

### Contract Preparation and Submission Checklist

This checklist is a guide to assist you in preparing and submitting your Contract.  
All items checked must be completed and/or returned along with the Contract or amendment.

**VENDOR LEGAL NAME:** Arts, Sciences & Cultural Council of Charlotte/Mecklenburg, Inc.

| Required Documents for Contract Processing   |   |
|--|---|
| <input checked="" type="checkbox"/> <b>IRS Tax Exempt Letter (If Applicable)</b><br><br><input type="checkbox"/> <b>Regulatory Licensure (If Applicable)</b><br><br><input type="checkbox"/> <b>Annual Trainings (all Vendors)</b><br>Use this <a href="#">link</a> to access annual trainings required for all Vendors.<br><br><input type="checkbox"/> <b>Social Services Vendors only</b><br>Visit the <a href="#">website link</a> to complete training. Training must be completed within ten (10) days of receipt of Contract by any employee that provides services under this Contract | <input checked="" type="checkbox"/> <b>Certificate of Insurance</b><br><ul style="list-style-type: none"> <li>• <b>Mecklenburg County must be listed as the certificate holder for all required insurances.</b></li> <li>• Certificate holder address:<br/>Mecklenburg County<br/>600 East Fourth Street<br/>Charlotte, NC 28202</li> <li>• Submit the most <b>current</b> Certificate of Insurance.</li> </ul> <input checked="" type="checkbox"/> Automobile Liability<br><input checked="" type="checkbox"/> Commercial General Liability*<br><input type="checkbox"/> Fidelity Bond – Crime*<br><input type="checkbox"/> Performance and Payment Bond*<br><ul style="list-style-type: none"> <li>• <b>*Mecklenburg County must be listed as additional insured.</b></li> <li>• <input checked="" type="checkbox"/> Worker's Compensation**<br/> <ul style="list-style-type: none"> <li>• <b>** (If less than three employees a statement on your company letterhead is required.)</b></li> </ul> </li> <li>• <input checked="" type="checkbox"/> Professional Errors and Omissions</li> <li>• <input type="checkbox"/> Sexual Abuse and Molestation</li> <li>• <input type="checkbox"/> Network Security and Privacy Liability</li> </ul> |
| <input type="checkbox"/> <a href="#">Sam Registration</a> Required.  | Enter your unique entity ID number here: _____.   |
| <input checked="" type="checkbox"/> Section 31 - Conflict of Interest Policy   | <ul style="list-style-type: none"> <li>• Insert the Conflict of Interest Policy on your letterhead/stationary.</li> <li>• If using sample provided, make the necessary changes to reflect your company.</li> <li>• Include your original signature.</li> <li>• Include the date the policy was approved.</li> <li>• Signature must be the same person signing Contract.</li> <li>• The date of the letter cannot be dated prior to the date of the Contract or amendment and must be within 10 days of signing the contract or amendment.</li> </ul>  |
| <input checked="" type="checkbox"/> Section 32 - Overdue Tax Letter  | <ul style="list-style-type: none"> <li>• Prepare the letter on your letterhead/stationery.</li> <li>• Make the necessary changes to reflect your company.</li> <li>• Include your original signature.</li> <li>• Signature must be the same person signing Contract.</li> <li>• If two names are listed both must sign.</li> <li>• The date of the letter cannot be dated prior to the date of the Contract or amendment and must be within 10 days of signing the Contract or amendment.</li> </ul>  |
| <input checked="" type="checkbox"/> Section 33 - Contractor Certifications Required By North Carolina Law  | <ul style="list-style-type: none"> <li>• Complete the State Certification Section</li> <li>• Check the appropriate box #3 (b).</li> <li>• Sign and date</li> </ul>  |
| <input type="checkbox"/> Exhibit B - Business Associate Agreement  | <ul style="list-style-type: none"> <li>• Sign and date.</li> </ul>  |
| <input type="checkbox"/> Exhibit C - False Claims Act – Contractors and Suppliers Education and Notice   | <ul style="list-style-type: none"> <li>• Sign and date.</li> </ul>  |
| <input checked="" type="checkbox"/> Signature Page   | <ul style="list-style-type: none"> <li>• Must be notarized.</li> </ul>  |
| <input checked="" type="checkbox"/> Audited Financial Statement return with Contract.  | <ul style="list-style-type: none"> <li>• Return with Contract.</li> </ul>   |
| Methods of Submission  |   |
| <b>EMAIL</b>   | <b>OR</b>   |
| Submit a PDF Copy to Caroline Miller, Procurement Analyst.<br>Email: <a href="mailto:caroline.miller@mecknc.gov">caroline.miller@mecknc.gov</a>  | <b>HAND DELIVER/MAIL</b>  |
|  | Mecklenburg County Government<br>Procurement Division Financial Services Department<br>700 East 4 <sup>th</sup> Street, 4 <sup>th</sup> Floor Charlotte, NC 28202   |
| Gatekeeper Draft Review Completed by:  | Date:   |



State of North Carolina  
County of Mecklenburg

Financial Services Department  
Procurement Division

This Contract, entered into on the 1st day of August 2024 by and between the COUNTY OF MECKLENBURG, a political subdivision of the State of North Carolina, through its County Managers' Office hereinafter referred to as "County" and Arts, Sciences & Cultural Council of Charlotte/Mecklenburg, Inc., hereinafter referred to as "Vendor", duly licensed and authorized to conduct business in Mecklenburg County.

The section headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract. The County and Vendor agree as follows:

**1. ENGAGEMENT, TERM AND CONTRACT DOCUMENT**

**1.1 Purpose, Scope and Contract Amount**

The County is engaging the Vendor for the purpose of providing Culture Blocks programming in ten geographic County locations, as well as providing financial support programs for creative individuals and cultural organizations, as further described in **Exhibit A SCOPE OF WORK**, payable as provided in section 3. **METHOD AND CONDITION OF PAYMENT** in an amount not to exceed **\$9,035,000.00**.

The amount consists of the following funds:  Federal CFDA#  State  County  Other.

1.1.2  There are no matching requirements from the Vendor.

1.1.3.  Vendor's matching requirement is \$\_\_\_\_\_, which consist of the following:

In-kind  Cash  Cash and In-kind  Cash and/or In-kind

Any contributions from the Vendor required under this agreement shall be sourced from non-federal funds. The total Contract amount including any Contractor match shall not exceed \$\_\_\_\_\_.

**1.2 Term Effective and Ending Dates**

1.2.1 The Contract service performance period shall commence on 08/01/2024 or the last party signature date, whichever is later.

1.2.2 The Contract term ends on 06/30/2025 unless the Contract is terminated sooner in accordance with the terms as provided herein.

1.2.3 During the Contract term and any extensions, services will be subject to, and contingent upon annual appropriation of funding for the services. The Vendor will be required to complete and submit the following on an annual basis:

1.2.3.1 Any required proof of insurance.

1.2.3.2 Any required proof of annual trainings or attestations, if applicable.

1.2.3.3 Any required Exhibits.

1.2.3.4 Audited financial statement, or proof of exemption.

1.2.4 A Contract Amendment executed by the parties and the completion of any required documents must be signed and submitted prior to the expiration of each Contract term.

