

CHESTERFIELD COUNTY – GENERAL TERMS AND CONDITIONS

The following terms and conditions are applicable to, and incorporated by reference in, any governmental procurement from a nongovernmental source conducted by the Chesterfield County Purchasing Department (or pursuant to delegated purchasing authority) on behalf of all Chesterfield County public bodies, as public bodies are defined in *Code of Virginia* Section 2.2-4301, as amended, including any agencies, boards, authorities, schools, or other entities for which the Chesterfield County Purchasing Department acts as purchasing agent. The term “County” as used in any general or special terms and conditions includes the applicable entity or entities listed above as the context may require.

NOTE: Certain terms and conditions may not be applicable based on the method of procurement.

- A. **Addenda:** Any changes or supplemental instructions to a solicitation shall be in the form of written addenda. Most addenda are downloadable from the Purchasing Department web site at: www.chesterfield.gov/purchasing. Each bidder/offeror is responsible for obtaining all addenda posted at the Purchasing Department website or by calling (804) 748-1617. Acknowledgement of receipt of all addenda shall be in the space provided within the solicitation or by returning a copy of each signed addendum. Failure to do so may result in rejection of the bid/proposal. All addenda issued shall become part of the solicitation and all resulting contract documents.
- B. **Appropriation of Funds:** The continuation of the terms, conditions, and provisions of a resulting contract beyond June 30 of any year, the end of the County’s fiscal year, are subject to approval and ratification by the Chesterfield County Board of Supervisors and appropriation by them of the necessary money to fund said contract for each succeeding year. In the event of non-appropriation of funds, the contract shall be automatically terminated with no recourse for the Contractor.
- C. **Assignment of Contract:** The County and Contractor bind themselves, and any successors, and assigns to the contract. The employees of the Contractor will perform the work necessary to fulfill the contract. The Contractor shall not assign, sublet, subcontract or transfer any of its interest in the contract without written consent of the County. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and Contractor.
- D. **Audit of Vendor Records:** Contractor shall maintain full and accurate records with respect to all matters covered under the contract including, without limitation, accounting records, written policies and procedures, time records, telephone records, reproduction cost records, travel and living expense records and any other supporting evidence necessary to substantiate charges related to the contract. Contractor’s records shall be open to inspection and subject to audit and/or reproduction, during normal working hours by the County and its employees, agents or authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by Contractor pursuant to this contract. Such records subject to examination shall also include, without limitation, those allocations as they may apply to costs associated with the contract. The County shall have access to such records from the effective date of the contract, for the duration of the contract, and until two (2) years after the date of final payment by the County to the Contractor pursuant to this contract. The County’s employees, agents or authorized representatives shall have access to the Contractor’s facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this paragraph.

E. **Change Orders:** Change orders must be approved by the County prior to work being performed.

F. **Commitment to Diversity and Chesterfield Businesses:**

1. Chesterfield County is a growing progressive community consisting of an increasingly diverse population. This diversity provides for a dynamic and robust community that promotes growth. Chesterfield County believes that all of its citizens should benefit from this economic growth without regard to race, color, religion or economic status. The County is committed to increasing the opportunities for participation of minority-owned businesses, service disabled veteran-owned businesses, small businesses, women-owned businesses, and businesses located in Chesterfield County to ensure diversity in its procurement and contract activities. These businesses are encouraged to respond to all solicitations. In addition, the County strongly encourages each Contractor and/or supplier with which the County contracts to actively solicit minority-owned businesses, service disabled veteran-owned businesses, small businesses, women-owned businesses, and businesses located in the County as subcontractors/suppliers for their projects. Upon award/completion of work, the County will require the Contractor to furnish data regarding subcontractor/supplier activity with minority-owned businesses, service disabled veteran-owned businesses, small businesses, women-owned businesses, and businesses located in Chesterfield County on a Certification of Subcontractor/Supplier Activity form. The form will be provided to the Contractor by the Purchasing Department. This information will enable the County to document the dollar level of activity and measure the success of its purchasing and contracting efforts in this endeavor.

