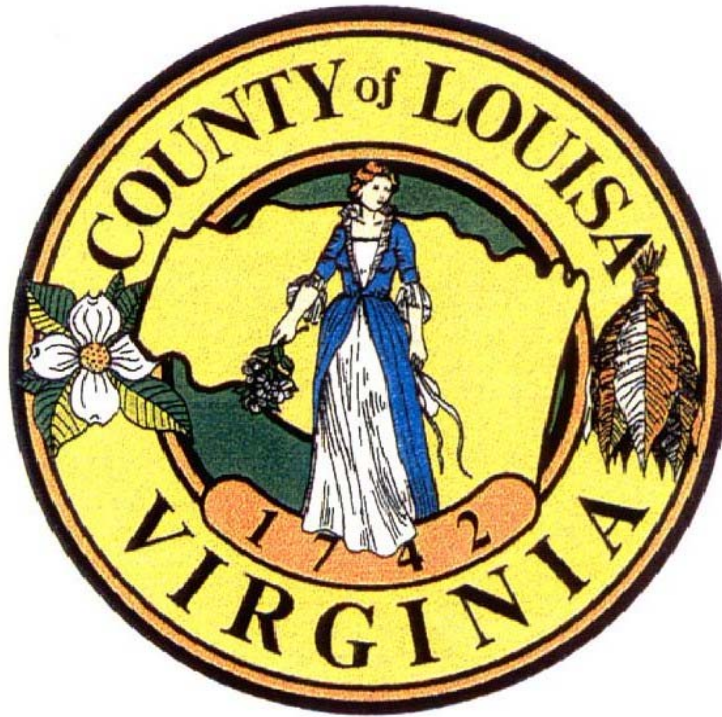




COUNTY OF LOUISA, VIRGINIA
REQUEST FOR PROPOSAL (RFP)
FOR
COUNTY-WIDE BROADBAND INITIATIVE

RFP# IT-11-02

MARCH 24, 2011

**REQUEST FOR PROPOSAL
(RFP)**

Issue Date: Thursday, March 24, 2011

RFP# IT-11-02

Title: County-wide Broadband Initiative

Issuing Agency: County of Louisa, Virginia
Attn: April Lowe
PO Box 160
Louisa, VA 23093

Location Where Work Will Be Performed: County of Louisa, Virginia

Period of Contract: From TBD Through TBD

Renewable: N/A

Proposals Will Be Received Until: Friday, April 15, 2011, by 2:00 p.m., local time prevailing

Direct All Inquiries for Information To: April Lowe, Purchasing Officer
Post Office Box 160
1 Woolfolk Avenue
Louisa, VA 23093
(540) 967-3499
alowe@louisa.org

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, DELIVER TO:

County of Louisa
Louisa County Administration Building
Attn: April Lowe
Finance Department, 2nd Floor
1 Woolfolk Avenue
Louisa, Virginia 23093
(540) 967-3499

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

REQUEST FOR PROPOSAL TITLE PAGE

REQUEST NUMBER: IT-11-02 **ISSUE DATE:** 03/24/2011

TITLE: COUNTY-WIDE BROADBAND INITIATIVE

In compliance with this Request for Proposal and to all the conditions imposed herein, by signing below, Offeror:

- (1) Offers and agrees to furnish the goods/services in accordance with the attached signed proposal;
- (2) Agrees that upon Louisa County's written acceptance of Offeror's response to the Request for Proposal, a valid and binding contract for services exists between Offeror and Louisa County;
- (3) Agrees that the Contract Documents will consist of, and *only* of, the Request for Proposal, the County of Louisa, Virginia Standard Terms and Conditions and Offeror's response to the Request for Proposal;
- (4) Certifies and warrants that the individual signing on Offeror's behalf is authorized to bind the Offeror in any and all contractual matters relating to this Request for Proposal;
- (5) Certifies and warrants that neither Offeror, nor the individual signing on Offeror's behalf, has any business or personal relationships with any other persons, including Louisa County employees, or companies that are in conflict with the Commonwealth of Virginia's Conflict of Interest Act, or the County of Louisa, Virginia Standard Terms and Conditions; and,
- (6) Certifies and warrants that the Offeror is properly licensed for providing the goods/services specified in the Request for Proposal and has the appropriate License or Certificate and classification(s) required to perform the work included in the scope of the proposal documents, prior to submitting the proposal, in accordance with Title 54.1, Chapter 11 of the Code of Virginia. If an Offeror shall fail to obtain the required license prior to submission of his proposal, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his proposal will not be considered.

Sign in ink and type or print requested information.

