

2014-15 OUTSIDE AGENCY PERFORMANCE AGREEMENT

THIS AGREEMENT, made and entered into the first day of July 2014, (“Effective Date”) by and between the County of Orange, a political subdivision of the State of North Carolina, 200 South Cameron Street, Hillsborough, North Carolina, 27278, (“County”) and «Agencys_Name», a not-for-profit corporation, located at «Agencys_Mailing_Address», «Agencys_City», NC «Agencys_Zip_Code» (“Provider”).

WITNESSETH:

WHEREAS, it is in the interests of the County that said program be assisted by the County and thereby enhance its availability to residents of the County, and said program addresses an important community human services need, as identified by the Board of Commissioners;

NOW, THEREFORE, in consideration of the above and the mutual covenants and conditions hereafter set forth, the County and «Agencys_Name» agree as follows:

- 1. Term of the Agreement.** The term of this Agreement shall be a program year beginning July 1, 2014 to June 30, 2015.
- 2. Scope of Services.**
 - a. Provider will provide services, as outlined in the attached Outside Agency Funding Application Scope of Services and any amendments or revision thereto which is attached as Exhibit “A” and incorporated by reference, to the residents of Orange County. The Scope of Services may be different from the original application based on County appropriation; however, any revisions or amendments to this Agreement must be approved in writing by the County and attached to this Agreement.
 - b. The Provider shall be solely responsible for the means, methods, techniques, sequence, safety program and procedures necessary to properly and fully complete the work set forth in the Scope of Services.
- 3. Funding.**
 - a. The County agrees to appropriate for the provision of services described in Exhibit A, Scope of Services and more particularly described in the Program Budget, the maximum sum of «M_1415_Appropriations».
 - b. All funds appropriated shall be used for purposes described in Exhibit A. Any funds not used for the purposes stated shall be returned to the County. Any changes in the use of funds must be authorized in writing by the County prior to any expenditure of the funds by the Provider. If the funds are expended not in accordance with the Scope of Services, at the discretion of the County the Provider may be required to repay the funds to the County.
 - c. The Provider shall be paid in four equal installments in the amount of «Quarterly_Appropriation». The first payment is contingent upon receipt of the agency’s performance agreement; the remaining payments are contingent upon receipt of the request for reimbursement and related supporting documentation.

- d. The County's obligation to make the three quarterly payments is contingent upon receipt of Progress Reports, which show satisfactory progress toward completion of performance measures and an accounting of expenditures as detailed in the attached Scope of Services.
- e. Once Provider has satisfied its obligations as provided in (d) payment will be made 21 days after receipt of the Progress Report and Request for Reimbursement or 21 days after due date of Progress Report whichever is later.
- f. The County is not obligated to provide any other support to Provider in this or in succeeding fiscal years.

4. Agency Reporting.

- a. Provider will provide Orange County a Progress Report that includes a fiscal report and updates on 2014-15 performance measures as outlined in the Scope of Services. Progress Report dates are: July 1 – December 31; January 1 – March 31 and April 1 - June 30. Reports are due on January 9, April 15, and July 10 of the program fiscal year.
- b. Provider agrees to allow the County to inspect its financial books and records, which document costs of those services, upon reasonable notice during normal working hours.

5. Termination.

- a. In the event of any of the circumstances set forth below (hereinafter referred to as "default"), the County may immediately terminate this Agreement, in whole or in part, and from time to time. Notice of termination must be in writing, state the reason or reasons for the termination, and specify the effective date of the termination:
 - i. In the event that Provider shall cease to exist as an organization or shall enter bankruptcy proceedings, be declared insolvent, or liquidate all or substantially all of its assets, or significantly reduce its services or accessibility to Orange County residents during the term of this Agreement; or
 - ii. In the event that Provider shall fail to render a satisfactory accounting as provided section 4 above, the County may terminate this Agreement and Provider shall return all payments already made to it by the County for services which have not been provided or for which no satisfactory accounting has been rendered; or
 - iii. In the event of any fraudulent representation by the Provider in an invoice or other verification required to obtain payment under this Agreement or other dishonesty on a material matter relating to the performance of services under this Agreement.
 - iv. Nonperformance, incomplete service or performance, or failure to satisfactorily perform any part of the work identified in the Scope of Services or to comply with any provision of this Agreement, as determined by the County in its sole discretion.
 - v. Failure to adhere to the terms of applicable county, state or federal laws, regulations, or stated public policy.
- b. In the event of default by the Provider, the county may elect to terminate this Agreement, in whole or in part and/or require the Provider to repay the funds within ten (10) business days from written notice of default. The County may (but shall not be required to) grant the

