

Middle Peninsula Planning District Commission
Request for Proposal # Fleet Purchase 1

ISSUE DATE: [5/24], 2024

Pre-Proposal Meeting [6/3rd], at [10:00 am-12:01 PM]

DUE DATE: [6/18], 2024

TIME: 12:01 PM

RFP #: [Fleet Purchase 1]

ISSUING AGENCY: Middle Peninsula Planning District Commission (MPPDC) - **All proposals should be delivered only to the contact at MPPDC shown below.**

CONTACT: **Taylor Ovide, Coastal Resilience Planner**
Middle Peninsula Planning District Commission
PO Box 286
Saluda, Virginia 23149
Phone: [804-758-2311]
Email: tovide@mppdc.com

SCOPE OF WORK: MPPDC solicits proposals from qualified manufactures or other participants in the septic system supply and installation chain to provide turnkey services which prioritize Middle Peninsula septic system installations in a cost-effective approach. The selected winner will be responsible for all aspects of the project, from purchasing the systems, design and engineering, construction and installation, and commissioning and handover.

All proposals in response to this Request for Proposal and any resulting contract shall be consistent with and governed by the Virginia Public Procurement Act.

All proposals shall be turned in no later than [12:01 P.M. EST] on [June 18th], 2024 to MPPDC Office located at 125 Bowden St., Saluda, Virginia 23149 or by mailing to PO Box 286, Saluda, Virginia 23149. If proposals are sent via a mailing service or hand delivered, please address the proposals to the issuing department listed above. Any proposals that are submitted by e-mail, phone, or facsimile shall not be considered. Any proposals received after the deadline shall be deemed non-responsive and returned unopened. *It is the Offeror's sole responsibility to ensure all information; including addendums are complete and delivered on time.* If MPPDC closes its offices due to inclement weather, scheduled receipt of proposals will be extended to the next business day, same time.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or

veteran status or any other basis prohibited by state law relating to discrimination in employment.

I. Introduction

A. Background

The area served by the Middle Peninsula Planning District Commission is composed of the following Virginia counties: Essex, Gloucester, King and Queen, King William, Mathews, and Middlesex and the towns of Tappahannock, West Point, and Urbana. All are within the Chesapeake Bay Watershed and are in immediate or close proximity to the Bay and its direct tributaries. Failing septic systems in the Middle Peninsula pose significant environmental hazards to the immediate area and the Bay. To respond to these threats to water quality, the MPPDC developed and operates the Septic Repair Program to provide financial assistance to homeowners whose septic systems are in significant need of repair or replacement.

After the pandemic caused significant septic supply chain challenges and labor problems backlogged most septic installations across the Middle Peninsula, MPPDC applied for and received an American Rescue Plan Act (ARPA) Septic Local Partner Program (SLPP) grant from the Virginia Department of Environmental Quality. MPPDC intends to use this grant to lower the costs of and fast-track the installation of new septic systems for qualifying Middle Peninsula residents. MPPDC solicits turnkey services to include:

1. The bulk fleet purchase of an anticipated 12 or more septic systems in compliance with the Virginia Department of Health "Treatment level 3 effluent"¹ or "TL-3 effluent" ("TL3") standards;
2. The engineering and planning for the installation of such systems; and
3. The installation of the systems.

Offerors shall assemble their preferred team (manufacture, designer, installer) who will collectively provide turnkey services which prioritize Middle Peninsula septic system installs in a cost-effective approach. Offerors shall act as the general contractor for the project using labor provided by general contractor and/or subcontractors as required. Bidders must submit individual cost estimates for each job to ensure transparency and fair and reasonable pricing. Some jobs due to simplicity may be \$30,000 while other jobs with more complexity could be \$60,000. In any event, MPPDC expects that the average cost for each site shall not exceed \$40,000. The total amount available turnkey services is \$480,000

Grant awards, proposals and permits for this RFP can be found at <https://www.mppdc.com/index.php/pdcinfo/proposals>.

