

File Copy



**AGREEMENT**

**BETWEEN**

**HOWARD COUNTY, MARYLAND**

**AND**

**BLACK TIE SERVICE**

**AGREEMENT NO. PA-03-2015**



**HOWARD COUNTY, MARYLAND  
AGREEMENT**

**PA 03-2015**

THIS AGREEMENT (the "Agreement") is made by and between **HOWARD COUNTY, MARYLAND**, a body corporate and politic, (the "County") and **BLACK TIE SERVICE, LLP, 4813 BENSON AVENUE, BALTIMORE, MARYLAND 21227**, Federal Employer Identification Number 52-1712205, Telephone Number 410-247-8255 (the "Contractor").

WHEREAS, the said Contractor, in consideration of the payments hereinafter specified and agreed to be made by said County, hereby covenants and agrees to perform all services, in strict and entire conformity with the Attachment A entitled, "Services to be Performed", any Purchase Order subsequently issued, the Invitation for Bid No. 2014-68, Vending Machine Services, the Contractor's response and any amendments or revisions thereto (collectively, the "Bid"), incorporated herein either by reference or attachment, as applicable.

NOW THEREFORE, in consideration of the mutual promises and covenants, the parties hereto agree that the County shall pay the Contractor, an amount as set forth herein, for services rendered in accordance with this Agreement, the other attachments hereto, the Bid, and the Purchase Order, all of which are hereby incorporated into and made a part of this Agreement. Notwithstanding any other terms or provisions of this Agreement, in the event the County is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the Howard County Council, by a court of competent jurisdiction or by administrative delay not due to the fault of the County (and its members and agents), the County shall not be liable directly or indirectly for any claims caused to or suffered by the Contractor or any other person in connection with or as a result of such prevention, restriction or delay. In addition the parties hereto agree as follows:

1. Contractor's Duties.

The Contractor shall be an independent Contractor and not an employee of the County and the Contractor's employees who are assigned to provide services to the County under this Agreement shall be employees of the Contractor and not the County. The Contractor shall be responsible for the reporting and remittance of all state and federal taxes, compensable workers' compensation claims and coverage of unemployment claims filed by its employees. The Contractor shall perform the services outlined in Attachment A hereto. The Contractor's services will be provided with due care and in accordance with all applicable standards. The Contractor shall perform the services for the Director of Purchasing of the County, or Designee, who shall have authority to administer the Agreement.

2. Compensation.

2.1 In consideration of the services to be provided by the Contractor, the Contractor shall pay the County in accordance with the commission rates set forth in the Bid:

Cold Beverages – 27% commission

Hot Beverages – 45% commission

Snack Foods – 23% commission



2.2 In no event shall the gross sales commission rates paid to the County fall below these established rates.

2.3 The Contractor shall submit payments to the County monthly. The Contractor's payments and detailed monthly report shall include:

2.3.1 Vending machine location

2.3.2 Machine type (cold beverage, hot beverage, snack)

2.3.3 Unit sales price

2.3.4 Total units sold by machine type

2.3.5 Gross sales by machine type

2.3.6 Sales tax

2.3.7 Commission rate

2.3.8 Commission amount due to County

2.4 All payments shall be submitted to Howard County Office of Purchasing, 6751 Columbia Gateway Drive, Suite 501, Columbia, Maryland 21046. Checks shall be made payable to "Howard County, Maryland".

3. Term.

3.1 This Agreement shall be effective October 1, 2014 and shall continue through September 30, 2015 (hereinafter defined as the "Initial Term"), at which time the County may exercise its option to renew set forth in Paragraph 3.2 below, unless sooner terminated pursuant to Paragraphs 5 and 7 hereof.

3.2 The County reserves the right to renew this Agreement for four additional one-year periods on the same terms and conditions set forth herein. Unless set forth in a written amendment, the reimbursement and manner of payment set forth in Paragraph 2 shall remain as is. In the event any renewal changes the terms and conditions set forth herein, the approval of the Howard County Council may be required.

