

## ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS

Regarding the Contract(s) between The Greenbrier County Commission of Greenbrier County, West Virginia (the "County"), and the Vendor: \_\_\_\_\_ (the "Vendor," or collectively referred to herein as the "Parties"):

**WHEREAS**, the Parties are entering into one or more contracts (the "Contract") for goods and/or services, or Vendor has presented one or more forms for incorporation into the Contract, including one or more terms or conditions that the County will not or cannot accept, or Vendor has presented a quote for goods or services. In consideration for the incorporation of the Vendor's form(s) into the Contract and/or acceptance of the Vendor's quote, the Vendor agrees to the terms and conditions contained in this Addendum, which specifically eliminates or alters the legal enforceability of certain terms or conditions contained in the Vendor's form(s) or constitutes the basic terms and conditions of the Contract where the Contract is silent.

**THEREFORE**, the parties agree to the following terms and conditions, and if any of such terms and conditions conflict with terms or conditions presented by either party, the terms and conditions contained in this Addendum shall control:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes Vendor's form(s) regardless of whether such forms are submitted or executed before or after the execution of this Addendum. In the event of any conflict between any form and this Addendum, the terms contained herein shall control.
2. **PAYMENT:** Payments for goods or services shall be made only after or simultaneous with the delivery of the good or service and only upon the receipt of a proper invoice. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.
3. **INTEREST ON UNPAID INVOICES:** Except in the case of unforeseen budgetary constraints, any interest on the vendor's legitimate uncontested invoice shall not begin to accrue until the sixty-first day after the invoice was received by the county or agency through the date on which the check is mailed to the vendor e: Provided, That this section shall not apply if payment cannot be made within the sixty-day period because of unforeseen budgetary constraints.
4. **GOVERNING LAW:** Any language requiring the application of the law of any state other than West Virginia in interpreting or enforcing the Contract is deleted and the Contract shall be governed by the laws of the State of West Virginia. Any information provided by Vendor in any form which contradicts or violates applicable West Virginia law shall have no effect.
5. **REGISTRATION:** The Vendor shall be registered and in good standing with the West Virginia Secretary of State's Office.

6. **RISK SHIFTING:** Any provision requiring the County to bear the costs of all or a majority of business or legal risks associated with the Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is deleted.
7. **LIMITING LIABILITY:** Any language limiting the Vendor's liability for direct damages to person or property is deleted.
8. **VENDOR RELATIONSHIP:** The relationship of the Vendor to the County shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the Contract. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed by Vendor in connection with carrying out the procurement by County, except that any such individual may be required to undergo a background check if that person shall have access to secured areas of the County or to County data. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing. Vendor shall hold harmless the County and shall provide the County with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.
9. **INDEMNIFICATION:** Any provision requiring indemnification of Vendor by the County is deleted. Unless the more favorable terms of indemnification are contained in Vendor's forms, the Vendor agrees to indemnify, defend, and hold harmless the County, its officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data use under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe Federal, State or local laws including, but not limited to, labor and wage and hour laws.
10. **FUNDING:** The Contract shall be for a term of one year and any obligation to any extension beyond one year constitutes an impermissible obligation of funds not yet appropriated and may be cancelled at the convenience of the County. Cancellation due to lack of funding or any other reason shall not constitute a default by the County.
  - The Contract with Vendor may be extended for **one additional year**;  The Contract with Vendor may be extended for **two additional years**; or
  - The Contract with Vendor **may not be extended**.

- 11. COMPLIANCE WITH LAWS:** Vendor acknowledges that it is responsible for reviewing, understanding, and complying with all applicable federal, state and local laws, regulations and ordinances, and that shall notify its subcontractors of the same obligations.
- 12. ARBITRATION:** Any reference made to arbitration or mediation by the Contract, or any other documents or specifications presented by Vendor are hereby deleted as void and of no effect.
- 13. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding any term to the contrary, no modification or extension of the Contract shall become binding without mutual written consent of the parties.
- 14. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provisions of the Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party. Any provision presented by Vendor requiring the County to waive any rights, claims or defenses is deleted.
- 15. SUBSEQUENT FORMS:** The terms and conditions contained in this Addendum shall supersede any and all subsequent terms and conditions which may appear on any form document submitted by the Vendor to the County, including any forms or terms presented electronically or reference to information contained on any website. Acceptance or use of Vendor's forms does not constitute acceptance of the terms or conditions contained thereon.
- 16. ASSIGNMENT:** The Vendor agrees not to assign the Contract to any person or entity without the County's prior written consent.
- 17. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by the Contract will: (a) conform to the specifications, drawings, samples or other description furnished or specified by the County; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.
- 18. PRIVACY, SECURITY AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the County, unless the individual who is the subject of the information consents to the disclosure in writing.
- 19. LICENSING:** Vendor agrees that it and any subcontractors engaged by it shall be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision.

- 20. **TAXES:** Any provision requiring the County to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The County will, upon request, provide a tax-exempt certificate to confirm its tax-exempt status.
- 21. **STATUTE OF LIMITATIONS:** The County does not agree to any limitation inconsistent with state law on the time in which the County may bring suit against the Vendor or any other third party, and any such clause is hereby deleted.
- 22. **RENEWAL:** The County does not agree to any language that seeks to automatically renew, modify, or extend the Contract beyond the initial terms or automatically continue the Contract period from term to term, and any such clause is hereby deleted.
- 23. **INSURANCE:** The Vendor shall furnish proof of insurance and must include the County as an additional insured on each policy prior to the commencement of work or invoicing. Notwithstanding the foregoing, Vendor is not required to list the County as an additional insured on any required Professional/Malpractice/Errors and Omission Insurance.
- 24. **WORKERS COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers' compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.
- 25. **FREEDOM OF INFORMATION ACT:** Vendor acknowledges and understands that contracts, subcontracts and other related documents are public documents and may be subject to disclosure under the West Virginia Freedom of Information Act, W.Va. Code §§ 29B-1-1 *et seq.* and County is under no obligation to notify Vendor of a request for information that includes the Contract.
- 26. **PUBLIC OFFICIALS AND EMPLOYEES:** Vendor acknowledges that the Contract involves approval and administration by public officials and/or public employees, and therefore both public officials and/or employees and Vendor are subject to ethics laws and rules, including, but not limited to W.Va. Code §6B-2-5. Vendor acknowledges its obligations and agrees to comply with all applicable ethics laws and rules.
- 27. **AUTOMATIC COST OR PRICE INCREASES:** Any automatic cost or price increase contemplated by the Vendor's terms is hereby deleted and any increase in cost or price must be separately and independently agreed to by the Parties in writing through a modification of the terms of the Contract.

**CERTIFICATION AND SIGNATURE:** By signing below, I certify that I have reviewed this Addendum in its entirety and that Vendor accepts the terms and conditions contained herein.

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Vendor Address

\_\_\_\_\_  
Name and Title of Authorized Signature

\_\_\_\_\_  
Vendor Email & Telephone