



**COUNTY OF FLUVANNA, VIRGINIA**  
**Request for Proposals (RFP) #2017-04**  
**Taxable Qualified Energy Conservation Bond (Direct Pay)**  
**or Bank Qualified Tax-exempt Equipment Lease/Purchase Financing**  
**Issue Date: December 15, 2016**  
**Due Date: January 6, 2017**

**Procurement Contact:**

County of Fluvanna  
Cyndi Toler, Purchasing Officer  
132 Main Street  
P.O. Box 540  
Palmyra, VA 22963  
Ph: (434) 591-1930 ext. 1124  
Email: [ctoler@fluvannacounty.org](mailto:ctoler@fluvannacounty.org)

**Issuing Department Contact:**

County of Fluvanna  
Eric Dahl, Deputy County  
Admin./Finance Dir.  
132 Main Street  
P.O. Box 540  
Palmyra, VA 22963  
Ph: (434) 591-1930 ext. 1069  
Email: [edahl@fluvannacounty.org](mailto:edahl@fluvannacounty.org)

**Municipal Advisor Contact:**

Raymond James & Associates  
Dianne Klaiss, Sr. Vice President  
Ph: (561) 739-7909  
Email: [Dianne.klaiss@raymondjames.com](mailto:Dianne.klaiss@raymondjames.com)  
Sean Ekiert, Managing Director  
Ph: (804) 225-1197  
Email: [sean.ekiert@raymondjames.com](mailto:sean.ekiert@raymondjames.com)

**All sealed proposals shall be turned in no later 2:00 p.m. EST, Friday, January 6. All Proposals that are delivered via mail or are hand delivered must be addressed to the "Procurement Contact" listed above. Any Proposals that are turned in late will be rejected and returned unopened. Any Proposals sent in via facsimile, telephone, or email shall not be considered.**

Proposal documents may be picked up at the Fluvanna County Department of Finance located at 132 Main Street, 2nd floor, Palmyra, VA 22963 or by clicking on the following link: <http://www.fluvannacounty.org/services/finance/procurement/solicitations>.

**1. SCOPE OF FINANCING**

Fluvanna County, a political subdivision of the Commonwealth of Virginia and the Fluvanna County Board of Supervisors (the "Board") is seeking competitively sealed proposals from qualified licensed and insured financial institutions to purchase up to \$7.7 million Taxable Qualified Energy Conservation Bond (Direct Pay) **OR** up to \$7.25 million Bank Qualified Tax-exempt equipment lease/purchase for energy projects located in Fluvanna County Government and School buildings. The County asks that financial institutions provide proposals for **one or both** of the financing options detailed below. The winning proposer shall have the necessary expertise to perform such services as described within this solicitation.

## 2. GENERAL INFORMATION

Fluvanna County is centrally located in the heart of Virginia, 120 miles south of Washington, D.C., 60 miles west of Richmond, VA, and 25 miles southeast of Charlottesville, VA. The County encompasses a land area of 282 square miles and is bound by interstate 64 to the north and by the James River to the south. As of December 2015, the County had a population of 26,235. The County's financial information can be found on their website:

Audits: <http://fluvannacounty.org/services/finance/reports>

Budgets: <http://fluvannacounty.org/services/finance/budget-and-cip>

### Project Overview

The Board and the Fluvanna County School Board, a body corporate of the Commonwealth of Virginia (as more fully defined hereinafter, the "School Board") and the Energy Equipment Provider ("Trane") intend to enter into an Energy Performance Contract no later than Wednesday, February 15, 2017 (the "Contract") under which Trane will install specified energy conservation measures and equipment as recommended in their audit dated September November 18, 2016 at certain Board and School Board (collectively the Board and the School Board shall be referred to herein as "County") locations as more fully described in **Attachment F**. It should be noted that no contract with Trane has been finalized (and nothing herein shall obligate the County to enter into said contract with Trane) and that prior to any financing pursuant to this RFP closing, the County will provide the Offeror with the final scope of work for the Project, a detailed equipment list and an executed Contract. The general scope of work for the Project will generally be similar in nature to the attached description, but is subject to change. The obligation will not exceed \$7.7 million and represents the maximum cost of the Project of \$7.4 million and anticipated financing costs. The principal and interest is intended to be to be repaid over a period of 15 Years (the "Term").

The Contract provides for guaranteed energy and operational cost savings of approximately \$492,473 annually which will be used by the County to offset the cost of the financing. Implementation/construction of the Project is anticipated to take approximately 12-18 months after closing on the financing.

## 3. FINANCING OPTION #1 - TAXABLE QUALIFIED ENERGY CONSERVATION BOND (DIRECT PAY) THROUGH THE VIRGINIA SAVES GREEN COMMUNITY PROGRAM

### *Qualified Energy Conservation Bonds*

Qualified Energy Conservation Bonds are Taxable, Direct Pay Bonds and as such, the issuer of the Direct Pay Bonds is entitled to receive cash rebates from the U.S. Department of the Treasury, which, as a part of the financing, will be assigned to the County to subsidize its interest payments.

The QECB allocation will be reserved by the Virginia SAVES Green Community Program ("VA SAVES") for use with the Taxable 2017 Bond pursuant to a QECB allocation awarded by the Commonwealth of Virginia to VA SAVES in furtherance of Executive Order 36, which authorized the creation of VA SAVES and appointed the Department of Mines, Minerals and Energy as the sponsor. CleanSource Capital, LLC is the administrator of VA SAVES and has entered into an Administrative Services Agreement with VRA for administering VA SAVES on its behalf.

Under a Taxable, Direct Pay Qualified Energy Conservation Bond, the Issuer of the Taxable Bonds will receive a Credit Payment subsidy (the "Credit Payment Subsidy") from the US Treasury in an amount

equal to the lesser of (i) the Interest Rate; or (ii) 70% of the Tax Credit Rate as of the date of the financial closing of the Transaction (the “Credit Subsidy Rate”). The Credit Payment Subsidy will be assigned from the VRA to the County.

**Under Financing Option #1**, the Taxable 2017 Bond pursuant to VA SAVES will be issued by the Virginia Resources Authority (“VRA” or “Issuer”) to the winning proposer (“Purchaser”) and will be secured primarily by the payments made by the County to the Purchaser pursuant to an equipment financing lease agreement (the “Financing Lease”) to be entered into by the County with VRA and assigned to the Purchaser. Draft versions of the Bond Purchase and Lease Agreement required for financing under Option #1 are attached as **Attachment G**.

Certain assumptions regarding **the Financing Option #1 - Taxable Qualified Energy Conservation Bond** are detailed below:

<i>Issuer:</i>	Virginia Resources Authority (“VRA”)
<i>Project Owner:</i>	Fluvanna County, Virginia
<i>Program:</i>	VirginiaSAVES Green Community Program
<i>Program Administrator:</i>	Clean Source Capital, LLC
<i>Tax Treatment:</i>	Federally Taxable, but interest will be exempted from Virginia income taxation.
<i>Bank Qualified:</i>	Not applicable.
<i>Obligation:</i>	Taxable Qualified Energy Conservation Bond (Direct Pay) (Virginia SAVES Green Community Program – Fluvanna County Energy Project), Series 2017
<i>Security:</i>	<p>The County’s obligation to make payments to the VRA in amounts sufficient to pay the Taxable 2016 Note are payable solely from revenues received by the VRA from the County under Financing Lease. Payments by the County to the VRA will be structured to be sufficient in amounts and at times to match the debt service on the Taxable 2017 Bond and will be assigned by the VRA to the Purchaser.</p> <p>The County will undertake, subject to appropriation by the Board of Supervisors, to make periodic payments to the Purchaser in amounts sufficient to pay lease payments for the Equipment and to pay certain other related costs. The undertaking by the County to make payments under the Lease will be subject to appropriation by the Board of Supervisors from time to time of sufficient amounts for such purposes</p> <p>Additional security includes: Security interest in the equipment financed and VRA State Aid Intercept. (VRA State Aid Intercept – Section 62.1-216.1 of the Code of Virginia of 1950, as amended, provides the State Comptroller with the power to withhold all funds appropriated and payable by the Commonwealth of Virginia to the County and apply the amount to payment of the defaulted principal, premium, if any, and interest on such designated financings. This concept is commonly referred to as the “VRA State Aid Intercept” provision and will be part of the collateral package securing this financing.) To accommodate the VRA State Aid Intercept, payments under the Financing Lease will be made at least 30 days prior to the due date to a Paying Agent who in turn will make payments to the Purchaser</p>

	on or before the due date.			
	The Taxable 2017 Bond will not carry the general obligation pledge of the Commonwealth of Virginia or any political subdivision thereof, including VRA and the County. The Taxable 2017 Bond is a limited obligation of VRA, payable solely from revenues received by the VRA from the County, pursuant to the Financing Lease.			
Rating:	None applied for although the County carries current General Obligation credit ratings of Aa2 (Moody's) and AA (Standard & Poor's).			
Estimated Uses of Funds:	Deposit to Project Construction Fund		\$7,398,098.00	
	Estimated Costs of Issuance		\$83,500.00	
	VA SAVES Program Fee		\$152,685.00	
	<b>Total Uses</b>		<u>\$7,634,283.00</u>	
	<b>Final project costs may change, but not expected to be material.</b>			
Estimated Amortization*	Fully Amortizing over the term. Below is estimated amortization subject to change. Approximate average life of 8.1 years.			
	<u>Date</u>	<u>Principal</u>	<u>Date</u>	<u>Principal</u>
	2/1/2018	\$ 471,744	2/1/2026	\$ 514,129
	2/1/2019	471,808	2/1/2027	520,478
	2/1/2020	477,634	2/1/2028	526,904
	2/1/2021	483,531	2/1/2029	533,410
	2/1/2022	489,502	2/1/2030	539,996
	2/1/2023	495,546	2/1/2031	546,664
	2/1/2024	501,665	2/1/2032	<u>553,414</u>
	2/1/2025	507,859	Total	\$7,634,284
Principal Payment Date:	Annually beginning February 1, 2018			
Interest Payment Dates:	Semi-annually on February 1 and August 1 with the first interest payment due on August 1, 2017			
Optional Call Provisions:	The County is looking for maximum flexibility. Please specify the call structure that would provide the County with the most flexibility at the lowest cost of funds. Please also address the possibility of a partial prepayment.			
Extraordinary Redemption:	In the event of an Extraordinary Event (defined as a material change in the Federal Subsidy), the Issuer, solely at the written direction of the County within 90 days of such Extraordinary Event, shall be entitled to prepay the Bond, in whole, at a prepayment price equal to the outstanding Principal Amount of the Bond plus interest accrued to the prepayment date, together with any other sums due hereunder.			
Interest Rate:	Please provide a firm fixed rate quote for the entire amortization period that will be held through closing, which is expected to occur on or before Tuesday, February 28,			

	2017. Interest calculated using a 30/360-day count.
<i>Drawdown:</i>	Cost of Issuance will be drawn down at closing and the remainder may be held in escrow or held in a VA SNAP account. Please specify any escrow and requisition requirements associated with bond proceeds.
<i>Bank Closing Costs:</i>	None anticipated to be paid by the County. Please specify any exceptions.
<i>Annual/Ongoing Fees:</i>	None anticipated to be paid by the County. Please specify any exceptions.
<i>Opinion of Bond Counsel:</i>	Bond Counsels to the County and the Authority will provide the necessary opinions(s).
<i>Ongoing Disclosure:</i>	The County will provide annual audited financial statements. Please specify any additional requirements.

#### 4. FINANCING OPTION #2 – BANK QUALIFIED TAX-EXEMPT EQUIPMENT LEASE/PURCHASE FINANCING

As an alternative to Financing Option #1, the County is also considering a bank qualified tax-exempt equipment lease/purchase financing and as such will evaluate the alternatives to determine the best overall financing for the County. Certain assumptions regarding **the Financing Option #2 – Bank Qualified Tax-exempt Lease/Purchase Financing** are detailed below:

<i>Issuer:</i>	Fluvanna County	
<i>Tax Treatment:</i>	Tax-Exempt	
<i>Bank Qualified:</i>	Yes	
<i>Obligation:</i>	Equipment Lease/Purchase Financing	
<i>Security:</i>	Equipment Lease/Purchase. The County will undertake, subject to appropriation by the Board of Supervisors, to make periodic payments to the Purchaser in amounts sufficient to pay lease payments for the Equipment and to pay certain other related costs. The undertaking by the County to make payments under the Lease will be subject to appropriation by the Board of Supervisors from time to time of sufficient amounts for such purposes.	
<i>Rating:</i>	None applied for although the County carries current General Obligation credit ratings of Aa2 (Moody's) and AA (Standard & Poor's).	
<i>Estimated Uses of Funds:</i>	Deposit to Project Construction Fund	\$7,162,553.00
	Estimated Costs of Issuance	<u>\$25,000.00</u>
	<b>Total Uses</b>	<u><u>\$7,187,553.00</u></u>

	<b><i>Final project costs may change, but not expected to be material.</i></b>																																							
<b><i>Estimated Amortization*</i></b>	Fully Amortizing over the term. Below is estimated amortization subject to change. Approximate average life of 8.4 years. <table><thead><tr><th><b><u>Date</u></b></th><th><b><u>Principal</u></b></th><th><b><u>Date</u></b></th><th><b><u>Principal</u></b></th></tr></thead><tbody><tr><td>2/1/2018</td><td>\$ 402,474</td><td>2/1/2026</td><td>\$ 488,365</td></tr><tr><td>2/1/2019</td><td>401,430</td><td>2/1/2027</td><td>502,234</td></tr><tr><td>2/1/2020</td><td>412,830</td><td>2/1/2028</td><td>516,498</td></tr><tr><td>2/1/2021</td><td>424,555</td><td>2/1/2029</td><td>531,166</td></tr><tr><td>2/1/2022</td><td>436,612</td><td>2/1/2030</td><td>546,251</td></tr><tr><td>2/1/2023</td><td>449,012</td><td>2/1/2031</td><td>561,765</td></tr><tr><td>2/1/2024</td><td>461,764</td><td>2/1/2032</td><td>577,719</td></tr><tr><td>2/1/2025</td><td>474,878</td><td>Total</td><td>\$7,187,553</td></tr></tbody></table>				<b><u>Date</u></b>	<b><u>Principal</u></b>	<b><u>Date</u></b>	<b><u>Principal</u></b>	2/1/2018	\$ 402,474	2/1/2026	\$ 488,365	2/1/2019	401,430	2/1/2027	502,234	2/1/2020	412,830	2/1/2028	516,498	2/1/2021	424,555	2/1/2029	531,166	2/1/2022	436,612	2/1/2030	546,251	2/1/2023	449,012	2/1/2031	561,765	2/1/2024	461,764	2/1/2032	577,719	2/1/2025	474,878	Total	\$7,187,553
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<b><i>Bank Closing Costs:</i></b>	None anticipated to be paid by the County. Please specify any exceptions.																																							
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<b><i>Opinion of Bond Counsel:</i></b>	Bond Counsel to the County will provide the necessary opinions(s).																																							
<b><i>Ongoing Disclosure:</i></b>	The County will provide annual audited financial statements. Please specify any additional requirements.																																							

## 5. REQUESTS FOR ADDITIONAL INFORMATION

- A. Any inquiries or requests for clarification or additional information must be delivered in writing (via email) to the County and the County's Financial Advisor no later than Tuesday, December 20, 2016 by 2:00pm to the following email addresses:

Eric Dahl: [edahl@fluvannacounty.org](mailto:edahl@fluvannacounty.org)

Dianne Klaiss: [dianne.klaiss@raymondjames.com](mailto:dianne.klaiss@raymondjames.com)

Sean Ekiert: [sean.ekiert@raymondjames.com](mailto:sean.ekiert@raymondjames.com)

- B. All inquiries will be answered via an addendum, posted to eVA and the County website.

## 6. PRELIMINARY FINANCING TIMETABLE

Thursday, Dec 15, 2016	The RFP is advertised, posted to eVA, posted on the County website and distributed to local, regional and national banking institutions
Tuesday, Dec 20, 2016	Any inquiries or requests for additional information must be delivered in writing by 2pm to the County and Raymond James
Thursday, Dec 22, 2016	All inquiries and information will be answered via an addendum
Friday, Jan 6, 2017	RFP responses due back to the County and its representative by 2:00 p.m. EST
Tuesday, Jan 10, 2017	Financing Recommendation Delivered to County
Wednesday, Jan 18, 2017	Meeting of the Fluvanna County Board of Supervisors: County staff and /or its representatives present the results of the RFP to the Board. Resolution adopted.
Tuesday, Feb 7, 2017	Draft supplemental indenture, escrow agreement and purchase and sale agreement due to the County for BOS package
Wednesday, Feb 15, 2017	Meeting of the Fluvanna County Board of Supervisors: The Board executes final documents.
Thursday, Feb 16, 2017	Lock in qualified tax credit rate (if applicable)
Tuesday, Feb 24, 2017	End of Business – Final documentation to Purchaser
Wednesday, Feb 28, 2017	Loan Funding

## 7. PROPOSAL FORMAT

- A. The County will follow the evaluation process and selection criteria described in this Request for Proposals. In order to provide each Offeror an equal opportunity for consideration, adherence to a standardized proposal format is required. The format of each proposal must contain the following elements organized into separate chapters and sections, as the Offeror may deem appropriate. The following paragraphs provide guidelines to each Offeror for information to include in the proposal:
- B. **Cover Letter** - Provide a cover letter that confirms the Offeror's understanding of this Request for Proposal, a general understanding of the financing, an overview of the history and qualifications of the firm.
- C. **Term Sheet** – The Offer should detail the interest rates requested, cost for services, such as prepayment penalties, up-front costs of the financing, legal fees and any other fees and costs of any kind related to the financing as detailed in Financing Option #1 and #2 above.
- D. **Forms:** All forms required to be submitted under this RFP must be included in the Proposal as an Appendix.
- i. Certificate of No Collusion
  - ii. Offeror Statement
  - iii. Proof of Authority to Transact Business in Virginia
  - iv. Vendor Data Sheet

- E. The County is not responsible for failure to locate, consider and evaluate qualification factors presented outside this format.

## **8. SUBMITTAL INSTRUCTIONS**

- A. **Each Offeror must submit one (1) original hard copy and one (1) electronic copy of its proposal on CD ROM, DVD, or USB flash drive/memory stick.**
- B. An authorized representative of the Offeror shall sign proposals. All information requested should be submitted. Failure to submit all information requested may result in the County requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the County.
- C. All forms attached to this RFP must be fully completed, executed by the Offeror and returned as a part of Offer's Proposal.
- D. Offers shall be prepared simply and economically, providing a straight forward, concise description of firm's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
- E. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph of the corresponding section of the RFP. It is also helpful to repeat the text of the requirement as it appears in the RFP.
- F. **Each proposal shall be in writing and received in hard copy by the deadline. Oral proposals, proposals received by telephone, fax, telegraph, or email shall be rejected.**

## **9. EVALUATION CRITERIA**

- A. All Proposals received shall be evaluated based upon the evaluation criteria listed below.
  - i. Costs of Financing **(45 pts.)**
  - ii. Responsiveness to the County's Financing Goals **(40 pts)**
  - iii. Offeror(s) Qualifications and Relevant Experience **(15 pts.)**
- B. The County may arrange for discussions with Offerors submitting Proposals for the purpose of obtaining additional information or clarification if needed.
- C. The Selection Committee may make such reasonable investigations as it deems proper and necessary to determine the ability of the Offeror to perform the work.
- D. The County reserves the right to make such additional investigations as it may deem necessary to establish competency and financial stability of any Offeror. If, after the investigation, the evidence of competency and financial stability is not satisfactory, in the sole opinion of the County, the County reserves the right to reject the Proposal.
- E. The County reserves the right to have any consultant(s) of its choosing serve on the evaluation committee or advise the evaluation committee with respect to responses to this RFP and information will be shared with any such consultant(s).