Legal Name and Address of Firm:

_____	Date: _____
_____	By: _____
_____	(Signature)
_____	Name: _____
FEI/FIN/SSN: _____	(Please Print)
Fax Number: _____	Title: _____
E-mail Address: _____	Telephone Number: _____

Please provide the following if applicable to this RFP:
Virginia Contractor License # _____

SCC ID # _____

Offeror shall ascertain prior to submitting a response that all Addenda issued have been received and shall **acknowledge receipt and inclusion of all Addenda here:**

Addendum #: _____	Date Issued: _____
Addendum #: _____	Date Issued: _____
Addendum #: _____	Date Issued: _____

Information the Offeror deems Proprietary is included in this response in the separate section of the proposal identified immediately below.

This Title Page MUST be Submitted as Part of your Proposal

TABLE OF CONTENTS FOR RFP # IT-11-02

	<u>PAGE</u>
I. <u>PURPOSE</u>	5
II. <u>STATEMENT OF NEEDS/SCOPE OF SERVICES</u>	5
III. <u>OFFEROR'S INSTRUCTION</u>	6
IV. <u>PROPOSAL EVALUATION PROCESS</u>	9
V. <u>PROPOSAL EVALUATION CRITERIA</u>	9
VI. <u>COUNTY OF LOUISA STANDARD TERMS AND CONDITIONS</u>	11

I. PURPOSE:

The County of Louisa is soliciting proposals for Phase I of a public-private partnership that would provide an affordable broadband internet service to most, if not all, of the citizens and businesses of the County.

The County of Louisa reserves the right to award to more than one Offeror.

Louisa County will select the firm(s) who they determine most closely satisfies the needs of the County. There is no requirement for acceptance of the lowest cost of service offered, and specific requirements may be waived or amended at the discretion of the County.

II. STATEMENT OF NEEDS/ SCOPE OF SERVICES:

A. OVERVIEW

This RFP outlines the process to select two or more vendors for Phase I. This phase will fund the study for this county-wide service and provide a proposed system to the County detailing the feasibility, operating plan and cost of such a system. The County plans on either granting or loaning funds and will assist in determining other funding sources for implementation. While not guaranteed, it is the County's desire to then execute a contract for Phase II, the implementation of this broadband system, to one of the companies selected during Phase I. If the County chooses, it may issue a separate RFP for implementation of the selected proposed system, or decline to proceed based on economic or other reasons.

The County will assist in finding funding sources and tower space, as well as finding land for additional towers if necessary.

The County plans to stipulate several conditions relating to the cost of service, bandwidth, data caps, uplink and downlink speeds, and service level agreements. It is anticipated that this system will provide wireless service to households of 1Mbps at a cost of no more than \$30/month and businesses of 3Mbps at \$50/month. There will be no caps on monthly volume, but bandwidth shaping may be implemented for large volume users. Activation fees will not exceed \$50, and any customer premise equipment, except any unanticipated antenna support structures, will be provided by, and will belong to, the vendor. If a customer requires external equipment, the resident or business will split the cost with the vendor. Additional bandwidth will be available to residences or businesses at additional and County approved cost per month. If your proposal cannot meet one or more of these stipulations, or if during the completion of Phase I it is determined that one or more of these stipulations need amending, these will be modified during Phase II.

B. ADDITIONAL INFORMATION

1. Please refer to the County's Article IX, Telecommunication Regulations, for compliance information.
2. Phase II bonding and permit requirements will be designated if the County decides to proceed with the project after evaluating Phase I proposals.

III. OFFEROR'S INSTRUCTION:

A. PROPOSAL PREPARATION:

1. All questions pertaining to the proposal should be received no later than Thursday, April 7, 2011, at 5:00 p.m. All questions shall be in writing and directed to April Lowe at alowe@louisa.org or via fax at (540) 967-3439. A formal clarification will be sent out in writing on Friday, April 8, 2011, to all known potential proposers.
2. The Offeror must submit a proposal, which demonstrates and provides evidence that the Offeror has the capabilities, professional expertise, and experience to provide the necessary services as described in this RFP. The Offeror shall ensure that all information required herein is submitted with the proposal. All information provided should be verifiable by documentation requested by the County of Louisa. Failure to provide all information, inaccuracy or misstatement may be sufficient cause for rejection of the proposal or rescission of an award. **Each copy of the proposal should be bound with all documentation in a single volume where practical.**

Reponses must, in any event, contain the following information and be organized into separate chapters and sections using the format described below in order to provide each firm an equal opportunity for consideration.

