

JAMES RIVER WATER AUTHORITY

**REQUEST FOR PROPOSALS FOR OWNER’S
REPRESENTATIVE AND GENERAL
CONSTRUCTION MANAGEMENT RELATED
SERVICES**

RFP No. 2024-11

May 31, 2024

I. BACKGROUND.

The James River Water Authority (the “JRWA”) is seeking proposals from qualified firms to provide non-professional construction related services regarding the construction of a design-build raw water intake and pump station project by the JRWA pursuant to the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) (the “PPEA”).

The JRWA has entered into a design-build comprehensive agreement pursuant to the PPEA with Faulconer Construction as the general contractor and Timmons Group as the design engineer for the design and construction of a raw water intake and pump station using the James River in Fluvanna County. From the intake structure, underground pipes will carry water drawn from the river to a raw water pump station situated on higher ground. It will be necessary to construct an above-ground structure, and an access driveway, at the pump station site. Additional underground piping will convey water from the pump station approximately six miles to a point north of Route 6 west of Columbia. The project design is approximately 95 % complete and construction is in the process of commencing with a completion date scheduled for September 2026.

The selected offeror will be an independent contractor to the JRWA and would be responsible for coordinating and managing the construction of the project on behalf of the JRWA, acting as the owner’s representative for the JRWA, and reviewing the construction while it is going on to ensure that the construction is of high quality, is being constructed on time, and in accordance with the plans, to inform the JRWA Board of any problems or issues that occur during construction, and to mediate issues among the JRWA and the design-builder. Such services may include, but not be limited to, the following:

1. Contract Administration – Review the construction contract documents and ensure that the design build team complies with these documents.

2. Permit Review and Compliance – Review the requirements of the permits for the project, assist in obtaining any necessary permits and ensure compliance therewith throughout construction. Keep the Project Team apprised of any issues that may result once they are identified. Review submissions, timelines and related information to suggest changes if identified.
3. Specification and Plan Review – Liaise with project engineers and construction vendors to oversee completion of 100% design drawings and specifications. Review these documents to ensure that they will result in a project that meets the overall needs of the JRWA in a cost effective manner. Advise regarding any recommended updates. Function as necessary to consider and resolve any construction issues which arise.
4. Schedule of Values – Review the schedule of values to determine compliance with overall contract price and sufficient detail to allow for verification and approval of contractor payments. Identify and communicate any and all potential cost savings.
5. Project Schedule – Review the project schedule to verify that it complies with the contract requirements and has enough detail to allow the Project Team to track the project accurately. Identify and communicate any opportunities for increased efficiency.
6. Submittals – Review and recommend approval or changes to submittals. Maintain submittal log.
7. Requests for Information (RFI) – Review and recommend acceptance or changes to requests for information after the Architect/Engineer (A/E) has submitted an answer to them. Maintain RFI log.
8. Change Orders (CO) – Review, analyze, and make recommendations and maintain CO log.
9. Pay Application – Review and recommend approval or changes to payment applications.
10. Issue Resolution – Review and recommend solutions to issues that arise during construction.
11. Meeting Minutes – The Design Build Team is responsible to create minutes of meetings between the Contractor and the Contract Management (CM) team. The CM team will review the meeting minutes and recommend changes as appropriate. The CM team will create minutes for any meetings that are the responsibility of the CM team.

12. Project Meetings – Attend project meetings including the routine monthly status and pay meetings along with any specially called meetings.
13. JRWA Meetings – Attend JRWA meetings throughout the project and present a brief update of the project, compliance with the schedule, construction issues, schedule issues, and any changes that may change the project schedule. Submit monthly report including an executive summary prior to the meeting.
14. Deficiencies – Review and recommend solutions to project deficiencies that arise during construction and maintain deficiencies log.
15. Inspection – Provide inspection services for the project as required. The inspector is expected to use time on site judiciously in order to minimize cost to the JRWA while providing effective service.
16. Substantial Completion – Review and recommend approval or rejection of substantial completion for the project.
17. Punch list – As the project nears completion, develop a punch list of items that need to be addressed to bring the project to full completion.
18. As-Built Drawings – Review and recommend changes and approval of the as-built drawings and associated documents.
19. Operations and Preventative Maintenance Manuals – Review and recommend changes and approval of the operations and preventative maintenance manuals.
20. Commissioning – Ensure that appropriate training meetings are established to review the operations of the system for attendance of the JRWA staff. Ensure that the equipment suppliers have performed proper installation and start up procedures so that the equipment will function correctly and in accordance with the overall requirements of the entire system
21. Observe and report on Contractor’s training of Owner’s Operations and Maintenance (O&M) staff.