## 10. AWARD OF CONTRACT

The award(s) shall be based on the Offeror(s)' ability to meet all RFP requirements and the right is reserved to make the award to other than the lowest priced Offeror when it is in the best interest of the County and consistent with the Virginia Procurement Act, the County's Code, the County's Procurement Policies and Procedures and other applicable law. The provisions set forth herein are for contractual goods/services rendered to the County of Fluvanna, Virginia and this solicitation is done under Virginia Code Section 2.2-4302.2(A)(3) as a competitive negotiation for goods and/or nonprofessional 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 Request for Proposal, including price. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror(s) which, in its opinion, have made the best proposals and provides the best values, and shall award the contract to those offeror(s).

The County's General Terms, Conditions, and Instructions to Bidders and Contractors are attached hereto as Attachment E and incorporated herein by reference. These provisions bind all Offerors. Further, the conditions and requirements of this RFP, including, but not limited to, County's General Terms, Conditions, and Instructions to Bidders and Contractors, are a material part of any contract awarded between the County and the successful Offeror(s).

Awards shall be made to as many Offerors as deemed necessary to fulfill the anticipated requirements of the County. The County may award contracts to multiple Offerors and use their services for some or all of the Financings identified herein. The County may choose not to award a contract or Notice to Proceed for any or all Financings described herein.

### Attachments:

Attachment A – Vendor Data Sheet

Attachment B – Proof of Authority To Transact Business in Virginia

Attachment C – Certification Of No Collusion

Attachment D – Offeror Statement

Attachment E – County Of Fluvanna General Terms, Conditions And Instructions To Bidders And Contractors

Attachment F – Fluvanna County Project Summary

Attachment G – Bond Purchase and Lease Acquisition Agreement (N/A for Financing Option #2 – Bank Qualified Tax-Exempt Equipment Lease/Purchase Financing)

## VENDOR DATA SHEET

Note: The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive.

1. Qualification: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

2. Vendor's Primary Contact:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

3. Years in Business: Indicate the length of time you have been in business providing this type of good or service:

\_\_\_\_\_ Years \_\_\_\_\_ Months

4. Vendor Information:

FIN or FEI Number: \_\_\_\_\_ If Company, Corporation, or Partnership

5. Indicate below a listing of at least four (4) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

Company:	Contact:
Phone:	Email:
Dates of Service:	\$\$ Value:

Company:	Contact:
Phone:	Email:
Dates of Service:	\$\$ Value:

Company:	Contact:
Phone:	Email:
Dates of Service:	\$\$ Value:

Company:	Contact:
Phone:	Email:
Dates of Service:	\$\$ Value:

I certify the accuracy of this information.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**PLEASE RETURN THIS PAGE WITH BID SUBMISSION-** (Attachment A)

## PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

THIS FORM MUST BE SUBMITTED WITH YOUR PROPOSAL/BID. FAILURE TO INCLUDE THIS FORM MAY RESULT IN REJECTION OF YOUR PROPOSAL/BID

Pursuant to Virginia Code §2.2-4311.2, an Offeror/Bidder organized or authorized to transact business in The Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its proposal/bid the identification number issued to it by the State Corporation Commission (“SCC”). Any Offeror/Bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its proposal/bid a statement describing why the Offeror/Bidder is not required to be so authorized. Any Offeror/Bidder described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the County Administrator, as applicable. If this quote for goods or services is accepted by the County of Fluvanna, Virginia, the undersigned agrees that the requirements of the Code of Virginia Article IV.2-4311.2 have been met.

Please complete the following by checking the appropriate line that applies and providing the requested information. ***PLEASE NOTE: The SCC number is NOT your federal ID number or business license number.***

A.\_\_\_\_ Offeror/Bidder is a Virginia business entity organized and authorized to transact business in Virginia by the SCC and such vendor’s Identification Number issued to it by the SCC is \_\_\_\_\_.

B.\_\_\_\_ Offeror/Bidder is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such vendor’s Identification Number issued to it by the SCC is \_\_\_\_\_.

C.\_\_\_\_ Offeror/Bidder does not have an Identification Number issued to it by the SCC and such vendor is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

**Please attach additional sheets if you need to explain why such Offeror/Bidder is not required to be authorized to transact business in Virginia.**

Legal Name of Company (as listed on W-9)

Legal Name of Offeror/Bidder

Date

Authorized Signature

Print or Type Name and Title

**PLEASE RETURN THIS PAGE WITH BID SUBMISSION (Attachment B)**

## CERTIFICATION OF NO COLLUSION

The undersigned, acting on behalf of \_\_\_\_\_, does hereby certify in connection with the procurement and bid to which this Certification of No Collusion is attached that:

This bid is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce: nor is this bid the result of, or affected by, any act of fraud punishable under Article 1.1 of Chapter 12 of Title 18.2 Code of Virginia, 1950 as amended (&&18.2-498.1 et seq.)

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Date

### ACKNOWLEDGEMENT

STATE OF VIRGINIA

FLUVANNA COUNTY, to wit:

The foregoing Certification of No Collusion bearing the signature of \_\_\_\_\_ and dated \_\_\_\_\_ was subscribed and sworn to before the undersigned notary public by \_\_\_\_\_ on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

### CODE OF VIRGINIA

& 18.2-498.4. Duty to provide certified statement:

A. The Commonwealth, or any department or agency thereof, and any local government or any department or agency thereof, may require that any person seeking, offering or agreeing to transact business or commerce with it, or seeking, offering or agreeing to receive any portion of the public funds or moneys, submit a certification that the offer or agreement or any claim resulting thereon is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce, or any act of fraud punishable under this article.

B. Any person required to submit a certified statement as provided in paragraph A, above who knowingly makes a false statement shall be guilty of a Class 6 felony. (1980, c.472)

a false statement shall be guilty of a Class 6 felony. (1980, c.472)

**PLEASE RETURN THIS PAGE WITH BID SUBMISSION-** (Attachment C)

## OFFEROR STATEMENT

Undersigned Bidder hereby certifies that he/she has carefully examined all conditions and specifications of this invitation for Bid and hereby submits this bid pursuant to such instructions and instructions.

\_\_\_\_\_

Type or Print Name & Title of Authorized Person

\_\_\_\_\_

Signature of Authorized Person Submitting This Bid

\_\_\_\_\_

Date

SUBSCRIBED AND SWORN to before me by the above named

\_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

**PLEASE RETURN THIS PAGE WITH BID SUBMISSION-** (Attachment D)

# Attachment E

## COUNTY OF FLUVANNA

### **GENERAL TERMS, CONDITIONS AND** **INSTRUCTIONS TO BIDDERS AND** **CONTRACTORS**

## **GENERAL TERMS, CONDITIONS AND INSTRUCTIONS TO BIDDERS AND CONTRACTORS**

These General Terms, Conditions and Instructions to Bidders and Contractor (hereinafter referred to as the “General Conditions”) shall apply to all purchases and be incorporated into and be a part of each Solicitation (as defined below) and every Contract (as defined below) awarded by Fluvanna County, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as the “County”) unless otherwise specified by the County in writing. Bidders, Offerors and Contractors or their authorized representatives are expected to inform themselves fully as to these General Conditions before submitting Bids or Proposals to and/or entering into any Contract with the County: failure to do so will be at the Bidder’s/Contractor’s own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation, including the County’s Procurement Policies and Procedures, Bids or Proposals on all Solicitations issued by County will bind Bidders or Offerors, as applicable, and Contracts will bind Contractors, to all applicable terms, conditions, instructions, rules and requirements herein set forth unless otherwise SPECIFICALLY set forth by the County in writing in the Solicitation or Contract. All provisions of these General Conditions are material to any contract between the County and a Contractor.

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### **INTRODUCTION**

- 1. VIRGINIA PUBLIC PROCUREMENT ACT AND ETHICS IN PUBLIC CONTRACTING:** The Virginia Public Procurement Act of Virginia Code §§ 2.2-4300 *et seq.* (hereinafter the “VPPA”) is incorporated herein by reference. Nothing in these General Conditions is intended to conflict with the VPPA and in case of any conflict, the VPPA controls. Specifically, the provisions of Article 6 of the VPPA (Virginia Code §§ 2.2-4367 through 2.2-4377) relating to ethics in contracting, shall be applicable to all Solicitations and Contracts solicited or entered into by the County. By submitting their Bids or signing any Contract, all Bidders and Contractors certify that they have not violated any of the provisions of Article 6 of the VPPA, including, but not limited to, that their Bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements.
- 2. DEFINITIONS:** The definitions of Virginia Code §§ 2.2-4301, 2.2-4302.1 and 2.2-4302.2 are specifically incorporated herein by reference and as used in these General Conditions, whether capitalized or not, any of such defined terms have the same meaning as such terms have under the VPPA: such defined terms include: “Affiliate”, “Best Value”, “Business”, “Competitive Negotiation”, “Competitive Sealed Bidding”, “Construction”, “Construction Management Contract”, “Design-Build Contract”, “Employment Services Organization”, “Goods”, “Informality”, “Job Order Contracting”, “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 these General Conditions, the following terms, whether capitalized or not, have the following meanings:

- a. 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 these General Conditions and where appropriate includes the term “Proposal” or any modifications or amendments to any Bid or Proposal.
- b. 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 these General Conditions and where appropriate includes the term “Offeror” and/or “Vendor”.
- c. Contract: Any contract to which the County will be a party.
- d. Contractor: Any individual(s), company, firm, corporation, partnership, or other organization to whom an award is made by the County or whom enters into any contract to which the County is a party.
- e. County: The County of Fluvanna, a political subdivision of the Commonwealth of Virginia, including where applicable all agencies and departments of the County.
- f. County Administrator: The Fluvanna County Administrator.
- g. County Attorney: The Fluvanna County Attorney.
- h. Purchasing Agent: The County Administrator is the County’s Purchasing Agent and is responsible for the purchasing activity of Fluvanna County; and has signatory authority to bind the County to all contracts and purchases made lawfully under the Fluvanna County Small Purchasing Procedures. 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 Fluvanna County Board of Supervisors.
- i. General Terms, Conditions and Instructions to Bidders and Contractors (also referred to herein as the “General Conditions”): These General Terms, Conditions and Instructions to Bidders and Contractors shall be attached to and made a part of all Solicitations by the County and all Contracts to which the County is party.
- j. His: Any references to “his” shall include his, her, their, or its as appropriate.
- k. 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.

- l. Purchasing Officer: The Purchasing Officer employed by the County and to whom Bidders/Contractors can submit questions relating to any Bid or Contract.
  - m. 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.
  - n. Small Purchasing Procedures: The County’s Small Purchasing Procedures, being Chapter 4 of the County’s Procurement Policies and Procedures, a method of 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.
  - o. 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 may consist of public advertising (newspaper, County’s website, or other electronic notification), the mailing of notices of Solicitation, any Invitation for Quotes (“IFQ”), Initiations to 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.
  - p. State: The Commonwealth of Virginia.
3. **AUTHORITY**: The Purchasing Agent shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of goods, services, insurance and construction in accordance with the County’s Procurement Policies and Procedures. 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 the County’s 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 Purchasing Procedures. The Purchasing Agent has responsibility and authority for negotiating, placing and when necessary modifying every other Solicitation, Contract and purchase order issued by the County except that the Purchasing Agent has signatory authority to bind the County to all other contracts and purchases ONLY after the contracts or purchases have been adopted and approved by a vote of the Fluvanna County Board of Supervisors (the “Board”).

Unless specifically delegated by the Board or the Purchasing Agent, and consistent with the limited authority granted thereto, no other County officer or employee is authorized to order supplies or Services, enter into purchase negotiations or Contracts, or in any way obligate the County for any indebtedness. Any purchase or contract made which is contrary to such authority shall be of no effect and void and the County shall not be bound thereby.

For convenience, the County's Purchasing Officer shall serve as an intermediary between the Purchasing Agent and the Bidder or Contractor and any Bidder or Contractor may direct communications regarding any purchase, Solicitation or Contract to the Purchasing Officer; however as stated *supra* only the Board or County's Purchasing Agent can bind the County and only upon the conditions stated *supra*.

### **CONDITIONS OF BIDDING**

- 4. COMPETITION INTENDED:** It is the County's intent to encourage and permit open and competitive bidding in all Solicitations. It shall be the Bidder's responsibility to advise the County in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in a Solicitation to a single source. The County must receive such notification not later than seven (7) business days prior to the deadline set for acceptance of the Bids. In submitting a Bid, the Bidder guarantees that he or she has not been a party with other Bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render the Bid of any Bidder involved void.
- 5. DISCRIMINATION PROHIBITED:** Pursuant to Virginia Code § 2.2-4310, the County does not discriminate against Bidders, Offerors or Contractors 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 Small Business and Supplier Diversity. Pursuant to Virginia Code § 2.2-4343.1, the County does not discriminate against "faith-based organizations", being 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 Reconciliation Act of 1996, P.L. 104-193.
- 6. CLARIFICATION OF TERMS:** Pursuant to Virginia Code § 2.2-4316, if any Bidder has questions or comments about the specifications or other Solicitation documents, the prospective Bidder should contact the County no later than seven (7) business days prior to the date set for the opening of Bids or receipt of Proposals. Any revisions to the Solicitation will be made only by written addendum issued by the County. Notifications regarding specifications may not be considered if received in less than seven (7) business days of the date set for opening of Bids/receipt of Proposals.
- 7. MANDATORY USE OF COUNTY FORM AND TERMS AND CONDITIONS:**  
Unless otherwise specified in the Solicitation, all Bids must be submitted on the forms

provided by the County, including but not limited to, a Cover Sheet or Pricing Schedule, if applicable, properly signed in ink in the proper spaces and submitted in a sealed envelope or package. Unauthorized modification of or additions to any portion of the Solicitation may be cause for rejection of the Bid. However, the County reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject any Bid or Proposal which has been modified. These General Conditions are mandatory provisions of all Solicitations and all Contracts of the County.

**8. LATE BIDS & MODIFICATION OF BIDS:** Any Bid or modification thereto received at the office designated in the Solicitation after the exact time specified for receipt of the Bid is considered a late Bid or modification thereof. The County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder to ensure their Bid reaches County by the designated date and hour. The following rules apply to all Bids submitted to the County:

- a. The official time used in the receipt of Bids/Proposals is that time on the automatic time stamp machine in the Finance Department;
- b. Late Bids or modifications thereof will be returned to the Bidder UNOPENED, if Solicitation number, due date and Bidder's return address is shown on the container;
- c. If a Bid is submitted on time, however a modification thereto is submitted after the due date and time, then the County in its sole discretion may choose to consider the original Bid except that the County may not consider such original Bid if the Bid is withdrawn by the Bidder pursuant to Section 9 below; and
- d. If an emergency or unanticipated event or closing interrupts or suspends the County's normal business operations so that Bids cannot be received by the exact time specified in the Solicitation, then the due date/time specified for receipt of Bids will be deemed to be extended to the same time of day specified in the Solicitation on the first work day on which normal County business operations resume.

**9. WITHDRAWAL OF BIDS:**

- a. Pursuant to Virginia Code § 2.2-4330, a Bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his Bid from consideration if the price bid was substantially lower than the other Bids due solely to a mistake in the Bid, provided the Bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn.

If a Bid contains both clerical and judgment mistakes, a Bidder may withdraw his Bid from consideration if the price bid would have been substantially lower than the other Bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn. The Bidder shall give notice in writing to the County of his or her claim of right to withdraw his or her Bid within two (2) business days after the conclusion of the Bid opening procedure and shall submit original work papers with such notice.

- b. A Bidder for a Contract other than for public construction may request withdrawal of his or her Bid under the following circumstances:
  - i. Bids may be withdrawn on written request from the Bidder received at the address shown in the Solicitation prior to the time of opening.
  - ii. Requests for withdrawal of Bids after opening of such Bids but prior to award shall be transmitted to the County, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, Bidder work sheets, etc. If Bid bonds were tendered with the Bid, the County may exercise its right of collection.
- c. No Bid may be withdrawn under this Section 9 when the result would be the awarding of the Contract on another Bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent (5%).
- d. If a Bid is withdrawn under the authority of this Section 9 the lowest remaining Bid shall be deemed to be the low Bid.
- e. No Bidder who, is permitted to withdraw a Bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn Bid was submitted.
- f. The County shall notify the Bidder in writing within five (5) business days of its decision regarding the Bidder's request to withdraw its Bid. If the County denies the withdrawal of a Bid under the provisions of this Section 9, it shall State in such notice the reasons for its decision and award the Contract to such Bidder at the Bid price, provided such Bidder is a responsible and responsive Bidder. At the same time that the notice is provided, the County shall return all work papers and copies thereof that have been submitted by the Bidder.

- g. Under these procedures, a mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of Virginia Code § 2.2-4342.

**10. ERRORS IN BIDS:** When an error is made in extending total prices, the unit Bid price will govern. Erasures in Bids must be initialed by the Bidder. Carelessness in quoting prices, or otherwise in preparation of the Bid, will not relieve the Bidder. Bidders/Offerors are cautioned to recheck their Bids for possible error. Errors discovered after public opening cannot be corrected and the Bidder will be required to perform if his or her Bid is accepted.

**11. IDENTIFICATION ON BID ENVELOPE:** All Bids, Proposals and requested copies thereof submitted to the County shall be in a separate envelope or package, sealed and identified with the following information clearly marked on the outside of the envelope or package:

- a. Addressed as indicated on page 1 of the solicitation;
- b. Solicitation number;
- c. Title;
- d. Bid due date and time;
- e. Bidder's name and complete mailing address (return address); and
- f. Pursuant to Virginia Code § 2.2-4311.2, the Bidder's identification number issued by the State Corporation Commission, or if the bidder is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bids or proposal a statement describing why the bidder or offeror is not required to be so authorized.

If a Bid is not addressed with the information as shown above, the Bidder takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the Bid to be disqualified. Bids may be hand delivered to the designated location in the County's offices. No other correspondence or other Proposals/Bids should be placed in the envelope. Any Bidder or Offeror that fails to provide the information required in (f) above shall not receive an award unless a waiver is specifically granted by the County Administrator.

**12. ACCEPTANCE OF BIDS:** Unless otherwise specified, all formal Bids or Proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for opening or receipt, respectively, unless extend by mutual agreement of the parties. At the end of the one hundred twenty (120) calendar days the Bid/Proposal may be withdrawn at the written request of the Bidder. Thereafter, unless and until the Proposal is withdrawn, it remains in effect until an award is made or the Solicitation is canceled by the County. The County may cancel any Solicitation at any time by notice of such cancelation to the Bidders.