a. Infrastructure Plan

- i. Describe your proposed broadband system. Please include the type of equipment to be deployed (vendor, type of system), frequency bands, interconnection plans, and infrastructure requirements (i.e. tower, fiber backhaul, etc.).
- ii. Identify where licensed spectrum will be utilized and where unlicensed spectrum will be utilized.
- iii. Identify the bandwidth that will be provided to the end user customer (residential and business). Specify a plan for capacity upgrade in coverage areas based on average daily usage and thresholds.
- iv. Specify any additional services you may provide – web hosting, email, malware, anti-virus, etc.
- v. Describe end user upgrade policy including all cost and contract settlement requirements.
- vi. Provide contract terms for both business and home use.
- vii. Provide a preliminary schedule to build out the market(s) addressed in your proposal.

b. Service Plan

- i. Describe the service area of your initial infrastructure deployment.
- ii. Describe plans and conditions for expanding the network reach and scope, if appropriate.
- iii. Describe end user upgrade policy including all cost and contract settlement requirements.
- iv. Provide contract terms for both business and home use.
- v. Identify approximately how many residential households and businesses would be reached by your services.
- vi. Provide a detailed description of your proposed end-user equipment requirements.

- vii. Provide your customer support plan – call center location, staff on-call, repair service, staffing needs.

c. Financial Plan

- i. Provide an estimate of your total expected capital investment, and a high-level equipment list.
- ii. Provide a detailed estimate of the ongoing operation and maintenance expense to sustain the network.
- iii. Outline the infrastructure components, if any, that you anticipate Louisa County making available for your use.

d. Agreement Considerations

- i. Outline any additional considerations, constraints, or exceptions that will be important for us to consider in selecting your firm for this RFP.
- ii. Please indicate any regulatory requirements that could materially influence any agreement between Louisa County and your organization.
- iii. Describe your proposed agreement term and renewal options.

e. Prior Experience and References

- i. Provide three non-residential references with whom you have an ongoing business relationship. At least two of these must be service relationships. Include a primary contact with email and phone number.
- ii. Provide related education and training of development and installation staff.
- iii. Provide a list of all anticipated subcontractors. The County may require additional information of the subcontractors.
- iv. Provide a description of any relevant projects you have executed that are similar to the scope of services requested in this RFP. Provide a list of references of all governmental clients.

- 3. Proposals shall be signed by the authorized representative of the Offeror.
- 4. Proposals should be prepared simply and economically, providing a straightforward, concise, detailed description of capabilities to satisfy the requirements of the RFP.
- 5. All expenses for making proposals to the County shall be incurred by the Offeror.
- 6. Offeror must be authorized to transact business in Virginia as a domestic or foreign business entity as required by the State Corporation Commission, if such is required by law. Such status shall be maintained during the term of a contract. A contract entered into by a business in violation of the requirements is voidable at the option of the public body.

B. PROPOSAL SUBMISSION: The following documents must be received in our office via hard copy no later than the closing date and time stated below:

- 1. Your original proposal, along with five (5) additional copies. If applicable, please also include a redacted copy which does not include trade secrets or proprietary information.
- 2. Signed original of the completed Request for Proposal Title Page
- 3. Signed Appendix A “County of Louisa, Virginia Standard Terms and Conditions.”

4. A copy of any applicable Federal, State, or Local license required to legally perform the service, or sell the goods specified in the RFP shall be attached to the proposal.

The RFP number and closing date must be clearly marked on the outside of the envelope.

This solicitation will close on Friday, April 15, 2011, at 2:00 p.m., local time prevailing.

Return the proposal to:

Mail to: (US Mail)
County of Louisa
PO Box 160
Louisa, VA 23093
Attn: April Lowe
(540) 967-3499

or Hand Delivery (FEDEX, UPS, etc.)
County of Louisa
Louisa County Administration Building
Finance Department, 2nd Floor
1 Woolfolk Avenue
Louisa, VA 23093
Attn: April Lowe
(540) 967-3499

- C. SUBMISSION OF PROPRIETARY INFORMATION:** All information submitted to the County in response to this solicitation will constitute public information and will be available to the public for inspection upon request pursuant to the Virginia Freedom of Information Act (FOIA).

Pursuant to Virginia Code Section 2.2-4342 and County of Louisa Code Section 60-24, a Bidder/Offeror may request an exception to disclosure for trade secrets or proprietary information as such is defined under Virginia Code Section 59.1-336, part of the Uniform Trade Secrets Act.

In order to claim this exemption, the Bidder/Offeror shall perform ALL of the following: (i) include a written request indicating Bidder/Offeror's desire to invoke the protections of Virginia Code Section 2.2-4342 with submitted proposal materials/data; (ii) specifically identify the data or other materials to be protected by clearly labeling each page containing applicable data as PROPRIETARY; and (iii) to the County's satisfaction, articulate the rationale for why protection for the particular data or materials is necessary. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable.