**2. NOTICES AND PARTY REPRESENTATIVES**

**2.1 Notices**

2.1.1 Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier or by electronic mail to the Vendor Representative at the address set forth in **Section 2.2.1 Vendor Representative** and/or to Procurement Analyst at the address set forth in **Section 2.3.4. – County Procurement Analyst**.

2.1.2 Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice, which is sent by electronic mail, shall also be simultaneously sent by regular mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

**2.2. Party Representatives**

**2.2.1 Vendor Representative**

**2.2.2 Vendor Project Manager**

|   |  |
|---|--|
| Name: Evan Wolkofsky  | Name: Adam Santalla Pierce, Interim President, ASC |
| Address: 220 N. Tryon St., Charlotte, NC 28202                      | Address:   |
| Phone: 704-973-4458   | Phone:   |
| Email: <a href="mailto:ewolkofsky@FFTC.org">ewolkofsky@FFTC.org</a> | Email:   |

2.2.3 County Department Project Manager

2.3.4 County Procurement Analyst

|   |  |
|---|--|
| Name: Dena Diorio   | Name: Caroline Miller  |
| Address: 600 East 4 <sup>th</sup> Street, 11 <sup>th</sup> Floor, Charlotte, NC 28202 | Address: 700 East 4 <sup>th</sup> Street, 4 <sup>th</sup> Floor, Charlotte, NC 28202 |
| Phone: 980-314-2880   | Phone: 980-314-2403  |
| Email: <a href="mailto:Dena.Diorio@mecknc.gov">Dena.Diorio@mecknc.gov</a>             | Email: <a href="mailto:caroline.miller@mecknc.gov">caroline.miller@mecknc.gov</a>    |

**3. METHOD AND CONDITION OF PAYMENT**

- 3.1 The County will pay the Vendor for the delivery of good/service units provided in accordance with the terms and conditions of this Contract.
- 3.2 The County will pay for the services/deliverables at the unit prices and limits in the table below. The allowable administrative rate of costs for County funded Contracts shall not exceed 4% of the total fiscal year award amount. Administrative costs must be referenced in the County approved Contract budget and the Vendor must be able to demonstrate that the applicable costs are not duplicated elsewhere as direct costs.
  - 3.2.1 Program expenses are defined as direct grants, compensation for culture block providers, salaries and benefits for Direct Vendor staff, travel & mileage, and program supplies.
  - 3.2.2 Administrative expenses are any expenses not included in program expenses, including but not limited to the below. These expenses do not need to be itemized in invoices:
    - Indirect staff expenses (e.g. Executives, financial staff, human resources, information technology, fund raising, etc.)
    - Liability and other insurance policies.
    - Facility rent, utilities and maintenance.
    - Software and technology.

| <b>Payment Schedule, not to exceed \$9,035,000.00</b> |   |                  |
|---|---|------------------|
| Distribution Month                                    | Description   | Amount           |
| Upon Contract Execution                               | 50% of business operating support and Public Art operations.                      | \$431,250        |
| November 2024   | Total actual program expenses to-date plus administrative cost, net first payment | To Be Determined |
| February 2025   | Total actual program expenses to-date plus administrative cost, net first payment | To Be Determined |
| May 2025  | Total actual program expenses to-date plus administrative cost, net first payment | To Be Determined |
| August 2025   | Total actual program expenses to-date plus administrative cost, net first payment | To Be Determined |

- 3.3 Line items as listed in 3.2, not to exceed the maximum amount payable under the terms of this Contract, may be adjusted by mutual written consent between the Vendor and the County. In such case, the Vendor shall provide an updated budget to be placed on file with all parties. These prices constitute the maximum total fees and charges payable to the Vendor under this Contract and shall not be increased except by a written instrument executed by both parties.
- 3.4 The price(s) stated in this Contract shall not increase for the initial term. The Vendor shall provide the County with sixty (60) days prior written notice of the revised price(s), if any, for subsequent Contract periods for which the County may elect to renew beyond the initial term. If the County agrees to the revised price(s), such changes will become effective the first day of the new applicable term and be reflected in a new Line-Item Budget provided by the Vendor, which will replace the existing Line-Item Budget for the successor term.
- 3.5 Price increases shall only be allowed when justified in the County's sole discretion based on legitimate, bona fide increases in the cost of providing the products and/or services covered under this Contract. No adjustment shall be made to compensate the Vendor for inefficiency in operation, increase in labor costs or for additional profit.
- 3.6 The Vendor warrants that, prices extended to the County under this Contract are comparable to or better than those being offered to any other customer purchasing similar quantities. During the term of this Contract, if the Vendor enters a Contract with another entity that provides better pricing and terms than this Contract, then the Vendor shall be obligated to provide the same to the County for subsequent purchases and the County shall be notified of changes to the Contract pricing. During any term of this Contract, if lower prices and rates become effective for like quantities of Products and/or Services, through a reduction in list prices, promotional discounts, or other circumstances, the County must be given immediate benefit of such lower prices and rates, and the County shall be notified of changes in Contract pricing.

- 3.7 Submit invoices in the month of February, May and August along with financial report documenting actual expenses and a report of activities as listed in Exhibit A – Scope of Work to the email address: [Grants@MecNC.gov](mailto:Grants@MecNC.gov)
- 3.8 Electronic invoices must be submitted in accordance with the privacy and security requirements set forth in **SECTION 9 - SAFEGUARDING CUSTOMER AND COUNTY INFORMATION.**
- 3.9 Per North Carolina State regulations, payment may not be authorized during the following times:  
Holidays, weekends, or days when the program is scheduled to be closed. County Holidays are: New Year's Day, Martin Luther King Jr. Day, Good Friday, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving and the day after, Christmas and two (2) other designated days either before or after Christmas.
- 3.10 The first invoice will be due upon contract execution to request advance funding and will be paid providing the Contract has been fully executed. Payment will be made via electronic funds transfer (EFT).
- 3.11 The first payment of this Contract will be 50% of the total contract amount for each program. The remaining three payments will be based on actual program expenses, net the first payment, as well as 4% for administrative costs. The total amount paid for this contract will not exceed \$9,035,000.00 and administrative costs will not exceed of \$361,400.00 of actual program expenses.
- 3.12 Upon receipt, the invoice will be validated and verified for accuracy and submitted to the County's Financial Services Department for payment. Incorrect invoices will be clarified with Vendor with corrections/changes made on a revised invoice.
- 3.13 The date of the revised invoice will be considered as the original date of the invoice.
- 3.14 Failure to send requests to the appropriate person may result in payment being delayed beyond thirty (30) calendar days.
- 3.15 The County will authorize approved amounts to be paid to Vendor.
- 3.16 **For services rendered from June 1<sup>st</sup> through June 30<sup>th</sup> of the previous year, the invoice will be due no later than July 5<sup>th</sup> of the current year. Late billings must be submitted for payment no later than sixty (60) calendar days from the date of service. If billing is over (60) calendar days, the County may deny payment.**
- 3.17 The Vendor shall prepare and submit with invoice each month, a supporting statement documenting actual monthly expenses per the line-item budget. The total amount paid under the terms of this Contract shall not exceed the actual expenditures incurred by the Vendor.
- 3.18 The County has no obligation to reimburse the Vendor for any travel or other expenses incurred in connection with this Contract unless specified and agreed to by both parties. If reimbursement is required by the County, all travel expenses must be in accordance with the County Travel Policy and Procedures and must be preapproved in writing by the County.