- 13. COMPLETENESS:** To be responsive, a Bid must include all information required by the Solicitation.
- 14. CONDITIONAL BIDS:** Conditional Bids are subject to rejection in whole or in part.
- 15. RESPONSE TO SOLICITATIONS:** In the event a Bidder cannot submit a Bid on a Solicitation, the Bidder is requested to return the Solicitation cover sheet with an explanation as to why the Bidder is unable to Bid on these requirements, or if there be no cover sheet for the Solicitation a letter to the County explaining the same.
- 16. BIDDER INTERESTED IN MORE THAN ONE BID AND COLLUSION:** More than one bid from an individual, firm, partnership, corporation or association under the same or different name will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for the work contemplated will cause rejection of all bids in which the bidder is interested. Any or all bids may be rejected if there is any reason for believing that collusion exists among the bidders. Participants in such collusion may not be considered in future bids for the same work. Each bidder, as a condition of submitting a bid, shall certify that he is not a party to any collusive action as herein defined. However, a party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a Bid directly for the work, materials or supplies.
- 17. BID OPENING:** Pursuant to Virginia Code § 2.2-4301, all Bids received in response to an IFB will be opened at the date, time and place specified, and announced publicly, and made available for inspection as provided in Section 21 of these General Conditions. Proposals received in response to an RFP will be made available for inspection as provided in Section 21 of these General Conditions.
- 18. TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder.
- 19. DEBARMENT STATUS:** By submitting their Bids, Bidders certify that they are not currently debarred from submitting Bids on Contracts by the County, nor are they an agent of any person or entity that is currently debarred from submitting Bids or Proposals on Contracts by the County or any agency, public entity/locality or authority of the State.
- 20. NO CONTACT POLICY:** No Bidder shall initiate or otherwise have contact related to the Solicitation with any County representative or employee, other than the Purchasing Officer or Purchasing Agent, after the date and time established for receipt of Bids. Any contact initiated by a Bidder with any County representative, other than the Purchasing Officer or Purchasing Agent, concerning this Solicitation is prohibited and may cause the disqualification of the Bidder.

**21. VIRGINIA FREEDOM OF INFORMATION ACT:** As provided under Virginia Code § 2.2-4342, all proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act of Virginia Code §§ 2.2-3700 *et seq.*, except:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection;
- b. Any competitive sealed bidding Bidder, upon request, shall be afforded the opportunity to inspect Bid records within a reasonable time after the opening of Bids but prior to award, except in the event that the County decides not to accept any of the Bids and to reopen the Contract. Otherwise, Bid records shall be open to public inspection only after award of the Contract;
- c. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect Proposal records within a reasonable time after the evaluation and negotiations of Proposals are completed but prior to award except in the event that the County decides not to accept any of the Proposals and to reopen the Contract. Otherwise, Proposal records shall be open to the public inspection only after award of the Contract;
- d. Any inspection of procurement transaction records under this Section 21 shall be subject to reasonable restrictions to ensure the security and integrity of the records;
- e. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Bidder, Offeror or Contractor must invoke the protections of this Section 21 prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and State the reasons why protection is necessary; and
- f. Nothing contained in this Section 21 shall be construed to require the County, when procuring by “competitive negotiation” (RFP), to furnish a Statement of reasons why a particular Proposal was not deemed to be the most advantageous to the County.

**22. CONFLICT OF INTEREST:** Bidder/Contractor certifies by signing any Bid/Contract to/with the County that no conflict of interest exists between Bidder/Contractor and County that interferes with fair competition and no conflict of interest exists between Bidder/Contractor and any other person or organization that constitutes a conflict of interest with respect to the Bid/Contract with the County.

### **SPECIFICATIONS**

**23. OMISSIONS OR DISCREPANCIES:** Any items or parts of any equipment listed in a Solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for

in the specifications. Should a Bidder find a discrepancy or ambiguity in, or an omission from, the Solicitation, including the drawings and/or specifications, he or she shall so notify the County within twenty-four (24) hours of noting the discrepancy, ambiguity or omission and in any event no less than five (5) days prior to the date set for the opening of Bids. If necessary, the County will send a written addendum for clarification to all Bidders no later than three (3) days before the date set for opening of Bids. Any notification regarding specifications received less than five (5) days prior to the date set for the opening of Bids may or may not be considered by the County in its sole discretion. The Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

**24. BRAND NAME OR EQUAL ITEMS:** Pursuant to Virginia Code § 2.2-4315, unless otherwise provided in the Solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the Solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the Bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a Bid non-responsive. Unless the Bidder clearly indicates in its Bid that the product offered is "equal" product, such Bid will be considered to offer the brand name product referenced in the Solicitation.

**25. FORMAL SPECIFICATIONS:** When a Solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the Bidder will be required to furnish articles in conformity with that specification.

**26. CONDITION OF ITEMS:** Unless otherwise specified in the Solicitation, all items shall be new, in first class condition.

## **AWARD**

**27. RESPONSIBLE BIDDERS:** In determining whether a Bidder is a responsible Bidder as defined herein, at minimum, the following criteria will be considered:

- a. The ability, capacity and skill of the Bidder to perform the Contract or provide the service required under the Solicitation;



- b. Whether the Bidder can perform the Contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;
- d. The quality of performance of previous Contracts or Services;
- e. The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract or Services;
- f. The sufficiency of the financial resources and ability of the Bidder to perform the Contract or provide the service;
- g. The quality, availability and adaptability of the Goods or Services to the particular use required;
- h. The ability of the Bidder to provide future maintenance and service for the use of the subject of the Contract;
- i. The number and scope of the conditions attached to the Bid;
- j. Whether the Bidder is in arrears to the County on debt or Contract or is a defaulter on surety to the County or whether the Bidder's County taxes or assessments are delinquent; and
- k. Such other information as may be secured by the County, the Purchasing Agent or the Purchasing Officer having a bearing on the decision to award the Contract. If an apparent low Bidder is not awarded a Contract for reasons of nonresponsibility, the County shall so notify that Bidder and shall have recorded the reasons in the Solicitation or Contract file.

**28. AWARD OR REJECTION OF BIDS; WAIVER OF INFORMALITIES:** The County shall award the Contract to the lowest responsive and responsible Bidder complying with all provisions of the IFB, provided the Bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified Offeror whose Proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The County reserves the right to award a Contract by individual items, in the aggregate, or in combination thereof, or to reject any or all Bids and to waive any informality in Bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many Bidders/Offerors as deemed necessary to fulfill the anticipated requirements of the County. The County also reserves the right to reject the Bid if a Bidder is deemed to be a non-responsible Bidder. Pursuant to Virginia Code § 2.2-4319, an IFB, a RFP, any other solicitation, or any and all bids or proposals, may be canceled or rejected by the County at any time. The reasons for cancellation or rejection shall be made part of the contract file. The County shall not cancel or reject an IFB, a RFP, any other solicitation, bid or proposal solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

**29. EXCLUSION OF INSURANCE BIDS PROHIBITED:** Pursuant to Virginia Code § 2.2-4320, notwithstanding any other provision of law or these General Conditions, no insurer licensed to transact the business of insurance in the State or approved to issue surplus lines insurance in the State shall be excluded from presenting an insurance bid proposal to the County in response to a RFP or an IFB; excepting that the County may

debar a prospective insurer pursuant to its Debarment Policy, see Chapter 2 of the County's Procurement Policies and Procedures.

**30. ANNOUNCEMENT OF AWARD:** Upon the award or announcement of the decision to award a Contract as a result of this Solicitation, the County will publicly post such notice on the County's bulletin board located at 72 Main Street, 2<sup>nd</sup> Floor, Palmyra, Virginia 22963. Award results may also be viewed on the County's website.

**31. QUALIFICATIONS OF BIDDERS OR OFFERORS:** The County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the work/furnish the item(s) and the Bidder shall furnish to the County all such information and data for this purpose as may be requested. The County reserves the right to inspect Bidder's physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The County further reserves the right to reject any Bid or Proposal if the evidence submitted by or investigations of, such Bidder fails to satisfy the County that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work/furnish the item(s) contemplated therein.

**32. TIE BIDS AND PREFERENCE FOR VIRGINIA PRODUCTS WITH RECYCLED CONTENT AND FOR VIRGINIA FIRMS:**

- a. Pursuant to Virginia Code § 2.2-4328, in the case of a tie bid on an IFB only, the County may give preference to Goods, Services and construction produced in Fluvanna County or provided by persons, firms or corporations having principal places of business in Fluvanna County. If such choice is not available, preference shall then be given to Goods produced in Virginia, or for goods, services or construction provided by Virginia persons, firms, corporations, pursuant Virginia Code § 2.2-4324. If no County or State choice is available, the tie shall be decided publicly by lot. The decision by the County to make award to one or more such Bidders shall be final.
- b. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this Section 32, the County may rely upon the accuracy of the information posted on this website.
- c. Notwithstanding the provisions of subsections a and b, in the case of a tie bid in instances where goods are being offered, and existing price preferences have

already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

- d. For the purposes of this Section 32, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

**33. NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER:** Pursuant to Virginia Code § 2.2-4318, unless cancelled or rejected, a responsive Bid from the lowest responsible Bidder shall be accepted as submitted, except that if the Bid from the lowest responsible Bidder exceeds available funds, the County may negotiate with the apparent low Bidder to obtain a Contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the County prior to issuance of the IFB and summarized therein.

### **CONTRACT PROVISIONS**

**34. APPLICABLE LAW AND COURTS:** Any Bid or Contract resulting from a Solicitation and its terms, including, but not limited to, the parties' obligations under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia, and exclusive jurisdiction and venue of any dispute or matters involving litigation between the parties hereto shall be in the courts of Fluvanna County, Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia, that would cause the application of any laws other than those of the Commonwealth of Virginia, shall not apply. The Contractor shall comply with applicable federal, State and local laws, ordinances, rules and regulations in performance of the Contract.

**35. PROVISION AND OWNERSHIP OF INFORMATION:** The County shall make a good faith effort to identify and make available to the Contractor all non-confidential technical and administrative data in the County's possession which the County may lawfully release including, but not limited to Contract specifications, drawings, correspondence, and other information specified and required by the Contractor and relating to its work under any Contract. The County reserves its rights of ownership to all material given to the Contractor by the County and to all background information documents, and computer software and documentation developed by the Contractor in performing any Contract.

**36. DOCUMENTS:** All documents, including but not limited to data compilations, drawings, reports and other material, whether in hard copy or electronic format, prepared, developed or furnished by the Contractor pursuant to any Contract shall be the sole property of the County. At the direction of the County, the Contractor shall have the right to make copies of the documents produced available to other parties. The County shall be entitled to delivery of possession of all documents, upon payment in accordance with the terms of any Contract for the service incurred to produce such documents.

**37. CONFIDENTIALITY:** Contractor shall not publish, copyright or otherwise disclose or permit to be disclosed or published, the results of any work performed pursuant to this contract, or any particulars thereof, including forms or other materials developed for the County in connection with the performance by Contractor of its services hereunder, without prior written approval of the County. Contractor, cognizant of the sensitive nature of much of the data supplied by the County, shall not disclose any information (other than information which is readily available from sources available to the general public) obtained by it in the course of providing services hereunder without the prior written approval of the County, unless disclosure of such information by it is required by law, rule or regulation or the valid order of a court or administrative agency.

**38. INDEPENDENT CONTRACTOR:** The Contractor and any agents, or employees of the Contractor, in the performance of any Contract shall act as an independent contractor and not as officers, employees or agents of the County.

**39. INSURANCE:** The Contractor agrees that, during the period of time it renders services to the County pursuant to any Contract, it shall carry (and provide the County with evidence of coverage) the following minimum amounts of insurance:

Automobile	\$500,000	Liability Medical Payment Comprehensive Collision
Public Liability	\$1,000,000	
Professional Liability	\$1,000,000	
Excess Liability	\$2,000,000	Aggregate Over Above Policy Limits (Excluding Professional Liability)
Worker's Compensation	Amount required by Virginia law	

The Contract may specifically require the Contractor to carry higher minimum amounts of insurance.

In addition, the Contractor shall require, and shall include in every subcontract, that any subcontractor providing any goods or services related to such Contract obtain, and continue to maintain for the duration of the work, workers' compensation coverage in the amount required by Virginia law.

**40. KEY PERSONNEL:** For the duration of any Contract, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment, or as expressly approved by the County. The Contractor

shall notify the County within five (5) calendar days after the occurrence of any of these events and provide the information required by the paragraph below.

The Contractor shall provide a detailed explanation of the circumstances necessitating any proposed substitution, complete resumes for the proposed substitute, and any additional information requested by the County. The proposed substitute should have comparable qualifications to those of the person being replaced. The County will notify the Contractor within fifteen (15) calendar days after receipt of all required information of its approval or disapproval of the proposed substitution.

- 41. SEVERABILITY:** If any term, covenant or provision of these General Conditions or any Contract shall be held to be invalid, illegal or unenforceable in any respect, these General Conditions and any Contract shall remain in effect and be construed without regard to such provision.
- 42. TITLES:** The titles and section headings herein and in any Contract are inserted solely for convenience and are not to be construed as a limitation on the scope of the provisions to which they refer.
- 43. ATTORNEYS' FEES:** In the event of a dispute between the County and Contractor under any Contract which cannot be amicably resolved, in addition to all other remedies, the party substantially prevailing in any litigation shall be entitled to recover its reasonable expenses, including, but not limited to, reasonable attorneys' fees.
- 44. NO WAIVER:** Neither any payment for, nor acceptance of, the whole or any part of the services by the County, nor any extension of time, shall operate as a waiver of any provision of any Contract, nor of any power herein reserved to the County, or any right to damages herein provided, nor shall any waiver of any breach of any Contract be held to be a waiver of any other or subsequent breach. Failure of the County to require compliance with any term or condition of any Contract shall not be deemed a waiver of such term or condition or a waiver of the subsequent enforcement thereof.
- 45. NO FINANCE CHARGES:** No finance charges shall be paid by the County.
- 46. ANTITRUST:** By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States or the State, relating to the particular Goods or Services purchased or acquired by the County under said Contract. Consistent and continued tie bidding could cause rejection of Bids by the County and/or investigation for antitrust violations.
- 47. PAYMENT:** Pursuant to Virginia Code § 2.2-4352, unless more time is provided in the Solicitation or Contract, payment will be made forty-five (45) days after receipt by the County of a proper invoice, or forty-five (45) days after receipt of all Goods or acceptance of work, whichever is later. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the

provision of the Contract or any modifications thereto. Within twenty (20) days of receipt of proper invoice or of goods or services, the County shall notify the Contractor if any defect or impropriety that would prevent payment by the payment date. The following provisions apply to such payments:

- a. Invoices for items/Services ordered, delivered/performed and accepted shall be submitted by the Contractor in duplicate directly to the payment address shown on the purchase order, Solicitation or Contract, as applicable. All invoices shall show the Contract number, purchase order number, or Solicitation number, as applicable, and as required under Virginia Code § 2.2-4354, either the individual Contractor's social security number or the Contractor's federal employer identification number, whichever is applicable.
- b. Any payment terms requiring payment in less than forty-five (45) days will be regarded as requiring payment forty-five (45) days after receipt of proper invoice or receipt of all Goods or acceptance of work, whichever occurs later. Notwithstanding the foregoing, offers of discounts for payment in less than forty-five (45) days are valid and enforceable.
- c. Pursuant to Virginia Code § 2.2-4353, the date any payment shall be deemed the date of postmark in all cases where payment is made by mail.
- d. The County's fiscal year is July 1 to June 30. Contractors are advised to submit invoices, especially for Goods and/or Services provided in the month of June, for the entire month (i.e. June 1 - June 30), so that expenses are recognized in the appropriate fiscal year.
- e. Any payment made by the Contractor to the County shall only be made in U.S. Dollars. If payment is received in foreign currency the County may, in its sole discretion, reject such payment and require immediate compensation in U.S. Dollars.

**48. SUBCONTRACTORS:** Pursuant to Virginia Code § 2.2-4354, in the event that any subcontractors are used by Contractor in connection with the work, Contractor shall:

- a. Within seven (7) days after receipt of amounts paid to the Contractor for work performed by a subcontractor, either:
  - i. Pay the subcontractor for the proportionate share of the total payment received attributable to the work performed by the subcontractor under any Contract; or
  - ii. Notify the County and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

- b. Contractor shall require each subcontractor to provide either (i) for an individual, their social security numbers, or (ii) for proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
- c. The Contractor shall pay interest to any subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under any Contract, except for amounts withheld as allowed in subdivision (a)(II) above. Unless otherwise provided under the terms of any Contract, interest shall accrue at the rate of one percent (1%) per month.
- d. The Contractor shall include in each of its subcontracts under any Contract a provision requiring each subcontractor to include or otherwise be subject to the above payment and interest requirements (a), (b) and (c) with respect to each lower tier subcontractor.
- e. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this Section 48 shall not be construed to be an obligation of the County. No Contract modification may be made for the purpose of providing reimbursement for such interest charge. No cost reimbursement claim may include any amount for reimbursement for such interest charge.

**49. RETAINAGE ON CONSTRUCTION CONTRACTS:** Pursuant to Virginia Code 2§ 2.2-4333, if a Contract for construction provides for progress payments in installments based upon an estimated percentage of completion, then the contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with no more than five percent (5%) being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment. Any subcontract related to work on a Contract that provides for similar progress payments shall be subject to the provisions above and the Contractor agrees to include such provisions in every subcontract.

**50. SUCCESSORS AND ASSIGNS:** The County and the Contractor bind themselves and their respective successors and assigns to any Contract. The foregoing notwithstanding, the Contractor shall not assign, sublet or transfer its interest in any Contract without the prior written consent of the County, which may be granted or withheld in the County's sole discretion. Nothing hereinafter mentioned shall be construed as creating any personal liability on the part of any officer, agent or employee of the County, nor shall it be construed as giving any benefits hereunder to anyone other than the County and the Contractor.

**51. DEFAULT:** Failure of a Contractor to deliver Goods or Services in accordance with Contract terms and conditions and/or within the time specified, or within reasonable time as interpreted by the County in its sole discretion, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the County, or failure of the Contractor to act in accordance with the Contract in any material respect, as reasonably determined by the County, shall constitute

a “default” by the Contractor and shall further authority for the County to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the County, for any expense incurred in excess of Contract prices including, but not limited to, any purchase and administrative costs. Such purchases shall be deducted from the Contract quantities, if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the County. In case of any default, the County, after due oral or written notice if required in accordance with the Contract, may terminate the Contract at its option in its sole discretion effective immediately. These remedies shall be in addition to any other remedies which the County may have, including but not limited to, any remedies at law, under the Contract or in equity.

Notwithstanding the foregoing, the Contractor shall not be liable for damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the County's opinion, are beyond the control of the Contractor. Under such circumstances, however, the County may, at its sole discretion, terminate or cancel the Contract effective immediately.

**52. NON-DISCRIMINATION ASSURANCES:** The Contractor shall conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and § 2.2-4311 of the Virginia Procurement Act:

- a. During the performance of any Contract, the Contractor agrees as follows: the Contractor 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 Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor, in all Solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer. 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 52.
- b. The Contractor shall include the provisions of paragraph (a) above in every subcontract or purchase over \$10,000.00 so that the provisions will be binding upon each subcontractor or Vendor.

**53. MODIFICATION:**



- a. Pursuant to Virginia Code § 2.2-4309, these General Conditions and any Contract entered into by the County and any Contractor shall not be subject to change, modification, or discharge except by written instrument signed by the County and Contractor, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the County's Board. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.
- b. The County may, but is not obligated to, extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
- c. Nothing in this Section 53 shall prevent the County from placing greater restrictions on contract modifications.