Without waiving sovereign immunity or any other available defenses, the County asserts that failure to meet all of these requirements will result in the data or materials being open for inspection in response to a valid inquiry under FOIA and will serve to waive any right of the Bidder/Offeror to assert a claim against the County for disclosure of trade secrets or proprietary information.

Bidder/Offeror shall be responsible for intervening and defending, at its expense, any demands made upon the County by third parties for production of any such items.

- D. RECEIPT OF PROPOSALS/LATE PROPOSALS:** It is the Offerors responsibility to ensure that his/her proposal is received prior to or at the specific time and the place

designated in the solicitation. **Proposals received after the date and time specified shall not be considered.**

No responsibility will be attached to any County personnel for the premature opening of a proposal not properly addressed and identified on the outside of a sealed envelope.

IV. PROPOSAL EVALUATION PROCESS:

The County of Louisa shall appoint a Selection Committee to review and evaluate all proposals submitted by Offerors responding to this RFP. The proposals will be evaluated based on the Evaluation Criteria listed in Section V. The County of Louisa may ask top ranked Offerors to attend a presentation discussion as part of the evaluation process. Firms invited to the discussion should be prepared to have general discussions on non-binding estimates of cost to provide requested services. At the conclusion of the evaluation process, the County will select one or more firms with whom final negotiations will be conducted in an effort to obtain a contract.

V. PROPOSAL EVALUATION CRITERIA

The respondents will be evaluated on the following criteria. Each proposal should address each of these elements:

1. Experience in 3rd or 4th generation wireless technology (WiMax or LTE preferred – other technologies considered).
2. Experience in a customer-based wireless business (preference will be given to those companies actually running a WISP).
3. Reach and coverage of the proposed solution (propagation studies with frequencies considering Louisa County topology and vegetative cover). In addition, the time and public costs necessary for any particular proposed solution, as well as its energy efficiency, will be factors in the evaluation process.
4. Availability of backend internet service (fiber or copper) to feed the system adequately.
5. The proposed and maximum throughput speeds of the proposed services, and cost of service to the end-user.
6. Discussion of and plans for matching funds request for capital – both grants and loans (a proposal that requires less of a financial commitment from the County would be viewed more favorably), use of County property and/or County towers will be considered in matching funds.
7. Vendor policy for back-up or reserve electrical power.

8. Potential new employment opportunities in Louisa County.
9. Vendor policy for determining the schedule of system deployment. Show each proposed facility location along with the timeline schedule for deployment.
10. Technologically stable and standards-based network architecture. Discuss evolution plans to prevent obsolescence.

In addition to these criteria, some insights into the operating history and longevity of the proposing organization may be considered.

The selection process shall be governed by and completed in accordance with the Louisa County Procurement Ordinance. If any provision of this Request for Proposal shall be found to be inconsistent or in conflict with such policy, the terms of the ordinance shall govern.

The County of Louisa reserves the right to reject any or all proposals.

VI. COUNTY OF LOUISA STANDARD TERMS AND CONDITIONS

See Appendix A. Louisa County does not accept changes to the County of Louisa, Virginia Standard Terms and Conditions, and any attempt by the Offeror to make such changes is in itself reason for a proposal to be declared as non-responsive to the RFP and rejected by the County.

APPENDIX A
COUNTY OF LOUISA, VIRGINIA
STANDARD TERMS AND CONDITIONS

1. General Provisions

- 1.1 Unless otherwise agreed to in a writing signed by the County Administrator for Louisa County, and approved as to form by the Louisa County Attorney, these Standard Terms and Conditions apply to and govern all purchases, regardless of the type of goods or services purchased, by the County of Louisa, Virginia (the “County”) from _____ (the “Vendor”).

2. Definitions

- 2.1 “Solicitation” means the vehicle by which the County solicited pricing, and if applicable other terms, by which it could acquire goods or services from Vendor, regardless of whether the vehicle was an Invitation for Bid, Request for Proposal, Request for Quote, telephone quote or any other means permissible under the Louisa County Code or Virginia law.
- 2.2 “Contract Documents” means all documents that constitute any legal and binding agreement between the Vendor and the County, including these Standard Terms and Conditions.
- 2.3 “Contract Period” means the time period from the time that Vendor first becomes legally bound to provide goods or services to the County in response to a Solicitation until all of Vendor’s contractual obligations to the County, arising out the Solicitation, cease.
- 2.4 “Obligations” means any and all legal obligations of Vendor under any Contract Documents.

