

**NC LOCAL GOVERNMENT  
STANDARD CONTRACTUAL TERMS & CONDITIONS RIDER**

(the “LGR”) Revised & Effective: July 1<sup>st</sup>, 2023

THIS LGR is hereby made and entered into by and between WASHINGTON COUNTY (the “County”) and any and all parties entering into any contract, memorandum of understanding, or other agreement of any kind, for the provision of goods, services, or other consideration of any kind, to the County referencing its existence or inclusion as a part thereof.

Any such instrument(s) together with any and all exhibits, addenda, riders and/or any other instruments attached to, or incorporated by reference therein, shall be collectively referred to hereinafter as the “Contract”.

**WITNESSETH:**

WHEREAS, County is a body politic of the State of North Carolina, subject by operation of state law to certain additional rules, regulations, & laws applicable to public and/or governmental bodies, including without limitation certain financial, operational, & contractual requirements; and

WHEREAS, the risk of financial default under a contract entered into by such a governmental body is substantially lower than the ordinary risk of financial default attributable to private or commercial entities; and

WHEREAS, County has established this LGR for the non-exclusive purposes of expediting its contract review and approval process, to document notice of its governmental status, and to protect its citizens and the public at large from illegal or unfair obligations otherwise imposed under certain adhesion contracts; and

WHEREAS, County is prohibited by applicable law from executing the Contract without modification by this LGR, or has otherwise determined it is not in the best interests of its citizens and the public at large to do so without the additional terms and conditions of this LGR being made a part thereof.

NOW THEREFORE, in exchange of the mutual covenants made herein, and for other good and valuable consideration exchanged between the parties, the sufficiency of which is hereby acknowledged, including but not limited to the inducement of County to enter into the Contract as modified by this LGR, the parties agree as follows:

**PART A: CONTRACTUAL INCORPORATION & PRECEDENCE OF LGR WITHIN CONTRACT:**

1. **Contract Incorporation:** **THE TERMS AND PROVISIONS OF THIS LGR SHALL BE DEEMED FULLY AND COMPLETELY INCORPORATED INTO, AGREED TO, AND ACCEPTED BY, ALL PARTIES ENTERING INTO ANY CONTRACT WHICH REFERENCES THEIR EXISTENCE IN ANY WAY;** including to the fullest extent permitted by law, incomplete or non-specific references to their existence where any party could with reasonable due diligence have ascertained the existence and content of its terms. Partial performance by any party under such a Contract, even prior to its formal execution thereof (or after its execution by County conditioned upon inclusion of this LGR), shall be considered as full agreement to, and acceptance of, these LGR terms and conditions to the fullest extent permitted by law.
  - a. Without limiting the generality of the foregoing statement, the LGR may be incorporated by specific reference into any Contract by reference, simply by inserting the following suggested italicized language (the language within the outlined box immediately below) (and filling in the applicable “NTE Limit” amount) prior to its execution:

***NOTE: Notwithstanding any statement or provision herein to the contrary, the terms and provisions of that “NC Local Government Standard Contractual Terms & Conditions Rider” or “LGR” most recently revised and adopted by Washington County, effective July 1<sup>st</sup>, 2023 and kept on file by the County Finance Officer, and posted publicly on the Finance Department page at [www.washconc.org](http://www.washconc.org), are hereby incorporated into this instrument by reference, as if fully set out herein, and shall supersede, control over and prevail in the event of any conflict with the provisions of this instrument and/or any exhibit, addenda, or attachment hereto.***

***NTE Limit:** \$ \_\_\_\_\_ The total maximum annual compensation payable by the County pursuant to this Contract in any single fiscal year of the County, shall not exceed the NTE Limit amount stated, without the prior written approval of the County Manager or County Finance Officer.*

***Pre-Audit Certification:** This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.*

\_\_\_\_\_  
County Finance Officer

2. Condition Precedent: Each party entering into any such Contract further agrees that the incorporation of this LGR into the terms and conditions of the Contract shall be deemed to be a **MATERIAL CONDITION PRECEDENT** to County's acceptance of such Contract, and to the validity and enforceability of said Contract against County by any party thereto.
3. Contractual Conflict & Precedence: **NOTWITHSTANDING ANY STATEMENT OR PROVISION WITHIN THE CONTRACT TO THE CONTRARY, AND EXCEPT FOR ANY "ADDITIONAL LGR TERMS & CONDITIONS" AGREED TO BETWEEN THE PARTIES PURSUANT TO THE IMMEDIATELY FOLLOWING PARAGRAPH, THE TERMS AND CONDITIONS OF THIS LGR SHALL SUPERSEDE, CONTROL OVER, AND PREVAIL IN THE EVENT OF ANY CONFLICT WITH ANY DIFFERING OR CONTRARY TERMS OR CONDITIONS OF THE CONTRACT.** Except to the extent they are inconsistent with or modified by this LGR, the terms and conditions of the contract shall remain in full force and effect.
  - a. Additional LGR Terms & Conditions: To the extent the parties require any additional or specific modifications or amendments to this LGR itself, the same shall be reduced in writing and attached to the Contract labeled as "Additional LGR Terms & Conditions" which shall clearly reference the Contract to which it applies, shall state that it takes precedence over, and shall control in the event of any conflicts with, both the Contract and this LGR", and shall be separately signed by all parties concurrent with their execution of the Contract itself.