**54. INDEMNIFICATION:** Contractor agrees to indemnify, keep and save harmless the County, its officers, agents, officials, employees and volunteers against any and all claims, claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, losses, costs and expenses, including but not limited to costs of investigation, all reasonable attorneys' fees (whether or not litigation results), and the cost of any appeal, occurring or arising in connection with the Contractor's, its agents', subcontractors', employees', or volunteers' negligence or wrongful acts or omissions in connection with its performance of any Contract. The Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by any Contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided. Nothing contained in this Solicitation or the Contract shall be deemed to be a waiver of the County's sovereign immunity.

**55. DRUG-FREE WORKPLACE:** Pursuant to Virginia Code § 2.2-4312, in every Contract over \$10,000.00 the following provisions apply: During the performance of any Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a Statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all Solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the

foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this Section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this the VPPA and the County’s Procurement Procedures, 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.

**56. TERMINATION:** Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

- a. Terminated prior to expiration date by satisfactory deliveries of entire Contract requirements;
- b. Terminated by the County upon thirty (30) days written notice to the Contractor at the County’s convenience in the County’s sole discretion (“termination for convenience”), unless a termination for convenience is specifically and expressly prohibited by the Contract. Any Contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of the termination;
- c. Terminated by the County for cause, default or negligence on the part of the Contractor. However, pursuant to Section 51 of these General Conditions, the County may hold the Contractor responsible for any resulting additional purchase and administrative costs. There is no advance notice requirement in the event of Termination for Cause and termination is effective immediately upon notice to Contractor of the termination for cause;
- d. Extended upon written authorization of County and accepted by Contractor, to permit ordering of unordered balances or additional quantities at Contract prices and in accordance with Contract terms.

**57. APPROPRIATIONS:** Notwithstanding any other provision of any Contract, the payment of the County's obligations under any Contract shall be subject to annual appropriations by the Board of Supervisors of the County in each fiscal year of monies sufficient to satisfy the same.

**58. REFERENCES TO VIRGINIA LAW:** Any reference in these General Conditions to the Code of Virginia or other relevant Federal, State or local law is incorporated in whole herein by reference as in effect at the time of the Solicitation or Contract as such statutory provisions may be amended or replaced by any statute dealing with the same or similar subject matter.

**59. COOPERATIVE PROCUREMENT:** Except as prohibited by the current Code of Virginia, all resultant Contracts will be extended to other Public Bodies of the Commonwealth of Virginia, to permit their ordering of Goods, supplies and/or Services at the prices and terms of the resulting Contract (“cooperative procurement”). By submitting any Bid or entering into any Contract with the County a Bidder/Contractor expressly authorizes cooperative procurement under Virginia Code § 2.2-4304 to the full extent permitted by law. If any other public body decides to use any Contract, the Contractor must deal directly with that public body concerning all matters relating thereto, including but not limited to, the placement or orders, issuance of the purchase order, contractual disputes, invoicing and payment. The County acts only as the “Contracting Agent” for these public bodies. Any resulting contract with other public bodies shall be governed by the laws of that specific entity. It is the Contractor’s responsibility to notify the public bodies of the availability of the Contract. Fluvanna County shall not be held liable for any direct or indirect costs, damages or other claim of any kind incurred by another public body or any Contractor as a result of any cooperative procurement.

**60. AUDIT:** The Contractor hereby agrees to retain all books, records and other documents relative to any Contract for five (5) years after final payment, or until audited by the County, whichever is sooner. The County, its authorized agents, and/or County auditors shall have full access to and right to examine any of said materials during said period.

**61. GUARANTIES AND WARRANTIES:** All guarantees, representations and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on any Contract is made. In addition to any guarantees, representations and warranties required under the Contract, the Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or owner;
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery;
- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to the Contractor’s own work or to the work of other contractors, for which the Contractor’s workers are responsible;
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County; and
- e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor;

- f. At minimum supply all Goods or Services with the manufacturer's standard warranty, if applicable; and
- g. For any Contract involving Services of any nature, the Contractor further agrees to:
  - i. Enter upon the performance of Services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence;
  - ii. Allow Services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County;
  - iii. Acknowledges that the County shall be under no obligation to compensate Contractor for any Services not rendered in strict conformity with the Contract; and
  - iv. Stipulates that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the Contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of any Contract. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material.

**62. PRICE REDUCTIONS:** If at any time after the date of the Bid/Contract the Contractor makes a general price reduction in the comparable price of any material covered by the Contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to any Contract for the duration of the Contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this Solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the Contract documents. The Contractor in addition will within ten (10) days of any general price reduction notify the County of such reduction by letter. FAILURE TO DO SO IS A DEFAULT UNDER THE CONTRACT AND MAY RESULT IN TERMINATION OF THE CONTRACT IN THE COUNTY'S DISCRETION. The Contractor, if requested, shall furnish, within ten (10) days after the end of the Contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the Bid or Contract, or (2) if any such general price reductions were made, that as provided above, they were reported to the County within ten (10) days and the County was billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by

the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the County was notified of any such reduction.

**63. COMPLIANCE WITH IMMIGRATION LAW:** Pursuant to Virginia Code § 2.2-4311.1, in every Contract the following provision applies: the Contractor does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**64. VIRGINIA STATE CORPORATION COMMISSION:** Pursuant to Virginia Code § 2.2-4311.2, Any Bidder or Contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law, at the time of the Bid, Proposal or any response to Solicitation and during the term of the Contract and any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required, to be revoked or cancelled at any time during the term or any renewal of the Contract. If the Contractor fails to remain in compliance with the provisions of this Section 64, the Contract may become void at the option of the County.

**65. CLAIMS PROCEDURE:**

- a. The procedure for consideration by the County of contractual claims for any Contract shall be that set forth in Virginia Code § 15.2-1243, *et seq.*
- b. In addition, pursuant to Virginia Code § 2.2-4364, contractual claims, whether for money or other relief, shall be submitted in writing to the County Administrator no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a Contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the Goods. Pendency of claims shall not delay payment of amount agreed due in the final payment.
- c. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the Board or the County Administrator. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the County fails to render a decision within ninety (90) days of submission of the claim. Failure of the County to render a decision within ninety (90) days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the County's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

- d. A Contractor may not institute legal action, prior to receipt of the County's decision on the claim, unless the County fails to render such decision within the time specified by law. A failure by the County to render a decision within the time provided by law shall be deemed a final decision denying the claim by the County.
  - e. The decision of the Board or the County Administrator shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in Virginia Code § 2.2-4364.
  - f. No administrative appeals procedure pursuant to Virginia Code § 2.2-4365 has been adopted for contractual claims by the County.
  - g. Nothing herein shall be construed to prevent the County from instituting legal action against any Contractor or Bidder.
- 66. NOTICES:** All written notices required or permitted under any Solicitation, Bid or Contract shall be deemed sufficient if delivered in person to the County Purchasing Agent or Bidder/Contractor, as applicable, or sent by first class mail to the County or Bidder/Contractor at the addresses set forth in the Solicitation, Bid or Contract or at such other address as a party may designate from time to time by notice given in accordance with the terms of this Section 66; except that where a Solicitation, Bid or Contract expressly requires notice to a specific individual or at a specific location, such shall control. Such notices are deemed received when actually delivered to the party or its representative or agent if hand delivered, or one (1) business day after deposited into the United States mail, if mailed.

## **DELIVERY**

- 67. SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the Solicitation or Contract, as applicable, each case, crate, barrel, package, etc., delivered under the Contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 a.m. – 3:00 p.m. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.
- 68. RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the Contract until they are delivered

at the designated point. The Contractor shall additionally bear all risk on rejected materials or supplies after notice of rejection is tendered by the County. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense or dispose of them as abandoned property.

**69. INSPECTIONS:** The County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and Services conform to the specification in the Solicitation, Bid or Contract, as applicable. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. Unless otherwise specified in the Contract, if inspection is made after delivery at the destination specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

**70. COMPLIANCE:** Delivery must be made as ordered and in accordance with the Solicitation, Bid or Contract, as applicable, or as directed by the County when not in conflict with the Bid/Contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of Goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the County, such extension applying only to the particular item or shipment affected. Unless otherwise specified in the Contract, should the Contractor be unreasonably delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction Contracts.

**71. POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated specifically in the Solicitation, Bid or Contract, as applicable. The materials must be delivered to the "Ship To" address indicated on the purchase order or Solicitation, as applicable.

**72. REPLACEMENT:** Materials or components that have been rejected by the County, in accordance with the terms of the Contract, shall be replaced by the Contractor at no cost to the County.

**73. DAMAGES:** Any and all damages to property of the "County" that is the direct result of the Contractor, the employees of the Contractor and/or its subcontractors, agents, licensees, successors, or assigns, shall be the sole responsibility of the Contractor. The

property shall be repaired to its last known condition prior to the damages and/or replaced at no cost to the County. The County shall approve any and all repairs/replacements prior to acceptance of the repairs/replacement.

**74. PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

- a. Purchase Order Number;
- b. Name of Article and Stock Number;
- c. Quantity Ordered;
- d. Quantity Shipped;
- e. Quantity Back Ordered; and
- f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the Goods.

**75. ADDITIONAL CHARGES:** No delivery charges of any kind shall be added to any invoice; except that (i) if Goods are expressly bought F.O.B. "shipping point" under the Contract and the Contractor prepays transportation, then delivery charges shall be added to invoices; and (ii) if express delivery is authorized and substituted by the County on orders for the method specified in the Contract, then the difference between freight or mail and express charges may be added to invoice.

**76. METHOD AND CONTAINERS:** Unless otherwise specified, Goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.



PC Project Summary- Fluvanna County Schools & County Buildings

Select?	Building	Item Description	Savings	Cost	SPB (years)	M&V Option (A, B, C, or D)	Savings Breakout	
							Energy	O&M
							Dollar Amount (\$)	Dollar Amount (\$)
	County Building Measures							
x	COMMONWEALTH ATTORNEY	Lighting	\$ 236	\$ 5,674	24.1	A	\$ 195	\$ 41
x	COMMONWEALTH ATTORNEY	Building Envelope	\$ 591	\$ 5,465	9.2	Stip	\$ 591	\$ -
	COMMONWEALTH ATTORNEY	Subtotal	\$ 827	\$ 11,139	13.5		\$ 786	\$ 41
x	COMMUNITY CENTER	Lighting	\$ 3,956	\$ 51,987	13.1	A	\$ 3,648	\$ 308
x	COMMUNITY CENTER	Building Envelope	\$ 1,568	\$ 9,489	6.1	Stip	\$ 1,568	\$ -
x	COMMUNITY CENTER	Programmable Thermostats	\$ 1,783	\$ 3,690	2.1	A	\$ 1,783	
	COMMUNITY CENTER	Subtotal	\$ 7,307	\$ 65,166	8.9		\$ 6,999	\$ 308
x	COUNTY ADMINISTRATION OFFICES	Building Envelope	\$ 762	\$ 5,577	7.3	Stip	\$ 762	\$ -
	COUNTY ADMINISTRATION OFFICES	Subtotal	\$ 762	\$ 5,577	7.3		\$ 762	\$ -
x	COURTHOUSE	Lighting	\$ 6,761	\$ 222,921	33.0	A	\$ 6,021	\$ 740
x	COURTHOUSE	Building Envelope	\$ 276	\$ 3,590	13.0	Stip	\$ 276	\$ -
x	COURTHOUSE	Controls Retro-Commissioning	\$ 5,386	\$ 15,375	2.9	A	\$ 5,386	
x	COURTHOUSE	Replace AHU-1 DX Condensing Unit	\$ 10,079	\$ 168,116	16.7	A	\$ 79	\$ 10,000
	COURTHOUSE	Subtotal	\$ 22,502	\$ 410,002	18.2		\$ 11,762	\$ 10,740
x	FORK UNION FIRE STATION	Lighting	\$ 4,903	\$ 31,991	6.5	A	\$ 4,696	\$ 207
x	FORK UNION FIRE STATION	Building Envelope	\$ 216	\$ 2,077	9.6	Stip	\$ 216	\$ -
	FORK UNION FIRE STATION	Subtotal	\$ 5,119	\$ 34,068	6.7		\$ 4,912	\$ 207
x	KENT STORE FIRE STATION	Lighting	\$ 4,669	\$ 28,430	6.1	A	\$ 4,492	\$ 177
x	KENT STORE FIRE STATION	Building Envelope	\$ 189	\$ 1,816	9.6	Stip	\$ 189	\$ -
	KENT STORE FIRE STATION	Subtotal	\$ 4,858	\$ 30,246	6.2		\$ 4,681	\$ 177
x	LIBRARY	Lighting	\$ 6,983	\$ 68,541	9.8	A	\$ 6,357	\$ 626
x	LIBRARY	Building Envelope	\$ 321	\$ 2,336	7.3	Stip	\$ 321	\$ -
x	LIBRARY	Controls Optimization	\$ -	\$ 7,688	#DIV/0!	N/A	\$ -	
	LIBRARY	Subtotal	\$ 7,304	\$ 78,565	10.8		\$ 6,678	\$ 626
x	PALMYRA FIRE STATION	Lighting	\$ 5,152	\$ 43,620	8.5	A	\$ 4,882	\$ 270
x	PALMYRA FIRE STATION	Building Envelope	\$ 243	\$ 2,336	9.6	Stip	\$ 243	\$ -
	PALMYRA FIRE STATION	Subtotal	\$ 5,395	\$ 45,956	8.5		\$ 5,125	\$ 270
x	PUBLIC WORKS	Lighting	\$ 96	\$ 2,199	22.9	A	\$ 77	\$ 19
x	PUBLIC WORKS	Building Envelope	\$ 600	\$ 5,545	9.2	Stip	\$ 600	\$ -
	PUBLIC WORKS	Subtotal	\$ 696	\$ 7,744	11.1		\$ 677	\$ 19
x	GENERAL REGISTRAR	Lighting	\$ 312	\$ 3,287	10.5	A	\$ 284	\$ 28
x	GENERAL REGISTRAR	Building Envelope	\$ 442	\$ 4,047	9.2	Stip	\$ 442	\$ -
	GENERAL REGISTRAR	Subtotal	\$ 754	\$ 7,334	9.7		\$ 726	\$ 28
x	SHERIFF'S OFFICE	Lighting	\$ 2,464	\$ 17,366	7.0	A	\$ 2,273	\$ 191
x	SHERIFF'S OFFICE	Building Envelope	\$ 285	\$ 2,077	7.3	Stip	\$ 285	\$ -
	SHERIFF'S OFFICE	Subtotal	\$ 2,749	\$ 19,443	7.1		\$ 2,558	\$ 191
x	DEPT OF SOCIAL SERVICES	Lighting	\$ 3,743	\$ 38,888	10.4	A	\$ 3,391	\$ 352
x	DEPT OF SOCIAL SERVICES - GYMNASIUM	Lighting	\$ 1,268	\$ 18,524	14.6	A	\$ 1,181	\$ 87
x	DEPT OF SOCIAL SERVICES	Building Envelope	\$ 1,550	\$ 37,113	23.9	Stip	\$ 1,550	\$ -
x	DEPT OF SOCIAL SERVICES - GYMNASIUM	Boiler Room Insulation	\$ 1,132	\$ 2,460	2.2	Stip	\$ 1,132	
	DEPARTMENT OF SOCIAL SERVICES	Subtotal	\$ 7,693	\$ 96,985	12.6		\$ 7,254	\$ 439
x	TREASURER BLDG.	Lighting	\$ 1,626	\$ 24,028	14.8	A	\$ 1,432	\$ 194
x	TREASURER BLDG.	Building Envelope	\$ 149	\$ 1,968	13.2	Stip	\$ 149	\$ -
	TREASURER BLDG.	Subtotal	\$ 1,775	\$ 25,996	14.6		\$ 1,581	\$ 194
	County Project subtotals		\$ 67,740	\$ 838,222	12.4			

PC Project Summary- Fluvanna County Schools & County Buildings

							Savings Breakout		
							Energy	O&M	
Select?	Building	Item Description	Savings	Cost	SPB (years)	M&V Option (A, B, C, or D)	Dollar Amount (\$)	Dollar Amount (\$)	
	County School Measures								
x	ABRAMS ALTERNATIVE SCHOOL	Lighting	\$ 4,286	\$ 56,348	13.1	A	\$ 3,767	\$ 519	
x	ABRAMS ALTERNATIVE SCHOOL	Building Envelope	\$ 2,954	\$ 26,783	9.1	Stip	\$ 2,954	\$ -	
x	ABRAMS ALTERNATIVE SCHOOL	Programmable Thermostats	\$ 2,538	\$ 6,150	2.4	A	\$ 2,538		
	ABRAMS ALTERNATIVE SCHOOL	Subtotal	\$ 9,778	\$ 89,282	9.1		\$ 9,259	\$ 519	
x	BOARD OF EDUCATION OFFICE	Lighting	\$ 4,574	\$ 54,311	11.9	A	\$ 4,031	\$ 543	
x	BOARD OF EDUCATION OFFICE	Building Envelope	\$ 827	\$ 6,941	8.4	Stip	\$ 827	\$ -	
x	BOARD OF EDUCATION OFFICE	Programmable Thermostats	\$ 3,663	\$ 5,612	1.5	A	\$ 3,663	\$ -	
	BOARD OF EDUCATION OFFICE	Subtotal	\$ 9,064	\$ 66,864	7.4		\$ 8,521	\$ 543	
x	BUS GARAGE	Lighting	\$ 1,271	\$ 23,192	18.2	A	\$ 1,163	\$ 108	
x	BUS GARAGE	Building Envelope	\$ 417	\$ 5,013	12.0	Stip	\$ 417	\$ -	
x	BUS GARAGE	Programmable Thermostats	\$ 2,554	\$ 3,075	1.2	A	\$ 2,554	\$ -	
	BUS GARAGE	Subtotal	\$ 4,242	\$ 31,280	7.4		\$ 4,134	\$ 108	
x	CARYSBROOK ELEMENTARY SCHOOL	Lighting	\$ 27,229	\$ 269,544	9.9	A	\$ 25,071	\$ 2,158	
x	CARYSBROOK ELEMENTARY SCHOOL	Building Envelope	\$ 2,598	\$ 19,823	7.6	Stip	\$ 2,598	\$ -	
x	CARYSBROOK ELEMENTARY SCHOOL	Controls Front End with Thru the Wall FCU Controls	\$ 13,035	\$ 137,631	10.6	A	\$ 13,035	\$ -	
	CARYSBROOK ELEMENTARY SCHOOL	Subtotal	\$ 42,862	\$ 426,998	10.0		\$ 40,704	\$ 2,158	
x	CENTRAL/WEST ELEMENTARY SCHOOL	Lighting	\$ 43,851	\$ 385,324	8.8	A	\$ 41,063	\$ 2,788	
x	CENTRAL/WEST CENTRAL ELEM SCHOOL	Building Envelope	\$ 2,166	\$ 26,299	12.1	Stip	\$ 2,166	\$ -	
x	CENTRAL/WEST CENTRAL ELEM SCHOOL	Central Plant & Controls Upgrades	\$ 94,190	\$ 3,368,504	35.8	A	\$ 94,190	\$ -	
	CENTRAL/WEST CENTRAL ELEM SCHOOL	Subtotal	\$ 140,207	\$ 3,780,127	27.0		\$ 137,419	\$ 2,788	
x	FLUVANNA HIGH SCHOOL	Lighting	\$ 38,101	\$ 692,055	18.2	A	\$ 32,821	\$ 5,280	
x	FLUVANNA HIGH SCHOOL	Building Envelope	\$ 4,005	\$ 76,640	19.1	Stip	\$ 4,005	\$ -	
x	FLUVANNA HIGH SCHOOL	Controls Optimization	\$ 84,307	\$ 46,125	0.5	A	\$ 84,307	\$ -	
	FLUVANNA HIGH SCHOOL	Subtotal	\$ 126,413	\$ 814,820	6.4		\$ 121,133	\$ 5,280	
x	FLUVANNA MIDDLE SCHOOL	Lighting	\$ 26,304	\$ 295,163	11.2	A	\$ 23,861	\$ 2,443	
x	FLUVANNA MIDDLE SCHOOL	Building Envelope	\$ 3,214	\$ 27,271	8.5	Stip	\$ 3,214	\$ -	
x	FLUVANNA MIDDLE SCHOOL	Controls Optimization	\$ 87,402	\$ 37,861	0.4	A	\$ 87,402	\$ -	
	FLUVANNA MIDDLE SCHOOL	Subtotal	\$ 116,920	\$ 360,295	3.1		\$ 114,477	\$ 2,443	
x	MAINTENANCE SHOP	Building Envelope	\$ 257	\$ 3,025	11.8	Stip	\$ 257	\$ -	
	MAINTENANCE SHOP	Subtotal	\$ 257	\$ 3,025	11.8		\$ 257	\$ -	
	Subtotal Schools		\$ 449,743	\$ 5,243,676	11.7				
		Project Implementation		\$ 103,864					
		General Conditions		\$ 184,947					
		Design Engineering		\$ 184,185					
		Construction Management		\$ 383,265					
		Contract Development		\$ 53,806					
		Measurement & Verification		\$ 24,000					
		Audit Cost		\$ 53,117					
x		Virginia Saves Administrator and Issuance Costs		\$ 309,000					
Projects Total			\$ 517,483	\$ 7,707,098	14.9		\$ 490,405	\$ 27,078	

## **Fluvanna County Schools and Government**

### **Lighting Upgrades (Owner review conducted on 9/7)**

- Retrofit existing interior fluorescent fixtures with LED bulbs with integrated drivers with 10 year warranty.
- Retrofit exterior fixtures with new LED lighting.
- Remove existing ballasts and install new end sockets.

