

General Terms and Conditions For Professional Services

Application:

These General Terms and Conditions for Professional Services apply to all Invitations for Bids Requests for Proposals (RFPs) and to all contracts, agreements, purchase orders, memoranda of understanding, and any change order, modification or addenda thereto (“Contract”), entered by and between the County of Accomack, Virginia (County”) and an individual or entity for goods and/or services. These Terms and Conditions for Professional Services do not apply to Contracts by and between the County and any public body or public agency except to the extent that the parties agree to incorporate these Terms and Conditions for Professional Services, in whole or in part, into said Contract.

The County’s General Terms and Conditions and Instructions to Bidders and Offerors shall also apply to any RFP or Contract for Professional Services. In the event of conflict between the General Terms and Conditions and those contained in these General Terms and Conditions for Professional Services, the more stringent requirement shall apply, unless otherwise required by law.

Definitions:

For purposes of these Terms and Conditions for Professional Services, the following terms are defined generally as follows:

“**Offeror**” shall mean any individual or entity responding to a Request for Proposals issued by the County.

“**Contract**” shall mean any contract, agreement, purchase order, or memorandum of understanding, and any change order, modification or addendum thereto.

“**Contractor**” shall mean any individual or entity that has entered into a Contract to provide professional services to the County of Accomack.

“**Professional Services**” shall mean the services defined in Virginia Code Section 2.2-4301, as amended.

1. **Tax Exemption:** The County of Accomack is exempt from and will not pay Federal Excise Tax, Transportation Tax or the Commonwealth of Virginia Sales and Use Tax. The County is also exempt from the local 911 tax. A signed certificate to document the County’s tax-exempt status is available upon request by contacting the purchasing office.
2. **License/Registration:** Individuals and entities (e.g. partnership, limited liability company or corporation) offering to provide architectural and/or services shall be properly registered and licensed in Virginia as required by the Department of Professional and Occupational Regulation (DPOR), Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA) Board, and, if incorporated, the State

Corporation Commission. Other Offerors of Professional Services must register with DPOR as required by Virginia Code Section 54.1-411, as amended.

The Architect or Engineer (i.e., the person) "in responsible charge" for each discipline shall be currently licensed in the Commonwealth of Virginia and shall affix his or her seal to those documents for which he or she is responsible.

3. **Business License:** All businesses who wish to engage in business with the County of Accomack must possess a valid Accomack County Business License or must document why they are exempt from licensure. Some businesses who have obtained business licenses from other county jurisdictions are exempt from Accomack County licensure requirements; however, rules differ for building contractors and tradesmen who may be required to possess multiple business licenses. Businesses should contact the Commissioner of the Revenue for specific guidance on this issue. This office may be reached at 757-787-5747.
4. **A/E Professional Services:** The architectural, civil, structural, and mechanical and electrical portions of the project shall be planned and designed by or under the immediate supervision of a licensed Architect or Engineer (A/E) who has expertise in the particular discipline involved. Where such licensed expertise is not available within the A/E of record or where the A/E chooses to subcontract a part of the Work, the A/E shall employ an associate or consulting architectural or engineering firm with the requisite expertise to provide the required services. The consultants, associates, or subcontractors proposed by the A/E during the selection process to be part of the A/E project team shall perform the work as proposed. If circumstances require a change, the A/E shall advise the County of the proposed change, the reasons therefore, and the name and qualifications of the proposed replacements. The replacements must be acceptable to the County.

Associates, consultants, or subcontractors proposed to be part of the A/E's project team shall be contracted by the A/E at the beginning of the work and shall be active participants in all phases of the Work related to their discipline from beginning to end. The A/E shall be responsible to the County for the work of all associates, consultants and subcontractors, whether employees of the A/E or not, performed under the Contract.