3. Laws of the Commonwealth

- 3.1 The Contract Documents shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia and the Louisa County Code. Vendor represents and warrants to the County that during the Contract Period it:
- a) Will comply and conform with 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;
 - b) Not employ illegal alien workers or otherwise violate the provisions of the Immigration Reform and Control Act of 1986; and

- c) Comply with all federal, state and local laws and regulations applicable to the performance of the services procured.

4. Louisa County Policies

4.1 In every contract of over \$10,000, the Vendor agrees during the Contract Period that Vendor:

- a) Will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Vendor; and
- b) Will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and
- c) Will state that the Vendor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Vendor to perform under the Contract Documents. 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
- d) Will include the provisions of the foregoing subparagraphs in every subcontract or purchase order exceeding \$10,000 issued by Vendor in order to fulfill its Obligations, so that the provisions will be binding upon each subcontractor or vendor employed by Vendor.

4.2 In every contract of over \$10,000, the Vendor agrees during the Contract Period the Vendor 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 the Vendor 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 subvendor.
- e) 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 Vendor under a Solicitation and in accordance with the Virginia Public Procurement Act and/or the Louisa County Code.
- f) In addition to the provisions contained herein, the Vendor shall comply with the federal Drug Free Workplace Act.

4.3 Pursuant to Section 2.2-4343.1 of the Code of Virginia and Section 60-25 of the Louisa County Code, in all Solicitations, contracts, and purchase orders, the County does not discriminate against faith-based organizations.

- a) "Faith-based Organization" means a religious organization that is or applies to be a Vendor 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.
- b) If Vendor is a faith-based organization, then Vendor shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this Agreement the following notice in bold-face type:

NOTICE

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.

5. **Certifications**

5.1 The Vendor certifies that Vendor's response to the Solicitation:

- a) Has been prepared without prior participation, understanding, agreement, or connection with any corporation, firm or other person that is also submitting a bid/offer in response to the same Solicitation;

- b) Is in all respects fair, without misrepresentations of fact, and free from collusion or fraud;
 - c) Is in full compliance with the Virginia Conflicts of Interest Act;
 - d) Is or is intended to be competitive and free from any collusion with any person, firm or corporation; and
 - e) Has been prepared without the benefit of being provided information not available to the general public, or other potential bidders, such as insider information known to County employees or other sources which may have gained such information from interaction with County employees.
- 5.2 The Vendor has not offered or received any kickback from any other bidder or vendor, 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;
- 5.3 The Vendor 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;
- 5.4 The Vendor 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
- 5.5 Neither Vendor, Vendor's subcontractors, nor any person acting on Vendor's behalf, have conferred, or will 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.

6. Warranties

- 6.1 The Vendor represents and warrants that it has the requisite experience, skills, capabilities, and manpower to perform the Obligations in a good and workmanlike fashion, that it is a legal business entity chartered or authorized

to do business in Virginia having all necessary licenses required by law, that the person signing any of the Contract Documents has been fully authorized to do so, and his signature will legally bind the Vendor to perform its Obligations. Any goods or services furnished by the Vendor under the Contract Documents shall be covered by the most favorable warranties provided by the Vendor to any customer, but in no event shall such warranty be less than one (1) year from date of completion of services or sale of goods, as applicable.

- 6.2 Vendor warrants to the County that all materials and equipment furnished shall be new, unless otherwise specified, and that Vendor's Work shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All materials and work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the Contract Documents.
- 6.3 The Vendor agrees that if warranties set forth in the Contract Documents are in any respect breached, the Vendor 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. These rights and remedies are in addition to and do not limit those rights and remedies otherwise available to the County.

7. Modifications, Additions or Changes

- 7.1 Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the County. 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 approval of the County. The amount of any contract may not be increased for any purpose without adequate consideration provided to the County.

8. Procurement Code

- 8.1 Solicitations are subject to Chapter 60 of the Louisa County Code and any revisions, thereto, which are hereby incorporated into this contract in their entirety. **ANY SOLICITATION OR CONTRACT DOCUMENTS THAT ARE ISSUED, REQUESTED OR EXECUTED IN VIOLATION OF LOUISA COUNTY CODE OR VIRGINIA LAW ARE VOID AB INTIO, AND ARE OF NO EFFECT, REGARDLESS OF WHETHER ANY PURCHASE HAS BEEN MADE UNDER THE CONTRACT DOCUMENTS AND IRRESPECTIVE OF THE AMOUNT OR LENGTH OF VENDOR'S PERFORMANCE UNDER THE CONTRACT DOCUMENTS.** A current copy of the Louisa County Code is

available at www.municode.com or for viewing at the Louisa County administration building during normal business hours.

