

## APPENDIX D: Standard Terms & Conditions

The following provisions shall be incorporated by reference into any contract awarded under this solicitation:

### Definitions

“Contract Documents” means all documents that constitute any legal and binding agreement between the Contractor and Middle Peninsula Planning District Commission (MPPDC), including these Standard Terms and Conditions.

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

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

“Solicitation” means the vehicle by which MPPDC solicited pricing, and if applicable other terms, by which it could acquire goods or services from Contractor, regardless of whether the vehicle was an Invitation for Bids, Request for Proposals, Request for Qualifications, MPPDC policy, or Virginia law.

1. **Assignment of Contract.** This Contract may not be assigned in whole or in part without the written consent of MPPDC.
2. **Attorneys’ Fees.** Should MPPDC employ an attorney to either (i) institute and maintain a suit against Contractor arising out of the Contract or Contractor’s Obligations (ii) assist in enforcing or defending any of MPPDC’s rights under the Contract, (iii) protect MPPDC’s interest in any matter arising under a contract with Contractor, (iv) collect damages for the breach of a contract or any other amounts owed to MPPDC; or (v) recover on a surety bond given by the Contractor, then MPPDC shall be entitled to recover its attorneys’ fees, costs, charges, and expenses expended or incurred therein from the Contractor if MPPDC prevails in court.
3. **Audit.** The Contractor hereby agrees to retain all books, records, and other documents relative to Contractor’s Obligations and the Contract Documents for five (5) years after final payment or after all other pending matters are closed, whichever is longer. MPPDC and its authorized agents, state auditors, the grantor of the funds to MPPDC, 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 Contractor for the purpose of making audits, examinations, excerpts or transcriptions.
4. **Authorized to Transact Business in Virginia.** A Contractor 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 the identification number issued to it by the State Corporation Commission. Any Contractor 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 a statement describing why Contractor is not required to be so authorized. Any Contractor 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 MPPDC.

**5. Certifications:**

- a. The Contractor certifies that Contractor's response to any Solicitation:
  - i. Has been prepared without prior participation, understanding, agreement, or connection with any corporation, firm or other person that is also submitting a proposal in response to the same solicitation;
  - ii. Is in all respects fair, without misrepresentations of fact, and free from collusion or fraud;
  - iii. Is in full compliance with the Virginia Conflicts of Interest Act;
  - iv. Is or is intended to be competitive and free from any collusion with any person, firm or corporation; and,
  - v. Has been prepared without the benefit of being provided information not available to the general public, or other potential offerors, such as insider information known to MPPDC employees or other sources which may have gained such information from interaction with MPPDC employees;
- b. The Contractor has not offered or received any kickback from any other offeror or contractor, supplier, manufacturer, or subcontractor in connection with the proposal on this Solicitation. A kickback is defined as an inducement for the award of a contract, subcontract, 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;
- c. The Contractor 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 proposals, prices, terms or conditions upon which the contract resulting from the acceptance of its proposal is to be performed;
- d. The Contractor 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 RFPs; and

- e. Neither Contractor, Contractor's subcontractors, nor any person acting on Contractor'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. Correction of Defective Work.** Contractor shall promptly replace or correct any work or materials which MPPDC rejects as failing to conform to the requirements of the Contract Documents. If Contractor does not do so within a reasonable time, MPPDC shall have the right to replace or correct the defective work or materials and Contractor shall be liable to MPPDC for the cost thereof. If, in the opinion of MPPDC, it is not expedient to correct or replace all or any part of rejected work or materials, then MPPDC, at its option, may deduct from the payment due, or to become due, to Contractor such amounts as, in MPPDC'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.

**7. Contractual Claims Procedure**

- a. Contractual claims or disputes by Contractor against MPPDC, 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 Contractor shall give the Commission 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 Contractor'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 Contractor files such written notice, Contractor shall proceed with the work as directed. If Contractor 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.
- b. MPPDC, 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 Contractor by written notice.
- c. If the Contractor disagrees with the decision of MPPDC concerning any pending claim, the Contractor shall promptly notify MPPDC by written notice that the Contractor is proceeding with the work under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of MPPDC or under a written notice of Contractor's intention to file a claim or a detailed claim not acted upon by MPPDC, shall be specifically exempt by the Contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

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

**8. Counterparts and Electronic Signatures.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Contract or any counterpart hereof to produce or account for the other counterpart. The parties acknowledge and agree that this Contract may be executed by electronic signature, which shall be considered as an original signature. Without limitation, "electronic signature" shall include faxed version of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

**9. Debarment.** By submitting a proposal, Contractor is certifying that it is not currently debarred by the Commonwealth of Virginia or MPPDC.