Provider an opportunity to cure the default without termination of this Agreement. This clause shall not be interpreted to limit the County's remedies in law or in equity.

- c. Notwithstanding the foregoing, either party may terminate the agreement at any time without penalty; provided that written notice of such termination is furnished to the other party at least 30 days prior to termination. In the event of such termination, any payment due shall be prorated to the date of termination and any unused funds shall be returned to the County within 10 days of termination.
- d. Any termination of this Agreement for default under this section that is later deemed to be unjustified shall be deemed a termination for convenience.

6. Insurance.

- a. General Requirements. The Provider shall purchase and maintain, during the period of performance of this Agreement, insurance:
 - i. Worker's Compensation. For protection from claims under workers' or workmen's compensation acts;
 - ii. Comprehensive General Liability Insurance covering claims arising out of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Consultant's employees or any other person and to real and personal property including loss of use resulting thereof;
 - iii. Comprehensive Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering personal injury or death, and property damage; and
 - iv. Professional Liability Insurance, covering personal injury, bodily injury and property damage and claims arising out of or related to the performance under this Agreement by the Consultant or his agents, consultants and employees.
- b. Limits of Coverage: Minimum limits of insurance coverage shall be as follows:

<u>INSURANCE DESCRIPTION</u>	<u>MINIMUM REQUIRED COVERAGE</u>
• Worker's Compensation	Limits for Coverage A - Statutory State NC & Coverage B - Employers Liability \$500,000 each accident, disease policy limit and disease each employee
• Commercial General Liability	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
• Automobile Liability	\$500,000 Combined Single Limit
• Professional Liability	\$1,000,000 Each Occurrence \$2,000,000 Aggregate

- c. All insurance policies (with the exception of Worker's Compensation and Professional Liability) required under this Agreement shall name the County as an additional insured party and as a certificate holder. Evidence of such insurance and all correspondence shall be sent to:

Orange County Risk Manager
Post Office Box 8181
Hillsborough, NC 27278

- d. Nothing in this section is intended to affect or abrogate the County's sovereign immunity defenses.
7. **Relationship of the Parties.** Provider is an independent contractor of the County. Provider represents that they have or will secure, at his own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees or have any contractual relationship with the County. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized and permitted under federal, state and local law to perform such services.
 8. **Compliance with all Laws.** The Provider, at its sole expense, shall comply with all laws, ordinances, orders and regulations of the federal, state or local governments, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following execution of this agreement.
 9. **Subcontract.** The County and Provider deem the services provided under this Agreement to be personal in nature and Provider may not subcontract any rights or duties under this Agreement to any other party without prior written consent from the County.
 10. **Assignment.** The Provider shall not assign this Agreement, including the rights to payment, to any other party without the prior written consent of the County.
 11. **Indemnification.** Provider agrees to defend, indemnify, and hold harmless the County, for all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or willful misconduct of the Provider, except to the extent same are caused by the negligence or willful misconduct of the County. It is the intent of this section to require Provider to indemnify the County to the extent permitted under North Carolina law. Nothing in this section is intended to affect or abrogate the County's sovereign immunity defenses.
 12. **Non-Appropriation.** This Agreement is subject to the availability of funds to purchase the specified services and may be terminated at any time if such funds become unavailable.
 13. **Non-Discrimination.** Provider agrees as part of consideration of the granting of funds by Orange County the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner of these basis of race, color, gender, national origin, age, handicap, religion, sexual orientation, familial status or veterans status with reference to any activities carried out by the grantee, no matter how remote. The parties hereto further agree in all respects to conform to the provision and intent of Orange County Civil Rights Ordinance, as amended. This provision is enforced by action for specific performance, injunctive relief, or other remedy as by law provided; this provision shall be binding on the grantees, the successors and assigns of the parties hereto with reference to the above subject manner.