II. PROCESS FOR SUBMITTING PROPOSALS.

Sealed proposals will be due in the office of Fluvanna County Administrator, attention Eric Dahl, at **132 Main Street Post Office Box 540 Palmyra, VA 22963**, no later than 2:00 p.m. on June 17, 2024. The proposals shall be marked “Proposals for James River Water Authority: Owner’s Representative and General Construction Management Related Services” on the outside. Seven

copies of the proposal shall be submitted. Proposals should be limited to 25 pages. Proposals shall include, at a minimum, the following information:

- a. Background of the firm or individual in general.
- b. Experience working with the design and construction of public infrastructure projects, including specifically regional water infrastructure projects in Virginia.
- c. The names and backgrounds of the primary individuals who will be working on this project, and the names and backgrounds of the others who will be involved.
- d. References from at least three projects which the firm or individual feels would be most relevant to this project.
- e. The experience of the firm working with design-build projects in Virginia.
- f. A proposed schedule for working on this project.
- g. Cost of services.

III. CRITERIA FOR EVALUATION OF PROPOSALS.

The proposals will be evaluated based on the following criteria:

- i. The approach the firm or individual takes to being the Construction Manager.
- ii. The experience and capability of the persons in the firm who will be assigned to this project.
- iii. The experience of the firm in working with design-build projects in Virginia.
- iv. The experience of the firm working with public infrastructure projects in Virginia, including specifically the design and construction of water projects.
- v. The cost of the services.
- vi. The proposed schedule.

IV. PROCESS FOR EVALUATING PROPOSALS.

Following the receipt of proposals, 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 this Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. 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 JRWA shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the JRWA determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

In negotiations regarding the terms of the contract, the JRWA has no legal authority to indemnify the offeror. Firms submitting proposals agree that they will not ask the JRWA to indemnify them in any resulting contract.

V. QUESTIONS.

Any interested person who has a question about the project or the Request for Proposal may contact the JRWA's legal counsel, Brendan Scott Hefty, at (804) 780-3143 or write him at Hefty Wiley & Gore, P.C., 100 W. Franklin Street, Suite 300, Richmond, VA 23220.

VI. Terms and Conditions

JAMES RIVER WATER AUTHORITY STANDARD TERMS AND CONDITIONS

1. General Provisions

1.1 Unless otherwise agreed to by the James River Water Authority, these Standard Terms and Conditions shall apply to and govern all Solicitations, regardless of the type of goods or services purchased, by the James River Water Authority (the "Authority").

2. Definitions

2.1 "Solicitation" means the vehicle by which the Authority solicited pricing, and if applicable other terms, by which it could acquire goods or services from Vendor, regardless of whether the vehicle was an Invitation for Bid, Request for Proposal, Request for Quote, telephone quote or any other means permissible under Virginia law.

2.2 “Contract Documents” means all documents that constitute any legal and binding agreement between the Vendor and the Authority, including these Standard Terms and Conditions.

2.3 “Contract Period” means the time period from the time that Vendor first becomes legally bound to provide goods or services to the Authority in response to a Solicitation until all of Vendor’s contractual obligations to the Authority, arising out the Solicitation, cease.

2.4 “Obligations” means any and all legal obligations of Vendor under any Contract Documents.

3. Laws of the Commonwealth

3.1 The Contract Documents shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia. Vendor represents and warrants to the Authority that during the Contract Period it:

a) Will comply and conform with the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;

b) Not employ illegal alien workers or otherwise violate the provisions of the Immigration Reform and Control Act of 1986; and

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

4. Policies

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

a) Will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Vendor; and

b) Will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

c) Will state that the Vendor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Vendor to perform under the

Contract Documents. All notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section; and

d) Will include the provisions of the foregoing subparagraphs in every subcontract or purchase order exceeding \$10,000 issued by Vendor in order to fulfill its Obligations, so that the provisions will be binding upon each subcontractor or vendor employed by Vendor.

