

ESSEX COUNTY

**PROCUREMENT POLICIES AND PROCEDURES**



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## **STATEMENT OF PURPOSE**

Public purchasing embraces a fundamental obligation to the general public to ensure that procurements are accomplished in accordance with the intent of the laws enacted by the appropriate legislative body. The intent of the Virginia General Assembly is set forth in the Virginia Public Procurement Act (*Code of Virginia* Section 2.2-4300 *et seq.*): "To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business, and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered."

Essex County intends, through these Procurement Policies and Procedures, to ensure fair and equitable treatment of all persons involved in the procurement process, to ensure the best quality and price for products and services, and to protect the assets and funds of Essex County, all while meeting the requirements of any applicable federal, state and local laws, rule, regulations and policies.

This policy, which includes the statement of purpose, Chapters 1 to 5 and Appendix I, may be cited as the County of Essex Procurement Policies and Procedures, and is herein referred to as the "Policy."

## CHAPTER 1 - GENERAL PROCUREMENT POLICY

### **ARTICLE 1 - GENERAL PROVISIONS**

1.1 Application: The County of Essex Procurement Policies and Procedures, which includes the statement of purpose, Chapters 1 to 5 and the Appendix I (hereinafter referred to as the “**Policy**”), applies to all purchases, contracts, agreements and the like for the procurement of goods, professional and nonprofessional services, insurance, construction or otherwise entered into by Essex County, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as the “**County**”). This Policy is established by official action of the Essex County Board of Supervisors (hereinafter referred to as the “**Board**”). Bidders and Contractors or their authorized representatives are expected to inform themselves fully as to this Policy before submitting Bids to and/or entering into any Contract with the County.

1.2 Definitions: The definitions of Virginia Code Section 2.2-4301 are specifically incorporated herein by reference and as used in this Policy, whether capitalized or not, any of such defined terms have the same meaning as defined thereunder, such terms include: “Affiliate,” “Best Value,” “Business,” “Competitive Negotiation,” “Competitive Sealed Bidding,” “Construction,” “Construction Management Contract,” “Design-Build Contract,” “Employment Services Organization,” “Goods,” “Informality,” “Multiphase Professional Services Contract,” “Nonprofessional Services,” “Potential Bidder or Offeror,” “Professional Services,” “Public Body,” “Public Contract,” “Responsible Bidder or Offeror,” “Responsive Bidder,” “Reverse Auctioning,” and “Services.” Additionally, as used in this Policy, the following terms, whether capitalized or not, have the following meanings:

1.2.1 Bid/Proposal: The offer of a Bidder or Offeror to provide specific Goods or Services at specified prices and/or other conditions specified in the Solicitation. The term “Bid” is used throughout this Policy and where appropriate includes the term “Proposal” or any modifications or amendments to any Bid or Proposal.

1.2.2 Bidder/Offeror/Vendor: Any individual(s), company, firm, corporation, partnership or other organization bidding or offering on any Solicitation issued by the County and/or offering to enter into Contracts with the County. The term “Bidder” is used throughout this Policy and where appropriate includes the term “Offeror” and/or “Vendor.”

1.2.3 Code of Virginia: All amendments to the Code of Virginia are to be incorporated and made part of these procedures.

1.2.4 Contract: Any contract or agreement for the procurement of services or goods to which the County will be a party.

1.2.5 Contractor: Any individual(s), company, firm, corporation, partnership, or other organization to whom an award is made by the County or who enters into any contract to which the County is a party.

1.2.6 County: Essex County, a political subdivision of the Commonwealth of Virginia, including where applicable all agencies and departments of the County.

1.2.7 County Administrator: The Essex County Administrator.

1.2.8 County Attorney: The Essex County Attorney.

1.2.9 Purchasing Agent: The County Administrator is the County's Purchasing Agent and is responsible for the purchasing activity of Essex County. The County Administrator has signatory authority to bind the County to all contracts and purchases made lawfully under the Essex County Small Purchasing Procedures. See Chapter 4 of this Policy. The Purchasing Agent has signatory authority to bind the County to all other contracts and purchases only after the contracts or purchases have been approved by a vote of the Essex County Board of Supervisors.

1.2.10 General Terms, Conditions and Instructions to Bidders and Contractors (also referred to herein as the "General Conditions"): The General Terms, Conditions and Instructions to Bidders and Contractors included in this Policy as Appendix I which shall be attached to and made a part of all Solicitations by the County and all Contracts to which the County is a party.

1.2.11 His: Any references to "his" shall include his, her, their, or its as appropriate.

1.2.12 Invitation to Bid (also referred to herein as an "IFB"): A request which is made to prospective Bidders for their quotation on Goods or Services desired by the County. The issuance of an IFB will contain or incorporate by reference the General Conditions and the other specifications and contractual terms and conditions applicable to the procurement.

1.2.13 Professional Services: Professional services means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

1.2.14 Purchasing Officer: The Purchasing Officer who is the County Administrator and to whom Bidders/Contractors can submit questions relating to any Bid or Contract.

1.2.15 Request for Proposal (also referred to herein as a "RFP"): A request for an offer from prospective Offerors which shall indicate the general terms which are sought to be procured from Offerors. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference the General Conditions and other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the Contractor.

1.2.16 Small Purchasing Procedures: The County's Small Purchasing Procedures, Chapter 4, permits purchasing not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000 and also allowing for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$50,000.

1.2.17 Solicitation: The process of notifying prospective Bidders or Offerors that the County wishes to receive Bids or Proposals on a set of requirements to provide Goods or Services.

“Solicitation” includes any notification of the County requirements, public advertising (newspaper, County’s website, or other electronic notification), the mailing of notices of Solicitation, any Invitation for Quotes (“IFQ”), Invitations for Bid (“IFB”), or Requests for Proposal (“RFP”), the public posting of notices, issuance of an Open Market Procurement (“OMP”), or telephone calls to prospective Bidders or Offerors.

1.2.18 State: The Commonwealth of Virginia.

1.3 Effective Date: Contracts entered into prior to the adoption of this Policy shall continue to be governed by procurement policy of the County and the County, State or Federal laws, ordinances, rules, and regulations in effect at the time those contracts were executed.

1.4 References to Law:

1.4.1 This Policy adopts and incorporates by reference the Virginia Public Procurement Act (“VPPA”), Virginia Code Section 2.2-4300 et seq. Any reference to the Virginia Code herein refers to and incorporates by reference the current adopted statute as such may be amended or replaced by any statute dealing with the same or similar subject. This Policy is meant to confirm and comply in every respect with the VPPA and with all other applicable laws, regulations, ordinances and rules, and, if this Policy conflicts in any way with the same, then this Policy shall be considered to be automatically amended, without action by the County, to conform to the VPPA or other applicable law, regulation, ordinance or rule.

1.4.2 When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which is not reflected in this Policy.

1.4.3 Pursuant to Virginia Code Section 2.2-4343(B), where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of the VPPA or this Policy, the County may comply with such federal requirements, notwithstanding the provisions of the VPPA or this Policy, only upon the written determination of the Board that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of the VPPA or this Policy in conflict with the conditions of the grant or contract.

1.5 Severability: If any provision of this Policy or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Policy which can be given effect without the invalid provision or application, and to this end the provisions of this Policy are declared to be severable.

## **ARTICLE 2 – AUTHORITY AND DELEGATION TO PURCHASING AGENT**

2.1 Authority of the Board of Supervisors: Except as specifically delegated to the Purchasing Agent herein, the Board shall be responsible for approving all purchases and contracts for the procurement of goods, services, insurance and construction.

2.2 Delegation of Authority to Purchasing Agent: The Purchasing Agent serves as the principal public purchasing official for the County, and except for the procurement of legal services shall be responsible for the procurement of goods, services, insurance and construction in accordance with this Policy, as well as the management and disposal of items that are determined to be surplus property of the County. The Purchasing Agent has responsibility and authority for developing, negotiating, placing, and when necessary, modifying every solicitation, contract and purchase order.

2.3 Delegation of Authority Generally: Except as specifically permitted under this Policy or by written delegation by the Purchasing Agent, no other County officer or employee is authorized to contract for or order supplies or services, enter into purchase negotiations, or in any way obligate the County for any indebtedness.

## **ARTICLE 3 - OFFICE OF THE PURCHASING AGENT**

3.1 Establishment and Appointment: The purchasing system shall operate under the direction and supervision of the Purchasing Agent, in accordance with the provisions in this Policy.

3.2 Responsibilities of Purchasing Agent: In accordance with this Policy, the Purchasing Agent shall:

3.2.1 Oversee and implement this Policy;

3.2.2 Purchase or supervise the purchase of all goods, services, insurance and construction needed by the County, consistent with his authority under Article 2 of this Chapter 1;

3.2.3 Make determinations on behalf of the Board of Supervisors under Virginia Code §§ 2.2-4303 C, E, and F (Competitive Negotiation, Sole Source, and Emergency Procurements).