2. Definitions:

- a. Chesterfield Business (CB) – any private business enterprise, located within the jurisdictional boundaries of Chesterfield County.
- b. Minority-Owned Business (MOB) – a business that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority. (*Code of Virginia* Section 2.2-4310, as amended)
- c. Service Disabled Veteran-Owned Business (SDVOB) – a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans. (*Code of Virginia* Section 2.2-4310, as amended)
- d. Small Business (SB) – a business independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business. (*Code of Virginia* Section 2.2-4310, as amended)

- e. Women-Owned Business (WOB) – a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women. (*Code of Virginia* Section 2.2-4310, as amended)

3. This provision only applies to contracts valued in excess of \$10,000.

If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses. (*Code of Virginia* Section 2.2-4310, as amended)

- G. **Contract Execution:** Though the term “County” is defined herein to include distinct entities, the contract shall be entered into by, and in the name of, the specific entity receiving the benefit of the goods and services.
- H. **Contractor Background Checks:** In order to preserve the integrity and security of County government operations, contract workers may be required to undergo a criminal background check conducted by Chesterfield County. The County will conduct these checks for any worker it believes will have unsupervised access to County designated Security Sensitive areas. Contract workers providing goods, services or construction in these designated areas are required to confine themselves to the area of the work. Based on the results of the background check, the contract worker may be disqualified from providing work/services for Chesterfield County.
- I. **Contractor’s Authorization to Transact Business:** In accordance with *Code of Virginia* Section 2.2-4311.2, as amended, any bidder/offeror organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Any bidder/offeror organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the *Code of Virginia* shall include in its bid/proposal the identification number issued to it by the State Corporation Commission. Any bidder/offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the *Code of Virginia*, or as otherwise required law, shall include in its bid/proposal a statement describing why the bidder/offeror is not required to be so authorized. This information shall be provided in the attachment included in the solicitation titled “Virginia State Corporation Commission (SCC) Registration Information”. Failure to provide the required information may result in the rejection of the bid/proposal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required under Title 13.1 or Title 50 of the *Code of Virginia*, to be revoked or cancelled at any time during the term of any contract. The County may void any contract with a Contractor if the Contractor fails to remain in compliance with the provisions of this section.
- J. **Copyrights or Patent Rights:** The bidder/offeror certifies by submission of a bid/proposal that there has been no violation of copyrights or patent rights in manufacturing, producing or selling the product or services shipped or ordered as a result of any solicitation. The Contractor shall, at his own expense, defend any and all actions or suits charging such infringement, and will save Chesterfield County, its officers, employees, and agents harmless from any and all liability, loss or expense incurred by any such violation, or alleged violation.

- K. **Default:** In case of failure to deliver the goods or services in accordance with the contract terms and conditions, the County may, without prejudice to any other right or remedy, and after giving the Contractor seven (7) calendar days written notice, terminate the employment of the Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the County for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the County may have.
- L. **Drug Free Workplace:** (*Code of Virginia* Section 2.2-4312, as amended) This provision only applies to contracts valued in excess of \$10,000.
1. During the performance of this contract, the Contractor agrees to:
 - a. Provide a drug-free workplace for the Contractor's employees;
 - 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 Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - c. 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
 - d. Include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
 2. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, 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.
- M. **Employment Discrimination:** (*Code of Virginia* Section 2.2-4311, as amended) This provision only applies to contracts valued in excess of \$10,000.
1. During the performance of this contract, the Contractor agrees 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 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 the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such is an equal opportunity employer.
 - c. 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 section.

