

# TEXAS A&M UNIVERSITY-KINGSVILLE

Title: Contract Addendum

Procedure No.: PP-132

Date: 4/29/05

## I. Purpose

This procedure provides a sample of a standard contract addendum that can be attached to a wide variety of Vendor agreement forms.

## II. Scope

This procedure applies University wide.

## III. General

The attached addendum has been reviewed by legal and can be used for many contracting applications. The formal documents may only be signed by those authorized in the Tables of Authorizations for Contracts.

To use this addendum, follow these steps.

1. Receive and review the vendor's contract form
2. Create a P.O. to document the agreement
3. Fill in the blanks on the Addendum
4. Secure the Vendor's signature on the Addendum
5. Sign the vendor's contract form w/ the annotation, "as per addendum"
6. Copy to vendor and file originals of both documents.



**TEXAS A&M UNIVERSITY-KINGSVILLE  
CONTRACT ADDENDUM FORM TO VENDOR'S CONTRACT FORM**

Vendor Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone/Fax/Email: \_\_\_\_\_  
Purchase Order Number: \_\_\_\_\_  
Vendor Reference Number: \_\_\_\_\_

Texas A&M University-Kingsville [**TAMUK**], a component of Texas A&M University System, an agency of the State of Texas, with its principal offices located at 955 University Blvd, Kingsville, TX and the Vendor are this day of \_\_\_\_\_ entering into a contract/agreement and, for their mutual convenience, the parties are using the standard contract form provided by the vendor (reference to hereafter ad the "Vendor's Contract Form").

This addendum, duly executed by the parties, is incorporated into the Vendor's Contract Form and made an integral part thereof.

The Vendor's Contract Form dated \_\_\_\_\_ is, with the exceptions noted herein, acceptable to TAMUK. Nonetheless, some types of clauses are not allowable for TAMUK components because of the constitutional restrictions. They should be deleted or amended to comply. The following must be inserted before the wording: **"To the extent permitted by the laws and constitution of the State of Texas"**.

This is done in consideration for the convenience of using provisions in the Vendor's Contract Form instead of negotiating a separate contract document, the parties agree, notwithstanding any provisions in the form shall have any effect or be enforceable against TAMUK. (As used herein, the term "Agreement" means the Vendor's Contract Form, this Addendum, and the purchase order, together with any other addenda or exhibits constituting part of the written contract between the parties).

Parties agree that any provisions in the agreement that relating to the items below shall be null and void.

- 1) Requiring TAMUK to maintain any type of insurance either for TAMUK's benefit or for the Vendor's benefit.
- 2) Requiring or stating the terms of the Vendor's Contract Form shall prevail over the terms of the purchase order or this Addendum in the event of conflict. Venue shall be in Kleberg County, Texas.
- 3) Requiring TAMUK to indemnify or hold harmless the Vendor for any act or omission.
- 4) Imposing interest charges beyond the maximum amount specified by law.
- 5) Requiring the application of the law of any state other than Texas in interpreting or enforcing the Agreement or requiring that any dispute under the Agreement be resolved in the courts of any state other than Texas. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.
- 6) Releasing the Vendor or any other entity or person from its legal liability, or limiting liability, or unlawful or negligent conduct or failure to comply with any duty recognized or imposed by applicable law.
- 7) Requiring any total or partial compensation or payment for lost profit or liquidated damages by TAMUK if the Agreement is terminated before the end of the contract term.
- 8) Requiring that the Agreement be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of TAMUK before the Agreement is considered in effect.
- 9) Delaying the acceptance of this Agreement or its effective date beyond the date of execution by TAMUK.
- 10) Changing the time period within which claims can be made or actions can be brought under the laws of the State of Texas.
- 11) Prohibiting TAMUK from recovering its lawful damages incurred as a result of a breach of this Agreement.
- 12) Limiting the liability of Vendor for property damage or personal injury.
- 13) Permitting unilateral modifications of this Agreement by the Vendor.
- 14) Binding TAMUK to any arbitration or to the decision of any arbitration board, commission, panel or other entity.
- 15) Obligating TAMUK to pay costs of collection or attorney's fees.
- 16) Granting the Vendor a security of interest in property of TAMUK.

- 17) Obligating TAMUK to pay taxes. (Our state tax exempt number is 37327327320) Tax Vendor ID no. 74-6001-530.
- 18) Requiring payment terms other than Net 30 days from receipt of correct invoice.
- 19) Waiving the Sovereignty of Texas or increasing TAMUK's liability beyond that found in the Texas Tort Claims Act. (TEX.CIV.PRAC. & REM. CODE Chapter 101).

In addition, the parties agree to the following additional contract provisions:

- The Vendor warrants it may lawfully transact business in Texas and if this Agreement has a value of more than \$10,000, Vendor does not discriminate on the basis of race, age, sex or any other basis contrary to federal or state law, and that it will obtain all necessary approvals/permits for performing under this Agreement.
- To the extent the language in this Addendum is in conflict with any language in the Vendor's Contract Form, the language in this Addendum will control.
- In Vendor's performance under this Agreement, the Vendor acts and will act as an independent contractor and not as an agent or employee of TAMUK.
- This Addendum, the purchase order and the Vendor's Contract Form constitute the entire Agreement between the parties and may not be waived or modified except by written agreement between the parties.
- If a court of competent jurisdiction finds any provision of this Addendum, the purchase order, and the Vendor's Contract Form illegal, ineffective or beyond the contractual authority of either party, then the offending provision will be stricken and the remainder of the agreement between the parties will remain in effect.
- **"The dispute resolution"** process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Texas A&M University-Kingsville and to attempt to resolve any claim for breach of contract made by the contractor:

A claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, the contractor shall submit written notice, as required by subchapter B, to the Director of Procurement and General Services. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Texas A&M University-Kingsville and the contractor otherwise entitled to notice under the parties' contract. Compliance by the contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by Texas A&M University-Kingsville if the parties are unable to resolve their disputes under subparagraph

(A) of this paragraph.

Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by Texas A&M University-Kingsville nor any other conduct of any representative of Texas A&M University-Kingsville relating to the contract shall be considered a waiver of sovereign immunity to suit.

The submission, processing and resolution of the contractor's claim is governed by the published rules adopted, by the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or in part.

The designated individual responsible on behalf of Texas A&M University-Kingsville for examining any claim or counterclaim and conducting any negotiations related thereto as required under §2260.052 of H.B. of the 76<sup>th</sup> Texas Legislature shall be Ralph Stephens, Director of Procurement & General Services.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed, intending thereby to be legally bound.

**For the Vendor:**

**TAMUK:**

**By:** \_\_\_\_\_

**by:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_