3.2.4 Exercise direct supervision over the County's supplies, inventories, vehicles, surplus, goods, and other items belonging to the County;

3.2.5 Sell, trade, donate or otherwise dispose of goods belonging to the County consistent with the County's Surplus Policy, Chapter 3 of this Policy;

3.2.6 Purchase or supervise the purchase of all goods, services, insurance and construction, needed by the County, under the Small Purchasing Procedures; and

3.2.7 Establish and maintain programs for specification development, contract administration, inspection, and acceptance in cooperation with the department or agency of the County



that has requested the goods, services, insurance or construction.

3.3 Powers of the Purchasing Agent: The Purchasing Agent shall have the power to:

3.3.1 Delegate any of his authorities, as limited by Article 2 *supra*, in writing, to other County employees, if such delegation is deemed necessary or efficient for the effective procurement of those items, provided such delegation specifically identifies the scope of such employees' authority;

3.3.2 Establish and promulgate procedures to carry out the provisions of this Policy;

3.3.3 Secure for the County the benefits of research done in the field of purchasing by other governmental jurisdictions, national societies, national trade associations, and private businesses and organizations; and

3.3.4 Maintain a current file of sources of goods, services, insurance and construction to be known as a "Bidder List" on which vendors can request to be included.

#### **ARTICLE 4 – COOPERATIVE PROCUREMENT**

4.1 Cooperative Procurement Generally: Consistent with the authority granted by Virginia Code Section 2.2-4304, the County may participate in, sponsor, conduct, or administer cooperative procurement agreements on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. The County may purchase from another public body's contract even if it did not participate in the Solicitation, if the Solicitation specified that the procurement was being conducted on behalf of other public bodies, except for: (1) contracts for architectural or engineering services; or (2) construction in excess of \$200,000 by the County from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the County. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of Virginia Code Section 2.2-4303.

4.2 Effect of Alternative Policies: If the County enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and 10 of Virginia Code Section 2.2-4343 then the County shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town as provided in Virginia Code Section 2.2-4301.

#### **ARTICLE 5 – PREQUALIFICATION OF BIDDERS**

5.1 Purchasing Agent Authorized to Prequalify Bidders: Pursuant to Virginia Code Section 2.2-4317, the Purchasing Agent is authorized to prequalify prospective contractors for particular types of supplies, services, insurance or construction; and, if so determined to be in the County's best interest by the Purchasing Agent, the Purchasing Agent may limit the consideration of bids or proposals to prequalified contractors.

5.2 Prequalification Process: Prequalification of prospective contractors for construction by the County shall be pursuant to the following prequalification process for construction projects:

5.2.1 The application form used in the Prequalification Process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection F of Virginia Code Section 2.2-4342.

5.2.2 In all instances in which the County requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

5.2.3 At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the County shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reason(s) for the denial of prequalification and the factual basis of such reason(s).

5.2.4 A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in Virginia Code Section 2.2-4357.

5.3 Denial: The County may deny prequalification to a contractor only if the County finds one or more of the following:

5.3.1 The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

5.3.2 The contractor does not have appropriate experience to perform the construction project in question;

5.3.3 The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

5.3.4 The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5.3.5 The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting;

5.3.6 The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and/or

5.3.7 The contractor failed to provide to the County in a timely manner any information requested by the County relevant to 5.3.1 through 5.3.6 *supra*.

## **ARTICLE 6 – THE PROCUREMENT PROCESS GENERALLY**

6.1 Competitive Sealed Bidding: Any Competitive Sealed Bidding, a method of procurement for other than professional services, the County must meet the specific requirements of the VPPA, as the term is specifically defined in Virginia Code Section 2.2-4301, and must include the following elements:

6.1.1 Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the County has provided for prequalification of bidders, the IFB shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an IFB may be issued requesting the submission of unpriced offers to be followed by an IFB limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

6.1.2 Public notice: At least ten (10) days prior to the date set for receipt of bids, public notice shall be made by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, the County may publish in a newspaper of general circulation. In addition, at the discretion of the Purchasing Agent bids may be solicited directly from potential contractors on the Bidder List maintained by the Purchasing Agent; good but may be burdensome AND any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise;

6.1.3 Public opening and announcement of all bids received;

6.1.4 Evaluation of bids based upon the requirements set forth in the invitation, which may

include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and

6.1.5 Award to the lowest responsive and responsible bidder: When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one bidder.

6.2 Methods of Procurement: Pursuant to Virginia Code §§ 2.2-4301 and 2.2-4303:

6.2.1 Generally: Except as provided in Virginia Code sections 2.2-4343 through 2.2-4346, all contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation, as permitted by the VPPA, unless otherwise authorized by law.

6.2.2 Competitive Sealed Bidding of Construction: Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used where specifically allowed under subsection D of Virginia Code Section 2.2-4303 AND upon a determination made in advance by the County and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

6.2.3 Competitive Negotiation of Professional Services: Professional services shall be procured by competitive negotiation as provided in Virginia Code Section 2.2-4303.

6.2.4 Competitive Negotiation of Other than Professional Services: Upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

6.2.5 Sole Source Procurement: Upon a determination in writing by the Purchasing Agent that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The County shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, the County may publish in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first.

6.2.6 Emergency Purchases: In case of emergency, as determined by the Purchasing Agent, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The County shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor

selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

6.2.7 Small Purchasing Procedures: As authorized under Virginia Code Section 2.2-4303(G) and (H), the County has adopted Small Purchasing Procedures; see Chapter 4 of this Policy.

6.2.8 Public Auction: Upon a determination made in advance by the County and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interest of the public, such items may be purchased at the auction, including online public auctions. However, bulk purchases of commodities used in road and highway construction and maintenance and aggregates shall not be made by online public auctions.

6.2.9 Reverse Auctioning: The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance and aggregates shall not be made by reverse auctioning.

6.3 Competitive Negotiation: Any Competitive Negotiation of the County must meet the specific requirements of Virginia Code Section 2.2-4301, and must include the following elements:

6.3.1 Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor;

6.3.2 Public notice of an RFP at least ten (10) days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, the County shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request; and

6.3.3 As appropriate or required by law, either:

6.3.3.1 Procurement of professional services:

6.3.3.1.1 The County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence of the offeror. The RFP shall not,

however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the County may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the County shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the RFP, the County may award contracts to more than one offeror.

6.3.3.1.2 Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

6.3.3.1.3 A contract for architectural or professional engineering services relating to construction projects may be negotiated by a County, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the RFP, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. Such contract may be renewable for four (4) additional one-year terms at the option of the County. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed \$500,000; and (c) the project fee of any single project shall not exceed \$100,000. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the RFP so states and (2) the County has established procedures for distributing multiple projects among the selected contractors during the contract term.

6.3.3.1.4 Multiphase professional services contracts satisfactory and advantageous to the County for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the County shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the County require awarding the contract; or

6.3.3.2 For procurement of other than professional services: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the RFP, including price if so stated in the RFP. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected,

the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

6.4 State-Aid Projects: Pursuant to Virginia Code Section 2.2-4305 and 2.2-4345(B), no contract for the construction of any building or for an addition to or improvement of an existing building by the County or agency thereof for which State funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of Virginia Code Section 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the VPPA.

6.5 Bulletin Board: The Purchasing Agent shall post pending purchases or sales by notice in the appropriate public bulletin board and on the County's website.

6.6 Exemptions from Competition for Certain Transactions:

6.6.1 Organizations Providing Services to Persons with Disabilities: Pursuant to Virginia Code Section 2.2-4344, the County may enter into contracts without competition for the purchase of goods or services that are produced or performed by: (a) persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or (b) employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

6.6.2 Legal Services: The purchase of legal services or expert witnesses or other services associated with litigation or regulatory proceedings.

6.6.3 Election Materials: Pursuant to Virginia Code Section 2.2-4346, the County is exempt from the requirements of Articles 1, 2, and 5 of the VPPA (Virginia Code Sections 2.2-4300 to 4342 and 2.2-4357-4366) and the corresponding provisions of this Policy, in contracting for certain essential election materials and services pursuant to Virginia Code Section 24.2-602.

6.6.4 Utility Operators: Pursuant to Virginia Code Section 2.2-4343(A)(13), if the County is also a utility operator, then the County may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act, Virginia Code Section 56-265.14 *et seq.* A purchase of services hereunder may deviate from the VPPA and this Policy only upon a determination made in advance by the County and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

6.7 Exemptions from Competitive Sealed Bidding and Competitive Negotiation for Certain

Transactions: Under the following circumstances, the County may enter into contracts without competitive sealed bidding or competitive negotiation pursuant to Virginia Code Sections 2.2-4343 through 2.2-4346 including but not limited to:

6.7.1 Cooperative Procurement:

6.7.1.1 Contracts procured pursuant to cooperative procurement. The County may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services.

6.7.1.2 The County may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, except for: (1) contracts for architectural or engineering services, or (2) construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303 of the Code of Virginia.