2. The Contractor shall include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- N. **Environmental Management Procedures:** The Contractor shall follow all federal, state and local environmental and safety laws and regulations. Chesterfield County's General Services - Environmental Division maintains an Environmental Management System (EMS) that is fully compliant with the ISO 14001 standard. The Bidder shall review and comply with the Contractor Environmental Guidelines (ENVMGT.FORM.0011) and Environmental Policy accessible at www.chesterfield.gov/purchasing. The Contractor shall work with the County Project Manager to manage and control those activities that may cause a significant environmental impact or safety hazard. Bid pricing shall include all costs associated with controls, permits and training to ensure regulatory compliance and to protect human health and the environment.
- O. **ePayables:** Chesterfield County recognizes the importance of timely payments to our vendors. Therefore, we offer our vendors the opportunity to enroll in our ePayables program. This program allows us to make card payments to our vendors and features an online portal to facilitate payments as well as reduce payment processing times. Our ePayables program is mutually beneficial and is our preferred method of payment. If you choose not to enroll in this program, payments will be made by check and mailed through the postal service which could impact how quickly you receive payments. No action is required for vendors already enrolled in the program. Please contact the Accounting Department at (804)748-1673 with questions.
- P. **Faith-Based Organizations:** (*Code of Virginia* Section 2.2-4343.1, as amended) The County does not discriminate against faith-based organizations.
- Q. **Finance/Interest Charges:** Finance and/or interest charges imposed by the Contractor on any invoice shall not be paid by the County.
- R. **Governing Law:** Contracts shall be governed by the provisions hereof and by the laws of the Commonwealth of Virginia, excepting the law governing conflicts of laws. Disputes arising out of this contract shall be resolved in the Courts of the Commonwealth of Virginia, in and for Chesterfield County.
- S. **Indemnification:** The Contractor shall hold harmless and indemnify the County and its officers, officials, employees and agents against any and all injury, loss or damage arising out of the Contractor's negligent or intentionally wrongful acts or omissions. As a matter of law, the County is prohibited from indemnifying the Contractor, subcontractors, or any third party beneficiaries of the contract(s).
- T. **Invoices:** Invoices for goods and services ordered and delivered shall be submitted by the Contractor to the remittance address shown on the purchase order. All invoices shall show the purchase order number, description of the goods and services, stock number and contract price as applicable. The County's obligation to pay amounts due under the contract shall be contingent upon receipt of invoices in sufficient detail to permit identification of the goods and services.
- U. **Mistakes in Bids (not applicable to competitive negotiation):**
1. Mistakes discovered following bid opening but prior to award:

- a. If there is a significant and obvious disparity between the prices of the lowest apparent responsive bidder and other bidders, the low bidder may be contacted by the purchasing authority to confirm the bid price. This does not relieve a bidder from the responsibility for the submission of a correct bid. If the bidder then alleges a mistake in the bid and can provide clear and convincing evidence that supports the existence of a clerical error to the satisfaction of the purchasing authority, the bid may be withdrawn in accordance with the withdrawal procedure provided herein.
- b. Prices shall be stated in units of quantity and/or work as specified in the Pricing Schedule. In the event of a discrepancy in calculating price extensions (an error in the multiplication of units of quantity and/or work and the unit price), the unit price shall govern and the discrepancy will be resolved in favor of the correct multiplication of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum of the column will be resolved in favor of the correct sum total. The County reserves the right to audit price extensions and/or totals, and may use corrected price extensions and/or totals after such audit to determine the apparent low bidder. The County is not responsible for a bidder's clerical or mathematical errors. The County further reserves the right to reject any bid in whole or in part, delete items before making an award, or waive any informality, in accordance with the Virginia Public Procurement Act.

2. Mistakes discovered after award: Bids containing mistakes by bidders shall not be withdrawn after award of a contract or issuance of a purchase order.

- V. **Modification of the Contract:** The contract shall not be amended, modified, or otherwise changed except by the written consent of the Contractor and the County given in the same manner and form as the original signing of the contract.
- W. **Negotiation (not applicable to competitive negotiation):** In accordance with 2-47 of the County Code, if the bid from the lowest responsible bidder exceeds available funds, the county may negotiate with the apparent low bidder to obtain a contract price within available funds. Such negotiation may include, but is not necessarily limited to, adjustment of the bid price and changes in the bid scope or requirements in order to bring the bid within the amount of available funds. Negotiation shall be conducted by the purchasing director, or his designee, with assistance from the user department or specific entity.
- X. **Payment:** If the Contractor performs all of the obligations of the contract to the satisfaction of the County, the County shall pay the Contractor for the performance of the work in the manner and within the time specified in the contract documents, which shall be consistent with the provisions of *Code of Virginia* Sections 2.2-4352 and 2.2-4354, as amended. Furthermore, the Contractor shall, within seven days after receipt of payment by the County, take the following actions:
1. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under that contract; or
 2. Notify the County and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- Y. **Precedence of Terms:** All Special Conditions contained in a solicitation that may be in variance or conflict with these General Terms and Conditions shall have precedence over these General Terms and Conditions. If no

changes or deletions to General Terms and Conditions are made in the Special Conditions, then the General Terms and Conditions shall prevail in their entirety.