4. Contractor's Representations and Warranties. The Contractor hereby represents the following:

4.1 The Contractor is a limited partnership, duly formed and validly existing under the laws of the State of Maryland and is qualified to do business and is in good standing and licensed in the State of Maryland.

4.2 The Contractor has the power and authority to consummate the obligations and responsibilities contemplated hereby, and have taken all necessary action to authorize the execution, delivery and performance required under this Agreement.

4.3 The person executing this Agreement for the Contractor warrants that it is duly authorized by the Contractor to execute this Agreement on the Contractor's behalf.

4.4 The services to be provided under this Agreement shall be performed competently and with due care, and in accordance with all applicable laws, codes, ordinances and regulations and licensing requirements.

4.5 The Contractor has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to provide the services rendered under this Agreement, and shall present such licenses to the County upon its request for the same.

4.6 All representations and warranties made in the Affidavit and the Bid response remain true and correct in all respects.



5. Termination:

5.1 Termination for Convenience: The County may terminate this Agreement for convenience, in whole or in part, whenever the County determines that such termination is in the best interest of the County, without showing cause, upon giving at least 30 days written notice to the Contractor. The Contractor shall pay the County all sales commission up to the date of termination.

5.2 Termination for Default: When the Contractor has not performed or has unsatisfactorily performed one or more material terms of the Agreement and therefore is in default, the County may terminate the Agreement for default. Failure on the part of a Contractor to fulfill the contractual obligations shall be considered just cause for termination of the Agreement.

6. Remedies for Default.

6.1 The County shall have the right upon the happening of any Default, without providing notice to the Contractor:

6.1.1. In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part;

6.1.2. To proceed at any time or from time to time to protect and enforce all rights and remedies available to the County, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

7. Remedies Cumulative and Concurrent.

No remedy herein conferred upon or reserved to the County is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under this Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the County shall be concurrent and may be pursued separately, successively or together against the Contractor, and every right, power and remedy given to the County may be exercised from time to time as often as may be deemed expedient by the County.

8. Insurance.

The Contractor shall be required to provide insurance required by the County pursuant to the insurance requirements specified in Document D of the Invitation for Bid, including naming "Howard County, Maryland, its officials, employees, agents and volunteers" as Certificate Holder and as Additional Insured. The Contractor shall maintain the insurance coverages required by the County while this Agreement is in force, and provide documentation of such insurance in a form satisfactory to the County. Such documentation may, in the discretion of the County, be in the form of binders or declarations from the insurance company.

9. Confidential Information.

The Contractor shall not disclose any documentation and information disclosed to the Contractor in the course of its performance of duties hereunder with respect to the past, present and future County business, services and clients without the express written consent of the County.





10. Ethics.

10.1 The Contractor certifies that the officer of the legal entity who is executing this Agreement has read and understands Attachment B, entitled Howard County Charter and Code References to Ethics, which contains the provisions of Section 901(a) of the Howard County Charter dealing with conflicts of interest and Section 22.204 of the Howard County Code dealing with conflicts of interest.

10.2 The Contractor certifies that it has (1) not been a party to an agreement to bid a fixed or uniform price; (2) not offered nor will offer any gratuity to any county official or employee; and (3) not violated any of the fair employment provisions of Code Sec. 4.119 Ethics and Fair Employment Practices detailed in Attachment B.

11. Assignment.

Neither the County nor the Contractor shall assign or transfer its interest or obligations under this Agreement to any third party, without the written consent of the other. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer or elected official of the County, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties of this Agreement.

12. Delegation of Duties.

The Contractor shall not delegate the Contractor's duties under this Agreement without the prior written consent of the County.

13. Indemnification.

13.1 The Contractor shall indemnify and hold harmless the County, its employees, agents and officials from any and all claims, suits, or demands including reasonable attorney fees which may be made against the County, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Agreement by the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of negligence or willful misconduct committed by the County, its employees, agents and officials.

