

# STANDARD NORTH CAROLINA LOCAL GOVERNMENT CONTRACTUAL TERMS & CONDITIONS RIDER

Revised and Effective: August 30, 2021

This Standard North Carolina Local Government Contractual Terms & Conditions Rider (the “LGR”) is hereby made and entered into by and between the Town of Mooresville (the “Town”) 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 Town 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 “Agreement”.

For purposes of additional clarification and not in derogation of the foregoing, this LGR shall relate to and be fully incorporated into and supersede the Agreement between the Town and (company\_name) known as (contract\_id) – (contract\_title) with an effective date of (contract\_start\_date).

## WITNESSETH:

WHEREAS, Town is a body politic of the State of North Carolina, subject by operation of law to certain additional rules, regulations and laws applicable to public and/or governmental bodies including without limitation certain operational and 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, Town 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, Town is prohibited by applicable law from executing the Agreement 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 Town to enter into the Agreement as modified by this LGR, the parties agree as follows:

## **PART A: AMENDED CONTRACT TERMS**

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 AGREEMENT OR CONTRACT REFERENCED HEREIN OR 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. Each party entering into any such Agreement

further agrees that the incorporation of this LGR into the terms and conditions of the Agreement shall be deemed to be a **MATERIAL CONDITION PRECEDENT** to Town's acceptance of such Agreement, and to the validity and enforceability of said Agreement against Town by any party thereto, as well as to any later amendment or modification to the primary Agreement. This LGR shall continue to apply to any modification or amendment to the Agreement made hereafter unless this LGR is specifically made inapplicable and described with particularity therein. Partial performance by any party under such an Agreement without formal execution thereof, shall be considered as agreement to, and acceptance of, these LGR terms and conditions.

2. Contractual Conflict & Precedence. **NOTWITHSTANDING ANY STATEMENT OR PROVISION WITHIN THE CONTRACT TO THE CONTRARY, AND EXCEPT FOR ANY "ADDITIONAL 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 OR AGREEMENT OR ANY AMENDMENT/MODIFICATION THERETO.** 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.
3. Additional Terms & Conditions. To the extent the parties require any additional or specific modifications or amendments to the Agreement, or to this LGR itself, the same **shall be reduced in writing and attached to the Agreement labeled as "Additional Terms & Conditions" which shall clearly reference the Agreement to which it applies, shall state that it takes precedence over and shall control in the event of any conflicts with both the Agreement and any Local Government Rider, and shall be separately signed by all parties** concurrently with their execution of the Agreement instrument(s).

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

1. Public Records & Confidentiality. Town 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 Agreement, Town shall not be liable to any party for disclosing the Agreement, 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 Town 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. For Agreements in amounts of Ninety Thousand Dollars (\$90,000.00) or more, only the Mayor on behalf of the Town Board of Commissioners or another specifically designated in writing by said person(s) to exercise their respective authority related to the Agreement shall be authorized to enter into, modify or otherwise bind the Town to the Agreement in any way. For any Agreement in an amount under Ninety Thousand Dollars (\$90,000.00), the Town Manager shall be authorized to enter into, modify or otherwise bind the Town to the Agreement; provided, however, that such authority has been granted and may be withdrawn at any time by the Town Board of Commissioners. 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 Town in lieu thereof. This provision shall apply to prevent any inadvertent or passive modification to the terms of the

Agreement through communications between the parties as may otherwise be allowed by law, including but not limited to any such provision 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 Town pursuant to the Agreement, shall not be due or owed by the Town until after actual delivery and acceptance of any such physical items.
4. E-Verify Certification. At all times during performance of the Agreement, 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 Town.
5. Constitutional Limitation on Municipal Indemnification. The parties acknowledge and understand that an unlimited indemnification by Town constitutes a violation of the North Carolina Constitution, and is void and unenforceable by operation of law. Any indemnification given by Town to any party under the Agreement shall be deemed to be given only to the fullest extent allowed by law.
6. Contingent Funding/Non-Appropriations Clause. Notwithstanding anything to the contrary within the Agreement or this LGR, all financial obligations of the Town under the Agreement are dependent upon, and subject to, the continuing allocation of funds by the Town Board of Commissioners for such purpose. The Agreement shall automatically terminate if such funds cease to be allocated or available for any reason.
7. Not to Exceed (NTE) Cap. Unless otherwise approved in writing by the Town, the total amount of compensation payable by Town to all parties under the Agreement during each fiscal year of Town (running from July 1 to June 30 of the following calendar year) shall not exceed the amount, if any, which is listed or referred to within the Agreement as “Total annual compensation hereunder not to exceed (contract\_amount) without Town’s prior written approval” or by substantially similar language. This amount is the total combined budget normally allocated for the services rendered under the Agreement, and may be increased unilaterally by Town from time to time, only through the written approval of the Town Manager for amounts totaling less than Ninety Thousand Dollars (\$90,000.00) and only through the written approval of the Town Board of Commissioners via the Mayor for amounts totaling Ninety Thousand Dollars (\$90,000.00) or more. Such approval may be given via email and said increased amount approved and pre-audited by the Finance Director.
8. Preaudit & Purchasing Policy Notices. Per NCGS §159-28, no contract with a local government, including Town, requiring the payment of any public funds is valid unless properly pre-audited in the manner required by said statute. The Agreement must contain a Preaudit Certificate signed by the Town Finance Officer or the Deputy Finance Officer which shall take substantially the following form: “This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.” Failure to obtain a preaudit upon the Agreement makes the contract invalid and unenforceable per state law. Additionally, pursuant to Town purchasing policies, no obligation of \$1,000 or more for any goods sold or services rendered to Town is validly enforceable without a valid signed contract, or a signed Purchase Order for such goods or services. Contact the Town Finance Office at 704-799-4048 with any questions or for further information related to this provision.