B. Competitive Negotiation.

¹ "Treatment level 3 effluent" or "TL-3 effluent" means effluent that has been treated to produce BOD₅ and TSS concentrations equal to or less than 10 mg/l each. [12VAC5-610-120. Definitions. \(virginia.gov\)](https://www.virginia.gov/12VAC5-610-120).

This procurement shall utilize competitive negotiation, pursuant to §§ 2.2-4302.2 and 2.2-4303.

MPPDC has determined in writing that, pursuant to § 2.2-4303(D)(2), competitive sealed bidding is not practicable nor is it fiscally advantageous to the public.

C. Pre-Proposal Meeting

MPPDC shall host a pre-proposal meeting on [June 3rd] at [10:00 am-12:01 PM] in the Conference Room of the MPPDC Office Building at 125 Bowden Street in Saluda, Virginia. This meeting will provide the only opportunity for prospective offerors to ask and receive responses to substantive questions about the procurement, including questions about the scope of work, the preparation or submittal of a proposal, and other matters. PLEASE NOTE THAT

- The meeting will not be recorded by MPPDC.
- MPPDC will not take minutes at this meeting.
- Responses to questions asked at the meeting will not be posted or provided to prospective offerors who do not attend the meeting.

Thus, while attendance is not required, it is strongly advised that all prospective offerors attend the pre-proposal meeting.

D. Communications Prior to the Response Deadline.

Any communications pertaining to the scope of work, the preparation or submittal of a proposal, and all other communications referred to this solicitation must be made in **writing** to:

Taylor Ovide, Coastal Resilience Planner
Middle Peninsula Planning District Commission
PO Box 286
Saluda, Virginia 23149
Phone: [804-758-2311]
Email: tovide@mppdc.com

No substantive questions will be answered except as provided by subsection D above. Any revisions to the solicitation will be made only by addendum issued by the procurement representative and posted to the MPPDC website at <http://mppdc.com/index.php/pdcinfo/bids>.

II. Scope of Work

Turnkey installation of 6-12+ septic systems meeting Virginia Department of Health (VDH) Treatment Level 3 (TL3) standards with nitrogen removal. The turnkey services include site visits, soil testing, permit design and installation necessary for the issuance of an approved operating permit by VDH.

C. Project Timeline:

Estimated Milestone Schedule	Date
Complete environmental assessments and engineering designs on selected priority sites	October 31, 2024
Complete Implementation Plan	January 31, 2025
Planned Project Completion Date	January 31, 2025

III. Proposal Format

The proposals are to be submitted in a format that allows uniform review and easy access to information by the evaluation committee. A table of contents shall be provided, and pages and exhibits numbered in an organized manner. Failure to submit all information requested may result in the proposal being deemed non-responsive. Proposals which are deemed non-responsive, incomplete, or lack key information may be rejected in full by the MPPDC.

MPPDC will assess each respondent based on the following which are to be listed in the following order:

1. Cover Sheet
2. Substantive Description of Offeror's Proposal
3. Statement of Qualifications
4. Response Capability
5. Insurance
6. References
7. Other Supporting Data
8. Submission of Proprietary Information

Section 1 – Cover Sheet

Included on the cover sheet shall be:

- a. The name of the firm and the location of the office that will have the responsibility for the services to be provided.
- b. The name, address, and phone number of a key representative who is knowledgeable about the proposal.
- c. The signature of an officer or employee having the authority to bind the company by their signature. Signatures by anyone other than the president, vice president, or general partner

should have accompanying documentation that the individual is empowered to bind the company or partnership.

Section 2 – Substantive Description of Offeror’s Proposal

The Offeror should describe its understanding of the scope of work and how the firm proposes to conduct its work including:

- Selection of a TL3 compliant septic system that is appropriate to the location of the drain field, the slope and geography of the land, the geology of the surrounding soil, and the size and purpose of the house and outbuildings.
- Plan for installation of the septic systems in a methodical and systemic way.
- Details about selection process for installation contractors with an emphasis on streamlining efforts to complete the project in a cost-efficient and time-efficient manner. If offeror has identified such contractor(s) at the time of submission of the proposal, provide their identity and contact information as well as brief descriptions of prior projects on which the offeror has partnered with the contractor(s).

