



King George County, Virginia

TERMS AND CONDITIONS FOR PURCHASE ORDERS (RFQ'S)

1. **COUNTY ORDER REQUIRED:** Responsibility will not be accepted for any equipment or goods delivered or services performed unless covered by a duly authorized Purchase Order issued by COUNTY. The terms of this Addendum take precedence over any conflicting terms in any other document included in the Contract.
2. **INVOICE & PAYMENT:** COUNTY will make payment to VENDOR in amounts and at stages of progress or delivery as set forth in the Purchase Order within 45 days of receipt of an invoice for all conforming goods and services upon inspection and acceptance by COUNTY as provided in Section 5, at its sole discretion. Any late fees assessed may not exceed 1% per month.
3. **SUBCONTRACTOR PAYMENT:** VENDOR will take one of the two following actions within seven days after receipt of amounts paid to the VENDOR by COUNTY: a) Pay all subcontractors (including but not limited to suppliers) for the proportionate share of the total payments received from COUNTY attributable to the work performed by the subcontractors under contract with VENDOR in support of VENDOR's performance under the CONTRACT; or b) Notify COUNTY and subcontractors, in writing, of VENDOR's intention to withhold all or a part of the subcontractors' payment with the reason for nonpayment. VENDOR will pay interest to all subcontractors on all amounts owed by the VENDOR that remain unpaid after seven days following receipt by the VENDOR of payment from COUNTY for work performed by the subcontractors, except for amounts withheld as allowed in part b. Unless otherwise provided under the terms of the Purchase Order, interest will accrue at the rate of one percent per month. VENDOR will include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. VENDOR's obligation to pay any interest charge to a subcontractor pursuant to this Section will not be construed to be an obligation of COUNTY. No modifications to the Contract will be allowed for the purpose of providing reimbursement for such interest charges. No cost reimbursement claim will include any amount for reimbursement for such interest charges.
4. **TAXES:** To the extent allowed by law, King George County Service COUNTY is exempt from taxation by virtue of exemption certificate No. 54-0716449.
5. **DELIVERY, QUALITY CONTROL & INSPECTION:** Goods and/or services must be completed to the satisfaction of COUNTY by the date specified in the Purchase Order. COUNTY, by its Procurement Manager, or any person whom she designates, has a right to inspect any services and/or products supplied or installed by Contractor in carrying out this Contract. COUNTY does not assume any responsibility for the availability of any controlled materials or other materials and equipment required under this Contract. VENDOR will be responsible for the agreed quality and standards of all materials, components or completed work furnished under this Purchase Order up to the time of final acceptance by COUNTY. Completed work not complying with the requirements of this Purchase Order will be rejected by the Procurement Manager and shall be corrected by VENDOR at no cost to COUNTY. In case of failure to complete services in accordance with the terms and conditions of this Contract, COUNTY, after due oral or written notice, may perform the services and/or have the services performed and hold VENDOR responsible for any resulting additional purchase and administrative costs; provided, that if public

necessity requires the use of nonconforming services, they may be accepted and payment will be made at a reduction in price determined by reasonable price concept. This remedy shall be in addition to any other remedy which COUNTY may have.