9. Bid Acceptance Period

- 9.1 Any bid in response to a Solicitation shall be valid for 60 days. At the end of the 60 days, the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the Solicitation is cancelled.

10. Indemnification

- 10.1 The Vendor agrees to indemnify, defend and hold harmless the County and its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by (i) the use of any materials, goods, or equipment of any kind or nature furnished by the Vendor; (ii) any services of any kind or nature provided by the Vendor; or (iii) Vendor's performance of its Obligations, provided that such liability is not attributable to the sole negligence on the part of the County.

11. Assignment

- 11.1 Neither the Obligations nor the Contract Documents may be assigned, sublet, or transferred, in whole or in part, without the written consent of the County.

12. Audit

- 12.1 The Vendor hereby agrees to retain all books, records, and other documents relative to Vendor's Obligations and the Contract Documents 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 such books, documents, papers and records of the Vendor for the purpose of making audits, examinations, excerpts or transcriptions.

13. Ownership of Documents

- 13.1 Any reports, studies, photographs, negatives, or other documents prepared by Vendor in the performance of its Obligations shall be remitted to the County by the Vendor, without demand therefore, upon the earliest of (i) completion of its Obligations; (ii) completion of the Contract Period; or (iii) termination, cancellation or expiration of the Contract Documents. Vendor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the Obligations without the prior written consent of the County. The County shall own the intellectual property rights to all materials produced under this Agreement.

14. Payment and Performance Bond

- 14.1 If Vendor's Obligations include construction, the amount of which exceeds \$100,000, the Vendor shall furnish to the County the bonds required under Section 60-21 of the Louisa County Code and shall otherwise fully comply with the requirements of such sections of the Code. The County reserves the right to require payment and/or performance bonds in the amount of the Obligations for any other projects, goods or services, whether or not required by such sections of the Code.

15. Required Payment

- 15.1 The Vendor covenants and agrees to:
- a) Within seven (7) days after receipt of any amounts paid to the Vendor under the Agreement,
 - b) pay any subcontractor for its proportionate share of the total payment received from the County attributable to the work under the Agreement performed by such subcontractor, or
 - c) 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 therefore.
- 15.2 Vendor agrees to provide its federal employer identification number or social security number, as applicable, as a condition precedent to the County being required to make any payment to the Vendor under the Contract Documents.
- 15.3. Vendor agrees to pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the Vendor on all amounts owed by the Vendor that remain unpaid after seven (7) days following receipt by the Vendor of payment from the County for work performed by the subcontractor in furtherance of Vendor meeting its Obligations to the County, except for amounts withheld pursuant to subparagraph 15.1(c) above.
- 15.4 Vendor agrees to include in its contracts with any and all subcontractors the requirements of 15.1(a), 15.1(b), and 15.1(c) above.

16. Liability Coverage

- 16.1 Unless otherwise expressly excepted in the Solicitation documents prepared by the County, the Vendor shall take out and maintain during the Contract Period 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 could arise from Vendor's performance of its Obligations. Such insurance shall at

least have the coverages and be in the amounts set forth in section 19 “Insurance and Bond Requirements” set forth below and shall name the “Board of Supervisors of Louisa County, Virginia” and the “County of Louisa, Virginia” as additional insureds. Such insurance must be issued by a company admitted to do business within the Commonwealth of Virginia and with at least an AM Best rating of A-. Within 10 days after Vendor is awarded a contract in response to a Solicitation, and in no event later than the first day on which Vendor provides goods or services to the County, the Vendor 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.

17. Loss or Damage in Transit

17.1 Delivery by a Vendor to a common carrier does not constitute delivery to the County. Any claim for loss or damage incurred during delivery shall be between the Vendor and the carrier. The County accepts title only when goods are received regardless of the F.O.B. point noted in the Solicitation or the Contract Documents. The receiving agency will note all apparent damages in transit on the freight bill and notify the Vendor. Discovery of concealed damages or loss will be reported by the receiving agency to the carrier and the Vendor within 15 days of receipt and prior to removal from the point of delivery if possible. The Vendor shall make immediate replacement of the damaged or lost merchandise or be in default of the Contract Documents. It shall be the Vendor’s responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the agency, the Vendor may deduct the amount of damage or loss from his or her invoice to the agency in lieu of replacement.

18. Freight

18.1 By signing any response to a Solicitation the bidder certifies that the bid price(s) offered for F.O.B. destination include only the actual freight charges at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Freight charges are, therefore, established for each individual purchase. If a requirement is bid F.O.B. origin, the Vendor shall prepay the charges and add the amount to the invoice. A copy of the freight bill should be attached to all invoices that include freight charges. In a solicitation specifying F.O.B. origin the County will consider freight cost in the evaluation of bids.