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

a) Provide a drug-free workplace for its employees;

b) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specify the actions which will be taken against any employee for a violation;

c) State in all of its solicitations or advertisements for employees that the Vendor maintains a drug-free workplace; and

d) Include the provisions of this sub-paragraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or subvendor.

e) For purposes of this sub-paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Vendor under a Solicitation and in accordance with the Virginia Public Procurement Act.

f) In addition to the provisions contained herein, the Vendor shall comply with the federal Drug Free Workplace Act.

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

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

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

NOTICE

Neither the Authority's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form.

5. Certifications

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

- a) Has been prepared without prior participation, understanding, agreement, or connection with any corporation, firm or other person that is also submitting a bid/offer in response to the same Solicitation;
- b) Is in all respects fair, without misrepresentations of fact, and free from collusion or fraud;
- c) Is in full compliance with the Virginia Conflicts of Interest Act;
- d) Is or is intended to be competitive and free from any collusion with any person, firm or corporation; and
- e) Has been prepared without the benefit of being provided information not available to the general public, or other potential bidders, such as insider information known to Authority employees or other sources which may have gained such information from interaction with Authority employees.

5.2 The Vendor has not offered or received any kickback from any other bidder or vendor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;

5.3 The Vendor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or

conditions upon which the contract resulting from the acceptance of his bid proposal is to be performed;

5.4 The Vendor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal Law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this proposal; and

5.5 Neither Vendor, Vendor's subcontractors, nor any person acting on Vendor's behalf, have conferred, or will confer, on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

6. Warranties

6.1 The Vendor represents and warrants that it has the requisite experience, skills, capabilities, and manpower to perform the Obligations in a good and workmanlike fashion, that it is a legal business entity chartered or authorized to do business in Virginia having all necessary licenses required by law, that the person signing any of the Contract Documents has been fully authorized to do so, and his signature will legally bind the Vendor to perform its Obligations. Any goods or services furnished by the Vendor under the Contract Documents shall be covered by the most favorable warranties provided by the Vendor to any customer, but in no event shall such warranty be less than one (1) year from date of completion of services or sale of goods, as applicable.

6.2 Vendor warrants to the Authority that all materials and equipment furnished shall be new, unless otherwise specified, and that Vendor's Work shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All materials and work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the Contract Documents.

6.3 The Vendor agrees that if warranties set forth in the Contract Documents are in any respect breached, the Vendor will pay to the Authority the full contract price agreed to by the Authority to be paid for the supplies, materials, equipment or services furnished under the bid or proposal. These rights and remedies are in addition to and do not limit those rights and remedies otherwise available to the Authority.

7. Modifications, Additions or Changes

7.1 Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the Authority. No fixed priced contract may be increased by more than twenty-five (25) percent of the amount of the contract or \$50,000, whichever is greater, without the approval of the Authority. The amount of any contract may not be increased for any purpose without adequate consideration provided to the Authority.

8. Procurement Code

8.1 Solicitations are subject to the Virginia Public Procurement Act and any revisions thereto, which are hereby incorporated into this contract in their entirety. ANY SOLICITATION OR CONTRACT DOCUMENTS THAT ARE ISSUED, REQUESTED OR EXECUTED IN VIOLATION OF VIRGINIA LAW ARE VOID AB INTIO, AND ARE OF NO EFFECT, REGARDLESS OF WHETHER ANY PURCHASE HAS BEEN MADE UNDER THE CONTRACT DOCUMENTS AND IRRESPECTIVE OF THE AMOUNT OR LENGTH OF VENDOR'S PERFORMANCE UNDER THE CONTRACT DOCUMENTS. The Virginia Public Procurement Act is contained within the Code of Virginia, beginning at § 2.2-4300.

9. Bid Acceptance Period

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

10. Indemnification

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

11. Assignment

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

12. Audit

12.1 The Vendor hereby agrees to retain all books, records, and other documents relative to Vendor's Obligations and the Contract Documents for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The Authority

and its authorized agents, auditors, the grantor of the funds to the Authority, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any such books, documents, papers and records of the Vendor for the purpose of making audits, examinations, excerpts or transcriptions.

13. Ownership of Documents

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

14. Payment and Performance Bond

14.1 If Vendor's Obligations include construction, the amount of which exceeds \$100,000, the Vendor shall furnish to the Authority the bonds required under § 2.2-4337 of the Virginia Public Procurement Act within the Virginia Code, and shall otherwise fully comply with the requirements of such Code and Act. The Authority reserves the right to require payment and/or performance bonds in the amount of the Obligations for any other projects, goods or services, whether or not required by such sections of the Code and Act.