### **Building Envelope (Owner review conducted on 9/7)**

- Install exterior door sweeps and insulation strips.
- Caulking of gaps and cracks.
- Energy walls.
- Fiberglass and foam insulation at various buildings.

### **Controls Upgrades**

- Controls Optimization at the High School, Middle School and Courts Building.
  - Reprogram existing controls and incorporate advanced energy savings features available to the existing systems.
- Improve humidity control at the Library.
- Carysbrook Elementary
  - Install a Trane Front end control system in place of the existing electric time clock controls.
  - Install zone thermostats to utilize for night setback and ventilation control per zone. Install controls on the existing ventilation unit serving the latest addition.
  - Install new wireless controls on the existing through the wall split system heat pumps and install three APR valves on existing condensing units to help control humidity and short cycling.
- Install programmable thermostats at Abrams, School Board Office, Bus Garage and the Community Center.

## **HVAC Upgrades**

- Central Elementary
  - Demolition of existing chilled water and heating water systems in each section of the building (original, 1993 addition, 1998 addition). Remove fan coil units, unit ventilators and cabinet unit heaters in the original section and 1993 addition.
  - Installation of two new propane fired hot water condensing boilers, one propane domestic water heater, propane storage tank, hot water pumps and underground distribution piping.
  - Install two new air cooled chillers, chilled water pumps and underground chilled water piping.
  - Install new energy recovery units for ventilation of classrooms in the original section of the building.
  - Install new DDC controls in the original section and 1993 addition and upgrade and commission the existing controls in the 1998 addition.
- Court House – Replace existing condensing unit and air handling unit DX coil.
- Carysbrook Elementary – Replace condensing unit and air handling unit serving the cafeteria and install new controls
- Department of Social Services – Installation of new pipe insulation on the Gym boiler room piping.

## **Miscellaneous**

- Department of Social services - Combine Performing Arts and DSS electrical accounts for utility cost savings.

## Detailed Energy Analysis – Fluvanna County Schools and Government Buildings

**Table 1.1 – Recommended Energy Conservation Measures and Projected Savings**

Energy Conservation Measures	Consumption (kWh)	Demand (kW)	Oil (Therms)	Propane (Therms)	Guaranteed Savings
<b>Fluvanna High School</b>					
Lighting Upgrades	432,037	1,445	-3,121	0	\$ 32,821
Controls Upgrade	604,173	-182	26,214	0	\$ 84,307
<b>Total Savings</b>	1,036,210	1,262	23,093	0	\$ 117,128
<b>Fluvanna Middle School</b>					
Lighting Upgrades	293,860	786	1,793	0	\$ 23,861
HVAC and Controls Upgrade	605,773	-194	30,748	0	\$ 87,402
<b>Total Savings</b>	899,633	592	32,540	0	\$ 111,262
<b>Central Elementary School</b>					
Lighting Upgrades	360,346	0	-2,913	0	\$ 41,063
HVAC and Controls Upgrade	386,777	0	65,776	-42,251	\$ 96,253
<b>Total Savings</b>	747,123	0	62,863	-42,251	\$ 137,316
<b>Carysbrook Elementary School</b>					
Lighting Upgrades	351,385	989	0	0	\$ 25,071
Controls Upgrade	385,652	-527	0	0	\$ 13,035
<b>Total Savings</b>	737,037	462	0	0	\$ 38,107
<b>Abrams School</b>					
Lighting Upgrades	29,964	0	0	0	\$ 3,767
Controls Upgrade	24,879	0	0	0	\$ 2,538
<b>Total Savings</b>	54,842	0	0	0	\$ 6,305
<b>School Board Office</b>					
Lighting Upgrades	31,107	0	0	0	\$ 4,031
Controls Upgrade	31,138	0	0	0	\$ 3,663
<b>Total Savings</b>	62,244	0	0	0	\$ 7,694
<b>Bus Garage</b>					
Lighting Upgrades	13,107	0	0	-296	\$ 1,163
Controls Upgrade	932	0	0	1,218	\$ 2,554
<b>Total Savings</b>	14,038	0	0	922	\$ 3,717
<b>Community Center</b>					
Lighting Upgrades	27,531	0	0	0	\$ 3,648
Controls Upgrade	17,284	0	0	0	\$ 1,783
<b>Total Savings</b>	44,815	0	0	0	\$ 5,431
<b>Courts Building</b>					
Lighting Upgrades	0	0	0	0	\$ -
Lighting Upgrades	66,903	328	-1,882	0	\$ 6,021
Controls Upgrades	4,502	43	2,352	0	\$ 5,386
Condensing Unit Replacement	715	5	0	0	\$ 79
<b>Total Savings</b>	72,119	375	470	0	\$ 11,486
<b>Other ECM's</b>					
Remaining County Lighting Upgrades	360,446	1,516	0	0	\$ 29,264
County Building Envelope Upgrades	85,863	0	161	280	\$ 7,194
School Building Envelope Upgrades	92,672	0	5,452	289	\$ 16,438
Social Services Gym Piping Insulation	0	0	548	0	\$ 1,132
<b>Total Savings - All Buildings</b>	<b>4,207,041</b>	<b>4,208</b>	<b>125,127</b>	<b>-40,761</b>	<b>\$ 492,473</b>

*NOTE: DRAFT AGREEMENT, SUBJECT TO CHANGE. FINAL DOCUMENT MUST BE IN FORM AND SUBSTANCE  
ACCEPTABLE TO THE VIRGINIA RESOURCES AUTHORITY, THE COUNTY OF FLUVANNA, THE FLUVANNA COUNTY  
SCHOOL BOARD, AND THE VIRGINIA SAVES GREEN COMMUNITY PROGRAM*

**BOND PURCHASE AND LEASE ACQUISITION AGREEMENT**

**by and between**

**VIRGINIA RESOURCES AUTHORITY**

**COUNTY OF FLUVANNA, VIRGINIA**

**FLUVANNA COUNTY SCHOOL BOARD**

**and**

**[PURCHASER]**

**Dated as of December \_\_, 2016**

**\$ \_\_\_\_\_**  
**Virginia Resources Authority**  
**Taxable Qualified Energy Conservation Revenue Bond**  
**(VirginiaSAVES Green Community Program - Fluvanna County Government and Schools**  
**Project)**  
**Series 2016 (Direct-Pay)**



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Exhibits:

- A. Form of Escrow Account and Control Agreement
- B. Form of Financing Lease
- C. Form of Paying Agent Agreement
- D. Intentionally Omitted
- E. Form of VRA Bond
- F. Form of Lender's Letter
- G. Form of Opinion of the County Attorney
- H. Form of Completion Certificate
- I. Form of Certification as to no Default for the County
- J. Form of Certification as to no Default for the School Board



**THIS BOND PURCHASE AND LEASE ACQUISITION AGREEMENT** dated as of December \_\_, 2016 (this "Agreement"), by and between the **VIRGINIA RESOURCES AUTHORITY**, a public body corporate and a political subdivision of the Commonwealth of Virginia (as more fully defined hereinafter, "VRA"), **[PURCHASER]**, as purchaser of the hereinafter defined Bond (as more fully defined hereinafter, the "Purchaser"), the **COUNTY OF FLUVANNA, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (as more fully defined hereinafter, the "County"), and the **FLUVANNA COUNTY SCHOOL BOARD**, a body corporate of the Commonwealth of Virginia (as more fully defined hereinafter, the "School Board" and, together with the County, the "Participants").

W I T N E S S E T H:

**WHEREAS**, at the request of the Participants, VRA will issue and sell to the Purchaser, and the Purchaser proposes to purchase from VRA, the Virginia Resources Authority Taxable Qualified Energy Conservation Revenue Bond (VirginiaSAVES Green Community Program - Fluvanna County Government and Schools Project), Series 2016 (Direct-Pay), in the principal amount of \$\_\_\_\_\_ (the "VRA Bond"); and

**WHEREAS**, the proceeds of the sale of the VRA Bond will be deposited into an Escrow Account (as hereinafter defined) established in accordance with the Financing Documents (as hereinafter defined); and

**WHEREAS**, the amount deposited into the Escrow Account will be made available to the Participants to (a) implement the VirginiaSAVES Green Community Program, which is a green community program established as a qualified conservation purpose under Section 54D(f)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended, by financing the acquisition, development, construction, installation and equipping certain energy efficiency improvements in Fluvanna County Government and School Buildings (as more fully defined hereinafter, the "Project"); and (b) pay certain fees and expenses incurred in connection with the issuance and sale of the VRA Bond; and

**WHEREAS**, in exchange for the amount deposited in the Escrow Account, the energy efficiency improvements (as more fully defined hereinafter, the "Equipment") to be financed pursuant to the Project will be sold by the Participants to VRA pursuant to the Deed of Sale (as hereinafter defined) and VRA, as lessor, will lease the Equipment back to the Participants, each as a co-lessee and collectively as the lessee, pursuant to the Financing Lease (as hereinafter defined); and

**WHEREAS**, the Rental Payments (as hereinafter defined) under the Financing Lease will be sufficient in timing and amount to pay the principal of and interest on the VRA Bond, and VRA will assign its rights under the Financing Documents and to the Equipment (except for certain unassigned rights as more particularly described herein) to the Purchaser to secure the VRA Bond; and

**WHEREAS**, the parties hereto understand that satisfaction of the Participant's repayment obligations to the Purchaser pursuant to the terms of the Financing Documents will be deemed to

be and constitute repayment of VRA's corresponding obligations to the Purchaser under the VRA Bond; and

**WHEREAS**, VRA, the County, the School Board and the Purchaser desire to set forth the terms and conditions with respect to such financing.

**NOW, THEREFORE**, the parties hereto agree as follows:

## **ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.1. Definitions.** In addition to other terms defined elsewhere in this Bond Purchase Agreement, the following terms shall have the following meanings in this Bond Purchase Agreement unless the context otherwise requires:

**"Act"** means the Virginia Resources Authority Act, Chapter 21, Title 62.1 of the Code of Virginia of 1950, as amended.

**"Administrator"** means CleanSource Capital LLC, and its successors and assigns pursuant to the Administration Agreement between the Administrator and VRA dated December \_\_, 2016, as modified, altered, amended or supplemented in accordance with the terms thereof.

**"Approved Institutional Buyer"** means (a) a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the "Securities Act"); (b) an "accredited investor" as defined in Sections 501(a)(1) through (3) of Regulation D promulgated under the Securities Act; (c) an entity that is directly or indirectly wholly owned or controlled by the purchaser/holder representative (being a financial institution described in (a) above); (d) an entity all of the investors in which are described in (a), (b) or (c) above; or (e) a custodian or trustee for a party described in (a), (b) or (c) above.

**"Bankruptcy Code"** means the United States Bankruptcy Code as in effect on the date hereof or as hereafter amended.

**"Bond Counsel"** means McGuireWoods LLP, or any other firm nationally recognized on the subject of municipal bonds acceptable to the Holder.

**"Bond Purchase Agreement"** means this Bond Purchase and Lease Acquisition Agreement dated as of December \_\_, 2016 between the County, the School Board, VRA and the Purchaser, as modified, altered, amended and supplemented in accordance with its terms and the terms of the Financing Lease.

**"Business Day"** means any day on which banks in the Commonwealth are not by law authorized or required to remain closed.

**"Closing Date"** means the date of delivery of and payment for the VRA Bond, which is December \_\_, 2016.

**"Code"** means the Internal Revenue Code of 1986, as amended, including applicable regulations and revenue rulings thereunder.

**"Commonwealth"** means the Commonwealth of Virginia.

**"Completion Certificate"** shall have the meaning set forth in Section 5.1.

**"Completion Date"** means, with respect to the Project, the date on which the School Board Representative delivers a completion certificate to VRA, the Holder and the County pursuant to Section 5.1.

**"County"** means the County of Fluvanna, Virginia, a political subdivision of the Commonwealth.

**"County Representative"** means (i) the chair or vice chair of the governing body of the County, as applicable, (ii) the chief executive officer of the County and (iii) any other official or employee of the County authorized by resolution of the governing body of the County to perform the act or sign the document in question.

**"Deed of Sale"** means the Deed of Sale dated as of December \_\_, 2016 conveying the School Board's right, title and interest in the Equipment now existing or hereafter acquired to VRA, in order for VRA to lease the Equipment back to the Participants pursuant to the Financing Lease.

**"Default Rate"** means 300 basis points (3.00%) above the then applicable interest rate on the VRA Bond.

**"Equipment"** means the Equipment as defined in the Financing Lease.

**"Escrow Account"** means the account by that name created and maintained pursuant to the Escrow Agreement.

**"Escrow Agent"** means the Bank of America, National Association and its successors and assigns.

**"Escrow Agreement"** means the Escrow and Account Control Agreement dated as of December \_\_, 2016 in form and substance acceptable to the Purchaser and acceptable and executed by VRA, the County, the School Board and the Escrow Agent, as modified, altered, amended or supplemented in accordance with the terms thereof, in substantially the form of Exhibit A attached to this Bond Purchase Agreement and pursuant to which the Escrow Account is established and administered.

**"Event of Default"** shall have the meaning set forth in Section 7.1.

**"Financing Documents"** means, collectively, (i) this Bond Purchase Agreement; (ii) the Escrow Agreement; (iii) the Financing Lease; (iv) the Paying Agent Agreement; (v) the Tax Agreement; and (vi) the VRA Bond.

**"Financing Lease"** means the Financing Lease dated as of December \_\_, 2016 between VRA, as lessor, and the Participants, each as a co-lessee and collectively as lessee, as modified, altered, amended or supplemented in accordance with the terms thereof, and in substantially the form of Exhibit B attached hereto.

**"GAAP"** means generally accepted accounting principles, as in effect from time to time, consistently applied.

**"Holder"** means the Purchaser or any future registered owner of the VRA Bond as permitted hereunder.

**"Local Authorization"** means, collectively, (i) the resolution adopted on \_\_\_\_\_, 2016, by a majority of the members of the governing body of the County approving, among other things, the transactions contemplated by and authorizing the execution and delivery of the Financing Documents and (ii) the resolution adopted on \_\_\_\_\_, 2016, by a majority of the members of the governing body of the School Board approving, among other things, the transactions contemplated by and authorizing the execution and delivery of the Financing Documents.

**"PACT Agreement"** means that certain PACT Agreement dated as of \_\_\_\_\_, 2016, between the School Board and Trane, Inc.

**"Participants"** means, collectively, the County and the School Board.

**"Paying Agent"** means U.S. Bank National Association, and its successors and assigns.

**"Paying Agent Agreement"** means the Paying Agent Agreement dated \_\_\_\_\_, 2016 between VRA, the County, the School Board and the Paying Agent, as modified, altered, amended or supplemented in accordance with the terms thereof and in substantially the form of Exhibit C attached hereto.

**"Payment of the VRA Bond"** means payment in full of the VRA Bond and the making in full of all other payments due and payable pursuant to this Bond Purchase Agreement and the Financing Lease at the time of such payment.

**"Person"** means an individual, partnership, corporation, trust, unincorporated organization, association, joint venture, joint-stock company, or a government or agency or political subdivision thereof.

**"Program"** means the VirginiaSAVES Green Community Program established by the Governor of Virginia's Executive Order 36, sponsored by the Virginia Department of Mines, Mineral and Energy and administered by the Administrator pursuant to the Administrative Services Agreement between dated December \_\_, 2016 between VRA and the Administrator.

**"Program Fee"** means the fee for the Program in an amount equal to two percent of the principal amount of the VRA Bond.

**"Project"** means the acquisition, development, construction, installation and equipping by the Participants of the Equipment, as more fully described in Exhibit A of the Financing Lease and the PACT Agreement, as well as the use of the Program for the funding of the same, and expenses related thereto, including but not limited to, the Program Fee, and the payment of the Costs of Issuance.

**"Project Costs"** means the costs of the Equipment to the extent such costs are included in the definition of "cost" set forth in Section 62.1-199 of the Act, and includes the refunding of obligations of VRA or the County used to finance "costs" set forth in Section 62.1-199 of the Act, including, but not limited to, the Program Fee and the Costs of Issuance.

**"Purchaser"** means [PURCHASER] (or one of its affiliates), or any successor, as the initial Holder of the VRA Bond.

**"Rental Payments"** means the rental payments due to VRA from the County as set forth in Section 6.1 and Schedule 1.1 of the Financing Lease.

**"School Board"** means the Fluvanna County School Board, a body corporate of the Commonwealth.

**"School Board Representative"** means (i) the Superintendent of the School Board, (ii) the chair or vice chair of the School Board, and (iii) any other official or employee of the School Board authorized by resolution of the governing body of the School Board to perform the act or sign the document in question.

**"State Aid Intercept Funds"** means state aid intercept funds obtained pursuant to Section 62.1-216.1 of the Act and under Section 11.1 of the Financing Lease.