19. Insurance and Bond Requirements

19.1 The Vendor shall maintain the following insurance to protect it from claims that could arise from performance of the Obligations, including claims (i) under the Workmen’s Compensation Act; (ii) for personal injury, including death; and (iii) for damage to property, regardless of whether such claims

arise out of Vendor's actions or inactions, or those of Vendor's subcontractor or other persons directly or indirectly employed by either of them:

- a) Worker's Compensation and Employer's Liability. Vendor shall procure and maintain Worker's Compensation and Employer's Liability Insurance covering all of its employees in conformance with the laws of any state, district or territory of the United States of America in which work towards meeting Vendor's Obligations are to be performed. Such insurance shall not have a limit of liability less than the following:
 - a) Bodily Injury by accident, \$500,000 for each accident;
 - b) Bodily Injury by disease, \$500,000 policy limit;
 - c) Bodily Injury by disease, \$500,000 for each employee.
- b) Commercial General Liability Insurance. This coverage shall include contractual liability, underground hazard, explosion and collapse, hazard, property damage, independent Vendor, and personal injury insurance in support of section 10 of this Agreement entitled "Indemnification". This policy shall be endorsed to include the County as additional insured's during the Contract Period and shall state that this insurance is primary insurance as regards any other insurance carried by the County. Vendor shall procure and maintain Public Liability Insurance in an amount not less than:
 - a) \$1,000,000 for each occurrence involving bodily injury;
 - b) \$1,000,000 for each occurrence involving property damage;
 - c) \$2,000,000 aggregate limits.
- c) Comprehensive Automobile Liability. Vendor shall procure and maintain Comprehensive Automobile Liability Insurance covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, not owned, or hired by the Vendor, with the following limits:
 - a) \$1,000,000 for each occurrence involving personal injury;
 - b) \$1,000,000 for each occurrence involving property damage;
 - c) \$2,000,000 aggregate limits.
- d) The Vendor shall purchase and maintain insurance coverage in a sufficient amount to cover all potential claims on his tools, equipment and machinery.

19.2 The County reserves the right to require insurance of any Vendor in greater amounts provided notice of such requirements is stated in the solicitation.

- 19.3 All insurance policies required under this paragraph, or otherwise required by the Solicitation or Contract Documents, shall include a clause waiving any and all subrogation rights against the County.
- 19.4 Insurance policies shall provide for notification to the County of non-payment of any premium and shall give the County the right to make the premium payment thereunder within a reasonable time, if the insurance policy is in danger of lapsing during the Contract Period. Any premium payments made by the County shall be deducted from amounts due Vendor under the Contract.

20. Compliance With Laws

- 20.1 All work performed shall be in accordance with all local, state and federal codes, laws and regulations, including but not limited to: Virginia Conflict of Interest Act, Virginia Fair Employment Contracting Act, Virginia Freedom of Information Act, Virginia Prompt Payment Act, the Virginia Public Procurement Act, and the Louisa County Code.

21. No Waiver

- 21.1 Any failure of the County to demand rigid adherence to one or more of the terms of the Contract Documents, 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 the Contract Documents. Moreover, it is the County's position and Vendor hereby agrees that the legal theories of Implied Waiver, Statute of Limitation, Estoppel, and Laches do not apply as defenses that the Vendor may assert in any action by the County. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

22. Termination and Cancellation

- 22.1 The County shall have the unilateral right to terminate any contract with Vendor for default on the terms of that contract, or any other contract between the Vendor and the County.
- 22.2 The County has the unilateral right to cancel and terminate any contract with Vendor, in whole or in part, without penalty, merely out of convenience, and shall require no breach of contract by Vendor as a condition of termination. This right of termination for convenience may be exercised at the sole unconditional discretion of the County. If a contract is terminated in whole or in part for the convenience of the County, the Vendor shall be paid the contracted price for the service or goods actually provided or rendered up to the date of the termination of the respective contract, but shall not be paid any other fees or lost profits.

- 22.3 Any contract cancellation notice shall not relieve the Vendor of the obligation to perform on all outstanding orders issued prior to the effective date of cancellation.

23. Availability of Funds

- 23.1 It is understood and agreed between the parties herein that the County shall be bound hereunder only to the extent of the funds available and duly appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling the County's obligations with respect to the Contract Documents.