5. **Taxpayer Identification Number:** The Contractor shall furnish to the County at the time of contract award its Federal Employer Identification Number (FEIN) if a corporation or a partnership or its Social Security Number (SSN) if a sole proprietor.
6. **Relationship of Contractor to Owner:** Once a Contract for A/E or other professional services has been fully executed, the Contractor shall be the professional advisor and consultant to the County and shall be responsible directly to and only to the County. The County shall communicate all approvals, rejections, change requirements, and other similar information to the A/E or other Contractor for Professional Services. The Contractor shall advise the County of changes necessary to keep the project within the prescribed area and cost limits.

Generally, the County will observe the procedure of issuing orders through the Contractor for Professional Services, unless otherwise specified in the Contract

7. Code and Regulatory Compliance: All Contractors for Professional Services shall render services in accordance with federal, state and local laws, regulations and policy and in accordance with the professional standard of care. An A/E is responsible for designing the project and administering the construction phase of the project in accordance with professional standards and all regulatory requirements applicable to the project. Nothing contained herein shall be construed as relieving any A/E, professional design consultant, contractor, supplier, or any other Contractor for Professional Services from any professional or legal responsibility for performance.
8. Liability Insurance: The A/E or other Contractor for Professional Services shall carry professional liability insurance covering negligent acts, errors, and omissions. The minimum amount of professional liability insurance required to be carried by an A/E shall be calculated as not less than an amount equal to 5% of the estimated cost of construction of all County-owned projects designed by the A/E which are currently under construction, but in no event shall the amount of professional liability insurance be less than \$100,000 per claim. As an alternative to the calculated amount indicated above, an A/E or other Contractor for Professional Services may work with the County to procure a "Project Insurance" package for the project which is satisfactory to the County or the Contractor for Professional Services may provide a Certificate of Insurance indicating coverage in the amount of \$2,000,000 per claim and \$6,000,000 in the aggregate.

The A/E or other Contractor for Professional Services shall maintain this insurance coverage in force after completion of the services under the Contract for a period of five years after final completion of the project, or the Contractor may purchase a "completed operations" coverage for the project or projects.

Neither the County's review, approval or acceptance of, nor payment for any of the services required shall be construed to operate as a waiver by the County of any rights or any cause of action arising out of the Contract. The A/E or other Contractor for Professional Services shall be and remain liable to the County for all costs of any kind, which are incurred by the County as a result of negligent acts, errors, or omissions on the part of the Contractor, including its subcontractors and consultants, in the performance of any of the services furnished.

9. Design Errors and/or Omissions: An A/E or other Contractor for Professional Services shall be responsible for all costs resulting from its errors, omissions, and other breaches of the applicable standards of care established under Virginia law. The County shall actively pursue reimbursement of costs resulting from the Contractor's errors, omissions, or breaches of the applicable standard of care.
10. Records Retention: The A/E or other Contractor for Professional Services shall retain record copies of its design calculations, drawings, bid / contract documents, addenda, field orders, clarifications and responses to Requests for Information, approved shop drawings and submittals, inspection / observation reports, fiscal records, and other documents relative to the Contract for five (5) years after completion of the services under the Contract or five years after completion of construction, whichever occurs earlier. Should the A/E cease its business

prior to that time, the A/E will provide those project-related documents to the County for safekeeping.

11. Other Insurance Required of the Contractor: Prior to the start of any work under the Contract, the A/E or other Contractor for Professional Services shall provide to the County Certificates of Insurance forms and shall maintain such insurance until the completion of all work under the contract. The minimum limits of liability shall be as follows:
 - a. Workers' Compensation: Standard Virginia Workers Compensation Policy with statutory requirements and benefits.
 - b. Employer's Liability: \$100,000.
 - c. Broad Form Commercial General Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate.

The County of Accomack shall be named and *endorsed* as an "additional insured" with respect to the services being provided. The coverage shall include:

 - Premises / Operations Liability
 - Products and Completed Operations Coverage
 - Independent Contractors Liability
 - Owners and Contractor's Protective Liability
 - Personal Injury Liability (Libel, slander, defamation of character, etc.)
 - d. Automobile Liability: \$1,000,000 Combined Limit for bodily injury and property damage per occurrence.