Section 3 – Qualifications and Experience of the Firm, Project Team, and any Partners

1. Include the names and responsibilities of the intended project team members, including concise resumes of each team member’s education, relevant professional experience, and professional licensure. The Offeror shall clearly state whether it is proposing to subcontract any of the work herein. The names of all proposed subcontractors shall be provided. By proposing such firms or individuals, the Offeror assumes full liability for the subcontractor’s performance. The Offeror shall state the amount of previous work experience with the subcontractor.

2. Include a list of projects, which contain work similar or related to that called for in this solicitation and, at a minimum, include for each project listed the following: project name, brief project description, location of the office responsible for the project, budgeted cost, completed cost, year completed and actual completion date relative to scheduled completion date.

Section 4 – Response Capability

Give an overview of the workload priority to be assigned to this project and staffing available relative to the Offeror’s ability to commence and complete work on the work of this contract.

Section 5 – Insurance

Insurance of the types and in the amounts set forth in the terms and conditions shall be purchased and maintained by the Offeror during the life of the Contract.

Section 6 – References

Give name, address, and telephone number of references for whom similar work has been performed. MPPDC may, at its discretion, contact these and other known references to discuss the past performance of the firm and project team.

Section 7 – Other Supporting Data

Other information you feel to be relevant to the selection of your firm for this Contract.

Section 8 – Submission of Proprietary Information (Submit Under Separate Cover)

Pursuant to the Virginia Public Procurement Act (“VPPA”), Virginia Code § 2.2-4342, trade secrets or proprietary information submitted by an offeror in connection with this procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of Virginia Code § 2.2-4342 or another applicable statute, prior to or upon submission of the trade secrets or proprietary information, and must identify the data or other materials to be protected and state the reasons why protection is necessary. Offerors shall submit under separate cover any information considered proprietary and any copyrighted material. Separate cover means that proprietary information must be placed in a separate area of the proposal and be clearly identified as containing proprietary and/or copyrighted information.

References may be made within the body of the proposal to proprietary information; however, all information contained within the body of the proposal not under separate cover and labeled proprietary shall be public information in accordance with state statutes.

V. Submittal Instructions

A. Each Offeror shall submit one (1) original and five (5) copies of their proposal. Each proposal shall be printed in English and received in hard copy by the deadline. Oral proposals, proposals received by telephone, fax, telegraph, or e-mail shall be rejected. Proposals should be organized and include all required information as required in this solicitation, including the Proposal Form **(Appendix A)**.

B. The contract shall be awarded to the Offeror who has made the best proposal and provides the best value. Unless canceled or rejected, a responsive proposal from the selected offeror(s) shall be accepted as submitted, except that if the proposal from the lowest responsible offeror(s) exceeds available funds, and if, time or economic considerations preclude re-solicitation of work of reduced scope, the MPPDC Executive Director, or his/her designee, may, in accordance with the provisions of § 2.2-4318, negotiate with the apparent low offeror(s) to obtain a contract price within available funds. If both conditions set forth in the preceding sentence are not met, the MPPDC shall not have the power to so negotiate. In such event, the MPPDC will utilize the following procedure: the MPPDC shall notify the apparent low offeror in writing that the proposal exceeds available funds and advise such offeror of MPPDC’s decision to negotiate to obtain a contract within available funds through reduction in scope, modification of timelines, or other costs saving changes to the specifications of the goods or services to be

obtained. The parties will thereafter negotiate in good faith to determine if a contract within the available funds may be obtained. An authorized representative of the Offeror shall sign proposals.

C. Proposals should clearly respond to the Scope of Work. All information requested in this solicitation should be submitted. Failure to submit all information requested may result in the proposal being deemed non-responsive. Proposals which are deemed non-responsive, incomplete, or lack key information may be rejected in full by MPPDC.

D. Proposals should be organized in the order delineated above in Section III.

E. All pages of the proposal should be numbered.

F. Except as otherwise provided, and in accordance with Virginia Code § 2.2-4342, all proceedings, records, contracts, and other public records relating to MPPDC's 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 (Virginia Code § 2.2-3700 et seq.). Proposals shall not be available for inspection by Offerors until interviews, if scheduled, are completed. After award, all proposals become a matter of public record and are available for inspection by the public, except those portions of the proposals that were properly and timely identified as proprietary and/or copyrighted, and thus not subject to the Virginia Freedom of Information Act.