6.7.2 For insurance or electric utility services if purchased through an association of which the County is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the County has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination; and

6.7.3 In administering public assistance and social services programs as defined in Virginia Code Section 63.2-100, community services boards as defined in Virginia Code Section 37.2-100, or when purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (Virginia Code Section 2.2-5200 *et seq.*) or the Virginia Juvenile Community Crime Control Act (Virginia Code Section 16.1-309.2 *et seq.*) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. However, contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of the VPPA and this Policy.

6.7.4 Other exemptions as provided by Virginia Code Sections 2.2-4344 through 4346 such as Small Purchase Procedures:

6.8 Contract Pricing Arrangement: Pursuant to Virginia Code Section 2.2-4331, contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis not prohibited by law;



however, except in case of emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. A Policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

6.9 Multi-Term Contracts: Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the County provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled without liability to the County.

6.10 Energy Forward Pricing Mechanisms: Pursuant to Virginia Code Section 2.2-4329.1:

6.10.1 As used in this Section 6.10, unless the context requires a different meaning:

"Energy" means natural gas, heating oil, propane, diesel fuel, unleaded fuel, and any other energy source except electricity; and

"Forward pricing mechanism" means either: (i) a contract or financial instrument that obligates the County to buy or sell a specified quantity of energy at a future date at a set price or (ii) an option to buy or sell the contract or financial instrument.

6.10.2 Notwithstanding any other law to the contrary but subject to available appropriation, the County may use forward pricing mechanisms for budget risk reduction.

6.10.3 Forward pricing mechanism transactions shall be made only under the following conditions: (a) the quantity of energy affected by the forward pricing mechanism shall not exceed the estimated energy use for the County for the same period, which shall not exceed 48 months from the trade date of the transaction; and (b) a separate account shall be established for operational energy for the County.

6.10.4 Before exercising authority under this section, the County shall establish an oversight process that provides for review of the County's use of forward pricing mechanisms. The oversight process shall include internal or external audit reviews; annual reports to, and review by, an internal investment committee; and internal management control.

6.11 Deposit of Certain Retained Funds on Certain Contracts: Pursuant to Virginia Code Section 2.2-4334:

6.11.1 When contracting directly with contractors for contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water,

gas, sewer lines and pumping stations where portions of the contract price are to be retained, the Bid Proposal shall include an option for the contractor to use an escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the County within fifteen (15) calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

6.11.2 In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the State. The escrow agreement and all regulations adopted by the County entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.

6.11.3 This Section 6.11 shall not apply to contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

6.11.4 Any such contract for construction with the County, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

6.11.5 Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section, and any contract with the Contractor shall include language that any subcontracts shall be subject to the provisions of this Section 6.11.

6.12 **Bid Bonds:** Pursuant to Virginia Code Section 2.2-4336:

6.12.1 Except in cases of emergency, all bids or proposals for non-transportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Virginia Code Section 33.1-12 that are in excess of \$250,000 and partially or wholly funded by the State shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in the State, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the amount of the bid.

6.12.2 For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with Article 5 of this Chapter *supra*.

6.12.3 No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

6.12.4 Nothing in this section shall preclude the County from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for non-transportation-related projects or \$250,000 for transportation-related projects authorized under Virginia Code Section 33.1-12 and partially or wholly funded by the State.

### 6.13 Performance and Payment Bonds:

6.13.1 As provided in Virginia Code § 2.2-4337, upon the award of any (i) construction contract exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by the County; (iii) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with County funds; or (iv) transportation-related projects exceeding \$350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the County the following bonds:

6.13.1.1 A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Virginia Code Section 33.1-12, such bond shall be in a form and amount satisfactory to the County.

6.13.1.2 A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under Virginia Code Section 33.1-12 and partially or wholly funded by the State, such bond shall be in a form and amount satisfactory to the County. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

6.13.2 For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with Virginia Code Section 2.2-4317.

6.13.3 Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

6.13.4 Bonds required for the contracts shall be payable to the County.

6.13.5 Each of the bonds shall be filed with the Purchasing Agent.

6.13.6 Nothing in this section shall preclude the County from requiring payment or performance bonds for construction contracts below \$500,000 for non-transportation related projects or \$350,000 for transportation related projects authorized under Virginia Code Section 33.1-12 and partially or wholly

funded by the State.

6.13.7 Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

6.14 Alternative Forms of Security: Pursuant to Virginia Code Section 2.2-4338, upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond, a bidder may: (i) furnish a certified check or cash escrow in the face amount required for the performance bond; or (ii) if approved by the County Attorney, furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond.

6.15 Bonds for Other than Construction Contracts: Pursuant to Virginia Code Section 2.2- 4339, at the discretion of the Purchasing Agent, the County may require bid, payment or performance bonds for contracts for goods or services if provided for in the IFB or RFP.

6.16 Action on Performance Bonds: Pursuant to Virginia Code Section 2.2-4340, no action against the surety on a performance bond shall be brought unless brought within one (1) year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

6.17 Action on Payment Bonds: Pursuant to Virginia Code Section 2.2-4341,

6.17.1 Any claimant, who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in the furtherance of work provided in any contract for which a payment bond has been given and who has not been paid in full before the expiration of ninety (90) days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to such action.

6.17.2 Any claimant, who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection 6.17.2.

6.17.3 Any action on a payment bond must be brought within one (1) year after the day on

which the person bringing such action last performed labor or last furnished or supplied materials.

6.17.4 A person may waive their right to sue on the payment bond required by this Section 6.17, but such waiver shall be void UNLESS it is: (i) in writing, (ii) it is signed by the person whose right is waived, and (iii) it is executed after such person has performed labor or furnished material in accordance with the contract documents.

## **ARTICLE 7 – CONTRACTS GENERALLY**

7.1 Required Contract Terms: The General Terms, Conditions and Instructions to Bidders and Contractors, Appendix A to this Policy, is incorporated in its entirety into this Policy and MUST be incorporated in every RFP or IFB and by reference into every contract to which the County is a party.

7.2 Contracts Approved by County Attorney: All Contracts must be approved as to form by the County Attorney pursuant to Virginia Code Section 15.2-1237.

7.3 Contracts to be Filed with County Treasurer: A copy of each long-term contract shall be filed with the County Treasurer pursuant to Virginia Code Section 15.2-1237.

7.4 Unauthorized Purchases & Contracts:

7.4.1 The Purchasing Agent, and only consistent with the authority granted under Article 2 of this Chapter, shall have the authority to execute a contract. Any contract that has been signed by another officer of the County shall be nullified, relinquishing the County of any obligations owed or implied to the Contractor.

7.4.2 Whenever any officer or employee of the County purchases or contracts for any supplies or services contrary to the provisions of this Policy, such purchases or contracts shall be void and shall not be considered to be an obligation of the County.

7.4.3 Any County officer or employee making or approving a purchase contrary to the provision of this Policy shall be personally liable for the costs of such purchases or contract. If already paid out of the County funds, the amount thereof may, in the name of the County, be recovered through appropriate legal action instituted. The Board of Supervisors for good cause may ratify the unauthorized contracting or payment action.

## **ARTICLE 8: DISCRIMINATION PROHIBITED; PARTICIPATION OF SMALL, WOMEN, MINORITY AND SERVICE DISABLED VETERAN OWNED BUSINESSES**

8.1 Definitions: The words defined in Virginia Code Section 2.2-4310 shall have the meanings set forth therein throughout this Article 8 and incorporated herein by reference.

8.2 Discrimination Prohibited: In the solicitation or awarding of contracts, the County shall not discriminate against a Bidder or Offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to

discrimination in employment. Whenever solicitations are made, the County shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

8.3 Participation of Small, Women, Minority and Service Disabled Veteran owned Business: The County desires to facilitate the participation of small businesses and businesses owned by women, minorities, and service disabled veterans in procurement transactions, and it is the policy of the County that the Purchasing Agent shall establish programs consistent with this Article 8 and further shall cooperate with state and federal agencies to facilitate the participation of small, women-, minority-, and service disabled veteran-owned businesses in the procurement transactions of County. The Purchasing Agent shall assist any such business in understanding any Solicitation or completing a Bid or Proposal.

8.4 Contracts with Faith-Based Organizations: Pursuant to Virginia Code § 2.2-4343.1,

8.4.1 In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, the County is authorized to enter into contracts with faith-based organizations for the purposes described in this Section 8.4 on the same basis as any other nongovernmental source without impairing the religious character of such organization and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

8.4.2 In all invitations to bid, requests for proposals, contracts, and purchase orders, the County does not discriminate against "Faith-Based Organizations" which is defined as a "religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193." In procuring goods or services, or in making disbursements pursuant to Virginia Code Section 2.2-4343.1, the County shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in Section 8.4.4 below, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

8.4.3 A faith-based organization contracting with the County (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided. However, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the County. Nothing in Section 8.4.3 shall be construed to supersede or otherwise override any other applicable state law.

8.4.4 Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with the County shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

8.4.5 Nothing in this Section 8.4 shall be construed as barring or prohibiting a faith-based

organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 *et seq.*), to employ persons of a particular religion.