15. Required Payment

15.1 The Vendor covenants and agrees to:

- a) Within seven (7) days after receipt of any amounts paid to the Vendor under the Agreement,
- b) Pay any subcontractor for its proportionate share of the total payment received from the Authority attributable to the work under the Agreement performed by such subcontractor, or
- c) Notify the Authority and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefore.

15.2 Vendor agrees to provide its federal employer identification number or social security number, as applicable, as a condition precedent to the Authority being required to make any payment to the Vendor under the Contract Documents.

15.3. Vendor agrees to pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the Vendor on all amounts owed by the Vendor

that remain unpaid after seven (7) days following receipt by the Vendor of payment from the Authority for work performed by the subcontractor in furtherance of Vendor meeting its Obligations to the Authority, except for amounts withheld pursuant to subparagraph 15.1(c) above.

15.4 Vendor agrees to include in its contracts with any and all subcontractors the requirements of 15.1(a), 15.1(b), and 15.1(c) above.

16. Liability Coverage

16.1 Unless otherwise expressly excepted in the Solicitation documents prepared by the Authority, the Vendor shall take out and maintain during the Contract Period such bodily injury, liability and property damage liability insurance as shall protect it and the Authority from claims for damages for personal injury, including death, as well as from claims for property damage, which could arise from Vendor's performance of its Obligations. Such insurance shall at least have the coverages and be in the amounts set forth in section 19 "Insurance and Bond Requirements" set forth below and shall name the "James River Water Authority" as additional insureds. Such insurance must be issued by a company admitted to do business within the Commonwealth of Virginia and with at least an AM Best rating of A-. Within 10 days after Vendor is awarded a contract in response to a Solicitation, and in no event later than the first day on which Vendor provides goods or services to the Authority, the Vendor shall provide the Authority with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the Authority at least 30 days' notice prior to cancellation or other termination of such insurance.

17. Loss or Damage in Transit

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

18. Freight

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

19. Insurance and Bond Requirements

19.1 The Vendor shall maintain the following insurance to protect it from claims that could arise from performance of the Obligations, including claims (i) under the Workmen's Compensation Act; (ii) for personal injury, including death; and (iii) for damage to property, regardless of whether such claims arise out of Vendor's actions or inactions, or those of Vendor's subcontractor or other persons directly or indirectly employed by either of them:

a) Worker's Compensation and Employer's Liability. Vendor shall procure and maintain Worker's Compensation and Employer's Liability Insurance covering all of its employees in conformance with the laws of any state, district or territory of the United States of America in which work towards meeting Vendor's Obligations are to be performed. Such insurance shall not have a limit of liability less than the following:

- a) Bodily Injury by accident, \$500,000 for each accident;
- b) Bodily Injury by disease, \$500,000 policy limit;
- c) Bodily Injury by disease, \$500,000 for each employee.

b) Commercial General Liability Insurance. This coverage shall include contractual liability, underground hazard, explosion and collapse, hazard, property damage, independent Vendor, and personal injury insurance in support of section 10 of this Agreement entitled "Indemnification". This policy shall be endorsed to include the Authority as additional insured's during the Contract Period and shall state that this insurance is primary insurance as regards any other insurance carried by the Authority.

Vendor shall procure and maintain Public Liability Insurance in an amount not less than:

- a) \$1,000,000 for each occurrence involving bodily injury;
- b) \$1,000,000 for each occurrence involving property damage;
- c) \$2,000,000 aggregate limits.

c) Comprehensive Automobile Liability. Vendor shall procure and maintain Comprehensive Automobile Liability Insurance covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, not owned, or hired by the Vendor, with the following limits:

- a) \$1,000,000 for each occurrence involving personal injury;
- b) \$1,000,000 for each occurrence involving property damage;
- c) \$2,000,000 aggregate limits.

d) The Vendor shall purchase and maintain insurance coverage in a sufficient amount to cover all potential claims on his tools, equipment and machinery.

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

19.3 All insurance policies required under this paragraph, or otherwise required by the Solicitation or Contract Documents, shall include a clause waiving any and all subrogation rights against the Authority.