**10. Drug-free Workplace.**

During the performance of this Agreement, Contractor agrees to (i) provide a drug-free workplace for 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 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 Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

"Drug-free workplace" means a site for the performance of Work done in connection with a specific contract awarded to Contractor, 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 Agreement.

Contractor shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Contractor, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

**11. Employment Discrimination Prohibited.** During the performance of this Contract, Contractor agrees as follows:

- 1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability, or any 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

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Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, shall state that such Contractor is an equal opportunity employer.

3. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement. The Contractor will include the provisions of the foregoing paragraphs, a, b, and c in every subcontract or purchase order of over ten thousand dollars (\$10,000), so that the provisions will be binding upon each subcontractor.

Contractor will include the provisions of the foregoing subsections a.(1), (2), and (3) in every subcontract or purchase order of over \$10,000, including but not limited to any agreement with Contractor, so that the provisions will be binding upon each subcontractor or vendor.

**12. Entire Agreement.** This Contract contains the entire agreement of the Parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the Parties that this Contract alone sets forth the terms on which the Parties have mutually agreed.

**13. Ethics in Public Contracting.** The provisions contained in Virginia Code §§ 2.2-4367 through 2.2-4377, shall be applicable to all contracts solicited or entered into by MPPDC. A copy of these provisions may be obtained from MPPDC upon request. The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interests Act (§ 2.1-348 et. seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et. seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

**14. Exemption from Taxes.** MPPDC is exempt from state sales tax and federal excise tax. Tax Exemption Certificates indicating MPPDC's tax-exempt status will be furnished by MPPDC upon request.

**15. Governing Law and Forum Selection.** This Contract shall be governed by, and construed in accordance with, the laws of Virginia without regard for Virginia's conflicts of laws rules. Venue for any litigation arising from this Contract shall only be proper in the Circuit Court of the County of Middlesex, Virginia or in the General District Court of the County of Middlesex, Virginia if the amount in controversy is within the jurisdictional limit of each court, regardless of the actual location of such parties. The provisions of this Contract shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Contract.

**16. Headings.** The headings used in this Contract, or any other Contract, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**17. Immigration Reform and Control Act of 1986.** By accepting a contract award, Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits the employment of illegal aliens.

**18. Indemnification.** Contractor shall indemnify, keep and save harmless MPPDC, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against MPPDC in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and 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 MPPDC in any such action, 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 this Contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend MPPDC as herein provided.

#### **19. Insurance**

The Contractor 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 Contractor's actions or inactions, or those of Contractor's subcontractor or other persons directly or indirectly employed by either of them:

- a. **Worker's Compensation and Employer's Liability.** Contractor 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 Contractor's Obligations are to be performed. Such insurance shall not have a limit of liability less than the following:
  1. Bodily Injury by accident, \$500,000 for each accident;
  2. Bodily Injury by disease, \$500,000 policy limit;
  3. 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 Contractor, and personal injury insurance in support of section 18 of this Agreement entitled "Indemnification". This policy shall be endorsed to include MPPDC as an additional insured during the Contract Period and shall state that this insurance is

primary insurance as regards any other insurance carried by MPPDC. Contractor shall procure and maintain Public Liability Insurance in an amount not less than:

1. \$1,000,000 for each occurrence involving bodily injury;
  2. \$1,000,000 for each occurrence involving property damage;
  3. \$2,000,000 aggregate limits.
- c. Comprehensive Automobile Liability. Contractor 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 Contractor, with the following limits:
1. \$1,000,000 for each occurrence involving personal injury;
  2. \$1,000,000 for each occurrence involving property damage;
  3. \$2,000,000 aggregate limits.
- d. The Contractor shall purchase and maintain insurance coverage in a sufficient amount to cover all potential claims on his tools, equipment and machinery.

MPPDC reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

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 MPPDC.

Insurance policies shall provide for notification to MPPDC of non-payment of any premium and shall give MPPDC 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 MPPDC shall be deducted from amounts due Contractor under the Contract.

**20. Liability Coverage:** Unless otherwise expressly excepted in the Solicitation documents prepared by MPPDC, the Contractor shall take out and maintain during the Contract Period such bodily injury, liability and property damage liability insurance as shall protect it and MPPDC from claims for damages for personal injury, including death, as well as from claims for property damage, which could arise from Contractor'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 MPPDC, Virginia and the "MPPDC" 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 Contractor is awarded a contract in response to a Solicitation, and in no event later than the first day on which Contractor provides goods or services to MPPDC, the Contractor shall provide

MPPDC with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give MPPDC at least 30 days' notice prior to cancellation or other termination of such insurance.

**21. Minority and Women-Owned Business Enterprise and Small Business Certification.** Contractor shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for Work on the Project.

