#### 21. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the 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. 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	300	500	1,000	See Attachment

and operations, and independent  
contractors

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
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Certificate Holder

Montgomery County Maryland (Contract #)

Office of Procurement

27 Courthouse Square, Ste 330

Rockville, Maryland 20850

\*Professional services contracts only

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



TABLE B. INSURANCE REQUIREMENTS  
(See Paragraph #21 under the General Conditions of Contract  
between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>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  
27 Courthouse Square, Ste 330  
Rockville, Maryland 20850

(Remainder of Page Intentionally Left Blank)

## 22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

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

## 23. INFORMATION SECURITY

### A. 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).

### B. Payment Card Industry Compliance:

In any contract where the Contractor provides a system or service that involves processing credit card payments (a "Payment Solution"), the Payment Solution must be Payment Card Industry Data Security Standard Compliant ("PCI-DSS Compliant"), as determined and verified by the Department of Finance, and must (1) process credit card payments through the use of a Merchant ID ("MID") obtained by the County's Department of Finance by and in the name of the County as merchant of record, or (2) use a MID obtained by and in the name of the Contractor as merchant of record.

## 24. 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.

## 25. 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.

## 26. 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, late fees, or shipping fees that are not provided for in the contract. 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.

## 27. 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.

#### **28. 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.

#### **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 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 D

### MANDATORY INSURANCE REQUIREMENTS

Prior to the execution of the contract by the County, the proposed awardee/contractor must obtain, at their own cost and expense, the *minimum* following 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 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. Subject to applicable law, the insurance companies providing insurance coverage, as referenced in this agreement, may not limit coverage to their insured, or the County as an additional insured, to stated minimum amount(s) of insurance referenced in this contract/agreement.

#### Commercial General Liability

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

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

#### Workers' Compensation/Employer's Liability - *waive if officials are subcontractors*

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 and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract. The Additional Insured endorsements shall have no added exclusions or limitations of coverage to limits of liability contractually required; or percentage of negligence attributed to the named insured. 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 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  
Department of Recreation  
Attn. Allison Cohen  
2425 Reedie Drive, 10<sup>th</sup> Floor  
Wheaton, MD 20902

**ATTACHMENT E**

**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); 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  
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:

2. Certified by:

Subcontractor Name:

Title:

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:

3. Certified by:

Subcontractor Name:

Title:

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:

4. Certified By:

Subcontractor Name:

Title:

Address:

City:

State:

Zip:

Phone Number:

Fax Number:

Email:

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

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

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

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

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

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

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

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

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

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

Full Waiver Approved:

Partial Waiver Approved:

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

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

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

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

Full Waiver Approved:

Partial Waiver Approved:

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

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

\_\_\_\_\_  
Avinash Shetty  
Director  
Office of Procurement

\_\_\_\_\_  
Avinash Shetty  
Director  
Office of Procurement

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

CONTRACTOR SIGNATURE

USE ONE:

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
Avinash Shetty, 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 F

### **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 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 in addition to 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 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 14th 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).

**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, please check the box(es) below that apply, and leave all of the other boxes blank.

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 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 also 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). The contractor must provide proof of its 501(c)(3) status (i.e. Letter from the IRS). Accordingly, the contractor has completed the 501(c)(3) Non-profit Organization's Employee's Wage and Health Insurance Form which is attached. See Section 11B-33A(c)(2). (must also complete box B.4. above)

D. ☐ 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
- (3) will inform the Montgomery County Division of Business Relations and Compliance if the sole proprietor employs any worker other than the sole proprietor.

Note: A schedule C from the employer's federal tax return may be required for verification purposes.

E. Sub-Contractors

It is the prime contractor's responsibility to ensure all of its subcontractors adhere to the WRL. All subcontractors are required to submit quarterly payroll reports. It is the prime contractor's responsibility to collect these payroll reports and submit them to [wrl@montgomerycountymd.gov](mailto:wrl@montgomerycountymd.gov) on a quarterly basis.

- ☐ I intend to use Sub-Contractors if I am awarded a contract as a result of this solicitation.
- ☐ I do NOT intend to use Sub-Contractors if I am awarded a contract as a result of this solicitation. If at any time during the course of the contract I use Sub-Contractors, I understand that I am responsible for their quarterly payroll reporting.

F. Independent Contractors

- ☐ I intend to use Independent Contractors if I am awarded a contract as a result of this solicitation. If this box is checked, you must complete the Wage Requirements Law Independent Contractor Certification (PMMD193) in order for your bid/offer to be considered. It can be found at: <https://www.montgomerycountymd.gov/PRO/Resources/Files/PMMD-193.pdf>
- ☐ I do NOT intend to use Independent Contractors if I am awarded a contract as a result of this solicitation. If at any time during the course of the contract I use Independent Contractors, I understand and agree that I must complete the Wage Requirements Law Independent Contractor Certification (PMMD193). See above link.

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	

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

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

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

[illegible]

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