G. MPPDC will assume no responsibility for oral instruction or interpretation. Any question regarding the procurement solicitation shall be in writing.

H. Any contact with any MPPDC representative, other than that outlined above, concerning this RFP is prohibited. Such unauthorized contact may disqualify an Offeror from this procurement.

I. Each Offeror shall be prepared, if so requested by MPPDC, to present evidence of their experience, qualifications and financial ability to carry out the terms of the Contract.

J. By responding to this request and signing the Proposal Form, Offeror acknowledges that it shall be bound by the terms and conditions at Appendices B-D below and that such terms and conditions shall be integrated into any contract resulting from this solicitation.

K. ALL PROPOSALS RECEIVED AFTER THE DUE DATE/TIME WILL NOT BE CONSIDERED AND SHALL BE RETURNED TO THE OFFEROR, UNOPENED. FAILURE TO COMPLETE FORMS AS REQUIRED MAY RESULT IN THE OFFEROR BEING DETERMINED "NON – RESPONSIVE."

VI. Contract Award

A. Award

MPPDC intends to enter a contract for the services solicited under this RFP with a competent, responsive, responsible firm(s) after using the competitive negotiation process as authorized by the Virginia Public Procurement Act, specifically including Virginia Code Sections §§ 2.2-4301, 2.2-4302.2 and 2.2-4303. This procurement shall utilize competitive negotiation, pursuant to §§ 2.2-4302.2 and 2.2-4303. This RFP outlines MPPDC's process for selecting the best proposal plus the major elements of the subsequent contract resulting from this selection. MPPDC will base its recommendation on the "Evaluation Criteria" set forth in this RFP along with past performance and references of each Offeror.

MPPDC may cancel this Request for Proposals or reject proposals at any time prior to an award and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. See Virginia Code § 2.2-4359(D). Should MPPDC determine in writing and in its sole discretion that only one (1) Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

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 at www.MPPDC.com.

B. Evaluation & Selection Criteria

All proposals received shall be evaluated based upon the RFP, permit and funding limitations conditions.

Scoring shall follow:

RFP Response Completeness 0 being lowest to 5 being the highest and preferred score.

Qualifications of Team 0 being lowest to 5 being the highest and preferred score.

Response Capability 0 being lowest to 5 being the highest and preferred score.

Price 0 being lowest to 5 being the highest and preferred score.

Posting of Award

Upon the award or announcement of the decision to award a contract as a result of this solicitation, MPPDC will publicly post such notice at its headquarters and also on the MPPDC website (www.MPPDC.com)

C. Contract Term

The Contract shall be for the length of the project plus one (1) year from the date of final payment for all work related to the project unless DEQ extends the parent contract.

D. Payment Terms

Vendor will propose a payment schedule that includes initial draw, milestone draws, and balance upon final deliverable. Schedule shall identify draw down agreeable to both parties for funds accordingly. Terms shall be agreeable to DEQ and MPPDC and the selected vendor prior to final award.

**APPENDIX A:
PROPOSAL FORM**

In compliance with this Request for Proposals and to all the conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon in writing by subsequent negotiation and the undersigned hereby certifies that all information is true, correct and complete.

CONTRACT EXECUTION: MPPDC reserves the right to accept or reject any or all proposals or and waive any informalities it determines are in its best interest.

Once septic clients are identified and financially qualified by MPPDC, a notice to proceed is given. The Contractors shall have 15 days to initiate discussions with all permitting authorities to discuss the project, including cost estimates provided to and approved by MPPDC prior to Contractor mobilizing its equipment on site. Contractors will comply with all conditions of the respective permits governing this project as required

State Corporation Commission ID Number: _____

NAME AND ADDRESS OF FIRM:

DATE: _____

BY: _____
(Signature in Ink)

NAME/TITLE: _____

PHONE/E-MAIL/FAX: _____

EVA Vendor ID or DUNS#: _____

Acknowledgment of Addenda:

No. 1, Date _____ Signature _____

No. 2, Date _____ Signature _____

No. 3, Date _____ Signature _____

SIGN CERTIFICATION ABOVE.