13.2 Any property or work to be provided by the Contractor under this Agreement will remain at the Contractor's risk for the duration of the Agreement; and the Contractor will replace, at the Contractor's expense, all property or work damaged or destroyed by any cause whatsoever.

13.3 In the event that there is a conflict between the indemnification provision set forth in the Purchase Order Terms and Conditions and/or the General Conditions of the solicitation and/or this Agreement, the terms set forth in the Agreement shall govern.

14. Integration and Modification.

This Agreement sets forth the entire agreement between the parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of all parties to this Agreement.

15. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The



parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate Federal or State court located within the State of Maryland.

16. Conflicting Terms.

16.1 The Contractor acknowledges that any Purchase Order issued on or after the effective date of this Agreement is hereby integrated and made a part of this Agreement, provided, however that if a conflict arises between the provisions of this Agreement and the Purchase Order, the provisions of this Agreement shall prevail.

16.2 In the event of a conflict between the Bid and this Agreement, the provisions of this Agreement (without the conflicting terms in the Bid) shall prevail.

17. Severability.

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

18. Time is of the Essence.

Time is of the essence with respect to performance of the terms and conditions of this Agreement.

19. Notice.

Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered, and there is written confirmation of delivery or refusal of receipt, to the following address and individual or at such other address and/or such other individual a party may identify in writing to the other party:

FOR THE COUNTY:

Dean Hof, Assistant Purchasing Administrator; Howard County, Maryland; Office of Purchasing; 6751 Columbia Gateway Drive, Suite 501; Columbia, Maryland 21046; Telephone: 410-313-4239; Fax: 410-313-6388; Email: [dhof@howardcountymd.gov](mailto:dhof@howardcountymd.gov) .

FOR THE CONTRACTOR:

Michael Allan, Vice President, New Business Development; Black Tie Service LLP, 4813 Benson Avenue, Baltimore, Maryland 21227; Telephone: 410-247-8255; Fax: 410-247-6369; Email: [mikea@blacktieservice.net](mailto:mikea@blacktieservice.net).

20. No Waiver, Etc.

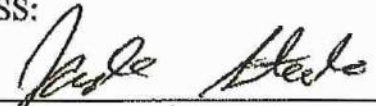
No failure or delay by the County to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the County from exercising any such right, power, or remedy at any later time or times.

**SIGNATURES BEGIN ON NEXT PAGE**

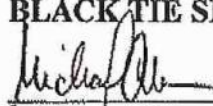


IN WITNESS WHEREOF, the parties have executed this Agreement PA-03-2015.

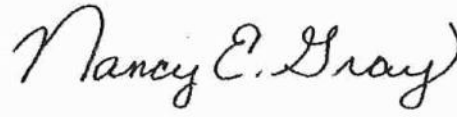
WITNESS:

  
Signature \_\_\_\_\_  
Print Name: Jade Steele


**BLACK TIE SERVICE LLP**

By:   
\_\_\_\_\_  
Michael Allan  
Vice President, New Business Development

WITNESS:

  
\_\_\_\_\_  
Gray, Nancy  
Assistant Administrator, for  
Robbins, Lonnie  
Chief Administrative Officer

**HOWARD COUNTY, MARYLAND**


  
\_\_\_\_\_  
Ken Ulman  
County Executive

**APPROVED FOR LEGAL SUFFICIENCY**

this 6th day of August, 2014



Reviewed by: Tucker, Constance  
Assistant County Solicitor

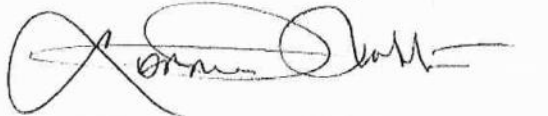


Vannoy, James  
Attorney, for  
Nolan, Margaret Ann  
County Solicitor

**APPROVED FOR SUFFICIENCY OF FUNDS DEPARTMENT APPROVED**



Ighile, Rafiu  
Deputy Director Finance, for  
Milesky, Stanley  
Director of Finance



Robbins, Lonnie  
Chief Administrative Officer  
Department of County Administration