**"Tax Agreement"** means the Federal Tax Certificate and Compliance Agreement dated the Closing Date, between the County, the School Board and VRA, as modified, altered, amended and supplemented.

**"UCC"** means the Uniform Commercial Code, as enacted in the Commonwealth. Any UCC Section reference herein shall be deemed to be the analogous provision of the Uniform Commercial Code, as enacted in the Commonwealth.

**"VRA"** means the Virginia Resources Authority, a public body corporate and a political subdivision of the Commonwealth.

**"VRA Authorization"** means the Resolution Authorizing Participation by the Virginia Resources Authority in the VirginiaSAVES Green Community Program Established by the Virginia Department of Mines, Minerals and Energy, the Execution and Delivery of an Administrative Services Agreement Related to the Program and the Issuance of up to \$22,500,000 in Qualified Energy Conservation Tax Credit Revenue Bonds during the Fiscal Year ending June 30, 2017, adopted on June 7, 2016 by VRA's Board of Directors.

**"VRA Bond"** means the Taxable Qualified Energy Conservation Revenue Bond (VirginiaSAVES Green Community Program - Fluvanna County Government and Schools

Project), Series 2016 (Direct-Pay), in the principal amount of \$\_\_\_\_\_, in the form of Exhibit E to this Bond Purchase Agreement, which is issued pursuant to the VRA Authorization and this Bond Purchase Agreement and is allocable to the Financing Lease (as determined by VRA).

**"VRA Representative"** means (i) the Chairman of VRA, (ii) the Executive Director of VRA or (iii) any member of VRA's Board of Directors designated to act on behalf of VRA by written certificate furnished to the Holder, the County and the School Board containing the specimen signatures of such person and signed on behalf of VRA by the Chairman, the Executive Director or a member of its Board of Directors.

### **Section 1.2. Rules of Construction.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(b) The table of contents, captions and headings in this Bond Purchase Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Bond Purchase Agreement.

(c) All references herein to particular Articles or Sections are references to Articles or Sections of this Bond Purchase Agreement unless some other reference is established.

(d) All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

(e) All references herein to the Code or any particular provision or section thereof shall be deemed to refer to any successor, or successor provision or section, thereof, as the case may be.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.1. Representations of VRA.** VRA hereby affirms all of the representations made in Section 2.1 of the Financing Lease, which are incorporated herein by this reference and further makes the following representations and warranties as the basis for its undertakings hereunder:

(a) The VRA Bond will be issued under and secured by this Bond Purchase Agreement and the Financing Lease, pursuant to which the revenues derived by VRA hereunder and under the Financing Lease and VRA's rights under this Bond Purchase Agreement and the Financing Lease (except for certain unassigned rights as more particularly described herein) will be pledged to the Holder as security for payment of the principal of and interest on the VRA Bond.

(b) VRA has not pledged and will not pledge its interest in this Bond Purchase Agreement or the Financing Lease for any purpose other than as provided in this Bond Purchase

Agreement. The VRA Bond constitutes the only obligation of VRA in any manner payable from the revenues to be derived from this Bond Purchase Agreement and the Financing Lease, and except for the VRA Bond, no notes or other obligations have been issued by VRA on the basis of this Bond Purchase Agreement or the Financing Lease.

(c) VRA has found and determined and hereby finds and determines that all requirements of the Act with respect to the issuance of the VRA Bond and the execution and delivery of this Bond Purchase Agreement have been complied with, and that issuing the VRA Bond and entering into this Bond Purchase Agreement will be in furtherance of, the purposes of the Act.

(d) No director, member, officer or other official of VRA has any personal financial interest whatsoever in the transactions contemplated by the Financing Documents.

(e) VRA makes no representation or warranty concerning the suitability of the Project for the purposes for which it is being undertaken by the Participants. VRA has not made any independent investigation as to the feasibility of the Project. The Purchaser, any subsequent Holder, any assignee of this Bond Purchase Agreement or any other party with any interest in this transaction, shall make its own independent investigation as to the creditworthiness of the Participants and the feasibility of the Project, independent of any representation or warranties of VRA.

(f) To the best knowledge of VRA, VRA has not defaulted in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of any of the Financing Documents or the ability of VRA to perform its obligations thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes, or with the lapse of time or the giving of notice or both would constitute, such a default.

(g) To the best of its knowledge, no litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or threatened against VRA with respect to (i) the organization and existence of VRA, (ii) its authority to issue, execute and/or deliver the Financing Documents, or to perform its obligations thereunder, (iii) the validity or enforceability of any of such instruments or the transactions contemplated hereby, (iv) the title of any officer of VRA who executed such instruments, or (v) any authority or proceedings related to the execution and delivery of such instruments on behalf of VRA. No such authority or proceedings of VRA have been repealed, revoked, rescinded or amended and all are in full force and effect.

(h) All of the above representations and warranties shall survive the making of this Bond Purchase Agreement and the issuance of the VRA Bond.

**Section 2.2. Representations of the County.** The County hereby reaffirms all of the representations made in Section 2.2 of the Financing Lease, which are incorporated herein by this reference.

**Section 2.3. Representations of the School Board.** The School Board hereby reaffirms all of the representations made in Section 2.3 of the Financing Lease, which are incorporated herein by this reference.

**ARTICLE III**  
**ISSUANCE, SALE AND PURCHASE OF THE VRA BOND;**  
**TERMS OF THE VRA BOND**

**Section 3.1. Issuance, Sale and Purchase of the VRA Bond.** VRA shall issue the VRA Bond in substantially the form attached as Exhibit E hereto. In reliance upon the representations, warranties and agreements herein contained, and subject to the conditions herein set forth, at the Closing Date, (a) the Purchaser, VRA, the County and the School Board agree to enter into this Bond Purchase Agreement; (b) VRA agrees to issue and to sell the VRA Bond to the Purchaser for a purchase price of \$ \_\_\_\_\_, and the Purchaser agrees to purchase the VRA Bond from VRA; (c) VRA shall cause the proceeds of the VRA Bond to be deposited in the Escrow Account and made available to the Participants to finance the Project pursuant to the terms of the Escrow Agreement and Article IV of the Financing Lease; (d) the Participants shall convey its interest in the Equipment to VRA pursuant to the Deed of Sale; (e) VRA and the Participants agree to enter into the Financing Lease, by which the Participants agree to sell the Equipment to VRA and VRA will lease the Equipment back to the Participants; (f) the Purchaser acknowledges that the Financing Lease, the Rental Payments thereunder, the funds in the Escrow Account, any State Aid Intercept Funds and VRA's interest in the Equipment shall be the security and source of payment for VRA's limited obligations under the VRA Bond and this Bond Purchase Agreement and shall accept VRA's assignment of substantially all of VRA's rights under the Financing Lease, including but not limited to, the receipt of the Rental Payments under the Financing Lease; and (g) upon the issuance of the VRA Bond, the Purchaser shall execute a lender's letter, substantially in the form attached hereto as Exhibit F.

Subject to the conditions precedent set forth in Section 3.6 of this Bond Purchase Agreement, payment for the VRA Bond shall be made at or before 12:00 Noon, Eastern time, on the Closing Date, at the offices of Bond Counsel or at such other time, date and place as may be mutually agreed upon by the parties hereto.

**Section 3.2. Terms of the VRA Bond.** The VRA Bond shall be dated the Closing Date, shall bear interest on the outstanding principal amount thereof, payable on each [December 1 and March 1, commencing on March 1, 2017], at the rate of \_\_\_\_% per annum. The principal amount of the VRA Bond shall be paid in annual installments, subject to prior redemption, on March 1 in the years and in the amounts set forth in Schedule 1 to the VRA Bond.

Interest on the VRA Bond shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The principal of, and premium, if any, and interest on the VRA Bond shall be payable in lawful money of the United States of America.

**Section 3.3. VRA Bond to be Issued in Registered Form; Registration and Transfer.** The VRA Bond shall be issuable in typewritten form as a fully registered VRA Bond without coupons and without CUSIP numbers. The VRA Bond shall not be DTC book entry



eligible and shall not be rated. The VRA Bond shall be substantially in the form attached hereto as Exhibit E, with such appropriate variations, omissions and insertions as are permitted or required by this Bond Purchase Agreement, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirements of law with respect thereto.

The Paying Agent is appointed as the registrar for the VRA Bond and as such shall keep books for the registration and for the registration of transfer of the VRA Bond as provided in the Paying Agent Agreement.

### **Section 3.4. Purchase for Own Account.**

(a) The Purchaser shall deliver on the Closing Date the Lender's Letter substantially in the form attached hereto as Exhibit F and the parties hereto may rely on the representations, warranties and covenants contained therein. In determining whether to purchase the VRA Bond, the Purchaser acknowledges that VRA has not supplied, nor has it been requested to supply, the Purchaser with any information (including financial information) relating to the Participants or the Project.

(b) The Purchaser reserves the right at all times to control the disposition of its assets, including the VRA Bond, and reserves the right to sell, assign and transfer the VRA Bond (or fractional interests in the VRA Bond in denominations of not less than \$100,000) to Approved Institutional Buyers in accordance with this Bond Purchase Agreement, including subsection (c) below, and the Lender's Letter as set forth in Exhibit F. The provisions of this Section 3.4 imposing limitations on transfers or assignments of the VRA Bond or any interests therein shall be binding on any subsequent Holder of the VRA Bond and shall not be amended without the prior written consent of VRA.

(c) Except as otherwise provided herein, Purchaser's right, title and interest in and to the VRA Bond, the Financing Documents and the Equipment may be sold, assigned and reassigned in whole or in part to one or more assignees or subassignees by Purchaser or such subsequent Holder, without the necessity of obtaining the consent of VRA; provided, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable Commonwealth law. Nothing in this Section 3.4 shall be construed, however, to prevent Purchaser or a subsequent Holder from executing any such assignment, transfer or conveyance that involves funding through the use of certificates of participation within the meaning of applicable Commonwealth law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; provided such certificates are sold only on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Bond Purchase Agreement, the VRA Bond nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is Approved Institutional Buyer, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; provided further, that in any event, neither VRA nor the Participants shall be required to make payments on the VRA

Bond, to send notices or to otherwise deal with respect to matters arising under this Bond Purchase Agreement and the VRA Bond with or to more than one individual or entity. Unless to an affiliate controlling, controlled by or under common control with Purchaser, no assignment, transfer or conveyance permitted by this Section 3.4 shall be effective until VRA, the Participants and the Paying Agent shall have received a written notice of sale or assignment that discloses the name and address of each such assignee; provided, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the VRA Bond and this Bond Purchase Agreement, it shall thereafter be sufficient that VRA, the Participants and the Paying Agent receive notice of the name and address of the bank or trust company as trustee or paying agent.

(d) It is specifically understood and agreed that VRA makes no representations, covenants or agreements as to the financial position or business condition of the County or the School Board and does not represent or warrant as to any statements, materials, representations or certifications furnished by the County or the School Board in connection with the sale of the VRA Bond, or as to the correctness, completeness or accuracy thereof.

### **Section 3.5. Redemption of the VRA Bond.**

(a) The Participants have the option to prepay the Financing Lease in whole on the interest payment date of the VRA Bond, and exercise their purchase option by providing funds to prepay the VRA Bond, in whole but not in part, on any date with not less than 30 days advance written notice to the Holder, at a redemption price of 102% of the outstanding principal balance of the VRA Bond, as well as any interest accrued to the prepayment date and other sums due hereunder to the Holder.

(b) In accordance with Section 4.2(c) of the Financing Lease, the Participants shall prepay the VRA Bond with remaining funds in the Escrow Account. If the amount redeemed is in excess of 10% of the original principal amount of the VRA Bond, then the amount in excess of 10% shall also be subject to a premium of 2% of such excess principal amount of the VRA Bond and such premium shall be paid by the Participants. Regardless, the Participants covenant to prepay the VRA Bond no later than ninety (90) days after the third anniversary date of the Closing Date, unless the Internal Revenue Service grants an extension of time for completion of the Project, in which event such prepayment shall be within 90 days of such extension date. The amount prepaid shall not be less than the amount determined by the School Board by which the School Board has expended less than 100 percent of the "available project proceeds" (as defined in Section 54A(e)(4) of the Code) of the VRA Bond for one or more "qualified conservation purposes" (as defined in Section 54D(a)(1) of the Code). VRA shall, within 90 days after such determination, redeem a portion of each of the VRA Bond solely from funds provided by the County in an amount to be determined in the same manner as the amount of nonqualified bonds required to be redeemed under Section 142 of the Code and as directed in writing by the County.

(c) In the event that the Participants elect to exercise their purchase option under Section 6.2(b) of the Financing Lease, the Participants have the option to prepay the VRA Bond, in whole but not in part, on the date provided in Section 6.2(b) of the Financing Lease, at a redemption price of 102% of the outstanding principal balance of the VRA Bond, as well as any interest accrued to the prepayment date and other sums due hereunder to the Holder.

(d) To exercise an option granted in subsection (a) or upon mandatory redemption under subsection (b), the County shall give written notice to VRA, the School Board and the Holder which shall specify therein (i) the date of the intended prepayment of the VRA Bond, which shall not be less than 10 nor more than 90 days from the date the notice is mailed and (ii) the principal amounts of the VRA Bond to be prepaid. To exercise an option granted in subsection (c), the County shall give written notice to VRA, the School Board and the Holder, which shall specify therein (i) the date of the intended prepayment of the VRA Bond, which shall not be less than 10 days from the date the notice is mailed and (ii) the principal amounts of the VRA Bond to be prepaid. When given, such notice shall be irrevocable by the County.

**Section 3.6. Conditions Precedent to Delivery of the VRA Bond.** VRA shall issue and sell the VRA Bond, and the Purchaser shall accept delivery of the VRA Bond, only upon delivery to VRA and the Purchaser, with documents, certificates and opinions in form and substance reasonably satisfactory to VRA and Purchaser, of the following:

- (a) Original executed counterparts of the Financing Documents;
- (b) Certified copies of the Local Authorization and all other ordinances and resolutions of the Participants relating to the Financing Documents, if any;
- (c) Evidence of the due authorization, execution and delivery of the Financing Documents by the parties thereto and certificates covering any litigation and compliance with all applicable federal, state and local laws, restrictions and requirements, and prior agreements;
- (d) A certificate of the appropriate officials of the Participants dated the Closing Date as to the matters set forth in Sections 2.2 and 2.3 of the Financing Lease, respectively, including appropriate certifications regarding the Financing Documents and such other matters as VRA and the Purchaser may reasonably require;
- (e) A certificate of the Participants Representative to the effect that the Lease Proceeds Amount (as defined in the Financing Lease) and funds available from the other sources specified in the budget for the Project will be sufficient to pay the estimated total Project Costs, and specifying the date the Participants are expected to complete the acquisition and installation of the Equipment;
- (f) Evidence that the Participants are in compliance with the insurance provisions set forth in Sections 8.1 and 8.2 of the Financing Lease as of the Closing Date;
- (g) Evidence that the Participants have performed and satisfied all of the terms and conditions contained in this Bond Purchase Agreement and the Financing Lease to be performed and satisfied by them as of the Closing Date;
- (h) An opinion of counsel to the County in substantially the form attached as Exhibit G;
- (i) An opinion of special counsel to the County;
- (j) An opinion of counsel to the School Board;

(k) An opinion of bond counsel to VRA, which shall include an opinion on the availability of collection of the State Aid Intercept Funds in the Event of Non-Appropriation;

(l) Insurance certificates as required in Section 8.1 of the Financing Lease;

(m) The Surety Bonds required by Section 8.2 of the Financing Lease;

(n) The Purchaser shall have paid in full and VRA shall have accepted the purchase price for the VRA Bond on the Closing Date; and

(o) Such other documentation, certificates and opinions as may be reasonably required by the Purchaser, VRA or Bond Counsel, including, but not limited to, all documents, certificates and opinions required under the Financing Documents.

**Section 3.7. Election under Section 6431 of the Code; Required Filings.**

(a) VRA hereby irrevocably elects to apply Section 6431(f) of the Code to the VRA Bond and this Bond Purchase Agreement. VRA will receive the credit payable with respect to the VRA Bond under Section 6431(f) of the Code and immediately pay it over to the County, so long as the County is current on its payments under the Financing Lease. VRA makes no representations or warranties regarding the amount of any credit payable with respect to the VRA Bond under Section 6431(f) of the Code, which among other things, is dependent on the Participants' compliance with the Tax Agreement and subject to federal budget "sequestration."

(b) Pursuant to the Administrative Services Agreement dated December \_\_, 2016 between VRA and the Administrator, the Administrator shall make, or cause to be made, any filings required by the Internal Revenue Service in connection with the VRA Bond or the Project, including, but not limited to, the preparation of Form 8038-CP for execution by VRA.

**ARTICLE IV**

**AMOUNTS PAYABLE; LIMITED OBLIGATION OF COUNTY; ASSIGNMENTS**

**Section 4.1. Amounts Payable.** VRA shall make or cause to be made all payments required under the VRA Bond as and when the same become due and shall promptly pay or cause to be paid to the Holder all other amounts necessary to pay principal of and interest on the VRA Bond, including any other payments required by the VRA Bond, as and when the same become due, on the dates and in the amounts set forth in the VRA Bond. Pursuant to the Financing Lease and the Paying Agent Agreement, the Rental Payments set forth in Schedule 1.1 of the Financing Lease are to be made by the County to the Paying Agent thirty days before the corresponding debt service payment on the VRA Bond so that the debt service payments on the VRA Bond shall be made on the date due. Upon the expiration of the thirty-day period, or sooner in the event any of the County's Rental Payments were not timely made, the Paying Agent shall transfer all payments received for the VRA Bond to the Holder on VRA's behalf. All such payments required to be made by VRA under the VRA Bond shall be made solely from the Rental Payments received from the County pursuant to the Financing Lease. VRA hereby assigns receipt of the Rental Payments from the County to the Holder, except for those amounts due under Sections 6.1(c), 6.1(d), 6.1(e) and 11.8 of the Financing Lease (with respect to Section 6.1(d), only the late payment penalty attributed to VRA and with respect to Section 6.1(e), only

to those costs and expenses of VRA and not to those costs and expenses of the Purchaser or the Holder), which are payable directly to VRA. As a result, the Rental Payments shall be made directly to the Paying Agent as a credit to the amounts due under the VRA Bond.

**Section 4.2. Limited Obligation of VRA and the County.** The obligation of the County to make payments as provided in Section 6.1 of the Financing Lease is not a general obligation but a limited obligation subject to annual appropriation of Rental Payments by the County pursuant to the terms of the Financing Lease.