#### 4. **INSURANCE REQUIREMENTS**

- 4.1 Throughout the Term, Vendor and any of its subcontractors will comply with the insurance requirements described in this section. In the event that Vendor fails to maintain required insurance, the County shall be entitled to terminate or suspend the Contract immediately.
- 4.1.1 For operations or services rendered under this Contract the Certificate of Insurance must name Mecklenburg County as the holder of the certificate of insurance.
- 4.1.2 Mecklenburg County must be named as an additional insured under Vendor's Commercial General Liability insurance policy.
- 4.1.3 All Certificates of Insurance must have a retroactive date of no later than the first date services under this Contract are to be performed.
- 4.2 The Vendor agrees to purchase and maintain the following insurance coverage during the Term:
- Automobile Liability**  
Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.
  - Commercial General Liability**  
Insurance with a limit not less than \$1,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.
  - Workers' Compensation**  
Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.
  - Professional Errors & Omissions**  
Insurance with a limit of not less than \$1,000,000 per claim occurrence as shall protect the Vendor and the Vendor's employees for negligent acts, errors or omissions in performing the professional services under this Contract.
  - Sexual Abuse and Molestation**  
Abuse and Molestation Insurance in the amount of \$1,000,000 occurrence/aggregate, covering damages arising out of actual, perceived, or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment,

supervision, training, investigation, reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers.

Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. These limits shall be exclusive to this required coverage. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

**Network Security and Privacy Liability**

Network Security and Privacy Liability as shall protect the Company and its employees from claims alleging from the failure: (1) to provide adequate electronic or physical security to safeguard against the theft, loss or other threat to confidential information; or (2) to protect information of Mecklenburg County in any format. This policy shall be specific to the performance of this Contract and shall provide combined single limit each occurrence/aggregate of \$1,000,000. Policy will include acts of rogue employees.

**Crime Fidelity Bond – Employee Theft**

Insuring the Vendor and/or his employees that have access to monies or properties of the County. Providing employee dishonesty coverage on all employees at a limit of not less than \$50,000 with the addition of Loss Payable endorsement (CR 20 14 08 07)

- 4.3 Vendor shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this section and has furnished corresponding certificates of insurance to the County with the Contract. Vendor shall be responsible for notice to the County of any material changes (including renewals) to or cancellation of required insurance coverage. Vendor shall not allow any subcontractor to commence work without proof of the same insurance coverage required of Vendor under this Contract.
- 4.4 All insurance policies shall be written by insurers qualified to do business in the State of North Carolina. If any of the coverage conditions are met by a program of self-insurance, the Vendor must submit evidence of the right to self-insure under North Carolina law.
- 4.5 Payment of any deductible or retention shall be the sole responsibility of the Vendor or, as applicable, Vendor's subcontractor. The County shall not be liable for any deductible or self-insured retention in any insurance policy of Vendor.
- 4.6 Vendor's insurance shall be primary of any self-insurance or insurance policy carried by the County for all loss or damages arising from the Vendor's operations under this Contract. The Vendor and each of its subcontractors shall waive all rights of subrogation against the County and each of the Indemnitees.

**5. AUDIT REQUIREMENTS**

- 5.1 Vendor shall comply with audit requirements as described in N.C.G.S. § 143C-6-22 & 23 and OMB Circular- CFR Title 2 Grants and Agreements, Part 200, and shall disclose all information required by 42 USC 455.104, or 42 USC 455.105, or 42 USC 455.106.
- 5.2 County, during the term of this Contract and for a period of two years after expiration or termination, shall have the right to audit, either itself or through an independent auditor, all books, records, and facilities of the Vendor necessary to evaluate Vendor's compliance with the terms and conditions of this Contract or the County's payment obligations. The County shall pay for its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs to the Vendor.

**6. INCORPORATION**

Any exhibits attached to this Contract are incorporated herein and made part of this Contract by reference. Each reference to the Contract shall be deemed to include the Exhibits selected below. Any conflict between the language in an Exhibit to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract; provided, however, if the parties have executed a Business Associate Agreement, either as an Exhibit to this Contract or as a separate agreement, any conflict between the Business Associate Agreement and this Agreement shall be resolved in favor of the Business Associate Agreement.

- Exhibit A: Scope of Work  
 Exhibit B: Business Associate Agreement  
 Exhibit C: False Claims Act – Contractors and Suppliers Education and Notice

**7. LEGAL RESPONSIBILITIES OF VENDOR - COMPLIANCE WITH FEDERAL AND STATE LAWS AND REGULATIONS AND AUTHORITY TO CONTRACT**

Vendor shall:

- 7.1 Have all the requisite power and authority to execute, deliver and perform its obligations under this Contract and to provide the service(s) stipulated in this Contract as described Exhibit A. **SCOPE OF WORK** and in accordance with applicable standards for the service(s).
- 7.2 Furnish financial and program data as required to document those applicable standards have been met.
- 7.3 Comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.



- 7.4 If applicable, comply with Section 6032 of the Deficit Reduction Act of 2005 (42 USC 1396(a)(68)) as a condition of enrollment in the North Carolina Medicaid Program by ensuring that the Vendor and any agent of the Vendor are aware of the Federal False Claims Act, 31 USC 3729 et seq., administrative remedies for false claims and Statements established under 31 USC 3801 et seq., and any North Carolina State laws pertaining to civil or criminal penalties for false claims and Statements and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse.
- 7.5 Accept fiscal responsibility for deviations from the terms of this Contract as a result of acts of Vendor or any of its officers, employees, agents or representatives.
- 7.6 Certify that no approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Vendor in order for Vendor to enter into and perform obligations under this Contract.
- 7.7 Not violate any Contract with any third party by entering into or performing this Contract.
- 7.8 Assure that funds received pursuant to this Contract shall be used only to supplement, not to supplant, the total amount of Federal, State and local public funds that the Vendor otherwise expends for Contract services and related programs. Funds received under this Contract shall be used to provide additional public funding for such services; the funds shall not be used to reduce the Vendor's total expenditure of other public funds for such services.
- 7.9 Certify that it has identified to the County all jobs related to the Contract that have been outsourced to other countries, if any. The Vendor further agrees that it will not outsource any such jobs during the term of this Contract without obtaining prior written approval from the County.
- 7.10 Agree to make itself aware of and comply with, and cause it subcontractors to comply with all Federal, State, and local laws, regulations and ordinances, to the extent any apply, relating to the performance of this Contract and to the products and services delivered hereunder, including without limitation, E-Verify (Article 2 of Chapter 64 of the North Carolina General Statutes), Workers' Compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and all applicable regulations of the Occupational Safety and Health Administration (OSHA). The Vendor further agrees to obtain all verifications, permits and licenses applicable to the performance of this Contract. If any violation of this section has occurred or does occur, the Vendor will indemnify, defend and hold harmless the County from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of such violation.
- 7.11 If applicable, make available all services under this Contract to all persons without discrimination on the grounds of race, color, creed, national origin, religion, age, sex, disability or any other status protected by law.
- 7.12 Notify the County within five (5) days upon the receipt of notification from the North Carolina Secretary of State that the business charter, articles of incorporation, articles of organization, or certificate of authority of the corporation or limited liability company is under suspension pursuant to N.C.G.S. §105-230 for failing to file any report or return or to pay any tax or fee required by the North Carolina Department of Revenue or to sign an agreement for repayment within ninety (90) days after it is due.
- 7.13 Represent that as of the date of this Contract, Vendor is not currently listed on the Final Divestment List created and maintained by the North Carolina State Treasurer pursuant to G.S.143-6A-4. Further, pursuant to G.S. 143C-6A-5(b), Vendor further agrees to notify the County Procurement Department if at any time during the term of this Contract, it is added to the "List." The Divestment List may be found on the State Treasurer's website at [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran).