8.4.6 If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the County and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider. The County shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the County and a faith-based organization a notice in bold face type that states: Neither the County's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form.

## **ARTICLE 9 - APPEALS AND REMEDIES FOR BIDDERS**

9.1 Ineligibility and Debarment of Bidder, Offeror or Contractor: See Chapter 2 of this Policy.

9.2 Appeal of Denial of Withdrawal of Bid: See Virginia Code Section 2.2-4358 as amended:

9.2.1 The County's decision to deny withdrawal of Bid shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in Virginia Code Section 2.2- 4364.

9.2.2 If no Bid bond was posted by a Bidder who has been refused permission to withdraw its Bid under the provisions of this Policy (see General Conditions, paragraph 8), the Bidder shall deliver to the County a certified check or cash bond in the amount of the difference between the Bid sought to be withdrawn and the next low Bid. Such security shall be released only upon a final determination that the Bidder was entitled to withdraw the Bid.

9.2.3 If, upon appeal, it is determined that the decision refusing withdrawal of the Bid was not (i) an honest exercise of discretion but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the IFB, the sole relief shall be withdrawal of the bid.

9.3 Determination of Non-Responsibility: See Virginia Code Section 2.2-4359 as amended.

9.4 Protest of Award or Decision to Award: See Virginia Code Section 2.2-4360- 4362 as amended.

## **ARTICLE 10 – ETHICS IN PUBLIC CONTRACTING**

10.1 Purpose: This Article 10 adopts the ethics provisions of Article 6 of the VPPA, Virginia Code Sections 2.2-4367 *et seq.*, as amended, and pursuant to Virginia Code Section 2.2- 4367 the provisions of this Article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (Virginia Code Section 2.2-3100 *et seq.*), the Virginia Governmental Frauds Act (Virginia Code Section 18.2-498.1 *et seq.*), and Articles 2 (Virginia Code Section 18.2- 438 *et seq.*) and 3 (Virginia Code Section 18.2-446 *et seq.*) of Chapter 10 of Title 18.2. The provisions of this Article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

10.2 Definitions: Pursuant to Virginia Code Section 2.2-4368, the words defined in this section shall have the meanings set forth below throughout this Article 10:

10.2.1 "Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

10.2.2 "Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

10.2.3 "Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (Virginia Code Section 2.2-3100 *et seq.*).

10.2.4 "Nominal Value" means five dollars (\$5.00) or less.

10.2.5 "Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

10.2.6 "Public employee" means any person employed by the County, including elected officials or appointed members of governing bodies.

10.3 Proscribed Participation by Employees in Procurement Transactions: Pursuant to Virginia Code Section 2.2-4369, except as may be specifically allowed by subdivisions A 2, 3 and 4 of Virginia Code Section 2.2-3112, no employee having official responsibility for a procurement transaction shall participate in that transaction of behalf of the County when the employee knows that:

10.3.1 The employee is contemporaneously employed by a bidder, Offeror, or contractor involved in the procurement transaction;

10.3.2 The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, Offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the



procurement transaction, or owns or controls an interest of more than five percent;

10.3.3 The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

10.3.4 The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with the bidder, Offeror or contractor.

10.4 Prohibition on Solicitation or Acceptance of Gifts; Gifts by Bidders, Offerors, Contractor or Subcontractors Prohibited: Pursuant Virginia Code Section 2.2-4371:

10.4.1 No County employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The County may recover the value of anything conveyed in violation of this subsection.

10.4.2 No bidder, offeror, contractor or subcontractor shall confer upon any County employee having official responsibility for a procurement transaction 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 is exchanged.

10.5 Disclosure of Subsequent Employment: Pursuant to Virginia Code Section 2.2-43790, no County employee or former County employee having official responsibility for procurement transactions shall accept employment with any bidder, Offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the County, unless the employee or former employee provides written notification to the Board or the Purchasing Agent, or both prior to commencement of employment by that bidder, Offeror or contractor.

10.6 Kickbacks: Pursuant to Virginia Code Section 2.2-4372:

10.6.1 No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

10.6.2 No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

10.6.3 No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a County contract.

10.6.4 If a subcontractor or supplier makes a kickback or other prohibited payment as

described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the County and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

10.7 Participation in bid preparation; limitation on submitting bid for same procurement: Pursuant to Virginia Code section 2.2-4373, no person who, for compensation, prepares an IFB or RFP for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, the County may permit such person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County.

10.8 Purchase of Building Materials, etc., from Architect or Engineer Prohibited: Pursuant to Virginia Code Section 2.2-4374:

10.8.1 No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in Virginia Code Section 2.2-3101.

10.8.2 No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in Virginia Code Section 2.2-3101.

10.8.3 The provisions of subsections 10.8.1 and 10.8.2 *supra* shall not apply in cases of emergency.

10.9 Misrepresentations Prohibited: Pursuant to Virginia Code Section 2.2-4376, no County employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

## **CHAPTER 2 - DEBARMENT**

Pursuant to Virginia Code §§ 2.2-4357 and 2.2-4321 the County has adopted the following ineligibility and debarment procedure:

### **ARTICLE 1 – DEBARMENT**

1.1 The County shall have the authority to suspend or debar a Bidder or Contractor from bidding on any Contract for the causes stated below:

1.1.1 Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

1.1.2 Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;

1.1.3 Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;

1.1.4 Violation of contract provisions, as set forth below, of a character which is regarded by the County to be so serious as to justify suspension or debarment action:

1.1.5 Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;

1.1.6 For non-responsibility, any other cause the County determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

1.1.7 The Contractor has abandoned performance or been terminated for default on any other County project; and/or

1.1.8 The Contractor is in default on any surety bond or written guarantee on which County is an obligee.

1.2 Rules Applicable to Debarment

1.2.1 The improper conduct of any agent, subcontractor, officer, board member or employee of any Contractor or Bidder may be fully imputed to such Bidder or Contractor; and vice versa.

1.2.2 Debarment of a Contractor in no way affects his obligations under any other

Contracts with the County which are ongoing, unless terminated by the County as provided for in the County's Procurement Policies and Procedures.

1.2.3 A debarment can be imposed for any length of time, and the length of time for debarment will be determined by the County based upon the relevant circumstances.

1.2.4 Debarment of a Contractor/Bidder applies to any successor company formed with the same resources, owners or stockholders as the debarred entity.

**ARTICLE 2 - PROCEDURES**

2.1 Any Bidder, Offeror or Contractor suspended, refused permission to participate, or disqualified from participation, in any Solicitation or Contracts by the County ("disbarred") for any cause including non-responsibility shall be notified in writing. Prior to the issuance of a written determination of disbarment, the County shall:

2.1.1 Notify the Bidder or Contractor in writing of the results of the evaluation;

2.1.2 Disclose the factual support for the determination; and

2.1.3 Allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five (5) business days after receipt of the notice.

**ARTICLE 3 – REBUTTAL**

3.1 Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The County shall issue its written determination of disqualification or ineligibility based on all information in the possession of the County, including any rebuttal information, within five (5) business days of the date the County received such rebuttal information.

**ARTICLE 4 - DECISION**

4.1 If the evaluation reveals that the Bidder, Offeror or Contractor should be allowed permission to participate in the Contract, the County shall cancel the proposed disqualification action. If the evaluation reveals that the Bidder should be refused permission to participate, or disqualified from participation in the Contract, the County shall so notify the Bidder, Offeror or Contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days after receipt of the notice by invoking administrative procedures meeting the standards of Virginia Code § 2.2-4365, if available, or in the alternative by instituting legal action as provided in Virginia Code § 2.2-4364.

**ARTICLE 5 – APPEAL**

5.1 If, upon appeal, it is determined that the action taken by the County was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the Bidder or Contractor shall be restoration of eligibility.

## **ARTICLE 6 - REINSTATEMENT**

6.1 The County may terminate debarment status of any Contractor or Bidder at any time if it determines that it is in the County's best interests to do so. Mitigating circumstances that will be considered when deciding to reinstate a Contractor or Bidder may include, but are not limited to: (i) the improper or illegal act underlying the debarment; (ii) the degree of culpability of the Bidder or Contractor; (iii) any restitution by the Contractor to the County for the improper or illegal act; and (iv) cooperation with the County by the Contractor or Bidder in any investigations into bid crimes. After the debarment period expires, the contractor may submit formal written request to the County stating that the contractor wishes to continue to conduct business with the County. A determination for the contractor's reinstatement shall be voted on by the Board of Supervisors based upon recommendation from the staff. If agreed upon by the County Board of Supervisors, the contractor shall be permitted to contract or make an offer, proposal or bid, in response to a Request for Proposals, an Invitation to Bid or any other form of solicitation by the County, for supplies, services, insurance or construction.

## **CHAPTER 3 - SURPLUS PROPERTY**

### **ARTICLE 1 – PURPOSE**

1.1 This Surplus Property Policy shall determine the process for transfer, sale, destruction or disposal of all the County’s tangible property.

### **ARTICLE 2 – AUTHORIZATION**

2.1 The Purchasing Agent is responsible for overseeing and implementing the County’s Surplus Property Policy and is authorized to transfer, sell, trade, donate, or destroy the County’s property and vehicles consistent with this Surplus Policy.