Z. Preferences (not applicable to competitive negotiation):

1. In accordance with *Code of Virginia* Section 2.2-4324(B), as amended, whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Commonwealth's Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, the County will rely upon the accuracy of the information posted on this website. In accordance with *Code of Virginia* Section 2.2-4324(D), as amended, for the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.
2. In accordance with *Code of Virginia* Section 2.2-4328, as amended, and Article 4, Section 2-47 of the County Code, in the case of a tie bid, the County may give preference to goods, services, and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth of Virginia pursuant to *Code of Virginia* Section 2.2-4324, as amended, or where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content. If no County or Commonwealth of Virginia preference is applicable, the tie shall be decided by lot.

AA. Proprietary Information: *Code of Virginia* Section 2.2-4342(F), as amended, states: "Trade secrets or proprietary information submitted by a bidder, offeror, or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of §2.2-4317 shall not be subject to the Virginia Freedom of Information Act (2.2-3700 et seq.); however, the bidder, 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." If the exemption from disclosure provided by *Code of Virginia* Section 2.2-4342(F), as amended, is not properly invoked then the bids/proposals will be subject to disclosure pursuant to applicable law.

BB. Quality Expectation Statement: The County, through its quality initiative, is a recognized leader in providing quality goods and services at the most effective cost possible. Therefore, the County fully expects, requires, and shall hold all Contractors, and all agents, staff, representatives, and subcontractors of the Contractor, responsible for, and accountable to, the highest quality standards of professional workmanship, goods and services. In the spirit of the County's total quality improvement initiative, the Contractor shall be expected to become a member of the team and perform or provide goods and services with a target of "zero defects - zero rework".

CC. **References:** If requested, the bidder/offeror shall provide references which substantiate past work performance and experience in the type of work required for the contract. The County may contact all references furnished by bidders/offerors. The right is further reserved by the County to contact references other than, and/or in addition to, those furnished by the bidder/offeror.

DD. **Safety:**

1. The Contractor, its employees and subcontractors shall comply with all current applicable local, state and federal policies, regulations and standards relating to occupational health and safety, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health (VOSH) Compliance Program administered by the Virginia Department of Labor and Industry. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under the contract. The Contractor shall provide, or cause to be provided, all technical expertise, qualified personnel, equipment, tools and material to safely accomplish the work specified and performed by the Contractor.
2. The Contractor shall provide a supervisor at each job site who is competent, qualified, and authorized on the worksite, and who is familiar with policies, regulations and standards applicable to the work being performed. The supervisor shall be capable of identifying existing and predictable hazards in the surroundings or working conditions which are hazardous or dangerous to employees or the public, and shall be capable of ensuring compliance with all applicable safety and health regulations, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's employees from the work site.
3. Any activities of the Contractor determined to be hazardous by the County, shall be immediately discontinued by the Contractor upon receipt of either a written or verbal notice from the County to discontinue such activities.
4. If requested by the County Project Manager, the Contractor shall provide a written health and safety plan for the project prior to proceeding with work.

EE. **Sensitive Information Handling:** Any information in the possession of the County which is specific to an employee, student, citizen, County business function, private business entity or other government entity which is not generally available to the public shall be designated Sensitive Information. Contract workers will under no circumstances remove Sensitive Information from County facilities. Any Sensitive Information which must reside temporarily on a hard drive or portable storage device (USB Key, CD ROM, memory card, etc.) for processing must remain within the County facility. No Sensitive Information may be remotely accessed by contract workers by dial in, VPN, web interface or other means without expressed consent of the County's department head, if any, and the specific entity's information systems technology department manager or director. In the event that the specific entity entering into the contract does not have an information systems technology department, then the consent must be obtained from the Chesterfield County Chief Information Officer, or his designee. Any access to County information by contract workers from outside the County intranet shall be in accordance with existing technology security policies and procedures as required by the executed contract. Contract worker network connected computer equipment will be subject to all applicable County policies and procedures. Any exception to the application of these policies shall require approval by the specific entity's information systems

technology department manager or director. In the event that the specific entity entering into the contract does not have an information systems technology department, then the approval must be obtained from the Chesterfield County Chief Information Officer, or his designee.