RETURN PROPOSAL FORM TO MPPDC.

Appendix B:

General Conditions and Instructions to Offerors

1. COMPETITION INTENDED: It is MPPDC's intent that this solicitation permit competition. It shall be the Offeror's responsibility to advise the MPPDC in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. MPPDC must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the proposals.

2. CLARIFICATION OF TERMS: If any Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the Deputy Director of MPPDC at the contact information provided whose name and contact information appears on the face of the solicitation no later than seven (7) business days prior to the date set for the receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by MPPDC. Questions regarding specifications may not be considered, if received in less than seven (7) business days of the date set for receipt of proposals.

3. WITHDRAWAL OF PROPOSALS: Offeror for a contract other than for public construction may request withdrawal of its proposal under the following circumstances:

Proposals may be withdrawn on written request from the Offeror received at the address shown in the solicitation prior to the time of acceptance.

Requests for withdrawal of proposals after opening of such proposals but prior to award shall be transmitted to the MPPDC, 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, Offeror work sheets, etc.

No Proposal may be withdrawn under this paragraph when the result would be the awarding of the Contract on another Proposal of the same Offeror or of another Offeror in which the ownership of the withdrawing Offeror is more than five percent. No Offeror who is permitted to withdraw a proposal 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 proposal was submitted.

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

**Appendix B:
General Conditions & Instructions to Offerors**

5. ACCEPTANCE OF PROPOSALS: Unless otherwise specified, all formal proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the proposal may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

6. CONDITIONAL PROPOSALS: Conditional proposals are subject to rejection in whole or in part.

7. DEBARMENT STATUS: By submitting their proposals, Offerors certify that they are not currently debarred from submitting proposals on contracts by any Federal agency or MPPDC, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by MPPDC or any agency, public entity/locality or authority of the federal government or the Commonwealth of Virginia.

8. ETHICS IN PUBLIC CONTRACTING: The provisions contained in the Virginia Public Procurement Act shall be applicable to all contracts solicited or entered into by MPPDC. In submitting their proposals, Offerors shall, by completing and returning with their proposal Appendix B, certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this 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 was exchanged.

9. NO CONTACT POLICY: No Offeror shall initiate or otherwise have contact related to the solicitation with any MPPDC representative or employee, other than the procurement representative, after the date and time established for receipt of proposals. Any contact initiated by an Offeror with any MPPDC representative, other than the procurement representative, concerning this solicitation is prohibited and may cause the disqualification of the Offeror from this procurement process.

10. PROTEST OF AWARD OR DECISION TO AWARD: Any Offeror who desires to protest the award or decision to award a contract, by MPPDC, shall submit such protest in writing to MPPDC no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected Offeror is not a responsible Offeror. The written protest shall include the basis for the protest and the relief sought. MPPDC shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the Offeror follows the process established in Virginia Code § 2.2-4360 for protesting an award or a decision to award. Nothing in this paragraph shall be construed to permit an Offeror to challenge the validity of the terms or conditions of the solicitation.

APPENDIX C:

MPPDC Standard Terms & Conditions

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

Definitions

“Contract Documents” means all documents that constitute any legal and binding agreement between the Contractor and 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’s Executive Director or their designee.
- 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 Contractor, then the prevailing party shall be entitled to recover from the other party its attorneys’ fees, costs, charges, and expenses expended or incurred therein.
- 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. Authority 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 bid or 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 bid or 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 the MPPDC Executive Director.

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. Contractor Disclosure of No Conflict. Contractor shall certify, upon signing a bid or proposal, that to the best of their knowledge no official or employee having official responsibility for the procurement transaction, or member of his/her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this Contract. If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the Contract made, or could affect payment pursuant to the terms of the Contract.

7. 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 sole 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.

8. 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.

9. 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.