### **ARTICLE 3 – DEFINITIONS**

3.1 Whether capitalized or not, within this Chapter 3, the following terms mean:

3.1.1 County: Essex County, a political subdivision of the Commonwealth of Virginia, including all agencies, departments, and constitutional offices of the County.

3.1.2 Department: Any department, agency of the County reporting to the County Administrator.

3.1.3 Non-Profit: Any 501(c)(3) organization deemed to be serving a public purpose.

3.1.4 Property: All tangible personal property owned by the County except vehicles.

3.1.5 State Agency: Any agency or department of the Commonwealth of Virginia.

3.1.6 Surplus Property: Any tangible property that is no longer of use to the County because it is obsolete, uneconomical, uneconomical to repair, valued based only upon its contents, or for any other reason deemed appropriate by the Purchasing Agent.

3.1.7 Surplus Vehicle: Any vehicle that is no longer of use to the County because it is obsolete, uneconomical, uneconomical to repair, valued based only upon its contents, or for any other reason deemed appropriate by the Purchasing Agent.

3.1.8 Vehicles: All vehicles owned by the County.

### **ARTICLE 4 – IDENTIFICATION OF UNUSED PROPERTY AND RELEASE OF PROPERTY**

4.1. All Department heads are responsible for identifying property and vehicles within their Department that are no longer used by or of use to such Department. The Department Heads shall notify the Purchasing Agent in writing specifically identifying such unused property or vehicles from time to time, but at least semiannually.

4.1.1. Such written notice shall include all known pertinent information regarding the property or vehicle including, but not limited to, the following:

4.1.2. For property:

- 4.1.2.1. Type of property;
- 4.1.2.2. Year of purchase;
- 4.1.2.3. Condition of property;
- 4.1.2.4. Manufacturer, if applicable; and,
- 4.1.2.5. Product identification, if applicable.

4.1.3. For vehicles:

- 4.1.3.1. Year, make, and model of vehicle;
- 4.1.3.2. VIN;
- 4.1.3.3. General condition of interior and exterior;
- 4.1.3.4. Any known mechanical problems;
- 4.1.3.5. Any known major repairs;
- 4.1.3.6. Any known accident history;
- 4.1.3.7. Number of miles;
- 4.1.3.8. Number of doors; and,
- 4.1.3.9. Other descriptors including, but not limited to, air conditioning, power steering, power brakes, power door locks, cruise control, etc.

4.2. All computer equipment being released must first be cleared by the IT Administrator to ensure that the hard drive has been cleared of all privileged County information, software, and documents.

## **ARTICLE 5 - TRANSFER OF PROPERTY**

5.1. Notice of Availability: Upon determination by the Purchasing Agent that property or vehicle(s) are unused and eligible for transfer, the Purchasing Agent shall notify the heads of Departments that such is available. If the Purchasing Agent deems the property or vehicle(s) unsafe or otherwise not suitable for use by the County, then the Purchasing Agent is authorized to declare the property as

Surplus Property, or in the case of a vehicle, as a surplus vehicle under Article 6 below and proceed to dispose.

5.2. Priority: Preference for transfer of property or vehicles shall generally be given to the Department with the most need for it or to the Department who responds first to the notice of availability, as determined by the Purchasing Agent in his sole discretion.

5.3. Notice of Determination: Upon receipt of requests by Departments to receive the property or vehicle(s), the Purchasing Agent shall make a determination as to the most effective placement of the property or vehicle(s) and notify all requestors of the decision.

5.4. Transfer between County Departments: Should the Purchasing Agent choose to transfer property from one Department to another Department, the notification shall serve as final approval and the receiving Department shall contact the releasing agency for transfer of the property or vehicle(s), keys, etc.

## **ARTICLE 6 - SURPLUS PROPERTY AND SURPLUS VEHICLE(S)**

### 6.1. Determination of Surplus Property:

6.1.1. If the Purchasing Agent deems the property or vehicle(s) unsafe or otherwise improper for use by the County, then the property is Surplus Property, or in the case of a Vehicle, is a Surplus Vehicle.

6.1.2. If no Department receives the Property or Vehicle(s) under Article 5 *supra*, i.e. the Purchasing Agent determines that no Department needs or is eligible to receive the Property or the Vehicle(s), then the Property is Surplus Property, or if a vehicle, the vehicle is a Surplus Vehicle.

6.2. Disposition of Surplus Property by Sale, Trade or Exchange: The Purchasing Agent has the authority to sell all Surplus Property and Surplus Vehicle(s) or to exchange the same for, or trade in the same for other property or vehicle(s). All sales of Surplus Property and Surplus Vehicle(s) shall be based on competitive principals and, if feasible, shall be sold on the basis of competitive bids to obtain the best price and insure that the County receives fair market value. The Purchasing Agent must require competitive sealed bids for any sale of Surplus Property or a Surplus Vehicle estimated to have a fair market value of more than \$50,000; and the Purchasing agent may require competitive sealed bids for any sale in his discretion.

### 6.3. Other Disposition of Surplus Property:

6.3.1. The Purchasing Agent may use the other methods of disposition described herein only if:

6.3.1.1. The Purchasing Agent is unable to sell, trade or exchange the Surplus Property or Surplus Vehicle(s) as described in Section 6.2 *supra*; or

6.3.1.2. The Purchasing Agent has determined that the Surplus Property or



Surplus Vehicle(s) have a nominal fair market value such that sale, trade or exchange is inappropriate.

6.3.1.3. If either of the above conditions of 6.3.1 are met, then the Purchasing Agent may transfer surplus property or surplus vehicle(s) from County ownership to a State Agency or Non-Profit, described below.

6.3.1.3.1. Notification: The Purchasing Agent shall notify heads of State Agencies and non-profits that have requested to receive such notifications that Surplus Property or Surplus Vehicle(s) are available.

6.3.1.3.2. Priority: In the case of multiple interested parties, the Purchasing Agent shall give priority to Non-Profits operating in the County or offering services to County residents, then to State Agencies locally housed, then to other non-profits and finally to other State Agencies.

6.3.1.3.3. Conditions: The receiving State Agency or Nonprofit, submits a letter stating the following: “The Surplus Property transfer is in the form of a donation and such donated property will not subsequently be sold”; and that “Surplus property being received is “as is – where is.” It is understood that this is a gratuitous donation, that no representations or warranties are intended, that the donee assumes responsibility for inspection and use and that donee assumes risks of using the property.” Non-profit agencies must provide a copy of their IRS determination letter to verify their non-profit status.

6.3.1.3.4. Pick-Up: It shall be the sole responsibility of the receiving non-profit or State Agency to arrange for pick-up of the Surplus Property or Surplus Vehicle(s) within ten (10) working days of notice of donation.

6.3.2. Surplus Vehicles: In addition to the requirements supra, the County Board of Supervisors must approve any transfer of a Surplus Vehicle to a State Agency or non-profit.

6.3.3. Transfer to Surplus Property Pool: The Purchasing Agent may order that Surplus Property or Surplus Vehicle(s) be stored with other surplus property and made available at public auction (including online auctioning, if authorized and appropriate).

6.3.4. Destruction of Property: The Purchasing Agent may order the destruction, removal to landfill or trash disposal of any Surplus Property or Surplus Vehicle(s) with no or nominal fair market value that cannot be otherwise disposed of under 6.2, 6.3.2 or 6.3.3 of this Surplus Policy.

## **CHAPTER 4 -SMALL PURCHASES**

### **ARTICLE 1 – AUTHORIZATION**

1.1 The following purchase procedures have been adopted by the Essex County Board of Supervisors pursuant to authority granted to it under Sections 2.2-4303(G) and (H) of the *Code of Virginia* for use by the County when acquiring (1) materials, supplies, equipment, printing, or other goods and non-professional services where the estimated contract cost is less than or equal to \$50,000, and (2) professional services as that term is defined in the County's Procurement Manual.

1.2 These procedures are only to be used when a single or term contract in the aggregate or when the sum of all phases of the contract is not expected to exceed \$50,000. The objective of these procedures is to provide the County and its taxpayers with the best value possible - reflecting high quality and best price – through efficient and effective use of the competitive market.

### **ARTICLE 2 – AUTHORITY OF PURCHASING AGENT**

2.1 The Purchasing Agent has responsibility and authority for negotiating, placing and, when necessary, modifying every solicitation, contract and purchase order issued by the County under these Small Purchasing Procedures. The Purchasing Agent has signatory authority to bind the County to all contracts and purchases made lawfully under the County's Small Purchase Procedures.

### **ARTICLE 3 – GENERAL POLICIES**

3.1 When procuring goods and services under these procedures, the Purchasing Agent shall attempt to provide for competition and participation by all vendors whenever practicable.

3.2 The Purchasing Agent may choose to require more formal bidding procedures or more stringent requirements in the furtherance of competition. Reasons for imposing such requirements may include, but shall not be limited to, (1) a belief that a more competitive price could be obtained or (2) to comply with more stringent funding source procurement requirements.