**PART B: STANDARD LOCAL GOVERNMENT PROVISIONS:**

1. Public Records & Confidentiality: County is required to comply with certain applicable statutes of the State of North Carolina regarding open meetings and/or open records. Notwithstanding anything to the contrary within the Contract, County shall not be liable to any party for disclosing the Contract, or any documents or communications made or received in relation thereto, to any third party or the public at large, if such disclosure is made by County in a good faith effort within its sole discretion, to comply with any public records request or other applicable laws.
2. Limitation on Contractual Authority: Only the County Board of Commissioners, the County Manager, or another agent specifically designated in writing by either to exercise their respective authority related to the Contract shall be authorized to enter into, modify, or otherwise bind the County to the Contract in any way. Any such action shall be taken only by the signed written consent thereof, and no party shall rely upon any verbal communications, or otherwise upon the authority of any other agent of the County in lieu thereof. This provision shall apply to prevent any inadvertent or passive modifications to the terms of the Contract through communications between the parties as may otherwise be allowed by law, including but not limited to any such provisions of the North Carolina Uniform Commercial Code, if applicable.
3. Limitation Upon Partial/Progress Payments for Goods/Materials to be Delivered: Payment (partial or otherwise) for any physical goods or materials to be provided to the County pursuant to the Contract, shall not be due or owed by the County until after actual delivery and acceptance of any such physical items.
4. E-Verify Certification: At all times during performance of the Contract, all parties shall fully comply with Article 2 of Chapter 64 of the General Statutes, and shall ensure compliance by any subcontractors utilized. All parties shall execute an affidavit verifying such compliance upon request by County.
5. Iran Divestment Act Certification: All parties executing this Contract thereby affirm they are not listed on the Final Divestment List created by the State Treasurer pursuant to NCGS 143-6A-4, nor shall they utilize any subcontractor in the performance of the Contract that is identified upon said list.
6. Constitutional Limitation on County Indemnification: The parties acknowledge and understand that an unlimited indemnification by County constitutes a violation of the North Carolina Constitution, and is void and unenforceable by operation of law. Any indemnifications given by County to any party under the Contract shall be deemed to be given only to the fullest extent allowed by law.
7. Contingent Funding/Non-Appropriations Clause: Notwithstanding anything to the contrary within the Contract or this LGR, all financial obligations of the County under the Contract are dependent upon, and subject to, the continuing allocation of funds by the County Board of Commissioners for such purpose. The Contract shall automatically terminate if such funds cease to be allocated or available for any reason.

8. **Pre-audit & Purchasing Policy Notices:** Pursuant to County purchasing policies, no obligation of \$1,000 or more for any goods sold or services rendered to County is validly enforceable without a valid signed contract, or a signed Purchase Order for such goods or services. Per NCGS § 159-28, no contract with a local government including the County requiring the payment of any public funds is valid unless first properly pre-audited in the manner required by said statute. Contracts must contain a Pre-audit Certificate signed by the County Finance Officer (or their Deputy) taking substantially the same form as follows: “*This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.*” Failure to obtain such a Certificate renders the contract voidable by the County, and unenforceable per state law. Contact the County Finance Office at 252-793-3523 with any questions or for further information related to this provision.
9. **NTE Limit (Not to Exceed Limit):** The total amount of compensation payable by County to all parties under the Contract during each fiscal year of County (July 1 to June 30 of the following calendar year) shall not exceed the amount, if any, which is specifically listed as the “NTE Limit” in the Contract, or which is otherwise described in the Contract as the maximum annual compensation payable by County. This figure is used by the Finance Officer to perform the pre-audit process described above. The County may increase this amount unilaterally in writing (including email) signed by the County Manager or County Finance Officer as deemed reasonably necessary to expedite its internal processing of unanticipated mid-term increases or term to term increases not otherwise pre-approved for multiple fiscal years.
10. **General Legal Compliance:** Any party providing goods or services of any kind to the County pursuant to this Contract hereby agrees to do so in compliance with any and all applicable local, state, or federal rules, regulations, or laws, and shall be solely responsible for the failure to abide by the same unless otherwise agreed in writing by the County. Without limiting the generality of the foregoing paragraph:
  - a. **Federal Uniform Guidance Requirements:** If the source of funds for this Contract are federal funds, the following non-exclusive federal provisions shall apply pursuant to 2 C.F.R § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable), and all parties hereto agree to comply with any and all such applicable provisions.
    - i. Equal Employment Opportunity (41 C.F.R. Part 60);
    - ii. Davis-Bacon Act (40 U.S.C. 3141-3148);
    - iii. Copeland “Anti-Kickback” Act (40 U.S.C. 3145);
    - iv. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708);
    - v. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387);
    - vi. Debarment and Suspension (Executive Orders 12549 and 12689);
    - vii. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
    - viii. Procurement of Recovered Materials (2 C.F.R. § 200.322); and
    - ix. Record Retention Requirements (2 CFR § 200.324)
  - b. **Worker’s Compensation Insurance, Certifications, & Indemnification:** Each party is solely responsible for obtaining and maintaining at all times any and all policies of Worker’s Compensation Insurance to lawfully cover itself, and any and all of its employees, contractors, or subcontractors employed in the provision of any work or services under the Contract, or as otherwise required by law.
    - i. Unless specifically agreed to in writing as part of the terms of the Contract, County shall not be required to obtain any such insurance for any of the employees, contractors, or subcontractors of any other party to the Contract, and all such parties hereby agree to promptly provide certificates of such coverage, or other adequate proof thereof upon County’s request, and further to immediately notify County in the event of any loss or disruption of any such coverage during the term of the Contract as a material term hereof.
    - ii. County is hereby authorized to withhold payments under the Contract pending receipt of proof of such insurance coverage if applicable without being in breach of the Contract.
    - iii. All parties also hereby agree to indemnify and hold each other harmless from any and all damages or liability arising from any subsequent determinations by any parties including without limitation each party’s own insurance auditors, that any Worker’s Compensation Insurance required to be obtained and maintained by any party to the Contract as stated above was not actually obtained or maintained.