## **8. INDEMNIFICATION**

To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "charges" (as defined below) paid or incurred by any of them as a result of any claims demands, lawsuits, actions or proceedings either: (i) alleging violation, misappropriation, or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the services or any products or deliverables provided to the County pursuant to this Contract ("infringement claims"); (ii) seeking payment for labor or materials purchased or supplied by the Vendor or its subcontractors in connection with this Contract; (iii) arising from the Vendor's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Vendor or any of its agents, employees or subcontractors relating to the performance of this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness, or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; (iv) arising from a violation of any Federal, State or local law, regulation or ordinance by the Vendor or any of its subcontractors, including without limitation E-Verify or other immigration laws; or (v) arising from any claim that the Vendor or an employee or subcontractor of the Vendor is an employee of the County, including but not limited to claims relating to workers' compensation, failure to withhold taxes, and the like. For purposes of this section: (a) the term "Indemnitees" means the County and each of the County's officers, officials, employees, agents and independent contractors, excluding the Vendor; and (b) the term "charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities including settlement amounts.

## **9. SAFEGUARDING CUSTOMER AND COUNTY INFORMATION**

9.1 Both parties hereto agree to comply with any and all applicable laws and regulations concerning the confidentiality of customer records, files or communications in addition to the terms of this Contract.

- 9.2 Both parties agree to secure privacy, confidentiality and integrity of customer, employee, and administrative data on automated systems and to install antivirus protection and a firewall as well as any other industry standard security measures.
- 9.3 Electronic exchange of confidential information, including any email which will include invoices, customer billing information, employee or administrative data, or any information regarding the delivery of services to customers/clients/patients, must be sent and received via encrypted methods. Vendor is responsible for determining how to send encrypted emails to the County.
- 9.4 Vendor agrees to keep confidential any information about a customer or the County pursuant to the CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT which is incorporated herein as part of this Contract as follows:
- 9.4.1 Vendor has obtained or may need to obtain confidential information from the County or its licensors, contractors or suppliers in connection with the provision of services to the County or the discussions of such a proposed relationship.
- 9.4.2 The County and Vendor desire to stipulate and agree that any disclosure of confidential information in connection with the provision of services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.
- 9.4.3 In consideration of the pursuit of current discussions and payment for the services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows. As used in this Contract, the following terms shall have the meanings set forth below, DEFINITIONS:
- 9.4.3.1 Confidential Information. The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally known is obtained from the County or any of its suppliers, contractors or licensors which falls within any of the following general categories. The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.
- 9.4.3.2 Trade Secrets. For purposes of this Contract, trade secrets consist of information of the County or Vendor or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 9.4.3.3 Highly Restricted Information. Vendor acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) Vendor will also comply with any more restrictive instructions or written policies that may be provided by County from time to time to protect the confidentiality of Highly Restricted Information, as defined below:
- i. Information of County or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."
  - ii. Information relating to criminal investigations conducted by County, and records of criminal intelligence information compiled by County.
  - iii. Information contained in County's personnel files, as defined by N.C. Gen. Stat. 153A-198. This consists of all information gathered by County about employees, except for that information which is a matter of public record under North Carolina law.
  - iv. Citizen or employee social security numbers collected by County.
  - v. Computer security information of County, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
  - vi. Local tax records of County that contain information about a taxpayer's income or receipts.
  - vii. Any attorney/client privileged information disclosed by either party.
  - viii. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
  - ix. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
  - x. Protected health information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), and any other health information that is designated as confidential under Federal or State law.
- 9.5 RESTRICTIONS. Vendor shall keep the Confidential Information in the strictest confidence, in the manner set forth below:
- 9.5.1 Vendor shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by County in writing.
- 9.5.2 Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subcontractor or Vendor of the County or Vendor having a need to know such Confidential Information for purpose of performing work contemplated by this Contract between the County and Vendor, and who has executed a confidentiality agreement incorporating substantially the form of this Confidentiality and Non-Disclosure

- Agreement. Vendor shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County's prior written consent.
- 9.5.3 Vendor shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written Contracts between the parties hereto or is for the purpose for which such Confidential Information is being disclosed.
  - 9.5.4 Vendor shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
  - 9.5.5 Vendor shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
  - 9.5.6 In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Vendor shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
  - 9.5.7 All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to County or destroyed upon satisfaction of the purpose of the disclosure of such information.
  - 9.5.8 Restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
  - 9.5.9 Take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.
- 9.6 EXCEPTIONS. County agrees that Vendor shall have no obligation with respect to any Confidential Information that Vendor can establish:
- 9.6.1 was already known to Vendor prior to being disclosed by County.
  - 9.6.2 was or becomes publicly known through no wrongful act of Vendor.
  - 9.6.3 was rightfully obtained by Vendor from a third party without similar restriction and without breach hereof.
  - 9.6.4 was used or disclosed by Vendor with the prior written authorization of County.
  - 9.6.5 was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Vendor shall first give to the other party notice of such requirement or request.
  - 9.7.6 was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.
- 9.7 REMEDIES. Vendor acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the County's proprietary interests therein. Accordingly, it is agreed that if Vendor breaches its obligations hereunder, COUNTY shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.
- 9.8 DATA SECURITY. Vendor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.
- 9.9 Vendor shall report a suspected or confirmed security breach to the County Department Procurement Analyst within twenty-four (24) hours after the breach is first discovered, provided that the Vendor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.
- 9.10 If any applicable Federal, State, or local law, regulation, or rule requires the Vendor to give written notice of a security breach to affected persons, the Vendor shall bear the cost of the notice.