**22. Modification.** Any amendment or modification of this Contract or additional obligation assumed by either Party in connection with this Contract will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

**23. Non-Appropriation of Funds.** It is understood and agreed between the parties herein that MPPDC 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 MPPDC's Obligations with respect to the Contract Documents. If such appropriation is not made for any fiscal year, the Contract shall terminate effective at the end of the fiscal year for which funds were appropriated and MPPDC shall not be obligated to make any payments under the Contract beyond the amount appropriated for payment obligations under the Contract. MPPDC will provide Contractor with written notice of non-appropriation of funds 30 days after action is completed by MPPDC, but failure to give such notice shall be of no effect and MPPDC shall not be obligated under the Contract beyond the date of termination specified in MPPDC's written notice.

**24. Non-Discrimination pursuant to Virginia Code § 2.2-4343.1.** Be advised that MPPDC does not discriminate against faith-based organizations. Contractor shall not discriminate against faith-based organizations during the performance of this Contract.

**25. Notices.** 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 MPPDC shall be sent to:**

Ashley Chriscoe  
Chairperson  
Middle Peninsula Planning District Commission  
125 Bowden Street  
P.O. Box 286  
Saluda, Virginia 23149  
achriscoe@gloucesterva.info

***With a copy, which shall not constitute notice, to:***

Heather Hays Lockerman, Esquire  
Sands Anderson, PC  
P.O. Box 1998  
Richmond, VA 23218-1998  
hlockerman@sandsanderson.com

**26. Notice of Required Disability Legislation Compliance.** MPPDC is required to comply with state and federal disability legislation: The Rehabilitation Act of 1993 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act 1990. Specifically, MPPDC, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the American with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all state and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and Local governments, including those that do not receive federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows Section 504 of the Rehabilitation Act of 1973.

**27. Payment to Subcontractors Under Virginia Code § 2.2-4354.**

- a. Contractor is obligated to take one of the two following actions within seven days after receipt of amounts paid to Contractor by MPPDC for work performed by any subcontractor under this Contract:
  - 1) Pay the subcontractor for the proportionate share of the total payment received from MPPDC attributable to the work performed by the subcontractor under the Contract;  
or
  - 2) Notify MPPDC and the subcontractor, in writing, of Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- b. Contractor shall provide its federal employer identification number to MPPDC.
- c. Contractor shall pay interest to the subcontractor on all amounts owed by Contractor that remain unpaid after seven (7) days following receipt by Contractor of payment from MPPDC for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subdivision a(2), above.
- d. Unless otherwise provided under the terms of this Contract, such interest shall accrue at the rate of one percent (1%) per month.

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- e. Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements to each lower-tier subcontractor.
- f. Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause above may not be construed to be an obligation of MPPDC.

**28. Safety.**

- a. All Contractors and subcontractors performing services for MPPDC are required to and shall comply with all Occupational Safety and Health Administration (OSHA), state and city safety and occupational health standards and any other applicable rules and regulations. Also, all Contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this Contract.
- b. Contractor expressly undertakes both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may be affected by Contractor's operation in connection with the work.
- c. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
- d. The provisions of all rules and regulations governing safety as adopted by the Virginia Safety and Health Codes Board and issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this Contract.

**29. Severability.** If any provision or any part of a provision of the Contract shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**30. Substitutions.** No substitutions, including key personnel, or cancellations are permitted after award without written approval by MPPDC Administrator or its designee.

**31. Termination and Cancellation.** MPPDC has the unilateral right to terminate any contract with Contractor for default on the terms of that contract, or any other contract between the Contractor and MPPDC.

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

in part for the convenience of MPPDC, the Contractor 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.

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

**32. W-9 Form.** Contractor will submit a completed W-9 form if it has not already submitted one with its proposal. This information is required in order to issue purchase orders and payments to Contractor.

**33. Waiver.** The failure of MPPDC or Contractor to insist upon the strict performance of any provisions of the Contract, the failure of MPPDC or Contractor to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by MPPDC of any act by Contractor requiring MPPDC's consent or approval shall not be construed to waive or render unnecessary the requirement for MPPDC's consent or approval of any subsequent similar act by Contractor. No provision of the Contract shall be deemed to have been waived unless such waiver shall be in writing signed by the Party to be charged.

**34. Warranties.** If applicable, Contractor warrants to MPPDC that all materials and equipment furnished shall be new, unless otherwise specified, and that Contractor'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. If the Contract does not state a specific warranty period, the Contractor warrants Contractor's Work for a period of one (1) year from the date of Substantial Completion of the entire Project. In no event shall Contractor's warranty period be less than or terminate earlier than any warranty provision specified in the Contract.

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

**29. Work Site Damages.** Any damages, including damage to finished surfaces, resulting from Contractor's performance of its Obligations shall be repaired to the satisfaction of MPPDC at the Contractor's expense.