14. Living Wage. Orange County is committed to providing its employees with a living wage and encourages agencies if funds to pursue the same goal. The County's living wage is \$12.76 per hour. To the extent possible, Orange County recommends that «Agencys_Name» provide a living wage to its employees.

15. Notice. The Parties hereto agree and understand that written notice, mailed or delivered, to the last known address shall constitute sufficient notice to the County and the Provider. All notices required and/or made pursuant to this Agreement to be given to the County and the Provides shall be in writing and mailed to the party addressed as follows:

County: Finance & Administrative Services	Provider: «Agencys_Name»
Orange County	«Agencys_Mailing_Address»
Post Office Box 8181	«Agencys_City», NC
Hillsborough, NC 27278	«Agencys_Zip_Code»

16. Entire Agreement. This Agreement, including any referenced attachments, constitutes the entire Agreement between the parties and shall supersede, replace or nullify any and all prior Agreements of understandings; written or oral, relating to the matters set forth herein, and any such prior Agreements or understandings shall have no force or affect whatsoever on this Agreement. The County and Provider have read this Agreement and agree to be bound by all of its terms, and further agree that this Agreement constitutes the complete and exclusive statement of the Agreement between the County and Provider.

17. Severability. All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on the other provisions of this Agreement. It is understood by the parties hereto that if any part, term or provision of this Agreement is by the Courts held to be illegal or in conflict with any laws of the State of North Carolina or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

18. Governing Law. The laws of the State of North Carolina shall govern all aspects of this Agreement. In the event that it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Orange County, North Carolina. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Orange County and the Provider have signed this Agreement, effective on the last date this Agreement is signed by both parties as indicated by the dates set forth under signatures below.

For and on behalf of the Provider

Signature

Date

Printed Name

For and on behalf of Orange County Government

Bonnie Hammersley, County Manager

Date

Approved as to form and legal sufficiency

Office of the County Attorney

Date

Approved as to technical content

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

Clarence Grier, Assistant County Manager/
Chief Financial Officer

Date

ATTACHMENT “A”

Orange County Certifications – FY 2014-15
Outside Agency Performance Agreement

Chief Contact, Administrators, Chief Executive Officer and Chief Financial Officer

I certify that I have provided a list of the chief contact, administrators, chief executive officer and chief financial officer for my agency with this Agreement and that I will keep it current to the County of Orange. The list should be in writing with the name, title, residential address; phone and email address and if possible, fax number.

Officers and Board of Directors

I certify that I have provided a current list of the Officers and Board of Directors with this Agreement and that we will continue to update the list as changes occur. The list should be in writing, with the name, physical address, mailing address and if possible, phone, fax and email address.

Budget Submission

I certify that I have provided a budget for the period to be covered by funding Orange County, and that any substantive changes made to this budget have been in advance authorized in writing by Orange County.

Annual Financial Review

I certify that I have provided a copy of the latest annual Financial Review for our agency and the budget adopted by the agency for the fiscal years encompassing this Agreement. If not, please explain on a separate sheet of paper.

Alignment with Organization’s Mission

I certify that the programs and services for which this funding is requested align with the mission of the organization.

Intended Purpose

I certify that the funds provided to the agency under the terms of this Agreement will be used for a public purpose and shall only be used for the purposes intended and any money not used for those purposes will be promptly returned to Orange County.

Certified by: _____ Title: _____ Date: _____
(Provider’s Signature)