**10. DIGITAL ACCESSIBILITY COMPLIANCE**

- 10.1 Vendor will comply with the following:
  - 10.1.1 Mecklenburg County has a Digital Accessibility Policy related to all public-facing digital communications initiatives. The policy supports Mecklenburg County's goal of providing equal access to all members of the public and complying with all applicable digital accessibility laws. Mecklenburg County has obligations under laws including (but not limited to): The Americans with Disabilities Act of 1990 (or "ADA", 28 CFR Parts 35 and 36), Section 508 of the Rehabilitation Act of 1973 (or "Section 508", 36 CFR 1194). This policy should be used when procuring third-party products, components or services related to the "public-facing digital communications" that are considered to be in scope for accessibility compliance and defined as:
    - 10.1.1.1 Mobile Websites and Applications: Mobile optimized websites and native applications (e.g., iOS®, Android®) that can be used by the public to interact with any services offered by Mecklenburg County.



- 10.1.1.2 Websites & Social Media: Websites and digital content (HTML or non-HTML) that can be accessed by the public via internet browser or social media platform (e.g., Facebook, etc.).
- 10.1.1.3 Other Public Facing Websites: Other Mecklenburg County public-facing sites such as: E-Parks, EastwayRec.com, and other department websites.
- 10.1.1.4 Any other digital communications effort towards public recipients.
- 10.1.1.5 Ensure compliance with this policy, Voluntary Product Accessibility Template (VPAT) for WCAG.docx or comparable proof of accessibility testing must be submitted to Public Information's Web Services Manager at [a11y@MeckNC.gov](mailto:a11y@MeckNC.gov) prior to any product public implementations.

**11. RECORDS AND REPORTS**

- 11.1 If applicable, Vendor shall maintain customer records which date and document the service delivered for the individual customer, a valid authorization for service, program records, documents and other evidence which reflect program operations.
- 11.2 Vendor shall furnish information to County, as requested, to support provision of service(s) pursuant to this Contract and the full cost of the service. Vendor agrees to submit requested changes to the Contract, or approved supporting information, for prior review, as needed or required.
- 11.3 Vendor shall maintain books, records, documents and other evidence and accounting procedures that reflect all direct and indirect costs expended under this Contract for a minimum of five years after final payment or until all audits continued beyond this period are completed or longer if required by funding source. If applicable, the record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years. Upon request, Vendor shall make available such books, records and other documents necessary to certify the nature and extent of the cost of the services to the Secretary of Health and Human Services and the Comptroller General of the United States or their duly authorized representatives. A fixed assets inventory must be kept current by the Vendor.
- 11.4 Vendor shall maintain records, which clearly identify income, expenditures, assets and liabilities for this contracted service. Federal, State and County auditors and any other persons authorized by County shall have the right to examine any of these materials. In the event Vendor dissolves or otherwise goes out of existence, records produced under this Contract will be turned over to the County.

**12. SUBCONTRACTING**

- 12.1 Vendor shall not subcontract any of the work contemplated under this Contract without obtaining prior written approval from the County.
- 12.2 Vendor shall be responsible for the performance of any subcontractor.
- 12.3 Vendor is responsible for all goods and/or services produced pursuant to this Contract whether furnished by the Vendor or by its subcontractors. Any subcontracts shall be evidenced by a written document. The Vendor further agrees that the County shall not be liable to the subcontractor in any way or for any reason relating to this Contract and agrees to indemnify and hold the County harmless from any claims against the County related to subcontract with Vendor.
- 12.4 Vendor shall include, in all subcontracts (at any tier) the substance of all clauses contained in this Contract that mention or describe subcontract compliance, as well as all clauses applicable to that portion of the Vendor's performance being performed by or through the subcontract.

**13. NON-EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Vendor. This Contract shall not restrict the County from acquiring similar, equal, or like goods and/or services from other entities or sources.

**14. AMENDMENT**

This Contract may be amended at any time with mutual consent of the parties hereto, but any amendment shall be in writing and signed by the parties hereto.

**15. SEVERABILITY**

In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, the remaining provision or requirement shall continue to be enforced to the extent they are not in violation of law or not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

**16. WAIVER**

No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding

breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.

**17. REDUCTION OR NON-APPROPRIATION OF FUNDS**

- 17.1 The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation and availability of funds for this purpose to the County. In the event that Federal, State, Local or Grant funding is no longer available or has been reduced, the County shall notify the Vendor and shall not be obligated to continue this Contract or any part thereof.
- 17.2 If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Contract for a given fiscal year, the County shall not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will notify Vendor of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County, which is attributable to non-appropriation of funds, shall constitute a breach of or default under this Contract.

**18. SALES/USE TAX REFUNDS AND TAXES**

- 18.1 Vendor shall pay all applicable federal, state, and local taxes chargeable against the performance of the services.
- 18.2 N.C. G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Vendor certifies that it and all of its affiliates (if any) collect all required taxes.
- 18.3 If eligible, the Vendor and all subcontractors shall (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

**19. CHANGE IN CONTROL**

- 19.1 In the event of a change in "Control" of Vendor (as defined below), the County shall have the option of terminating this Contract by written notice to Vendor as specified under the terms of **Section 20 – TERMINATION**. Vendor shall notify the County within ten (10) days after it becomes aware that a change in Control is imminent or has occurred. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either: (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in Vendor; or (ii) the power to direct or cause the direction of the management and policies of Vendor whether through the ownership of voting securities, by Contract or otherwise, or (iii) the position of Executive Director, Board Chairman or more than 25% of the Board of Directors.
- 19.2 The Vendor shall not replace any of the key personnel assigned to the performance of this Contract without the prior written approval of the County. The term "key personnel" includes any and all persons identified as such in the Contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

**20. TERMINATION**

**20.1 Termination Without Cause**

The County or Vendor may terminate this Contract at any time without cause by giving thirty (30) calendar days prior written notice to the other party deliverable in person or by certified or registered mail to the persons identified as the Contract Administrator/Analyst for each party as set forth in **Section 2.2 Party Representatives**. In the event the County terminates this Contract, the Vendor shall continue performing the service or work on the deliverable item until the termination date designated by the County in its termination notice. The County shall pay the Vendor for satisfactory work completed through the date of termination under the terms of this Contract.

**20.2 Termination With Cause**

20.2.1 If, through any cause, the Vendor shall fail to fulfill its obligations under this Contract in a timely and proper manner, the County shall have the right to terminate this Contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Vendor under this Contract shall, at the option of the County, become its property and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Vendor shall not be relieved of liability to the County for damages sustained by the County by virtue of the Vendor's breach of this Contract, and the County may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the County from such breach can be determined. In case of default by the Vendor, without limiting any other remedies for breach available to

it, County may procure the Contract services from other sources and hold the Vendor responsible for payment of any excess cost occasioned thereby.

20.2.2 The filing of a petition for bankruptcy by the Vendor shall be an act of default under this Contract, and the County shall have the right to terminate this Contract by giving written notice to the Vendor and specifying the effective date thereof.

20.2.3 The County shall have the right to terminate this Contract by giving thirty (30) calendar days prior written notice to the Vendor and specifying the effective date thereof if the Vendor takes or fails to take any action which constitutes grounds for termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract. County shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

**20.3 Obligations Upon Expiration or Termination**

Upon expiration or termination of this Contract, Vendor shall promptly (a) return to the County all computer programs (with the exception of software that Vendor provided as part of the equipment requirements), files, files in storage, documentation, data, media, related material and any other material and equipment and/or any other property acquired as referenced in **Section 9.8 - Data Security**, that is owned by the County. The return of files relative to the delivery of services in storage will be at no cost to the County. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information", as defined in **Section 9 – Safeguarding Customer and County Information**.