6. QUOTATION LIMITATION: Bidders shall offer only ONE ITEM AND PRICE for each line item bid. No alternatives will be accepted, unless requested by the County. If an "or equal" item is to be bid, the bidder must select the brand and model that meets or exceeds the specified item and submit their bid for that item. A discount price offered for a quantity purchase of the same manufacturer and model would not be considered a limitation; however, only the unit price requested will be considered in award.
7. PRODUCT INFORMATION: The bidder is responsible for clearly and specifically identifying the product being offered and enclosing complete and detailed descriptive literature, catalog cuts, and specifications with the bid to enable the County to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid to be considered non-responsive.
8. F.O.B DESTINATION: Unless otherwise provided in this purchase order, all prices must be F.O.B. delivered to the point as indicated on the front of the purchase order. The County will grant no allowance for boxing, crating, or delivery unless specifically provided for in the bid or quotation.
9. ASSIGNMENT: The Purchase Order may not be assigned in whole or in part to any other party by VENDOR without the express, written consent of COUNTY (but in no case will the consent relieve the VENDOR from its obligations or change the terms of the Contract). Any purported assignment that does not comply with this provision is void unless mandated by operation of generally applicable laws. The Contract binds all successors, assigns, employees or other agents of VENDOR. VENDOR maintains the overall responsibility to manage and provide the goods/services under this Contract whether directly or through a third party. VENDOR shall be responsible for completely supervising and directing the work under the Contract and all subcontractors that it may employ. VENDOR agrees that it is as fully responsible for the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of his own employees.
10. CONTRACTUAL DISPUTES:
 - a. Mandatory Notice and Claim Submittal Process: VENDOR must give written notice to the Purchasing Agent of his/her intent to file a claim for money or other relief within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the work upon which the claim is to be based, whichever is earlier. The written claim must be submitted to the Purchasing Agent and Interim General Manager no later than sixty (60) days after final payment. If the claim is not disposed of by mutual agreement, the Interim General Manager will reduce his decision to writing and mail or otherwise deliver a copy thereof to the VENDOR within thirty (30) days of receipt of the claim. Failure of the COUNTY Administrator to render a decision within thirty (30) days does not automatically result in the VENDOR being awarded the relief claimed nor does it result in any other relief or penalty. If the Interim General Manager fails to render a decision within thirty (30) days, it will be deemed a final decision denying the claim. The Interim General Manager's decision will be final and binding to the fullest extent allowed by law unless the VENDOR gives written notice within fifteen (15) days of the date of the written decision (or date when a denial is effectuated by inaction) to the Interim General Manager and County Attorney of the intent to appeal the decision to the Board of Directors. The Board of Directors will render a decision on the claim appeal within ninety (90) days of the date of receipt of a valid appeal notice, or denial is effectuated by inaction pursuant to § 15.2-1247 of the Code of Virginia. Such decision will be final and binding to the fullest extent allowed by law.

b. Further Legal Recourse: No administrative appeals procedure pursuant to § 2.2-4365 of the Code of Virginia has been established for claims. Having exhausted the claim procedure set out in part a, the VENDOR may institute legal action pursuant to §§ 2.2-4363(E) and 2.2-4364(E) of the Code of Virginia. Each party will bear its own expenses resulting from any litigation, including attorney's fees.

11. CHOICE OF LAW, VENUE & NO ARBITRATION OR MEDIATION: This Contract is deemed made in the Commonwealth of Virginia and is to be construed and interpreted solely in accordance with the laws of Virginia. Venue for any action arising hereunder will be in the Circuit Court for King George County, Virginia, or in a federal court sitting in Richmond, Virginia, if independent federal jurisdiction exists. Nothing under this Contract will be submitted to arbitration or mediation, and any references to mandatory arbitration or mediation are expressly deleted from any component of the Contract. Except as may be mutually agreed by subsequent written amendment, VENDOR and COUNTY hereby waive any and all rights to arbitration and/or mediation under the laws of Virginia, the United States, or otherwise.
12. LIMITATION OF LIABILITY – COUNTY: Notwithstanding anything on the Purchase Order, COUNTY payments shall not exceed the price(s) stated on the Purchase Order. COUNTY'S cumulative liability is limited to the unpaid balance of amounts due under this Contract, and in no event will COUNTY be liable to VENDOR for indirect, incidental, consequential or special damages except as may be required by Virginia law without waiver of sovereign immunity.
13. INDEMNIFICATION: To the fullest extent allowed by law, VENDOR will hold harmless and indemnify COUNTY, and all of its offices, officers, departments, commissions, committees, employees, subdivisions, agencies, agents, and employees from and against any and all claims, suits, causes of actions of all kinds, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, or exposure, by reason of property damage or personal injury to any person, including VENDOR'S and all subcontractors' employees and workers, of any nature or kind, wheresoever and by whomsoever brought arising out of or in connection with this Contract. Notwithstanding the foregoing, in the event this Contract relates to construction services, § 2.2-4335 of the Code of Virginia applies as to delays caused by acts or omissions of the COUNTY, its agents or employees; and, delays due to causes within the control of the COUNTY, its agents or employees.
14. TERMINATION FOR CAUSE: If VENDOR materially defaults in the performance of any provision of this Contract, and such default is not cured within thirty (30) days after COUNTY gives written notice of such default, then COUNTY will be entitled to terminate this Contract immediately upon written notice. If the nature of the default renders the Contract voidable without a cure notice or VENDOR acknowledges that the default cannot be cured, then COUNTY may immediately terminate this Contract upon written notice to VENDOR. In addition, COUNTY may, immediately upon written notice to VENDOR, terminate this Contract if: a) there is a cyber security incident or data privacy breach caused by VENDOR; or, b) in the event of an on-going series of material defaults, even if they are cured within the permissible periods; and/or there are persistent, non-material defaults; either or both of which in the aggregate constitute a material default or have a material adverse impact on COUNTY operations. Events of "Material Default" include but are not limited to the failure to timely provide the contracted services and/or goods.
15. TERMINATION FOR THE CONVENIENCE: In addition to termination effective upon notice in the event of non-appropriation as provided in Section 13, COUNTY reserves the right to terminate the Contract prior to delivery/performance, in part or in whole, without penalty, for any reason upon fifteen (15) days' advance written notice. Any such termination will be effectuated by delivery to the VENDOR of a written notice of termination, specifying the extent to which performance under the Contract is terminated and the date upon which such termination becomes effective.

16. TERMINATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the order will be canceled by written notice to the VENDOR, and the VENDOR will be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Purchase Order prior to notice of the termination.
17. EFFECT OF TERMINATION: Upon termination, VENDOR must stop all performance by the date specified in the notice and mitigate costs not yet invoiced for ongoing work by such measures including but not limited to (unless directed otherwise by the COUNTY in writing) cancelling pending orders for materials. As of the termination date, COUNTY agrees to pay costs associated with accepted goods and/or services, less any set-off. In no event will the COUNTY be responsible for lost profits, indirect, or consequential losses.
18. WARRANTIES: All equipment, products, and services will be furnished free of liens and encumbrances and will be free from defects in material and workmanship for a period of twelve months from the later date of installation or acceptance. Notwithstanding the foregoing, any more favorable warranties provided in the Purchase Order or by application of manufacturer's warranty will apply.
19. COUNTY TO TRANSACT BUSINESS IN THE COMMONWEALTH: VENDOR certifies that it and all of its subcontractors and agents of all kinds used in conjunction with and arising out of the Contract are authorized and licensed to conduct business in the Commonwealth of Virginia and are and will remain in good standing with such authorizations and licensure throughout the duration of this Contract. COUNTY may void this Contract if the VENDOR fails to remain in compliance with the provisions of this Section.
20. COMPLIANCE WITH LAWS: VENDOR must at all times observe and comply with all laws, ordinances and regulations of the federal, state and local governments, which may in any manner affect the performance of this Contract, including obtaining all necessary permits and licensure, and without limitation, applicable provisions of the Code of Virginia, the King George COUNTY Code, the King George County Purchasing Ordinance, the King George COUNTY and Commonwealth of Virginia Building Codes, the King George County Zoning Ordinance, and Standards, Specifications and Regulations implementing the King George County and the Virginia Administrative Code. Copies of the Purchasing Ordinance, the Zoning Ordinance, and County Code are available for inspection in the Purchasing Office and Department of Community Development.
21. LICENSURE: To the greatest extent required by either the Commonwealth of Virginia (see e.g. § 54.1-1100 *et seq.* of the Code of Virginia) or the COUNTY, the VENDOR must be duly licensed to perform the services identified in a Purchase Order.
22. ETHICS IN PUBLIC CONTRACTING: The Ethics in Public Contracting provisions of §§ 2.2-4367 through 2.2-4377 of the Code of Virginia, and § 2-29 of the Purchasing Ordinance are hereby incorporated by reference into the Contract.
23. PERMITTED CONTRACTS WITH CERTAIN RELIGIOUS ORGANIZATIONS: King George County does not discriminate against faith-based organizations as that term is defined in Virginia Code § 2.2-4343.1.
24. IMMIGRATION REFORM AND CONTROL ACT OF 1986: VENDOR certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986,

which prohibits employment of illegal aliens. VENDOR does not and shall not knowingly employ any unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