3.3 The Purchasing Agent shall not procure goods or services in a piecemeal manner, split a procurement into multiple parts, or request that the selected vendor invoice the County at intervals, solely for the purpose of reducing the estimated cost of the procurement below the \$50,000 threshold.

3.4 When procuring under these procedures, the receipt of written quotations is preferred. All oral quotes must be documented contemporaneously in writing by the employee receiving the quote. A standard County form shall be available for this purpose.

3.5 When practicable, the Purchasing Agent shall inquire about available discounts. The Purchasing Agent may, but shall not be required to, follow the methods provided in these procedures for procurements of goods or services which are exempt from requirements of competition under Chapter 43 of Title 2.2 of the Code of Virginia (the Virginia Public Procurement

Act).

3.6 In the event that the required number of quotes cannot be obtained, the Purchasing Agent must document either that there are no other vendors available to provide the goods or perform the services (and a sole source determination made), or that a reasonable effort was made to contact other vendors with no response. Written contemporaneous documentation of such efforts to contact vendors should include copies of faxed or emailed confirmation sheets or letters requesting the quote and confirmation that no response was received. A standard County form shall be available for this purpose.

3.7 A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Essex County Board of Supervisors. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of a vendor from the consequences of an error in its quote or offer.

3.8 In the solicitation or awarding of contracts, the Purchasing Agent shall not discriminate against a vendor because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by State law relating to discrimination in employment.

3.9 Whenever solicitations are made, the County shall include or incorporate by reference the General Terms, Conditions, and Instructions to Bidders and Contractors approved as to form by the County Attorney.

3.10 The County encourages the participation of small businesses and businesses owned by women and minorities in its procurement transactions.

#### **ARTICLE 4 – SMALL PROCUREMENT METHODS**

##### **4.1 General Rules:**

4.1.1 A "quotation" may be either written or oral. A supplier's current price list may serve the same purpose as obtaining a quote. It is the responsibility of the employee receiving an oral quote to document thoroughly the price and good or service provided.

##### **4.2 One Quotation:**

4.2.1 Purchases where the estimated cost of goods, professional services, or nonprofessional services is not estimated to exceed \$3,000 may be made upon receipt of a written or oral pricing quote from one vendor.

4.2.2 Additional pricing quotes should be obtained whenever there is reason to believe a materially better value could be found.

4.2.3 Where more than one pricing quote has been obtained for goods or nonprofessional services, the County shall select the supplier with the lowest responsive and responsible quote.

Product quality, service, and vendor reliability may be considered in addition to price when reaching a determination between two or more offerors.

4.2.4 Where more than one quote has been obtained for professional services, the County shall negotiate with the vendor determined to be the most qualified, responsible and suitable; cost shall not be the sole determining factor. If a satisfactory contract cannot be negotiated with such vendor, negotiations shall then be undertaken with the second most qualified, responsible, and suitable vendor, and so on until a satisfactory contract is agreed upon.

#### 4.3 Multiple Quotations:

4.3.1 Purchases where the estimated cost of goods, professional services, or nonprofessional services exceeds:

- \$3,000 but does not exceed \$20,000 an informal, written or oral quote from two or more vendors should be sought.
- \$20,000 but does not exceed \$30,000 informal, written quotes from three or more vendors should be sought.
- \$30,000 but does not exceed \$50,000 informal written quotes from four or more vendors should be sought.

4.3.2 For goods and nonprofessional services, the Purchasing Agent shall select the vendor with the lowest responsive and responsible quote. Product quality, service, and vendor reliability may be considered in reaching this determination.

4.3.3 For professional services, the County shall negotiate with the vendor determined to be the most qualified, responsible, and suitable; cost shall not be the sole determining factor. If a satisfactory contract cannot be negotiated with such vendor, negotiations shall then be undertaken with the second most qualified, responsible, and suitable vendor, and so on until a satisfactory contract is agreed upon.

### **ARTICLE 5 – EXCEPTIONS TO COMPETITIVE REQUIREMENTS**

5.1 The purchase of certain goods and services are exempt from competitive procurement under Virginia Code Sections 2.2-4343 through 2.2-4346. Included among these exemptions are the following transactions which may be purchased without receipt of quotes from additional vendors:

5.1.1 Books, pre-printed materials, reprints, and subscriptions (e.g., print or electronic), pre-recorded audio and video cassettes and slide presentations when only available from the publisher/producer;

5.1.2 Any items purchased on State contract or through cooperative procurement;

5.1.3 Academic/research consulting services;

5.1.4 Honoraria, entertainment (speakers, lecturers, musicians, etc.);

5.1.5 Royalties and film rentals when only available from producer or protected distributors;

5.1.6 Membership dues;

5.1.7 Advertisements, such as in newspapers, magazines, journals, radio, television, etc.;

5.1.8 Utility charges;

5.1.9 Items and services purchased off the Department of General Services Vendor lists;  
and

5.1.10 Items and services purchased under cooperative procurement.

## **ARTICLE 6 – CONTRACT REQUIREMENTS**

6.1 Every purchase over \$3,000 must be in the form of a formal written contract and must include and incorporate by reference the General Terms, Conditions and Instructions to Bidders and Contractors attached to the Policy as Appendix I. All contracts must be approved as to form by the County Attorney.

## **CHAPTER 5 - COUNTY FUEL CARD MANAGEMENT POLICIES**

### **ARTICLE 1 – OVERVIEW**

1.1 The Essex County (the “County”) Fuel Card program is offered through the State Motor Fuel Program. The fuel card program will utilize the Voyager card under Mansfield Oil Company and will provide the flexibility to fuel vehicles at 90% of the gas stations nationwide. Contract prices under this program allow cardholders to purchase Federal excise tax-exempt motor fuels at an OPIS-based price plus the contract adder. The card will give the County the ability to purchase all brands of fuel products.

1.2 This card program shall be managed in a manner consistent with all applicable County accounting policies and procedures related to the use of charge card programs. Agencies assume ultimate responsibility for employees’ use of the fuel card, as well as accountability for the physical security of the fuel cards. The County and the County Sheriff’s Office shall each have a Fuel Card Custodian to monitor fuel cards assigned to specific vehicles and to manage their daily use, a Fuel Card Account Custodian to perform the fiscal and administrative functions required to appropriately manage the fuel card program, and a County Fuel Card Administrator to oversee this Fuel Card Policy. The Fuel Card Custodian, Fuel Card Account Custodian and the Fuel Card Administrator for the County and the Fuel Card Custodian, Fuel Card Account Custodian and the Fuel Card Administrator for the County Sheriff’s Office shall be designated by the County Administrator.

### **ARTICLE 2 – DEFINITIONS**

2.1 County Owned Vehicle: Any vehicle with a title held by Essex County, Virginia, and the County Sheriff’s Office that includes, but is not limited to, sedans, station wagons, minivans, pickup trucks, sport utility vehicles, or vans used primarily for the transportation of the driver and no more than 15 passengers.

2.2 Employee: Any individual authorized to operate a County/Agency-owned vehicle on behalf of Essex County, Virginia, e.g., part-time, hourly, and full-time employees to perform business related services.

### **ARTICLE 3 – ROLES & RESPONSIBILITIES**

3.1 Fuel Card Custodian: The Fuel Card Custodian assumes responsibility for the physical security of any Essex County Fuel Card (Mansfield/Voyager Card) and the associated PINs (Personal Identification Numbers). The Fuel Card Custodian may delegate use of the card, but assumes responsibility for card transactions.

3.1.1 The Fuel Card Custodian shall perform duties that include, but are not limited to:

3.1.1.1 Ensuring physical security of Fuel Cards (for example, in a locked desk drawer). The card may **not** be left in the custody of a vendor,

3.1.1.2 Maintaining a written record of all persons who have physical access to the

Fuel Card (for example, a sign-out sheet for the card, or a list of persons who have keys to the locked desk drawer),

3.1.1.3 Ensuring that the card is used only for appropriate purchases (described below), and in conjunction with County business,

3.1.1.4 Reminding all card users to use commercial retail sites only,

3.1.1.5 Ensuring users of vehicle fuel cards turn in receipts of purchases from commercial retail fuel sites,

3.1.1.6 Ensuring all documentation of card use is forwarded to the Fuel Card Account Custodian, and

3.1.1.7 Informing the Department of Public Works or Essex County Sheriff's Office of any change in the Fuel Card Custodian's contact information.

### 3.2 Fuel Card Account Custodian:

3.2.1 The Fuel Card Account Custodian assumes responsibility for reviewing card activity to ensure appropriate use. In addition, the Account Custodian should not be a card user.

3.2.2 The Account Custodian shall perform duties that include, but are not limited to:

3.2.2.1 Reviewing the monthly Statement of Charges (downloaded from Mansfield website) for appropriateness of card usage,

3.2.2.2 Reconciling all charges and processing payment to card vendor,

3.2.2.3 Reporting infractions to the County Administrator,

3.2.2.4 Maintaining records of all card usage, sign out sheets, receipts, or other applicable documents,

3.2.2.5 Ensuring that the card is used only for appropriate purchases (described below), and in conjunction with County business, and

3.2.2.6 Informing the Department of Public Works or the Essex County Sheriff's Office of any change in the Fuel Card Account Custodian's contact information.