**20.4 Authority to Terminate**

The County Manager or the County Manager's designee is authorized to terminate this Contract on behalf of the County.

**20.5 Cancellation of Orders and Subcontracts**

In the event this Contract is terminated by the County for any reason prior to the end of the term, Vendor shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, Vendor shall submit a Statement to the County showing in detail the services performed under this Contract to the date of termination.

**20.6 No Effect on Taxes, Fees, Charges, or Reports**

Any termination of this Contract shall not relieve Vendor of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve Vendor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve Vendor from any claim for damages previously accrued or then accruing against Vendor.

**21. TRANSITION ACTIVITIES**

Continuity of service is critical when service under this Contract ends, and service commences under a new Contract. Accordingly, where service will continue through another Vendor upon the expiration or earlier termination of this Contract, the Vendor agrees, without additional compensation, to complete all actions necessary to smoothly transition service to the new Vendor. This includes but is not limited to the transfer of relevant data and files, as well as property funded or provided pursuant to this Contract. The Vendor agrees to support an orderly transition to the next Vendor no later than the expiration or earlier termination of this Contract and agrees to support the requirements for transition as specified in a County-approved Transition Plan, which shall be developed jointly with the new Vendor in consultation with the County. The Transition Plan shall include at a minimum, a detailed outline and timeline of activities to be completed prior to Contract termination.

**22. GOVERNING LAW AND JURISDICTION**

22.1 The parties acknowledge that this Contract is made and entered into in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the terms and provisions, as well as the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern the interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles).

22.2 Each party consents to the exclusive jurisdiction of the State and Federal courts located in Charlotte, Mecklenburg County, North Carolina in any proceeding arising out of or relating to this Contract, and waives any defense related to venue or inconvenient forum.

**23. FORCE MAJURE**

23.1 Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God constituting a Force Majeure Event.

23.2 An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, Vendor shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) Vendor continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

- 23.3 Upon the occurrence of a Force Majeure Event, Vendor shall immediately notify, by telephone or email, the contact identified in **Section 2.2.3 – Department Project Manager** (to be confirmed by written notice within two (2) business days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Vendor from performing its obligations for more than five (5) business days, the County shall have the right to terminate this Contract by written notice to Vendor.
- 23.4 Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse Vendor from the performance of its obligations under this Contract.

**24. TREATMENT OF ASSETS**

Treatment of assets acquired under this Contract shall be subject to the following:

- 24.1 Ownership of property purchased by Vendor under the terms of this Contract for which reimbursement by County is based upon the actual purchase cost of the property shall immediately vest with the County upon such reimbursement.
- 24.2 County shall have no claim to property purchased by Vendor under the terms of this Contract for which reimbursement by County is based upon an approved depreciation schedule or use allowance.
- 24.3 Vendor shall provide an annual accounting to County of available property and administer in accordance with sound business practice a program for the maintenance, repair, protection and preservation of property purchased under the terms of this Contract to assure its continued availability.
- 24.4 Property purchased under the terms of this Contract shall be used only for the performance of this Contract. A fixed assets inventory must be kept current by the Vendor.

**25. NO THIRD-PARTY BENEFICIARIES**

Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the County and Vendor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the County and Vendor that any such person or entity, other than the County or the Vendor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

**26. INTELLECTUAL PROPERTY RIGHTS - COPYRIGHTS AND OWNERSHIP OF DELIVERABLES**

All deliverable items produced pursuant to this Contract are the exclusive property of the County. The Vendor shall not assert a claim of copyright or other property interest in such deliverables.

**27. GENDER AND NUMBER**

Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.

**28. ADVERTISING**

Vendor shall not use the award of this Contract as a part of any news release or ~~any~~ advertising unless approved in writing by County.

**29. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

Vendor agrees that, if the County determines that some or all of the activities within the scope of this Contract are subject to the [Health Insurance Portability and Accountability Act of 1996, P.L. 104-91](#), as amended ("HIPAA"), and its implementing regulations, it will comply with the HIPAA requirements and will execute such Contracts and practices as the County may require to ensure compliance.

30. **CONFLICT OF INTEREST POLICY**  
**INSERT POLICY HERE**

**BE SURE TO READ THE INSTRUCTIONS PRIOR TO SIGNING.**

1. Each organization that chooses to use this template should take care to make changes that reflect the individual organization.
2. OR replace the following with your current adopted conflict of interest policy.
3. Put the information on your letterhead which includes name, address, telephone, and email address.
4. Enter the appropriate data in the yellow highlighted areas.
5. All documents requiring signature must be an original signature and the same representative must sign all documents.

**Conflict of Interest Defined:**

A conflict of interest is defined as an actual or perceived interest by a (staff member/Board member) in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. A conflict of interest occurs when an employee/Board member has a direct or fiduciary interest in another relationship. A conflict of interest could include:

- Ownership with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Employment of or by a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Contractual relationship with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Creditor or debtor to a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Consultative or consumer relationship with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.

The definition of conflict of interest includes any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization or group. An example, for instance, might involve a person who is an employee and a Board member, or a person who is an employee and who hires family members as consultants.

**Employee Responsibilities:**

It is in the interest of the organization, individual staff, and Board members to strengthen trust and confidence in each other, to expedite resolution of problems, to mitigate the effect and to minimize organizational and individual stress that can be caused by a conflict of interest.

Employees are to avoid any conflict of interest, even the appearance of a conflict of interest. This organization serves the community as a whole rather than only serving a special interest group. The appearance of a conflict of interest can cause embarrassment to the organization and jeopardize the credibility of the organization. Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to your supervisor immediately. Employees are to maintain independence and objectivity with clients, the community, and organization. Employees are called to maintain a sense of fairness, civility, ethics and personal integrity even though law, regulation, or custom does not require them.

**Acceptance of Gifts:**

Employees, members of employee's immediate family, and members of the Board are prohibited from accepting gifts, money or gratuities from the following:

- a. Persons receiving benefits or services from the organization;
- b. Any person or organization performing or seeking to perform services under contract with the organization; and
- c. Persons who are otherwise in a position to benefit from the actions of any employee of the organization.

Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If the employee is acting in any official capacity, honoraria received by an employee in connection with activities relating to employment with the organization are to be paid to the organization.

**[Date of Certification (mmddyyyy)]**

Signature of Authorized Official must be the same as the person signing contract.

Conflict of Interest Policy was adopted by the Board of Directors/Trustees or other governing body in a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

31. OVERDUE TAX LETTER  
INSERT LETTER HERE

BE SURE TO READ THE INSTRUCTIONS PRIOR TO SIGNING.

1. This document must be completed exactly as presented.
2. If you have two authorized individuals both must sign the letter.
3. Put the information on your letterhead which includes name, address, telephone, and email address.
4. Enter the appropriate data in the yellow highlighted areas.
5. All documents requiring signature must be an original signature and the same representative must sign all documents.