19.4 Insurance policies shall provide for notification to the Authority of non-payment of any premium and shall give the Authority the right to make the premium payment thereunder within a reasonable time, if the insurance policy is in danger of lapsing during the Contract Period. Any premium payments made by the Authority shall be deducted from amounts due Vendor under the Contract.

20. Compliance With Laws

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

21. No Waiver

21.1 Any failure of the Authority to demand rigid adherence to one or more of the terms of the Contract Documents, on one or more occasions, shall not be construed as a waiver nor deprive the Authority of the right to insist upon strict compliance with the terms of the Contract Documents. Moreover, it is the Authority's position and Vendor hereby agrees that the legal theories of Implied Waiver, Statute of Limitation, Estoppel, and Laches do not apply as defenses that the Vendor may assert in any action by the Authority. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

22. Termination and Cancellation

22.1 The Authority shall have the unilateral right to terminate any contract with Vendor for default on the terms of that contract, or any other contract between the Vendor and the Authority.

22.2 The Authority has the unilateral right to cancel and terminate any contract with Vendor, in whole or in part, without penalty, merely out of convenience, and shall require no breach of contract by Vendor as a condition of termination. This right of termination for convenience may be exercised at the sole unconditional discretion of the Authority. If a contract is terminated in whole or in part for the convenience of the Authority, the

Vendor shall be paid the contracted price for the service or goods actually provided or rendered up to the date of the termination of the respective contract, but shall not be paid any other fees or lost profits.

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

23. Availability of Funds

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

24. Billing, Method of Payment and Offset Rights

24.1 Billing shall be done monthly based on the contracted rate bid by the Vendor and submitted to the Fluvanna County Administration Department. The Authority will remit payment within 30 days of receipt of a correct invoice. Incorrect invoices shall be subject to correction and/or rejection by the Fluvanna County Administration Department.

24.2 Vendor agrees that the Authority has the unilateral right to offset any bill submitted to Authority by Vendor, or any payment owed to Vendor by the Authority, by any amount due to the Authority from Vendor pursuant to the Contract Documents, or any other agreement, contract or transaction between Authority and Vendor.

25. Tax Exemption

25.1 The James River Water Authority, as a political subdivision of the Commonwealth of Virginia, is exempt from any Federal excise tax and Virginia sales and use tax under VA Code §15.2-5132. The James River Water Authority's tax identification number is 27-0317733.

26. Work Site Damages

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

27. Choice of Law

27.1 To ensure uniformity of the enforcement of the Contract Documents, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

28. Forum Selection

28.1 Vendor agrees, and submits, to sole and exclusive jurisdiction and venue in either of the following courts: the General District or Circuit Courts of Louisa County, Virginia, or the General District or Circuit Courts of Fluvanna County, Virginia; for resolution of any and all claims, causes of action or disputes between Vendor and the Authority. The Vendor agrees hereby to waive any jurisdictional or venue defenses related to any such action brought in such courts, and further agrees to not remove or file any such action in Federal Court.

28.2 Vendor agrees that service by registered mail to the address set forth in Paragraph 31.1 of these Standard Terms and Conditions shall constitute sufficient service of process for any such action.

29. Severability

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

30. Attorneys' Fees

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

31. Notices

31.1 All requests, notices and other communications required or permitted to be given under the Contract Documents shall be in writing. Delivery of a notice shall be deemed to have been made when such notice is either:

- a) Duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect; or
- b) Transmitted by hand delivery, telegram, telex, telecopy or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party. Notices to the Authority shall be sent to:

James River Water Authority
123 Main Street
Fluvanna, Virginia 22963

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

And a copy to:
County Attorney
Fluvanna County
132 Main Street
Palmyra, VA 22963

32. Contractual Claims Procedure

32.1 Contractual claims or disputes by Vendor against the Authority, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Vendor shall give the Authority written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Vendor's intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Vendor files such written notice, Vendor shall proceed with the work as directed. If Vendor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

32.2 The Authority, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final

payment. Each such decision rendered shall be forwarded to the Vendor by written notice.

32.3 If the Vendor disagrees with the decision of the Authority concerning any pending claim, the Vendor shall promptly notify the Authority by written notice that the Vendor is proceeding with the work under protest. Any claim not resolved, whether by failure of the Vendor to accept the decision of the Authority or under a written notice of Vendor's intention to file a claim or a detailed claim not acted upon by the governing body of the Authority, shall be specifically exempt by the Vendor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

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

33. Correction of Defective Work

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