24. Billing, Method of Payment and Offset Rights

- 24.1 Billing shall be done monthly based on the contracted rate bid by the Vendor and submitted to the Louisa County Administration Department. The County will remit payment within 30 days of receipt of a correct invoice. Incorrect invoices shall be subject to correction and/or rejection by the Louisa County Administration Department.
- 24.2 Vendor agrees that the County has the unilateral right to offset any bill submitted to County by Vendor, or any payment owed to Vendor by the County, by any amount due to the County from Vendor pursuant to the Contract Documents, or any other agreement, contract or transaction between County and Vendor.

25. Tax Exemption

- 25.1 The County of Louisa, as a political subdivision of the Commonwealth of Virginia, is exempt from any Federal excise tax and Virginia sales and use tax. The county of Louisa's tax identification number is 54-6001398.

26. Work Site Damages

- 26.1 Any damages, including damage to finished surfaces, resulting from Vendor's performance of its Obligations shall be repaired to the satisfaction of the County at the Vendor's expense.

27. Choice of Law

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

28. Forum Selection

- 28.1 Vendor agrees, and submits, to sole and exclusive jurisdiction and venue in the General District or Circuit Courts of Louisa County, Virginia for resolution of any and all claims, causes of action or disputes between Vendor and the County. The Vendor agrees hereby to waive any jurisdictional or venue defenses related to any such action brought in the courts of Louisa County, and further agrees to not remove or file any such action in Federal Court.
- 28.2 Vendor agrees that service by registered mail to the address set forth in Paragraph 31.1 of these Standard Terms and Conditions shall constitute sufficient service of process for any such action.

29. Severability

- 29.1 If any provision of any one, or all of the Contract Documents is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reason, such provision shall be fully severable and the remainder of the Contract Documents shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of the Contract Documents, and the remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance.

30. Attorneys' Fees

- 30.1 Should the County employ an attorney to either (i) institute and maintain a suit against Vendor arising out of the Contract Documents or Vendor's Obligations; (ii) assist in enforcing or defending any of the County's rights under the Contract Documents; (iii) protect the County's interest in any matter arising under a contract with Vendor; (iv) collect damages for the breach of a contract or any other amounts owed to the County; or (v) recover on a surety bond given by the Vendor, then the County shall be entitled to recover its attorneys' fees, costs, charges, and expenses expended or incurred therein from the Vendor if the County prevails in court, regardless whether the County recovers at law or in equity.

31. Notices

- 31.1 All requests, notices and other communications required or permitted to be given under the Contract Documents shall be in writing. Delivery of a notice shall be deemed to have been made when such notice is either:
- a) Duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect; or

- b) Transmitted by hand delivery, telegram, telex, telecopy or facsimile transmission, 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 County shall be sent to:

County Administrator
Louisa County
P.O. Box 160
Louisa, VA 23093

With a copy to:
County Attorney
Louisa County
P.O. Box 160
Louisa, VA 23093

32. Contractual Claims Procedure

- 32.1 Contractual claims or disputes by Vendor against the County, 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 Vendor 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 Vendor'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 Vendor files such written notice, Vendor shall proceed with the work as directed. If Vendor 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.
- 32.2 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 Vendor by written notice.
- 32.3 If the Vendor disagrees with the decision of the County concerning any pending claim, the Vendor shall promptly notify the County by written notice that the Vendor is proceeding with the work under protest. Any claim not resolved, whether by failure of the Vendor to accept the decision of the County or under a written notice of Vendor'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 Vendor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

- 32.4 The County's decision on contractual claims shall be final and conclusive unless the Vendor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate court.

33. Correction of Defective Work

- 33.1 Vendor shall promptly replace or correct any work or materials which County rejects as failing to conform to the requirements of the Contract Documents. If Vendor does not do so within a reasonable time, County shall have the right to replace or correct the defective work or materials and Vendor shall be liable to County for the cost thereof. If, in the opinion of County, it is not expedient to correct or replace all or any part of rejected work or materials, then County, at its option, may deduct from the payment due, or to become due, to Vendor such amounts as, in County's judgment, will represent the higher of: (i) the difference between the fair value of the rejected work and materials and the value thereof, if the work had complied with the Contract Documents; or (ii) the cost of correction.

34. County Attorney Approval

- 34.1 These Terms and Conditions, in their standard form, have been reviewed and approved as to form by the Louisa County Attorney. Any alterations to these Terms and Conditions by Vendor are invalid without subsequent review and approval as to form by the Louisa County Attorney.

I agree to these terms and conditions, and understand that they apply to and govern all purchases, regardless of the type of goods or services purchased, by the County of Louisa, Virginia from Vendor.

Name Title

Vendor _____

Date _____