Entity's Letterhead

[Date of Certification (mmddyyyy)]

To: Mecklenburg County

**Certification:**

We certify that the [insert organization's name] does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the Federal, State, or local level. We further understand that any person who makes a false Statement in violation of N.C.G.S. 143C-6-23 c is guilty of a criminal offense punishable as provided by N.C.G.S. 143C-10-1b.

**Sworn Statement:**

[Name of Board Chair or Authorized Official] and [Name of Second Authorizing Official if you have] being duly sworn, say that we are [Board Chair or Authorized Official] and [Title of the Second Authorizing Official], respectively, of [insert name of organization] of [City] in the State of [Name of State]; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

---

Typed Name \_\_\_\_\_ Signature \_\_\_\_\_  
Include Title (Board Chair or Authorized Official)

---

Typed Name \_\_\_\_\_ Signature \_\_\_\_\_  
Include Title (One signature must be the same as the person signing the Contract)  
**If you have two names mentioned both must sign.**

<sup>1</sup> G.S. 105-243.1 defines: Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.



32. **CONTRACTOR CERTIFICATIONS REQUIRED BY NORTH CAROLINA LAW**

**Instructions:** The person who signs this document should read the text of the statutes and Executive Order listed below and consult with counsel and other knowledgeable persons before signing. The text of each North Carolina General Statutes and of the Executive Order can be found online at:

- Article 2 of Chapter 64: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_64/Article\\_2.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf)
- G.S. 133-32: <http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=133-32>
- **Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009):** <http://www.ethicscommission.nc.gov/library/pdfs/Laws/EO24.pdf>
- G.S. 105-164.8(b): [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_105/GS\\_105-164.8.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf)
- G.S. 143-48.5: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_143/GS\\_143-48.5.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-48.5.html)
- G.S. 143-59.1: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_143/GS\\_143-59.1.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf)
- G.S. 143-59.2: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_143/GS\\_143-59.2.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf)
- G.S. 143-133.3: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_143/GS\\_143-133.3.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-133.3.html)
- G.S. 143B-139.6C: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_143B/GS\\_143B-139.6C.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143B/GS_143B-139.6C.pdf)

**Certifications**

- (1) Pursuant to **G.S. 133-32 and Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009)**, the undersigned hereby certifies that the Contractor named below is in compliance with, and has not violated, the provisions of either said statute or Executive Order.
- (2) Pursuant to **G.S. 143-48.5 and G.S. 143-133.3**, the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: [www.uscis.gov](http://www.uscis.gov). Local government is specifically exempt from Article 2 of Chapter 64 of the North Carolina General Statutes. However, local government is subject to and must comply with North Carolina General Statute 153A-99.1, which states in part as follows:  
Counties Must Use E-Verify - Each county shall register and participate in E-Verify to verify the work authorization of new employees hired to work in the United States.
- (3) Pursuant to **G.S. 143-59.1(b)**, the undersigned hereby certifies that the Contractor named below is not an "ineligible Contractor" as set forth in G.S. 143-59.1(a) because:
  - (a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina when the sales met one or more of the conditions of G.S. 105-164.8(b); **and**
  - (b) [check **one** of the following boxes]  
 Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001; **or**  
 The Contractor or one of its affiliates **has** incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 **but** the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.
- (4) Pursuant to **G.S. 143-59.2(b)**, the undersigned hereby certifies that none of the Contractor's officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.
- (5) Pursuant to **G.S. 143B-139.6C**, the undersigned hereby certifies that the Contractor will not use a former employee, as defined by G.S. 143B-139.6C(d)(2), of the North Carolina Department of Health and Human Services in the administration of a contract with the Department in violation of G.S. 143B-139.6C and that a violation of that statute shall void the Agreement.
- (6) The undersigned hereby certifies further that:
  1. He or she is a duly authorized representative of the Contractor named below;
  2. He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; and
  3. He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1and -59.2 shall be guilty of a Class I felony.

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**Contractor/Vendor Name** \_\_\_\_\_ **Date** \_\_\_\_\_

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**Signature, Vendor's Authorized Agent** \_\_\_\_\_ **Title** \_\_\_\_\_

**[This Certification Must be Signed by the Same Individual Who Signs Contract.]**

**33. CONCLUSION**

- 33.1 It is understood and agreed that the provisions of services to the Contract shall be subject to the limitations and conditions contained in the laws, regulations, guidelines, and plans cited in this Contract, and that this Contract is subject to re-negotiation or revision to meet any new or revised rules, regulations or policies that may be issued by the Federal, State or County government, or any agency thereof. In the event of any new or revised rules, regulations or policies that prohibit the continuation of this Contract or are otherwise in conflict with any provision of this Contract or any activity hereunder, the parties shall use their best efforts during a thirty (30) day period to mutually agree to amend the Contract so as to permit its valid and legal continuation. If after such thirty (30) day period, the parties are unable to amend this Contract, the Contract shall automatically terminate.
- 33.2 The parties agree that this Contract, with any Exhibits incorporated herein, is the entire Contract between the parties with respect to its subject matter and there are no other representations, understandings, or contracts between the parties relative to such subject matter.
- 33.3 It is expressly understood and agreed that the services provided to eligible customers/clients/patients pursuant to this Contract shall consist exclusively of those services specified in the Scope of Work incorporated into this Contract.
- 33.4 To the extent applicable, nothing in this Contract shall be construed as payment by either party to the other for patient referrals. If applicable, and notwithstanding the anticipated effect of any of the provisions herein, neither party shall intentionally conduct itself under the terms of this Contract in a manner to constitute a violation of the Medicare and Medicaid Fraud and Abuse Provisions (42 USC 1395nn(b), 1396h(b), including the Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977 and the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 USC 1320a-7 et seq.)) or any other applicable state or federal laws.

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**IN WITNESS WHEREOF**, the parties have duly executed this Contract as of the date first above written. The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Contract with Mecklenburg County.

**Vendor:** Arts, Sciences & Cultural Council of Charlotte/Mecklenburg, Inc.  
**Name (Print/Type):** \_\_\_\_\_  
**Title (Print/Type):** \_\_\_\_\_  
**Signature:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for \_\_\_\_\_ County  
certify that \_\_\_\_\_ personally appeared  
before me this day and acknowledged that he/she is \_\_\_\_\_ of  
(circle one) (Title)  
\_\_\_\_\_ and by that  
authority duly given and as the act of the corporation, affirmed that the information is true and correct.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public (Official Seal)

My Commission expires \_\_\_\_\_, \_\_\_\_\_.

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**MECKLENBURG COUNTY AUTHORIZED OFFICER SIGNATURES**  
**TO FOLLOW ON SEPARATE PAGE**

## EXHIBIT A - SCOPE OF WORK

### CONTRACT GOALS

Vendor will provide various programs to support creative individuals and cultural organizations.