3.3 County Fuel Card Contract Administrator: The Fuel Card Contract Administrator will electronically monitor all fuel card accounts in the program via the Mansfield Oil website.

3.3.1 Monitoring responsibilities shall include, but not be limited to:

3.3.1.1 Creation and deletion of accounts,

3.3.1.2 Delinquent payments,

3.3.1.3 Inactive cards,

3.3.1.4 Inappropriate purchases, and

3.3.1.5 Ensure agency Fuel Card and Account Custodian receive appropriate training and support from the fuel card vendor.

#### **ARTICLE 4 - COUNTY FUEL CARD MANAGEMENT POLICIES**

4.1 County assigned fuel cards shall only be used at commercial retail fuel stations that accept the Voyager card. A list of the commercial retail stations can be found at <https://www.fleetcommanderonline.com/app/public/merchantLocator.do>.

4.2 Use only unleaded regular fuel or diesel fuel in gasoline powered County-owned vehicles.

4.3 Mid-grade or premium blends are only to be used when regular is not available or the manufacturer requires the use of high octane fuel in the vehicle. E85 fuel is to be used in Flex-Fuel vehicles where available. A list of E85 locations can be found at: [http://www.afdc.energy.gov/afdc/progs/ind\\_state.php/VA/385](http://www.afdc.energy.gov/afdc/progs/ind_state.php/VA/385). A list of approved E85 vehicles can also be found at the website listed above. Drivers are expected to use self-service pumps at commercial stations, since this service is normally more economical. A fuel card is provided for such purchases.

4.4 Drivers **MUST** enter correct odometer readings, no tenths, into the card readers, at all commercial self-service fueling sites. The Office of the County Administrator and the Essex County Sheriff's Office will run daily fueling reports and will contact all drivers that consistently fail to enter correct odometer readings. Correct odometer readings are critical to the fuel card management system, and, this requirement will be strictly enforced.

4.5 Department Directors, Constitutional Officers, and Agency Heads will be notified of unusual fuel transactions and will have fifteen (15) days to investigate and respond to the either the Office of the County Administrator or the Essex County Sheriff's Office as applicable.

4.6 A Mansfield/Voyager Fuel Card assigned to a **County owned** vehicle may be used to purchase the following, provided the County establishes authorization with Mansfield:

4.6.1 Fuel, either **regular** unleaded gasoline, E85 if the vehicle is capable of using E85 or diesel fuel.

4.6.2 A Mansfield/Voyager Fuel Card assigned to a **County owned** vehicle shall **not** be used to purchase:

4.6.2.1 Food or beverages.

4.6.2.2 Parts and labor for towing, road service, and mechanical repairs.



4.6.2.3 Other goods or services.

4.7 Fuel Cards will be assigned to each County owned vehicle that is currently in an “active” status. Each fuel card shall contain the following information which is vehicle specific:

4.7.1 Department;

4.7.2 Vehicle Identification Number (VIN #); and

4.7.3 Vehicle ID (This number is used as an "identifier" between Mansfield and Voyager's systems for the card information and is assigned by Contracts Administrator).

4.8 Fuels cards that are assigned to individual vehicles cannot be used to fill up any other vehicle within the active fleet.

4.9 The fuel cards will not work at the Essex County Public Schools gas terminal.

**ARTICLE 5 – DISPOSAL OF FUEL CARDS**

5.1 Fuel cards are to be turned back into the County Administrator or the Sheriff for the following qualifying events:

5.1.1 Vehicle taken out of service, and

5.1.2 Replacement of vehicle.

**ATTACHMENT A  
GENERAL TERMS AND CONDITIONS  
TO ALL CONTRACTS**

**1. General Provisions**

These General Terms and Conditions shall be attached to and made a part of any written contract (the "Contract") between Essex County, Virginia, and its contractors. In the event of any conflict between any provision of these General Terms and Conditions and the Contract, these General Terms and Conditions shall take precedence and control. Nothing in the Contract or any document executed in connection therewith shall be construed as authority for either party to make commitments which will bind the other party beyond the scope of service contained therein. Unless defined herein, capitalized terms shall have the meaning defined and used in the Contract. "Contractor" shall refer to all parties to the Contract other than the County.

**2. Laws of the Commonwealth**

A. The Contract shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia. The Contractor providing goods or services to the County under this Contract represents and warrants to the County that it is:

1. Conforming to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;
2. Not employing illegal alien workers or otherwise violating the provisions of the Immigration Reform and Control Act of 1986;
3. Complying with federal, state and local laws and regulations applicable to the performance of the services procured; and
4. In full compliance with the Virginia Conflict of Interest Act.

B. In every contract of over \$10,000, the Contractor agrees during the performance of the Contract that:

1. The Contractor (1) will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, or national origin, except where religion, sex or national origin is a *bona fide* occupational qualification reasonably necessary to the normal operation of the Contractor, (2) will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and (3) will state that the Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor under this Contract. All 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; and

2. The Contractor will include the provisions of the foregoing subparagraph 2.(B)(1) in every subcontract or purchase order under the Contract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- C. In every contract of over \$10,000, the Contractor agrees during the performance of the Contract that:
1. The Contractor shall A) provide a drug-free workplace for its 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 its workplace and specify the actions which will be taken against any employee for a violation; C) state in all of its solicitations or advertisements for employees that it maintains a drug-free workplace; and D) include the provisions of this sub-paragraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or vendor.
  2. For purposes of this sub-paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a the Contractor in accordance with the provisions of the Virginia Public Procurement Act, 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.
- D. In addition to the provisions contained in sub-paragraph C pertaining to drug-free workplaces, the Contractor shall comply with the federal Drug Free Workplace Act.
- E. Pursuant to Section 2.2-4343.1 of the *Code of Virginia* of 1950, as amended (the "Code") in all invitations to bid, requests for proposals, contracts, and purchase orders, the County does not discriminate against faith-based organizations.

"Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

### 3. **Certifications**

The Contractor certifies that:

- A. The bid or offer (1) is made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal, (2) is in all respects

fair and without collusion or fraud, and (3) is or is intended to be competitive and free from any collusion with any person, firm or corporation;

- B. The Contractor has not offered or received any kickback from any other bidder or Contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;
- C. The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or condition upon which the contract resulting from the acceptance of his bid proposal is to be performed;
- D. The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal Law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this proposal; and
- E. The Contractor or subcontractor has not and will not confer on any public employee having official responsibility for a procurement transaction 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 is exchanged.

#### **4. Warranties**

The Contractor represents and warrants that it has the requisite experience, skills, capabilities and manpower to perform the Services as provided for in the Contract Documents in a good and workmanlike fashion, that it is a corporation chartered or authorized to do business in Virginia having all necessary licenses required by law, that the person signing the Contract has been fully authorized to do so, and his signature will legally bind the Contractor to the Contract. Any goods or services furnished by the Contractor under the Contract shall be new and covered by the most favorable warranties provided by the Contractor to any customer. The rights and remedies hereby provided are in addition to any and do not limit those otherwise available to the County. The Contractor agrees that if such warranties are in any respect breached, the Contractor will pay to the County the full contract price agreed to by the County to be paid for the supplies, materials, equipment or services furnished under the bid or proposal.

#### **5. Modifications, Additions or Changes**

Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the County; however, no fixed priced contract may be increased by more than twenty-five (25) percent of the amount of the Contract or \$50,000, whichever is greater, without the express approval of the Essex County Board of Supervisors by action taken in an open meeting. The amount of this Contract may not be increased for any purpose without adequate consideration provided

to the County.

## **6. Hold Harmless**

The Contractor and all its subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify the County, its Board of Supervisors members, officers, employees and agents against and save them harmless from all claims, demands, and judgments made or recovered against them because of bodily injuries, including death at any time resulting there from, and/or because of damage to property, from any cause whatsoever, arising out of, incidental to, or in connection with the Services, whether or not due to any act of his or their employees, servants or agents and whether or not due to any act of omission or commission including negligence, except sole negligence, of Essex County, its Board of Supervisors members, officers, employees, and/or agents. Compliance by the Contractor with the insurance provisions hereof shall not relieve the Contractor from liability under this provision.

## **7. Assignment**

The Contract may not be assigned, sublet, or transferred without the written consent of the County.

## **8. Default**

In the case of default or breach by the Contractor or the failure of the Contractor to perform the Services in conformance with the specifications in the Contract, the County shall give written notice to the Contractor specifying the manner in which the Contract has been breached. If the County gives such notice of breach and the Contractor has not corrected the breach within seven (7) days of receipt of the written notice, the County shall have the right to immediately rescind, revoke or terminate the Contract and in addition to any other remedies available at law to procure such services from other sources and hold the Contractor responsible for any and all excess cost occasioned thereby.