- FF. **Taxes:** The County is exempt from payment of Federal Excise Tax and State and Local Sales and Use Tax on all tangible personal property purchased or leased by the County for its use or consumption. Tax exemption certification will be furnished upon request. Sales tax, however, is paid by the County on materials and supplies that are installed by a Contractor and become a part of real property. Contractors are not exempt from paying taxes on these materials and supplies, as they are considered to be a cost of doing business and should be considered in pricing when preparing a bid/proposal.
- GG. **Technology Agreements:** The bidder shall submit terms of service, terms of use, end user license agreements, software license agreements, etc. with the bid for any online activity (i.e., hosted, online, portal, website, support site, etc.) that is required to use or support the product or service being provided.
- HH. **Termination:** It shall be the sole right of the County to terminate the contract upon written notification to the Contractor.
- II. **Termination for Breach or Non-Performance:** If the Contractor fails to perform the work promptly and diligently, or if the Contractor breaches the Contract in any other way, the County may:
1. after providing the Contractor with 15 days written notice, supply any workmen, equipment or materials necessary to ensure that the work is performed promptly and diligently. The County may deduct the cost of supplying additional workmen, equipment or materials from payments due to the Contractor;
 2. terminate the contract, enter upon the premises, take possession of all equipment, materials or appurtenances, and employ any person or persons to finish the work.

If the contract is terminated by the County, the Contractor shall not be entitled to receive any further payment from the County until completion of the work has occurred. After completion of the work, the County shall pay to the Contractor the amount of the unpaid balance due to the Contractor at the time the contract was terminated minus the cost incurred by the County to complete the work. If the cost incurred by the County to complete the work exceeds the unpaid balance due to the Contractor, the Contractor shall be due no money from the County and, instead, the Contractor shall pay to the County the difference between the unpaid balance due and the County's cost to complete the work.

- JJ. **Unauthorized Aliens:** (*Code of Virginia* Section 2.2-4311.1, as amended) The Contractor agrees that he does not, and shall not during the performance of the contract knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- KK. **Vendor Rewards/Gift Programs:** It is the policy of the County not to participate in any rewards programs offered by vendors and not to accept any gifts or gift cards, or other rewards from vendors for purchases made by the County. If you customarily provide, or if you plan to provide, rewards programs, gifts or gift cards, or other rewards to your customers for purchases made by such customers, you must identify this fact in your bid/proposal and demonstrate in the bid/proposal how you have applied the value of such rewards to a reduction in the price of the goods and/or services being offered to the County.

LL. **Waiver of One Breach Not Waiver of Others:** No waiver by the County or its agents or employees of any breach of this contract by the Contractor shall be construed as a waiver of any other or subsequent breach of the contract by the Contractor. All remedies provided by this contract are cumulative, and in addition to each and every other remedy under the law.

MM. **Withdrawal of Bids (not applicable to competitive negotiation):**

1. Withdrawal: Construction (*Code of Virginia* Section 2.2-4330, as amended)

- a. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw its bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- b. The bidder shall give notice in writing to the Director of Purchasing of its claim of right to withdraw its bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. The work papers, documents and materials shall, at the bidders request, be considered as trade secrets or proprietary information subject to compliance with the provisions of *Code of Virginia* Section 2.2-4342(F), as amended.
- c. Within 5 business days, the County will notify the bidder in writing of its decision. If the County denies the withdrawal of a bid under the provisions of this section, or *Code of Virginia* Section 2.2-4330, as amended, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the County will also return all work papers and copies thereof to the bidder.

2. Withdrawal: Other than Construction

A bidder for a public contract may request withdrawal of its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or unintentional omission of a quantity of work, labor, or material made directly in the compilation of the bid which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of work papers, documents or materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may request withdrawal of its bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an

unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of work papers, documents or materials used in the preparation of the bid sought to be withdrawn. Such notice shall be sent to the Purchasing Department prior to award. The work papers, documents and materials shall, at the bidders request, be considered as trade secrets or proprietary information subject to compliance with the provisions of *Code of Virginia* Section 2.2-4342(F), as amended.