9. Non-Discrimination. During the performance of the Agreement, all parties agree not to discriminate against any employee or applicant for employment in terms of initial employment, tenure, terms of employment or otherwise because of race, color, religion, sex, national origin, political affiliation or belief, age, sexual orientation, ancestry or disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, or marital status. All parties will post, when appropriate, all notices related to nondiscrimination as may be required by applicable law.
10.  Federal Uniform Guidance Requirements. Only if this box is marked, some or all of the source of funding for the Agreement are anticipated to be federal funds, in which event, unless otherwise marked below, 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.
- a. Equal Employment Opportunity (41 C.F.R. Part 60);
  - b. Davis-Bacon Act (40 U.S.C. §§3141-3148);
  - c. Copeland "Anti-Kickback" Act (40 USC § 3145);
  - d. Contract Work Hours and Safety Standards Act (40 USC §§3701-3708)
  - e. Clean Air Act (42 USC §§ 7401-7671q.) and the Federal Water Pollution Control Act 33 USC §§ 1251-1387);
  - f. Debarment and Suspension (Executive Orders 12549 and 12689);
  - g. Byrd Anti-Lobbying Amendment (31 USC § 1352);
  - h. Procurement of Recovered Materials (2 CFR §200.322); and
  - i. Record Retention Requirements (2 CFR §200.324)
- \_\_\_ Only if this box is marked and initialed by the Town Manager or Town Mayor, the Town has verified or determined that despite the potential use of federal funding related to the Agreement, the provisions of this paragraph DO NOT APPLY. Only in such event, the entire foregoing paragraph shall be considered void.
11. Divestment Acts. The Contractor hereby certifies that as of the date listed below, it is not on any of the Final Divestment Lists as created by the state Treasurer pursuant to The Sudan (Darfur) Divestment Act of 2007, as amended, The Iran Divestment Act of 2015, as amended, or the Divestment from Companies Boycotting Israel Act of 2017, as amended, respectively codified in NCGS §147-86.41 et seq., NCGS §147-86.55 et seq. and NCGS §147-86.80 et seq. Contractor shall not utilize in the performance of the contract any subcontractor that is identified on any Final Divestment List.

### **Part C: OTHER GENERAL PROVISIONS.**

Notwithstanding anything with the Agreement to the contrary:

1. Choice of Law, Forum & Pre-Litigation Mediation. This Agreement is made and entered into in Iredell County, North Carolina and shall be governed by and construed in accordance with North

Carolina law. Any claim for breach or enforcement of this Agreement shall be filed in the appropriate court located in the jurisdiction of Iredell 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 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 to a case by Court Administration in Iredell 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 Agreement which is the result of arms-length negotiation between the parties. The titles/caption/headings of any and all portions of the Agreement are intended for reference purposes only, and shall not be deemed to affect the meaning or interpretation of the Agreement terms and conditions.
3. Merger. The Agreement is the entire agreement between the parties with respect to the foregoing matter and there are not other verbal or written agreements with respect thereto between the parties which have not been reduced to writing and specifically incorporated in the Agreement.
4. Modification. No modifications of the Agreement shall be valid unless reduced to writing and signed by all parties hereto.
5. Severability. The provisions of this Agreement are intended to be severable. Any and all provisions for this Agreement 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 Agreement 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 Agreement 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 Agreement.
7. Additional Limitation of Scope of Town Indemnification. If applicable, any indemnification given by Town shall be deemed and further limited to indemnify against claims or actions arising from the action or inaction of Town'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 Agreement. Notwithstanding the foregoing, the reasonable costs incurred in connection

with successfully enforcing the Agreement against another party, including court costs, fees, and reasonable attorneys' fees associated therewith shall be recoverable by such a prevailing party.

- 9. Savings Provision. Town shall not be held in default of the Agreement or otherwise deemed in breach thereof, unless it has first failed to cure any condition causing such default within thirty (30) days written notice thereof by the party alleging such default. If Town cures any default within that period, no breach of the Agreement shall be deemed to have occurred.
- 10. Electronic and/or Duplicate Execution & Order of Execution. The Agreement 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 Agreement shall have the same force and effect as the original. Due to the need to comply with statutory auditing requirements, all parties contracting with Town shall execute the Agreement first and deliver a fully signed copy thereof (preferably via electronic form) to the Town for its counter-execution and delivery of a fully signed copy to all parties.
- 11. Notices. All notices and other communications required or permitted by the Agreement shall be in writing and shall be given either by personal delivery, fax or certified United States mail, return receipt requested, addressed as follows:
 

To the Town:	To Contracting Party(ies):
Attn: Town Manager	Attn:_ (full_name)
413 N. Main St.	(address_1_and_2)
Mooresville, NC 28115	(city), (state) (zip)
- 12. Advertising. The Agreement and/or relationship among the parties shall not be used for any advertising purposes, including referrals or testimonials, by either party without the express written consent of the other party.

IN WITNESS WHEREOF, the parties hereby set their respective hands and seals on the dates noted below.

TOWN OF MOORESVILLE

BY: \_\_\_\_\_(SEAL)                      Date: \_\_\_\_\_

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

This instrument has been pre-audited in the manner required by the "Local Government Budget and Fiscal Control Act."

\_\_\_\_\_  
Evans Ballard, Acting Finance Director                      Date:

(COMPANY\_NAME)

BY: \_\_\_\_\_(SEAL)                      Date: \_\_\_\_\_

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