## **9. Audit**

The Contractor hereby agrees to retain all books, records, and other documents relative to this Contract for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The County and its authorized agents, state auditors, the grantor of the funds to the County, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the Contract for the purpose of making audits, examinations, excerpts or transcriptions.

## **10. Ownership of Documents**

Any reports, studies, photographs, negatives, or other documents prepared by the Contractor in the performance of its obligations under this Contract shall be remitted to the County by the Contractor upon completion, termination or cancellation of this Contract. The Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the Contractor's obligations under this Contract without the prior written consent of the County. The County shall own the intellectual property rights to all materials produced under this Contract.

**11. Payment and Performance Bond**

If required by law, the Contractor shall furnish to the County performance and payment bonds in the amount of the Contract Sum, regardless of its amount, pursuant to Sections 2.2-4336 and 2.2-4337 of the Code and shall otherwise fully comply with the requirements of such sections of the Code.

**12. Required Payment**

Pursuant to Section 2.2-4354 of the Code, the Contractor covenants and agrees to:

- A. Within seven (7) days after receipt of any amounts paid to the Contractor under the Contract, (i) pay any subcontractor for its proportionate share of the total payment received from the County attributable to the Services under the Contract performed by such subcontractor, or (ii) notify the County and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;
- B. Provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the Contract;
- C. Pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the Contractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for Services performed by the subcontractor under the Contract, except for amounts withheld pursuant to subparagraph 12a. above; and
- D. Include in its contracts with any and all subcontractors the requirements of A, B, and C above.

**13. Liability Coverage**

The Contractor shall take out and maintain during the life of the Contract such bodily injury, liability and property damage liability insurance as shall protect it and the County from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this Contract. Such insurance shall at least have the coverages and be in the amounts set forth in Section 16 "Insurance and Bond Requirements" set forth below and shall name Essex County and the Essex County Board of Supervisors as Additional Insureds. Such insurance must be issued by a company admitted within the Commonwealth of Virginia and with at least a Best's Key Rating of A:V1. The Contractor shall provide the County with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the County at least 30 days' notice prior to cancellation or other termination of such insurance.

**14. Loss or Damage in Transit**

Delivery by the Contractor to a common carrier does not constitute delivery to County. Any claim for loss or damage incurred during delivery shall be between the Contractor and the carrier. The County accepts title only when goods are received regardless of the F.O.B. point. The County will note all apparent damages in transit on the freight bill and notify the Contractor. Discovery of concealed damages or loss will be reported by the County to the carrier and the Contractor within seven days of receipt and prior to removal from the point of delivery if possible. The Contractor shall make immediate replacement of the damaged or lost merchandise or be in default of the Contract. It shall be the Contractor’s responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the County, the Contractor may deduct the amount of damage or loss from his or her invoice to the County in lieu of replacement.

**15. Termination for Default**

In case of default by the Contractor for failure to deliver or perform in accordance with the Contract’s specifications or terms and conditions, the County may procure the articles or services from other sources and hold the defaulting the Contractor responsible for any resulting additional purchase and administrative costs. The County will normally repurchase from the next low bidder or purchase competitively by resolicitation. If the repurchase results in increased costs to the County, a letter will be sent to the defaulted the Contractor requiring payment for additional costs. When repayment is requested, the Contractor will be removed from future bidding until the repayment has occurred. the Contractor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a Contractor’ source to deliver is generally not considered to be an unavoidable cause. The burden of proof rests with the Contractor.

**16. Insurance and Bond Requirements**

The Contractor shall maintain the following insurance to protect it from claims under the Workmen’s Compensation Act, and from any other claims for personal injury, including death, and for damage to property that may arise from operations under this Contract, whether such operations be by itself or by any subcontractor, or anyone directly or indirectly employed by either of them.

| <b><u>TYPE OF COVERAGE</u></b>  | <b><u>LIMITS</u></b>   |
|---|--|
| Workers’ Compensation and Employer’s Liability including coverage under United States Longshoremen’s and Harbor Worker’s Act where applicable | Statutory, including Employer’s Liability of \$100,000.00 Each Accident<br>\$500,000.00 Disease-Policy Limit<br>\$100,000.00 Disease-Each Employee |
| Comprehensive General Liability endorsement coverages.  | Including the Broad Form C.G.L.  |
| Premises – Operations<br>Bodily Injury Liability and Property Damage Liability Combined   | \$1,00,000 Each Occurrence<br>\$3,000,000 Aggregate  |

Including:

Underground Hazard (U)  
Explosion and Collapse  
Hazard (XC)

|  |  |
|--|--|
| Independent Contractors – Owner’s<br>Protective Bodily Injury Liability and<br>Property Damage Liability Combined  | \$1,00,000 Each Occurrence<br>\$3,000,000 Aggregate  |
| Completed Operations - Products Liability<br>Bodily Injury Liability and Property<br>Damage Liability Combined for five (5)<br>years after payment   | \$1,00,000 Each Occurrence<br>\$3,000,000 Aggregate  |
| Contractual Bodily Injury Liability and<br>Property Damage Liability Combined in<br>accordance with Contract between Owner<br>and Contractor   | \$1,00,000 Each Occurrence<br>\$3,000,000 Aggregate  |
| Personal Injury with Employee’s Exclusion<br>C deleted   | \$1,000,000 Aggregate                                |
| Automobile Bodily Injury Liability and<br>Property Damage Liability Combined<br>covering all automobiles, trucks, tractors,<br>trailers, or other automobile equipment,<br>whether owned, non-owned, or hired by the<br>Contractor | \$1,00,000 Per Accident                              |
| Umbrella/Excess Liability  | \$1,000,000 Each Occurrence<br>\$3,000,000 Aggregate |
| Professional Liability Insurance   | \$1,000,000 Limit of Liability                       |

- A. The Contractor shall purchase and maintain insurance coverage on his tools, equipment and machinery and shall waive subrogation to the County for damage thereto.
- B. The County reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

**17. No Waiver**

Any failure of the County to demand rigid adherence to one or more of the terms and provisions of the Contract, including these General Terms and Conditions, on one or more occasions, shall not be construed as a waiver nor deprive the County of the right to insist upon strict compliance with the terms of this Contract. Any waiver of a term of this Contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.



**18. Termination**

The County may terminate the Contract for its convenience at any time upon written notice to the Contractor. The Contractor shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the Contractor's Services under this Contract.

**19. Choice of Law**

To ensure uniformity of the enforcement of this Contract, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this Contract is made and is intended to be performed in the Commonwealth of Virginia, and shall be governed by and construed in accordance with the laws of that state without regard to principles of conflicts of law.

**20. Severability**

If any provision of the Contract, including this Appendix, is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and the Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of the Contract, and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from the Contract.

**21. Contractual Claims Procedure**

- A. Contractual claims or disputes by the Contractor, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that the Contractor shall give the County written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of the Contractor's intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not the Contractor files such written notice, the Contractor shall proceed with the Services as directed. If the Contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.
- B. The County, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the Contractor by written notice.
- C. If the Contractor disagrees with the decision of the County concerning any pending claim, the Contractor shall promptly notify the County by written notice that the Contractor is proceeding with the Services under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of the County or under a written notice of the Contractor's intention to file a claim or a detailed claim not acted upon by the governing body of the County, shall be specifically exempt by the Contractor from payment request,

whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

- D. The decision on contractual claims by the governing body of the County shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate circuit court.

**22. Subject to Annual Appropriation**

The Contract is subject to annual appropriation by the Board of Supervisors of Essex County. Neither the Contract nor any amount due or to become due under the Contract shall be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the County. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the County, shall be obligated to pay any amount due or to become due under this Contract except from funds annually appropriated by the Board of Supervisors of Essex County for such purpose.

In the event of non-appropriation of funds for the items under this Contract, the County may terminate this Contract as to the Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after such action is taken.

**23. Forum Selection**

The parties hereby submit to the personal jurisdiction and venue of any state or federal court located within the Commonwealth of Virginia for resolution of any and all claims, causes of action or disputes arising out of or related to this Contract and agree that service by certified mail to the addresses set forth in the Contract shall constitute sufficient service of process for any such action. The parties further agree that any claims, causes of action or disputes arising out of, relating to or concerning this Contract shall have jurisdiction and venue in the Circuit Court of Essex County, and shall be brought only in such Court.

**24. Notices**

All requests, notices and other communications required or permitted to be given under the Contract shall be in writing and delivery thereof shall be deemed to have been made three (3) business days after such notice shall have been duly mailed by certified first-class mail, postage prepaid, return receipt requested, one (1) business day after being deposited with any nationally recognized overnight courier service, or when delivered if delivered by hand delivery, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party. Notices to the Contractor shall be sent to the address set forth in the Contract, and notices to the County shall be sent to:

Mr. Timothy L. Wilson  
County Administrator  
Essex County  
202 South Church Lane  
P.O. Box 1079  
Tappahannock, VA 22560

Daniel Siegel, Esquire  
Sands Anderson PC  
1111 E. Main Street, Suite 2300  
P.O. Box 1998  
Richmond, VA 23218