25. NON-DISCRIMINATION: During the performance of this Contract, VENDOR agrees as follows:

A. VENDOR will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, creed, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of VENDOR. VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause, including the names of all contracting agencies with which the VENDOR has contracts of over \$10,000.

B. VENDOR, in all solicitations or advertisements for employees placed by or on behalf of VENDOR, will state that such VENDOR is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting the requirements of this Section.

D. VENDOR will comply with the provisions of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

E. VENDOR will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

26. DRUG-FREE WORKPLACE: VENDOR must during the performance of this Contract:

- a. Provide a drug-free workplace for the VENDOR's employees; and
- b. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the VENDOR's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- c. State in all solicitations or advertisements for employees placed by or on behalf of the VENDOR that the VENDOR maintains a drug-free workplace; and
- d. Include the provisions of the foregoing clauses in every subcontract or tier of purchase order, so that the provisions will be binding upon each subcontractor or subvendor.
- e. "Drug-free workplace" means a site for the performance of work done in connection with this Contract, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance during the performance of this Contract.

27. CHILD PROTECTION AND BARRIER OFFENSES: If performance of the work requires VENDOR to have direct contact with minors on school property during regular school hours or during school-sponsored activities, VENDOR must certify that it will not use any employees, staff, subcontractors, or other personnel, whether employed, contracted or otherwise engaged, who has been convicted of or is under charge or indictment for any violent felony offense set forth as a barrier crime in § 19.2-392.02(A) of the Code of Virginia, or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child; or any crime of moral turpitude. Notwithstanding any other provision in this Contract, a violation of this provision, for any reason, whether known or unknown, intentional or unintentional, willful or not, constitutes material default, and COUNTY may

terminate all or part of this Contract as a result without notice, set-off or demand. Furthermore, in the event that the scope of work involves access to sensitive information, secure areas, or work with vulnerable individuals, COUNTY reserves the right to the extent allowed by law to require VENDOR and all subcontractors physically present on COUNTY property or with potential access to sensitive information to submit to background investigations as deemed necessary by COUNTY, and, COUNTY reserves the right to require VENDOR to staff work with employees pre-screened to exclude convictions or indictments as stated in this Section.

VENDOR and all subcontractors must sign the following certification if work is likely to involve direct contact with minors on school property during regular school hours or during school-sponsored activities:

VENDOR CERTIFICATION REGARDING CONVICTIONS & CURRENT INDICTMENTS

I, _____, _____ of/for
[Print Name] [Title]

_____, certify that no employee, independent contractor and/or agents of any kind of VENDOR and all subcontractors in any way engaged in the execution or fulfillment of this Contract to be present on property operated or used for students or school activities has been convicted of or is under charge or indictment for any violent felony offense set forth as a barrier crime in § 19.2-392.02(A) of the Code of Virginia, or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child; or any crime of moral turpitude in any state or country.

False statements under this provision may constitute a criminal offense.

SIGNATURE DATE

TITLE

28. **CONFIDENTIALITY & NON-DISCLOSURE:** VENDOR must comply with the Virginia Government Data Collection and Dissemination Practices Act as to applies to all data provided by or provided to COUNTY under this Contract as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the VENDOR under this Contract. If VENDOR receives a request to release data or other records generated in the course of this Contract, the VENDOR will immediately notify the COUNTY and seek COUNTY direction (and a reasonable opportunity to file a protective order) prior to any disclosure not required by law. In addition, to the fullest extent allowed by law, VENDOR will not disclose the content or subject matter of documents or communications encountered in the course of conducting work on COUNTY premises, including records in open view or communications overheard; all such inadvertent disclosures will be considered confidential and not subject to

disclosure to third parties. VENDOR will require any subcontractors to be present on COUNTY property to sign an acknowledgment that they will comply with this nondisclosure provision.