### **A-2** SERVICE TASKS

1. Vendor will provide the following programs by allocation amount:
  - a) \$1,592,500 for Cultural Blocks programming in ten geographic areas resourcing County facilities, including parks, libraries, and recreation centers
  - b) \$455,000 to provide school based artistic programming
  - c) \$280,000 to provide cultural vision grants
  - d) \$280,000 to provide fellowships, SEED grants, and artistic support grants
  - e) \$65,000 to provide technical assistance to organizations and workshops
  - f) \$750,000 to provide business operating support
  - g) \$112,500 to provide public art support
  - h) \$1,000,000 to provide operating support grants to cultural organizations located outside the City of Charlotte. Up to 60% of the funds may be allocated to organizations located in northern Mecklenburg County. The awards will be based on the quality and impact of the programming.
  - i) \$3,000,000 to provide arts education grants in the public schools with a focus on Title I schools. Funds will be directed towards mid-large cultural institutions that have professional staff and experience providing arts educational opportunities, often tied to the public-school curriculum. \$225,000 will be allocated to the Charlotte Museum of History.
  - j) \$1,500,000 to provide subsidies for individual artists and arts groups to use publicly and privately owned venues in the County.
2. Vendor will provide a report of activities with each invoice to include:
  - a) New grants/commitments made
    - i) Programming/Funding Call Overview, Timeline and Application requirements
    - ii) Programmatic Overview (Project Title)
    - iii) County district representation by grantee/provider
    - iv) Cultural equity overview (demographic comparison of applicants and grantees)
  - b) Overview of previous quarter's programming for public programs
    - i) Estimate of audience participation
    - ii) Location of activities
    - iii) Highlights of feedback and stories from community investments
  - c) Programming participation numbers (reported quarterly)
  - d) Program locations of delivery (reported quarterly to ASC)
  - e) Program feedback/successes/satisfaction metrics
  - f) Annual program participant demographics
    - i) If requested, the Vendor will provide written reports and formal presentations to the County Manager. The Vendor will present annually to the Board of County Commissioners on the investment progress, outcomes, financials, and other relevant information.
    - ii) Vendor will respond timely to ad hoc requests for data or information from County staff.

**A-3 DELIVERABLES**

1. The Vendor shall maintain and deliver to the Project Manager to document the completion of deliverables. Documentation of the completed deliverable shall be received by the Project Manager by the listed due date or prior to, if with the request for payment. If the due date falls on a Mecklenburg County holiday or weekend, the deliverable documentation will be due the next business day.

| # | Title   | Due Date  | Contents  |
|---|---------|---|---|
| 1 | Invoice | Quarterly, in the months of November, January, April, and August. | Invoice to include a summary of quarterly activities and actual quarterly program expenses. |

2. The County reserves the right to reject reports, documents and/or deliverables as incomplete, inadequate, or unacceptable according to the limits set forth in this contract. The Vendor shall, without additional compensation, correct or revise any incomplete, inadequate, or unacceptable reports, documents and/or deliverables.

**A-4 RESPONSIBILITIES**

**A. BOTH PARTIES AGREE**

1. Vendor is an independent contractor of the County, and the County is in no way responsible for the administration and supervision of its officers, employees, grantees and subcontractors, which persons it is agreed are not officers, employees, agents, or subcontractors of the County.
2. Vendor shall list the County as a corporate sponsor on all the Vendor’s printed materials where corporate sponsors are listed. Further, at its fundraising events, the Vendor shall include appropriate representatives of the County as the Vendor’s guests at no additional charge to the County (e.g. providing the County with a table at any fundraising banquet.)
3. The Vendor’s Board of Directors shall be structured as follows:
  - a. Seventeen board members: 7 appointed by the County Commission, including one representing the northern towns and one representing the southern towns; 5 appointed by Charlotte City Council; 3 appointed by Foundation For The Carolinas; and 2 appointed by the Grants Committee. To satisfy IRS requirements, all board members will be ratified by FFTC.
  - b. Board members are eligible to serve up to two, three-year terms. Initial terms will be staggered.
  - c. Board members shall have demonstrated experience or qualifications in the areas of law, finance, development, management, government, arts and culture, economic development, or philanthropy.
  - d. Board members and their respective organizations are ineligible to receive grant funding from the Vendor.

**B. COUNTY RESPONSIBILITIES**

Provide a Project Manager who will manage the programmatic area of the contract. The Project Manager will:

1. Be the point of contact for the Vendor
2. Maintain communication with the Vendor

3. Keep Vendor and Procurement Analyst informed of any policy changes
4. Monitor the contract. Monitoring includes, but not limited to: review of monthly progress reports forwarded by Vendor, review quarterly expenditures, random sampling of invoices and payments, annual monitoring to include review of customer records, eligibility, attendance/participation, expenditures and review of contract procedures.
5. Attend scheduled meetings with Procurement Analyst and Vendor to discuss contract programmatic and/or administrative matters.

**C. VENDOR RESPONSIBILITIES**

1. Make a good faith effort to include environmental considerations supporting waste reduction, recycling, purchase recycled and other environmentally preferred products whenever practical.
2. Employees and/or volunteer of Vendor performing services under this contract must undergo a criminal background check.
3. Comply with Mecklenburg County Tobacco Use Policy, which prohibits County contractors and others performing services for the County, including Vendor, from smoking, using smokeless tobacco (chew, dip, snuff) and/or electronic or other nicotine delivery devices (electronic cigarettes, cigars, hookahs, pipes etc.) in County, City and Town buildings; County, City and Town grounds, County, City and Town vehicles, the County Park system, and buildings located within the County Park system.
4. The Vendor shall be responsible for the staff affiliated with this contract, ensuring that they have the education, any professional licensure or certification which may be required by law, and experience necessary to successfully carry out their duties.

**D. PERFORMANCE MEASURES**

Performance measures are a set of expectations that the County has for Vendors. The purpose of performance measure is to state what results are expected for performance to be considered satisfactory. These are expectations that the County has for Vendors in addition to the description of services agreed to by the Vendor in each contract. The additional expectations include tracking outcomes, monitoring progress, and presenting evidence to demonstrate that services are efficient and effective, and they are delivered using the County’s Customer Service Standards which include Service Quality, Timeliness, Courtesy and Respect, Clear Communication and Ethical Integrity.

The County is committed to providing technical assistance to Vendor for the achievement of continuous quality improvement. By agreeing to the terms and conditions of the contract, Vendor is required to accept this assistance when it is offered and implement systems that target ongoing quality improvement. It is the intention of the County to give Vendor sufficient opportunity to improve performance as it related to the following performance standards and avoid the need to impose consequences in each contract.

| # | Performance Measure   |
|---|---|
| 1 | Summary of quarterly activities and actual quarterly program expenses submitted in the months of November, January, April and August. |



**E. ISSUE TRACKING AND ESCALATION**

Noncompliance issues are problems identified in evaluations that reflect a lack of adherence to applicable duties, responsibilities, performance standards, terms and conditions of this contract. In the event of noncompliance issues, resolution shall be sought in accordance with the following escalation mechanisms to ensure that the appropriate level of management can resolve the issue:

- a. Project Manager should attempt to resolve the problem by working with the Vendor's onsite supervisor/lowest possible management level.
- b. Project Manager should attempt to resolve the problem by working with the Vendor's next level manager.
- c. Vendor submits a corrective action that will be reviewed and approved by the County Project Manager.
- d. If the issues still persist, the contract shall be terminated based on the termination language above.

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