**Section 4.3. Assignment by VRA to the Purchaser.**

(a) In order to provide security for the payment of principal of and interest on the VRA Bond, VRA hereby pledges, assigns, transfers and sets over to Purchaser and its successors and assigns and any subsequent Holder of the VRA Bond all of VRA's right, title and interest (including beneficial interest) in and to this Bond Purchase Agreement, the Financing Lease, the Escrow Agreement, funds in the Escrow Account, any State Aid Intercept Funds, the VRA Bond and VRA's interest in the Equipment, including, but not limited to, all Rental Payments due and to become due from or on behalf of the County to the Paying Agent pursuant to the Financing Lease and the Paying Agent Agreement, thirty days before any corresponding debt service payments on the VRA Bond, whether made at their respective due dates or as prepayments permitted or required by this Bond Purchase Agreement, together with full power and authority, in its own name or in the name of VRA or otherwise, to demand, receive, enforce, collect or receipt for any or all of the foregoing, to endorse or execute any checks or other instruments or orders, to file any claims and to take any action which the Holder may deem necessary or advisable in connection therewith, and VRA hereby irrevocably appoints the Holder as attorney-in-fact of VRA for such purposes, which appointment is coupled with an interest and is irrevocable; provided, however, that VRA shall continue to have all the rights, together with the Holder, contained in the following sections of this Bond Purchase Agreement or the Financing Lease:

(i) Section 3.5 of this Bond Purchase Agreement (pertaining to VRA's right to notice of prepayments);

(ii) Section 7.2 of the Financing Lease (pertaining to VRA's right of access to the Project and to certain records);

(iii) Article VIII of this Bond Purchase Agreement (pertaining to VRA's right to release and limitations on the liability of VRA and its members, officers, employees, etc.);

(iv) Section 9.3 of this Bond Purchase Agreement (pertaining to certifications of no default); and

(v) Section 9.4 of this Bond Purchase Agreement (pertaining to VRA's right to receive notices).

(b) The Holder shall notify VRA of any nonpayment by the County under the Financing Lease in order for VRA to perform its obligations hereunder and to enforce the rights under Section 62.1-216.1 of the Act. The Participants reaffirm Section 11.1 of the Financing

Lease as if set forth herein and acknowledge that, and consent to, the Purchaser and VRA, as applicable, taking any actions under Section 62.1-216.1 of the Act in the event of a nonpayment under the Financing Lease. The Participants agree that the provisions of Section 11.1 of the Financing Lease, as incorporated herein, survive termination of the Financing Lease, including due to an Event of Non-Appropriation (as defined in the Financing Lease), so long as the VRA Bond, and other amounts due under this Bond Purchase Agreement or the Financing Lease, remain outstanding and unpaid. So long as an Event of Default is continuing, VRA covenants to the Holder to take such action available under law to enforce collection of the State Aid Intercept Funds. The Participants covenant, to the extent permitted by law and so long as an Event of Default or Event of Non-Appropriation (as defined in the Financing Lease) is continuing, not to contest collection by VRA, the Holder or their attorneys or agents of the State Aid Intercept Funds.

(c) The Purchaser or any subsequent Holder may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder. Nothing herein contained and no act done or omitted by the Holder pursuant to the powers and rights granted it herein shall be deemed to be a waiver by the Holder of its rights and remedies under the VRA Bond, this Bond Purchase Agreement or the Financing Lease. The right of the Holder to collect such indebtedness and to enforce any other security therefor held by it may be exercised by the Holder either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

(d) Neither the assignment of VRA's right hereunder nor any action or inaction on the part of the Purchaser or any subsequent Holder shall, without its written consent, constitute an assumption on its part of any obligation of any other person under this Bond Purchase Agreement or the Financing Lease, nor shall the Purchaser or any subsequent Holder have any obligation to present or file any claim, or to take any other action to collect or enforce the payment of any amounts which have been assigned to the Purchaser or any subsequent Holder or to which it may be entitled under this assignment at any time or times. No action or inaction on the part of VRA shall adversely affect or limit in any way the rights of the Purchaser or any subsequent Holder under this assignment or under this Bond Purchase Agreement.

Except as set forth above, VRA agrees that it will not during the term of this Bond Purchase Agreement sell, assign, transfer or convey any of its interest in this Bond Purchase Agreement.

**Section 4.4. Payments Assigned.** If no Event of Default has occurred, the County, the School Board and VRA agree that all funds assigned hereunder shall be paid and applied as follows:

(a) each payment to be made pursuant to the VRA Bond shall be paid by VRA solely from the Rental Payments under the Financing Lease and any such Rental Payments shall be paid by the County on or before the due date of such payment under the Financing Lease (which shall be thirty (30) days prior to the payments due under the VRA Bond) directly, for the benefit

of the Holder, to the Paying Agent, who shall transfer any such amounts received to the Holder in accordance with the terms of the Paying Agent Agreement;

(b) all amounts prepaid by or on behalf of the County pursuant to Section 3.5 of this Bond Purchase Agreement shall be paid directly to the Paying Agent, for the benefit of the Holder, and applied by the Paying Agent, pursuant to the Paying Agent Agreement, to the redemption of the VRA Bond as provided in Section 3.5 of this Bond Purchase Agreement, by payment of the Holder; and

(c) all other funds assigned hereunder shall be applied as provided in this Bond Purchase Agreement and the Financing Lease.

If any "Event of Default" under this Bond Purchase Agreement shall have occurred, all Rental Payments and other funds payable by the County and the School Board under the Financing Lease and this Bond Purchase Agreement shall be paid directly to the Holder, including, but not limited to, interest at the Default Rate and late payment fees; provided that amounts due to VRA under Sections 6.1(c), 6.1(e) and 11.8 of the Financing Lease (with respect to Section 6.1(e), only to those costs and expenses of VRA and not the costs and expenses of the Purchaser or the Holder), which will be paid directly to VRA.

Amounts received from exercising remedies under Article VII of this Bond Purchase Agreement or the Financing Lease with respect to the security interest in VRA's interest in the Equipment shall be payable to the Holder and shall be applied in the manner specified in Section 7.3 of this Bond Purchase Agreement.

## **ARTICLE V PROJECT COMPLETION**

### **Section 5.1. Establishment of Completion Date and Certificate as to Completion.**

The Completion Date shall be the date on which the County AND School Board Representative sign and deliver to VRA, and the Holder a certificate, substantially in the form of Exhibit H attached hereto (the "Completion Certificate"). The final requisition from the Escrow Account by the County and School Board shall be accompanied by the executed Completion Certificate.

Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

**Section 5.2. No Warranty of Condition or Suitability.** VRA makes no representation or warranty, either express or implied, and offers no assurance that the proceeds of the VRA Bond will be sufficient to pay in full the costs of the Project or that the Project is or will be suitable for its intended purpose. In the event of such a shortfall, pursuant to Section 4.5 of the Financing Lease, the School Board shall be obligated to pay from legally available funds such additional costs to complete the Project. VRA MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, WORKMANSHIP, OR THE ACTUAL OR DESIGNED CAPACITY OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE COUNTY'S OR THE SCHOOL BOARD'S PURPOSES, OR FOR THE PURPOSES SPECIFIED IN THIS BOND PURCHASE

AGREEMENT, OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE VRA BOND WILL PAY THE COSTS TO BE INCURRED IN CONNECTION THEREWITH.

## **ARTICLE VI COUNTY'S AND SCHOOL BOARD'S COVENANTS**

**Section 6.1. Covenants under Financing Documents.** All of the representations, warranties and covenants of the Participants contained in the Financing Documents applicable to the Participants, including without limitation those contained in the Financing Lease, are hereby reaffirmed and incorporated herein by this reference.

**Section 6.2. Insurance.** The Participants shall provide the insurance as required in Article VIII of the Financing Lease.

**Section 6.3. Description of Project.** The Participants agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project and for carrying out the intention or facilitating the performance of this Bond Purchase Agreement and the Financing Lease.

## **ARTICLE VII EVENTS OF DEFAULT**

**Section 7.1. Events of Default.** The term "Event of Default" shall mean any one or more of the following events:

- (a) The failure of VRA to pay when due any payment of principal of or interest on or other amount payable under the VRA Bond;
- (b) The failure of the Purchaser to notify VRA of any nonpayment under the Financing Lease in regards to the enforcement of its rights under Section 62.1-216.1 of the Act;
- (c) The occurrence of an "Event of Default," "Default" or "event of default" under any of the Financing Documents;
- (d) Any representation or warranty of the County contained in Section 2.2 hereof, in the Financing Documents or in any other document, instrument or certificate delivered pursuant hereto or in connection with the issuance and sale of the VRA Bond shall have been false, misleading or incomplete in any material respect on the date as of which it is made;
- (e) Any representation or warranty of the School Board contained in Section 2.3 hereof, in the Financing Documents or in any other document, instrument or certificate delivered pursuant hereto or in connection with the issuance and sale of the VRA Bond shall have been false, misleading or incomplete in any material respect on the date as of which it is made;



(f) Failure by the County or the School Board to observe and perform any covenant, condition or agreement on the part of the County or the School Board under this Bond Purchase Agreement, other than as referred to in the preceding paragraphs of this Section or an Event of Nonappropriation (as defined in the Financing Lease), for a period of forty-five (45) days after written notice, specifying such failure and requesting that it be remedied, is given to the County or the School Board, as the case may be, by the Holder; provided that if after such written notice such failure cannot with diligence be cured within such forty-five (45) day period, the Holder will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the County or the School Board within the applicable period and diligently pursued until the default is corrected;

(g) Either the County or the School Board shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, assignee, sequestrator, trustee, liquidator or similar official of it or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition seeking to take advantage of any other federal or state law relating to bankruptcy, insolvency, reorganization, arrangement, winding-up or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (vii) take any corporate action for the purpose of effecting any of the foregoing; and

(h) A proceeding or case shall be commenced, without the application or consent of the County or the School Board, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, arrangement, dissolution, winding-up or composition or adjustment of debts of the County or the School Board, (ii) the appointment of a trustee, receiver, custodian, assignee, sequestrator, liquidator or similar official of the County or the School Board or of all or any substantial part of its assets, or (iii) similar relief in respect of the County or the School Board under any law relating to bankruptcy, insolvency, reorganization, arrangement, winding-up or composition or adjustment of debts and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 90 days from the commencement of such proceeding or case or the date of such order, judgment or decree, or an order for relief against the County or the School Board shall be entered in an involuntary case under the Bankruptcy Code.

**Section 7.2. Remedies of Holder.** If Payment of the VRA Bond is not made in full, or whenever there is an occurrence of any Event of Default referred to in Section 7.1 that shall not have been waived or cured within any applicable cure or grace period, the Holder may take any one or more of the following remedial steps:

(a) By written notice declare all principal repayable pursuant to the VRA Bond for the remainder of the term thereof to be immediately due and payable, whereupon the same, together with accrued interest thereon as provided for in the VRA Bond, shall become immediately due and payable without presentment, demand, protest or any other notice whatsoever, all of which are hereby expressly waived by the Participants and VRA; provided,

however, that upon the occurrence of any event described in Section 7.1(f) or (g) the VRA Bond shall become immediately due without demand or acceleration. The parties acknowledge that the Financing Lease is subject to termination under Section 5.1 of the Financing Lease, defined as an Event of Nonappropriation therein. Pursuant to Section 5.2 of the Financing Lease, in the Event of Nonappropriation, the Rental Payments (as defined under the Financing Lease) will no longer be available, the Holder will only have the rights under the Financing Lease in the Equipment, amounts in the Escrow Fund, any State Aid Intercept Funds and any past due sums and may exclude the Participants from possession of the Equipment and may sell its interest in, or lease or sublease the Equipment in the manner provided for by Section 10.2(b) of the Financing Lease.

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts payable pursuant to the VRA Bond and the Financing Documents then due and thereafter to become due, or to enforce the performance and observance of any obligation, agreement or covenant of the County or the School Board under this Bond Purchase Agreement or under any of the Financing Documents, including exercising all rights and remedies provided in the Financing Documents.

(c) Take whatever other action at law or in equity may appear necessary or desirable to collect any State Aid Intercept Funds, including, but not limited to, seeking mandamus action against VRA to pursue such collection under Section 4.4(b) of this Bond Purchase Agreement.

(d) So long as an Event of Default has occurred and is continuing the Default Rate shall be applicable on the VRA Bond. VRA and the Holder can also collect a late payment penalty in accordance with Section 6.1(d) of the Financing Lease.

In the enforcement of the remedies provided in this Section, the Holder and VRA may treat all reasonable expenses of enforcement, including, without limitation, legal, accounting and advertising fees and expenses, as additional amounts payable by the County or the School Board then due and owing, and the Participants agree to pay such additional amounts upon demand, the amount of such legal fees to be without regard to any statutory presumption.

**Section 7.3. Payments After Default; No Waiver.** Any amounts collected pursuant to action taken under Section 7.2 hereof shall be paid to the Holder and applied to the payment of, first, any costs, expenses and fees incurred by VRA as a result of taking such action; second, any costs, expenses and fees incurred by the Holder as a result of taking such action; third, any interest which shall have accrued on any overdue interest and overdue principal of the VRA Bond at the rate set forth in the VRA Bond, including interest at the Default Rate; fourth, any overdue interest on the VRA Bond; fifth, any overdue principal of the VRA Bond, including any late payment penalties; sixth, the outstanding principal balance of the VRA Bond; and seventh, if Payment of the VRA Bond has been made in full, all remaining moneys shall be paid to the County.

**Section 7.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Bond Purchase Agreement, the Financing Lease or now or hereafter existing at law or

in equity or by statute. No delay or omission to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE VIII LIMITATION OF LIABILITY; INDEMNIFICATION**

**Section 8.1. Limitation of VRA's Liability.** Anything contained in this Bond Purchase Agreement to the contrary notwithstanding, any obligation VRA may incur in connection with this Bond Purchase Agreement for the payment of money shall not be deemed to constitute a general obligation or indebtedness of VRA, the Commonwealth or any political subdivision thereof, within the meaning of any state constitutional provision or statutory limitation, and shall never constitute a pecuniary liability of the Commonwealth, but shall be a limited obligation of VRA payable solely from the revenues and receipts received by it under this Bond Purchase Agreement and the Financing Lease. No provision in this Bond Purchase Agreement or any obligation herein imposed upon VRA, or the breach thereof, shall constitute or give rise to or impose upon VRA, the Commonwealth or any political subdivision thereof a pecuniary liability or a charge upon its general credit or taxing powers. VRA has no taxing power. No officer, director, employee, member or agent of VRA shall be personally liable under this Bond Purchase Agreement or the VRA Bond.

To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of VRA contained herein or for any claim based hereon or otherwise in respect hereof against any member, commissioner, director, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of VRA, or of any successor entity, either directly or through VRA or any successor entity, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any member, commissioner, director, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of VRA or of any successor entity, either directly or through VRA or any successor entity, under or by reason of any of the obligations, promises or agreements entered into among VRA, the County, the School Board and the Holder, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such member, commissioner, director, officer, agent, attorney or employee is, by the execution of this Bond Purchase Agreement and as a condition of, and as part of the consideration for, the execution of this Bond Purchase Agreement, expressly waived and released; provided, however, that no covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any past, present or future director member, officer, employee or agent of VRA in his individual capacity, and no such director, member, officer, employee or agent shall be subject to any liability under this Bond Purchase Agreement or with respect to any other action taken by him unless he acts in grossly negligent or intentionally wrongful manner.

Notwithstanding any other provision of this Bond Purchase Agreement, VRA shall not be liable to the County, the School Board, the Holder or any other person for any failure of VRA to

take action under this Bond Purchase Agreement unless VRA (a) is requested in writing by an appropriate person to take such action, (b) is in its sole discretion either (i) fully indemnified to its satisfaction or (ii) assured of payment of, or reimbursement for, any reasonable expenses in such action, and (c) is afforded, under the existing circumstances, a reasonable period as determined by VRA to take such action. In acting under this Bond Purchase Agreement, or in refraining from acting under this Bond Purchase Agreement, VRA may conclusively rely on the advice of its counsel as to whether to take such action.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.1. Assignment.** Except as otherwise provided for in the Financing Documents, or with the prior written consent of the Holder, the rights of the Participants and VRA under this Bond Purchase Agreement shall not be sold, assigned or encumbered, and the Project may not be leased, assigned, encumbered or sold as a whole or in part.

**Section 9.2. Benefit of Agreement.** The Participants intend that the representations, warranties and covenants made by them in this Bond Purchase Agreement shall be for the equal benefit of VRA, the Purchaser and any Holder.

**Section 9.3. Certification as to No Default.** The Participants shall each deliver to VRA, within 210 days after the close of each Fiscal Year, a certification substantially in the respective forms attached as Exhibit I and Exhibit J signed by a County Representative and a School Board Representative, respectively.

**Section 9.4. Notices.** All demands, notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or by overnight courier or mailed by first class registered or certified mail, postage prepaid, addressed:

(a) if to the County, to the County of Fluvanna, [INSERT ADDRESS], Attention: \_\_\_\_\_;

(b) if to VRA, to Virginia Resources Authority, 1111 East Main Street, Suite 1920, Richmond, Virginia 23219, Attention: Executive Director;

(c) if to the Purchaser, to [PURCHASER], [PURCHASER ADDRESS];

(d) if to the School Board, to the Fluvanna County School Board, [INSERT ADDRESS], Attention: \_\_\_\_\_.

A duplicate copy of each notice, approval, consent, request or other communication given under this Bond Purchase Agreement by VRA, the School Board or the County to the other shall also be given to the Purchaser or the then Holder. VRA, the County, the School Board and the Purchaser, including any Holder, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests, or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 9.5. Amendments.** The Financing Documents may not be terminated, modified or amended, and the Participants will not take or omit to take any action, the taking or omission of which might result in any alteration or impairment of the Financing Documents, without the prior written consent of the Holder. Any consent provided for in the Financing Documents which may be given by VRA with respect to rights assigned to Purchaser shall not be valid unless approved in writing by the Holder and no offer made by the County or the School Board under this Bond Purchase Agreement or the Financing Lease with respect to such rights shall be deemed accepted or rejected by VRA without such approval.

**Section 9.6. UCC Financing Statements.** The Holder may file any financing statements and any continuation statements and amendments to financing statements that are or may be necessary with respect to this Bond Purchase Agreement, the Financing Documents and the assignment of VRA's rights hereunder under the Uniform Commercial Code as in effect in the Commonwealth, including fixture filings. Each of the Participants hereby (a) irrevocably appoints the Holder as its true and lawful attorney for such purpose, with full power of substitution, and (b) ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If so requested by the Holder, the Participants shall ratify and confirm all proper continuation statements and amendments to financing statements as may be designated in any such request.

**Section 9.7. No Third Party Beneficiary.** It is specifically agreed between the parties to this Bond Purchase Agreement that it is not intended by any of the provisions of any part of this Bond Purchase Agreement to make the public or any member thereof, other than as may be expressly provided herein, a third party beneficiary hereunder.

**Section 9.8. No Implied Waiver.** In the event any agreement contained in this Bond Purchase Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach thereunder or hereunder. Neither any failure nor any delay on the part of the Purchaser or any subsequent Holder to exercise any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

**Section 9.9. VRA Representative.** Whenever under the provisions of this Bond Purchase Agreement the approval of VRA is required or VRA is required to take some action at the written request of the County or the School Board, such approval, subject to the right of VRA to be indemnified, shall be made or such action shall be taken by VRA Representative; and the County, the School Board, the Purchaser and any subsequent Holder shall be authorized to rely on any such approval or action.

**Section 9.10. County Representative.** Whenever under the provisions of this Bond Purchase Agreement the approval of the County is required or the County is required to take some action at the request of VRA or the School Board, such approval shall be made or such action shall be taken by the County Representative; and VRA, the School Board, the Purchaser and any subsequent Holder shall be authorized to act on any such approval or action.

**Section 9.11. School Board Representative.** Whenever under the provisions of this Bond Purchase Agreement the approval of the School Board is required or the School Board is required to take some action at the request of VRA or the County, such approval shall be made or such action shall be taken by the School Board Representative; and VRA, the County, the Purchaser and any subsequent Holder shall be authorized to act on any such approval or action.