29. **INSURANCE:** If work is to be performed on COUNTY owned or leased property or facilities, VENDOR must obtain and maintain for the duration of the Contract the insurance coverages provided below applicable to the scope of work with insurance companies licensed and authorized to do business in the Commonwealth of Virginia. Prior to commencing work under this Contract, VENDOR must furnish the COUNTY a certificate of insurance consistent with the insurance provisions required under the Contract.

Minimum Insurance Coverages and Limits:

1. Workers’ Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Vendors who are not initially subject to this requirement but whose number of employee increases in the course of performance of the Contract shall come into compliance. In the event that the scope of work involves construction services, subcontractors must also have Workers’ Compensation to the extent required by law.
2. Employer’s Liability – \$100,000.
3. Commercial General Liability – \$1,000,000 per occurrence and \$2,000,000 in the aggregate. General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The COUNTY shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability – \$1,000,000 combined single limit. Coverage is required if a motor vehicle not owned by the COUNTY is to be used in performance of the Contract. If applicable, Vendor must assure that the require coverage is maintained by the Contractor (or third party owner of a motor vehicle).

Profession/Service Coverages (as applicable):

Profession/Service	Minimum Limits (occurrence/ aggregate)
Accounting	\$1,000,000/\$3,000,000
Architecture	\$2,000,000/\$6,000,000
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000/\$3,000,000
Health Practitioners (as defined by 8.01-581.15 of the Code of Virginia)	\$1,000,000/\$3,000,000
Insurance/Risk Management	\$1,000,000/\$3,000,000
Landscape/Architecture	\$1,000,000/\$1,000,000
Legal	\$1,000,000/\$5,000,000
Professional Engineer	\$2,000,000/\$6,000,000
Surveying	\$1,000,000/\$1,000,000

30. **COUNTERPARTS AND ELECTRONIC SIGNATURES:** The Addendum and Purchase Order may be executed in counterparts which together comprise a single, original instrument. **Upon execution of the separate consent provided below, electronic signatures and transmission by electronic means of the Addendum and Purchase Order will be effective as if in the original or in person if signified by separate consent below.** Each Party asserts and confirms that the signatories below have full right, title and actual COUNTY to execute this Contract.
31. **SEVERABILITY, ENFORCEMENT & NO WAIVER:** If any part of this Contract is deemed unenforceable, the remainder will remain in full force and effect. No failure or delay by COUNTY in exercising any right, power or

privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

32. MERGER & AMENDMENTS: This Addendum and the documents expressly referenced herein contain the entire agreement between the Parties and any previous agreements, discussions, proposals, bids, modifications, representations and the like, in writing or otherwise, are hereby superseded and made null and void. The Addendum and documents referenced herein constitute the entire Contract between the Parties and may not be waived or modified except by written agreement between the duly authorized representatives of the Parties.

IN WITNESS WHEREOF, COUNTY & VENDOR cause this Addendum to be signed and delivered by their duly authorized representatives:

King George County Service COUNTY: _____(VENDOR):

Date: _____

Date: _____

By: _____

By: _____

Interim General Manager

Printed Name: _____

King George Service COUNTY

Title: _____

Phone: (540) 775-9181

Street Address: _____

Fax: (540) 775-5248

Phone: (_____) _____

OPTIONAL CONSENT: At the election of both parties, the signatures below by the foregoing representatives collectively operate as mutual consent to enter into this Addendum and Purchase Order by digital signatures. Consistent with § 59.1-483 of the Code of Virginia, this consent standing alone does not operate as a consent by either party to conduct future transactions (including but not limited to amendment of the Contract by electronic means) by digital signatures.

King George Service COUNTY: _____(VENDOR):

Date: _____

Date: _____

By: _____

By: _____

Interim General Manager

Printed Name: _____

King George Service COUNTY

Title: _____