12. Ownership of Documents and Materials: Ownership of all materials and documentation, including the original drawings and the Plans and Specifications and copies of any calculations and analyses prepared pursuant to the Contract between the County and the Contractor, shall belong exclusively to the County. These materials and documentation, whether completed or not, shall be the property of the County of Accomack whether the work for which they are made is executed or not. The A/E shall not use these materials on any other work or release any information about these materials without the express written consent of the County.

Such material may be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror or Contractor in connection with a procurement transaction shall not be subject to disclosure under the Virginia Freedom of Information Act, provided the Offeror or Contractor invokes the protections of Virginia Code Section 2.2-4342, prior to or upon submission of the data or other materials, identifies the data or materials to be protected and states the reason why the protection is necessary. The County of Accomack, as the owner of the documents prepared for its projects, has the right to use project documents as a prototype to demonstrate scope, size, functional relationships, and similar characteristics in designing a similar project. The Contractor providing the original materials shall not be responsible or liable to the County for any such use of the documents.

13. Subcontracts: No portion of the Professional Services shall be subcontracted without prior written consent of the County. Consultants proposed by the Offeror during the selection and fee negotiation phases are assumed to be acceptable to the County unless the County notes otherwise during those phases. In the event that the Contractor desires to subcontract some

part of the work required by the Contract to a consultant or subcontractor not previously approved, the Contractor shall furnish the County names, qualifications and experience of the proposed consultants. The Contractor shall, however, remain fully liable and responsible for all work performed by his or her consultants and subcontractors and shall assure that their work complies with all requirements of the Contract.

14. Payments to the Contractor: The following procedures are established in conformance with the Virginia Public Procurement Act (VPPA), as amended, and, in particular, Section 2.2-4347 et seq., which is referred to as the Prompt Payment Act.
 - a. The Contractor shall submit an invoice to the County with the documentation required by the County. The invoice shall generally itemize or show a breakdown of the various phases or parts of the total contract amount, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice. The invoice shall also include a certification statement signed by the Contractor stating that the Contractor has paid its consultants, subcontractors and suppliers their individual proportional share of all previous payments, including interest, received from the County. Invoices for reimbursables shall include documentation of costs for which reimbursement is sought. Invoices for Work being performed on an hourly rate basis shall show the technical classifications, names of the persons performing the work, person-hours expended, marked-up hourly rates for the classification, and the extended cost amount.
 - b. Unless there is a dispute about the compensation due the Contractor including, but not limited to, claims by the County against the Contractor, then within forty-five (45) days after receipt by the County of the Contractor's invoice, which shall be considered the invoice receipt date, the County shall pay to the Contractor the amount approved less any retainage and less any prior payments or advances made to the Contractor. The date on which payment is due shall be referred to as the payment date.
 - c. The County may agree to make progress or partial payments to the Contractor during any phase of the work based on the estimated value of the work completed by the Contractor. Any such progress payment shall be based on the County's opinion of the value of the work completed as of the date of the invoice.
15. Release of Information Pertaining to Project Design: Release in any form by the Contractor of information pertaining to the estimated cost of a project under design or construction to anyone other than authorized County personnel is prohibited. The Contractor shall not give out information concerning a project to anyone other than authorized County personnel without specific prior approval of the County to release such information. This includes, but is not limited to, project photographs, floor plans, and project cost information.
16. Default: In case of the Contractor's failure to deliver the reports, documents, "Record Drawings," or services in accordance with the Contract terms and conditions, the County, after due written notice, may procure same from other sources, and the Contractor shall be responsible for any resulting additional procurement and administrative costs. This remedy shall be in addition to any other remedies which the County may have.
17. Termination of Contract by the Owner/Agency:

- a. General: The County may terminate the Contract for cause or for convenience after giving at least 5 days written notice to the Contractor. The written notice shall include a statement of reasons for the termination.
- b. Termination for Cause: If the Contractor should breach the Contract or fail to perform the services, or any portion thereof, required by the Contract, the County may terminate the Contract for cause by giving written notice as set forth above or may give the Contractor a stated period of time within which to remedy its breach of contract. If the Contractor shall fail to remedy the breach within the time allotted by the County, the Contract may be terminated by the County at any time thereafter upon written notice, effective immediately upon receipt. The County's forbearance in not terminating the Contract shall not constitute a waiver of the County's right to terminate in the future for similar breaches or failures to perform. If the Contract is terminated for cause, the Contractor shall be responsible for all damages incurred by the County as a result of the Contractor's breach of contract or failure to perform, including but not limited to, all costs and expenses incurred in securing a replacement Contractor to fulfill the obligations of the Contract.

Any termination by the County for default, if determined by a court of competent jurisdiction not to have been justified as a termination for default, shall be deemed a termination for the convenience of the County.

- c. Termination for Convenience: The County may terminate the Contract in whole or in part for convenience by delivering to the Contractor five days' written notice of termination as set forth above, specifying the extent to which performance under the contract is terminated and the effective date of the termination. Upon receipt of such notice, the Contractor must stop work, including but not limited to, work performed by subcontractors and consultants, at such time and to the extent specified in the notice.

If the contract is terminated for convenience, the Contractor shall be entitled to those fees earned for work performed in accordance with the Contract prior to the notice of termination. Thereafter, the Contractor shall be entitled to any fees earned for work not terminated, but shall not be entitled to lost profits for the portions of the Contract which were terminated. The Contractor will be compensated for reasonable costs or expenses for delivery to the County of the products of the services for which the Contractor has or will receive compensation.

- d. Delivery of Materials: Any termination shall not relieve the Contractor of the obligation to deliver to the County all products of the services for which the Contractor has been or will be compensated, including, but not limited to, the original drawings and specifications, copies of CADD diskettes or tapes, calculations, and analyses. Unless otherwise agreed to in writing, the Contractor shall deliver the materials to the County within thirty (30) days of receipt of the notice of termination. Failure to do so shall result in the withholding of final payment and shall constitute a breach of contract.

- 18. Assignment of Contract: The Contractor shall not assign the Contract, in whole or in part, without the written consent of the County.

19. Ethics in Public Contracting (§2.2-4367 et seq., *Code of Virginia*): The Contractor shall not offer or receive any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with this project. The A/E shall not confer on any public employee having official responsibility for this project any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

20. Non Discrimination: The County of Accomack does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4310 and 2.2-4343.1 *Code of Virginia* as amended, or against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

21. Contractor Anti-Discrimination:

For Contracts, including purchase orders, over \$10,000, Contractor agree as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 the contractor.

B. The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.

C. The Contractor, shall in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal-opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.

D. If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.

E. The Contractor shall include the provisions of paragraphs A – D above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

22. Drug-Free Workplace: During the performance of contracts, the Contractor shall (i) provide a drug-free workplace for the Contractor's employees; (ii) 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 contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

23. Virginia Freedom of Information Act: All proceedings, records, contracts, and other public records relating to procurement transactions shall be open to the inspection of any citizen or any interested person, firm, or corporation in accordance with the Virginia Freedom of Information Act *except* as provided below:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the Contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the County decides not to accept any of the proposals and to reopen the Contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "C" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- c. Trade secrets or proprietary information submitted by the Offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Request for Proposal, shall not be subject to the Virginia Freedom of Information Act; however, the Offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. No Offeror or Contractor shall identify as trade secret or proprietary information their entire completed proposal.
- d. Nothing contained in this section shall be construed to require the County, when procuring by Request for Proposal, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

24. Applicable Law and Courts: The Contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and exclusive jurisdiction for the resolution of any dispute arising out of the Contract shall be in the Circuit Court of Accomack County, Virginia.

25. General Terms and Conditions for Professional Services stated herein are controlling, and any variance or inconsistency with terms elsewhere shall be resolved in favor of the provisions contained herein and the General Terms and Conditions and Instructions to Bidders and Offerors.

Revised March 23, 2021