**Section 9.12. Conflicts.** To the extent any provision of this Bond Purchase Agreement is directly inconsistent with the VRA Bond and such provision of this Bond Purchase Agreement cannot reasonably be reconciled with the VRA Bond, the terms of this Bond Purchase Agreement shall be controlling. In the event of a conflict in the terms and provisions of this Bond Purchase Agreement and the Financing Lease insofar as the rights, remedies and obligations of the County and the School Board as between each other only are concerned, the terms and provisions of the Financing Lease insofar as they relate to the County and the School Board shall control.

**Section 9.13. Miscellaneous.**

(a) This Bond Purchase Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and the subsequent Holders of the VRA Bond and their respective successors and assigns. The representations, covenants and agreements contained herein shall continue notwithstanding the delivery of the VRA Bond to the Purchaser.

(b) If any provision of this Bond Purchase Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

(c) This Bond Purchase Agreement and the VRA Bond are contracts made under the laws of the Commonwealth and shall be governed by and construed in accordance with the Constitution and laws applicable to contracts made and performed in the Commonwealth.

(d) This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.

(e) The Purchaser shall furnish to VRA (a)(i) prior to August 1st of each year, a statement of the amount of principal of the VRA Bond outstanding and unpaid as of June 30 of such year and (ii) such information as may be necessary to complete the annual audit of VRA as required by the Act or any other law, now or hereafter in effect, and (b) notice of any nonpayment under the Financing Lease in regards to the enforcement of its rights under Section 11.1 of the Financing Lease, Section 4.2(c) of this Bond Purchase Agreement and Section 62.1-216.1 of the Act to collect any State Aid Intercept Funds. Failure to provide such information or notice to VRA shall not be an Event of Default.

[Remainder of Page Intentionally Left Blank]

*NOTE: DRAFT AGREEMENT, SUBJECT TO CHANGE. FINAL DOCUMENT MUST BE IN FORM AND SUBSTANCE  
ACCEPTABLE TO THE VIRGINIA RESOURCES AUTHORITY, THE COUNTY OF FLUVANNA, THE FLUVANNA COUNTY  
SCHOOL BOARD, AND THE VIRGINIA SAVES GREEN COMMUNITY PROGRAM*

IN WITNESS WHEREOF, the parties hereto have caused this Bond Purchase Agreement  
to be executed in their respective names, all as of the date first above written.

**VIRGINIA RESOURCES AUTHORITY**

By: \_\_\_\_\_  
Stephanie L. Hamlett  
Executive Director

**[PURCHASER]**

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

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

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



*NOTE: DRAFT AGREEMENT, SUBJECT TO CHANGE. FINAL DOCUMENT MUST BE IN FORM AND SUBSTANCE  
ACCEPTABLE TO THE VIRGINIA RESOURCES AUTHORITY, THE COUNTY OF FLUVANNA, THE FLUVANNA COUNTY  
SCHOOL BOARD, AND THE VIRGINIA SAVES GREEN COMMUNITY PROGRAM*

**COUNTY OF FLUVANNA, VIRGINIA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*NOTE: DRAFT AGREEMENT, SUBJECT TO CHANGE. FINAL DOCUMENT MUST BE IN FORM AND SUBSTANCE  
ACCEPTABLE TO THE VIRGINIA RESOURCES AUTHORITY, THE COUNTY OF FLUVANNA, THE FLUVANNA COUNTY  
SCHOOL BOARD, AND THE VIRGINIA SAVES GREEN COMMUNITY PROGRAM*

**FLUVANNA COUNTY SCHOOL BOARD**

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

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

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

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**EXHIBIT A**

**FORM OF ESCROW ACCOUNT AND CONTROL AGREEMENT**

Place holder - To be replaced with document in form and substance acceptable to the County, VRA and the Virginia Saves Green Community Program

## **EXHIBIT B**

### **FORM OF FINANCING LEASE**

Place holder - To be replaced with document in form and substance acceptable to the County, VRA and the Virginia Saves Green Community Program

## **EXHIBIT C**

### **FORM OF PAYING AGENT AGREEMENT**

Place holder - To be replaced with document in form and substance acceptable to the County, VRA and the Virginia Saves Green Community Program

*NOTE: DRAFT AGREEMENT, SUBJECT TO CHANGE. FINAL DOCUMENT MUST BE IN FORM AND SUBSTANCE  
ACCEPTABLE TO THE VIRGINIA RESOURCES AUTHORITY, THE COUNTY OF FLUVANNA, THE FLUVANNA COUNTY  
SCHOOL BOARD, AND THE VIRGINIA SAVES GREEN COMMUNITY PROGRAM*

**EXHIBIT D**

**INTENTIONALLY OMITTED**

(See Attached)

Place holder - To be replaced with document in form and substance acceptable to the County,  
VRA and the Virginia Saves Green Community Program

*NOTE: DRAFT AGREEMENT, SUBJECT TO CHANGE. FINAL DOCUMENT MUST BE IN FORM AND SUBSTANCE ACCEPTABLE TO THE VIRGINIA RESOURCES AUTHORITY, THE COUNTY OF FLUVANNA, THE FLUVANNA COUNTY SCHOOL BOARD, AND THE VIRGINIA SAVES GREEN COMMUNITY PROGRAM*

**EXHIBIT E**

**FORM OF VRA BOND**

Place holder - To be replaced with document in form and substance acceptable to the County, VRA and the Virginia Saves Green Community Program

**EXHIBIT F**

**FORM OF LENDER'S LETTER**

[DATE]

Virginia Resources Authority, as VRA  
Richmond, Virginia

Board of Supervisors of the  
County of Fluvanna, Virginia

Re:  
Virginia Resources Authority  
Taxable Qualified Energy Conservation Revenue Bond  
(VirginiaSAVES Green Community Program – Fluvanna County Schools Project)  
Series 2016 (Direct-Pay)

Ladies and Gentlemen:

[PURCHASER] ("Purchaser") has agreed to make a loan by purchasing the above-referenced debt obligations (the "Debt Obligations") in the amount of \$\_\_\_\_\_ which were issued in the original aggregate principal amount of \$\_\_\_\_\_ by Virginia Resources Authority (the "VRA") pursuant to the Bond Purchase and Lease Acquisition Agreement, dated as of December \_\_, 2016 (the "Agreement"), among VRA, the County of Fluvanna, Virginia (the "County"), the Fluvanna County School Board (the "School Board") and the Purchaser (the "Agreement"). All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the Agreement. The undersigned, an authorized representative of the Purchaser, hereby represents to you that:

1. The Purchaser has sufficient knowledge and experience in financial and business matters, including lending and leasing to municipalities and other government entities and the purchase and ownership of municipal and other governmental obligations, to be able to evaluate the risks and merits represented by making the loan by purchasing the Debt Obligations.

2. The Purchaser has authority to make the loan by purchasing the Debt Obligations and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the making of the loan by purchasing the Debt Obligations, including the Agreement.

3. The Purchaser is a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof, and is able to bear the economic risks of purchasing the Debt Obligations and entering into the Agreement.



4. The Purchaser understands that an official statement, prospectus, offering circular, or other comprehensive offering statement has not been provided with respect to the Debt Obligations. The Purchaser has made its own inquiry and analysis with respect to VRA, the County, the School Board, the Project, the Debt Obligations and the security therefor, and other material factors affecting the security for and payment of the Debt Obligations.

5. The Purchaser acknowledges that it has reviewed information, including financial statements and other financial information, regarding VRA, the County and the School Board, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning VRA, the County, the School Board, the Project, the Debt Obligations and the security therefor, so that it has been able to make an informed decision to make the loan by purchasing the Debt Obligations; provided, however, that this letter shall not constitute a waiver of any rights or remedies the Purchaser may have with respect to any untrue information it may have received or any material information which was withheld from its review.

6. The Purchaser understands that the Debt Obligations: (i) are not registered under the 1933 Act and are not registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (ii) are not listed on any stock or other securities exchange, and (iii) have not been rated by any credit rating agency.

7. The Debt Obligations are being acquired by the Purchaser for its own account and not with a present view toward resale or distribution; provided, however, that the Purchaser reserves the right to sell, transfer or redistribute the Debt Obligations, pursuant to the terms of Section 3.4 of the Agreement, but agrees that any such sale, transfer or distribution by the Purchaser shall be to:

- (a) an affiliate of the Purchaser;
- (b) a trust or other custodial arrangement established by the Purchaser or one of its affiliates, the owners of any beneficial interest in which are limited to Approved Institutional Buyer that execute a letter substantially in the form of this letter;
- (c) an Approved Institutional Buyer that executes a letter substantially in the form of this letter; or
- (d) as otherwise permitted under the terms of Section 3.4 of the Agreement.

[PURCHASER]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT G**

**FORM OF OPINION OF THE COUNTY BOND COUNSEL**

[Print on the Letterhead of Counsel for the County]

December \_\_, 2016

Board of Supervisors  
County of Fluvanna, Virginia

Virginia Resources Authority  
Richmond, Virginia

[PURCHASER]

**§ \_\_\_\_\_**  
**Virginia Resources Authority**  
**Taxable Qualified Energy Conservation Revenue Bond**  
**(VirginiaSAVES Green Community Program - Fluvanna County Schools Project)**  
**Series 2016 (Direct-Pay)**

Ladies and Gentlemen:

I have acted as counsel to the County of Fluvanna, Virginia (the "County"), in connection with the execution and delivery of a Financing Lease (the "Financing Lease") dated as of December \_\_, 2016, by and between the County, the Fluvanna County School Board and the Virginia Resources Authority ("VRA"), the net proceeds of which will be applied to finance the Project and in such capacity, I have examined, among other things, the following documents:

- (a) a certified copy of the County Authorization, authorizing the execution and delivery of the Financing Lease to finance the Project;
- (b) a copy of the Bond Purchase Agreement;
- (c) a copy of the Financing Lease; and
- (d) a copy of the Local Tax Document.

The documents referred to in clauses (a) through (d) above are referred to collectively as the "Local Lease Documents." Unless otherwise defined, each capitalized term used in this opinion has the same meaning given to such term in the Financing Lease.

I have also examined such other records and proceedings of the County and conducted such investigations as I deemed appropriate and necessary for purposes of this opinion.

As to questions of fact material to the opinions and statements set forth herein, I have relied upon representations of the County set forth in the Local Lease Documents and other certificates and representations by persons including representatives of the County. Whenever an opinion or statement set forth herein with respect to the existence or absence of facts is qualified by the phrase "to the best of my knowledge" or a phrase of similar import, it is intended to indicate that during the course of my representation of the County in connection with the Local Lease Documents no information has come to my attention that should give me current actual knowledge of the existence or absence of such facts. Except to the extent expressly set forth herein, I have not undertaken any independent investigation of the existence or absence of such facts, and no inference as to my knowledge or the existence or absence of such facts should be drawn from the fact of my representation or any other matter.

Based upon such examination and assuming the authorization, execution, delivery and enforceability of all documents by parties other than the County, I am of the opinion that:

1. The County is a duly created and validly existing political subdivision of the Commonwealth of Virginia and is vested with the rights and powers conferred upon it by Virginia law.

2. The County has full right, power and authority to (i) adopt the County Authorization and execute and deliver the Local Lease Documents and all related documents, (ii) undertake the Project, and (iii) carry out and consummate all of the transactions contemplated by the County Authorization and the Local Lease Documents.

3. The Local Lease Documents were duly authorized by the County Authorization.

4. All governmental permits, licenses, registrations, certificates, authorizations and approvals required to have been obtained as of the date hereof have been obtained for (i) the County's adoption of the County Authorization, (ii) the execution and delivery of the Local Lease Documents, (iii) the County's performance of its obligations under the Local Lease Documents, and (iv) to the best of my knowledge, the operation and use of the Equipment. I know of no reason why any such required governmental permits, licenses, registrations, certificates, authorizations or approvals cannot be obtained as required in the future.

5. The Local Lease Documents have been executed and delivered by duly authorized officials of the County and constitute legal, valid and binding obligations of the County enforceable against the County in accordance with their respective terms, subject to appropriation by the County. The obligations of the County under the Local Lease Documents, and the enforceability of such obligations, may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (b) principles of equity, whether considered at law or in equity, (c) the exercise of sovereign police powers of the Commonwealth of Virginia, and (d) rules of law which may limit the enforceability on public policy grounds of any obligations of indemnification undertaken by the County.

6. The execution and delivery of the Local Lease Documents and the performance by the County of its obligations thereunder are within the powers of the

County and will not conflict with, or constitute a breach or result in a violation of (i) any federal or Virginia constitutional or statutory provision, (ii) to the best of my knowledge, any agreement or other instrument to which the County is a party or by which it is bound or (iii) any order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the County or its property.

7. The County, to the best of my knowledge, is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under and subject to which any indebtedness for borrowed money has been incurred. To the best of my knowledge, no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including but not limited to the Financing Lease, which constitutes, or which, with notice or lapse of time, or both, would constitute an event of default thereunder.

8. The County (i) to the best of my knowledge, is not in violation of any existing law, rule or regulation applicable to it in any way which would have a material adverse effect on its financial condition or its ability to perform its obligations under the Local Lease Documents and (ii) is not in default under any indenture, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the County is a party or by which it is bound or to which any of its assets is subject, which would have a material adverse effect on its financial condition or its ability to perform its obligations under the Local Lease Documents. The execution and delivery by the County of the Local Lease Documents and the compliance with the terms and conditions thereof will not conflict with, result in a breach of or constitute a default under any of the foregoing.

9. Except as set forth in the Financing Lease, there are not pending nor, to the best of my knowledge, threatened against the County, any actions, suits, proceedings or investigations of a legal, equitable, regulatory, administrative or legislative nature (i) affecting the creation, organization or existence of the County or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the approval, execution, delivery or performance of the County Authorization or the Local Lease Documents, (iii) in any way contesting or affecting the validity or enforceability of the County Authorization, the Local Lease Documents or any agreement or instrument relating to any of the foregoing, (iv) in which a judgment, order or resolution may have a material adverse effect on the County or its business, assets, condition (financial or otherwise), operations or prospects or on its ability to perform its obligations under the County Authorization, or the Local Lease Documents, or (v) affecting the undertaking of the Project.

Very truly yours,

## **EXHIBIT H**

### **FORM OF COMPLETION CERTIFICATE**

Virginia Resources Authority  
1111 East Main Street, Suite 1920  
Richmond, Virginia 23219  
Attention: Executive Director

[PURCHASER]  
[PURCHASER ADDRESS]

Attn: Contract Administration  
Virginia Resources Authority  
Taxable Qualified Energy Conservation Revenue Bond  
(VirginiaSAVES Green Community Program – Fluvanna County Government and  
Schools Project)  
Series 2016 (Direct-Pay)

This certificate is being provided pursuant to Section 5.1 of the Bond Purchase and Lease Acquisition Agreement, dated as of December \_\_, 2016 (the "Agreement"), among the Virginia Resources Authority ("VRA"), the County of Fluvanna, Virginia (the "County"), the Fluvanna County School Board (the "School Board") and [PURCHASER], and the Financing Lease, dated December \_\_, 2016 between VRA, the County and the School Board.

On behalf of the County and School Board, we hereby certify the following:

(a) the Equipment set forth in the Financing Lease has been delivered, installed and accepted and the Project has been completed to the satisfaction of the School Board on the date hereof.

(b) The County and School Board have conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

(c) All labor, services, materials and supplies used in the construction and equipping of the Project to be paid from the proceeds of the VRA Bond have been paid for.

(d) This Completion Certificate is delivered within the Acquisition Period set forth in the Financing Lease.

(e) After payment of all remaining Project Costs, the amount of \$\_\_\_\_\_ shall be remaining in the Escrow Account. Such amount shall be applied to prepayment

of the principal component of Rental Payments set forth on Schedule 1.1 of the Financing Lease in accordance with Section 4.2(c) of the Financing Lease and Section 3.5(b) of the Agreement, with corresponding redemption of the VRA Bond by the same amount and at the price determined by Section 3.5(b) of the Agreement.

(f) The County and School Board are currently maintaining the insurance required by the Financing Lease.

(g) The County and School Board hereby reaffirm that the representations, warranties and covenants contained in the Financing Lease and the Agreement are true and correct as of the date hereof.

(h) (i) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default exists at the date hereof under the Financing Lease; and (ii) no Event of Non-Appropriation under the Financing Lease has been threatened or occurred.

All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement and the Financing Lease, as applicable.

**FLUVANNA COUNTY SCHOOL  
BOARD**

By \_\_\_\_\_  
School Board Representative

**COUNTY OF FLUVANNA,  
VIRGINIA**

By \_\_\_\_\_  
County Representative

## **EXHIBIT I**

### **FORM OF CERTIFICATION AS TO NO DEFAULT FOR THE COUNTY**

[DATE]

[Insert Name]

Compliance & Financial Analyst  
Virginia Resources Authority  
1111 East Main Street, Suite 1920  
Richmond, VA 23219

Dear Ladies and Gentlemen:

In accordance with Section 9.3 of the Bond Purchase and Lease Acquisition Agreement dated as of December \_\_, 2016 between VRA, the County, the School Board and the Purchaser (the "Bond Purchase Agreement"), I hereby certify that, during the fiscal year that ended June 30, \_\_\_\_\_, and through the date of this letter:

1. [No event or condition has happened or existed, or is happening or existing, which constitutes, or which, with notice or lapse of time, or both, would constitute, an Event of Default as defined in Section 7.1 of the Bond Purchase Agreement and Section 10.1 of the Financing Lease dated December \_\_, 2016 between VRA, the County and the School Board.] [If an Event of Default has occurred, please specify the nature and period of such Event of Default and what action the County has taken, is taking or proposes to take to rectify it].
2. Unless otherwise defined herein, each capitalized term used herein has the meaning set forth in the Bond Purchase Agreement.

Sincerely,

[Insert Name]

County Representative

**EXHIBIT J**

**FORM OF CERTIFICATION AS TO NO DEFAULT  
FOR SCHOOL BOARD REPRESENTATIVE**

[DATE]

[Insert Name]

Compliance & Financial Analyst  
Virginia Resources Authority  
1111 East Main Street, Suite 1920  
Richmond, VA 23219

Dear Ladies and Gentlemen:

In accordance with Section 9.3 of the Bond Purchase and Lease Acquisition Agreement dated as of December \_\_, 2016 between VRA, the County, the School Board and the Purchaser (the "Bond Purchase Agreement"), I hereby certify that, during the fiscal year that ended June 30, \_\_\_\_\_, and through the date of this letter:

1. [No event or condition has happened or existed, or is happening or existing, which constitutes, or which, with notice or lapse of time, or both, would constitute, an Event of Default as defined in Section 7.1 of the Bond Purchase Agreement and Section 10.1 of the Financing Lease dated December \_\_, 2016 between VRA, the County and the School Board.] [If an Event of Default has occurred, please specify the nature and period of such Event of Default and what action the County has taken, is taking or proposes to take to rectify it].
2. [The ownership and status of all or a portion of the Equipment has not changed since the Closing Date.] [If untrue, please describe.]
3. Unless otherwise defined herein, each capitalized term used herein has the meaning set forth in the Bond Purchase Agreement.

Sincerely,

[Insert Name]

School Board Representative