**PART C: OTHER GENERAL PROVISIONS**

Notwithstanding anything within the Contract to the contrary:

1. Choice of Law, Forum, & Pre-Litigation Mediation: This Contract is made and entered into in Washington County, North Carolina and shall be governed by and construed in accordance with North Carolina law. Any claim for breach or enforcement of this Contract shall be filed in the appropriate court located in the jurisdiction of Washington County, North Carolina. The parties agree in good faith to first submit any disputes to that formal process known as mediation being that process which is described by North Carolina in its Alternative Dispute Resolution Program through the Dispute Resolution Commission. The parties agree that they will attempt to agree on a North Carolina Certified Superior Court Mediator with the understanding that this list is maintained by the North Carolina Dispute Resolution Commission. Should the parties be unable to agree, then that mediator who is next to be assigned on a case by Court Administration in Washington County will be used as the mediator. The parties shall share the costs of mediation equally and the parties agree to mediate in good faith.
2. Construction & Headings: No rule of construction shall apply against any party as the drafter of the Contract which is the result of an arms-length negotiation between the parties. The titles/captions/headings of any and all portions of the Contract are intended for reference purposes only, and shall not be deemed to affect the meaning or interpretation of the Contract terms and conditions.
3. Merger: The Contract is the entire agreement between the parties with respect to the foregoing matter and there are no other verbal or written agreements with respect thereto between the parties which have not been reduced to writing and specifically incorporated into the Contract.
4. Modification: No modifications of the Contract shall be valid unless reduced to writing signed by all parties hereto.
5. Severability: The provisions of this Contract are intended to be severable. Any and all provisions of this Contract that are prohibited, unenforceable, or otherwise not authorized in any jurisdiction shall, as to such portion and/or jurisdiction only, be deemed ineffective to the extent of such prohibition, unenforceability, or non-authorization, without invalidating the remaining provision(s) hereof in such jurisdiction, or affecting the continuing validity, enforceability, or legality hereof in any other jurisdiction.
6. Signature Warranty: Any party executing the Contract as a corporate or other legal entity represents to the other parties hereto that such entity is duly organized, validly existing, and in good standing under the laws of the State of North Carolina or otherwise under the laws of the state of its formation, and is qualified to transact the business contemplated herein within the State of North Carolina, and further that any such party executing the Contract on behalf thereof, has the full power and authority to do so without any further authorization being required from any party, and thereby legally binds said entity to the terms and conditions of this Contract.
7. Additional Limitation of Scope of County Indemnification: If applicable, any indemnification given by County shall be deemed and further limited to indemnify against claims or actions arising from the action or inaction of County's own officers, officials, employees or agents only; and shall not be deemed to indemnify any party against claims or actions arising from any action or inaction of any other parties.
8. Waiver of Consequential/Punitive Damages: Under no circumstances whatsoever, shall any party be entitled to recover, and all parties hereby waive their right to seek, any indirect, punitive, special or consequential damages of any kind whatsoever, incurred in connection with any breach of the Contract. Notwithstanding the foregoing, the reasonable costs incurred in connection with successfully enforcing the Contract against another party, including court costs, fees, and reasonable attorneys' fees associated therewith shall be recoverable by such a prevailing party.
9. Savings Provision: County shall not be held in default of the Contract or otherwise deemed in breach thereof, unless it has first failed to cure any condition causing such default within fifteen days (15) days written notice thereof by the party alleging such default. If County cures any default within that period, no breach of the Contract shall be deemed to have occurred.
10. Electronic and/or Duplicate Execution & Order of Execution: The Contract may be executed in multiple counterparts, in which event each executed copy shall be deemed an original document as between the parties. An electronic signature and/or copy of the Contract shall have the same force and affect as the original. Due to the need to comply with statutory auditing requirements, all parties contracting with County shall execute the Contract first and deliver a fully signed copy thereof (preferably via electronic form) to the County for its counter-execution and delivery of a fully signed copy to all parties.