10. Debarment. By submitting a proposal, Contractor is certifying that he is not currently debarred by the Commonwealth of Virginia, MPPDC, or any federal agency.

11. 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.

12. Employment Discrimination Prohibited.

During the performance of this Contract, Contractor agrees as follows:

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

13. 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.

14. 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.

15. 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.

16. 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 Middlesex County, Virginia or in the General District Court of the Middlesex County, 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.

17. 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.

18. 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.

19. 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.

20. Insurance. Contractor will, coincident with the execution of this Contract, purchase at its own expense and maintain throughout the duration of this Contract Workers' Compensation Insurance; Comprehensive General Liability Insurance; and Automobile Liability Insurance. Additionally, Contractor will purchase at its own expense and maintain throughout the duration of this Contract Professional Liability Insurance and/or other professional liability insurance as applicable. Contractor must provide a certificate(s) of such insurance coverage to MPPDC prior to the date on which work under the Contract commences. Such insurance certificate(s) shall indicate that the coverage may not be terminated without a minimum of forty-five days advance notice being provided to MPPDC. The coverage shall be applicable for any claims made either during the duration of this Contract or within the applicable statute of limitations period for such claims. The minimum limits of insurance coverage shall be as set forth below:

1.	Workers' Compensation	Statutory Requirements
2.	Comprehensive General Liability	Combined single limit for Bodily Injury or Property Damage: \$2 Million

**Appendix C:
MPPDC Standard Terms & Conditions**

3.	Comprehensive Automobile Liability	Combined single limit for Bodily Injury or Property Damage: \$1 Million
4.	Professional Liability	\$1 Million
5.	Excess Liability - Umbrella Form	Aggregate/Each Occurrence \$3 Million (\$4 Million Total)

The Certificate Holder shall be the Middle Peninsula Planning District Commission. The Certificate should state: (1) The Middle Peninsula Planning District Commission, its officials, agents and employees are named as additional insured with respect to liability arising out of any work performed by Contractor on behalf of MPPDC; and (2) "This insurance is primary to other insurance or self-insurance, whether such other coverage is stated as primary, excess, contingent or otherwise." Any deductible or self-insured retention shall be assumed by Contractor or its subcontractor.

The words "endeavor to" and, "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" should be stricken from the standard Certification of Insurance form(s).

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. Contractor shall complete and submit the "Minority and Women-Owned Business and Small Business Certification" form from time to time, as requested by MPPDC. Failure to complete and sign this statement is considered a material violation of this Contract.

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. Any obligation of MPPDC to pay compensation due to Contractor pursuant to the Contract is subject to appropriations by MPPDC to satisfy payment of such obligations. MPPDC's obligations to make payments during subsequent fiscal years are dependent upon the same action. 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:

Lewis L Lawrence, Executive Director
Middle Peninsula Planning District Commission
125 Bowden Street
P.O. Box 286
Saluda, VA 23149
LLawrence@MPPDC.com

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

Heather Hays Lockerman
Sands Anderson PC
909 E. Main Street
Richmond, Virginia 23219
hlockerman@sandsanders.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.

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MPPDC Standard Terms & Conditions**

- 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 subsection 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.
- 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 county 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 the MPPDC Executive Director or their designee.

31. 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.

32. 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.

Appendix D
Special Terms & Conditions
American Rescue Plan Act (ARPA) Septic Local Partner Program (SLPP) Grant

By entering into a Contract, the Contractor assures and certifies that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Contractor and any applicable sub-contractors.

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. Compliance.

1.1. Contractor acknowledges and agrees that this Contract is awarded under American Rescue Plan Act (ARPA) Septic Local Partner Program (SLPP) Grant (“Grant”).

1.2. Contractor acknowledges and agrees that it has reviewed the Grant in its entirety, including its terms and conditions.

1.2. As a term of this contract, Contractor acknowledges and agrees that its conduct is governed by any statute or regulation that applies to any contract or subcontract awarded under the Grant, regardless of whether that statute or regulation is identified by name or incorporated by full text in this contract. Contractor agrees that any violation of the aforementioned statutes or regulations constitutes a material breach of this contract. Contractor agrees that this clause does not limit MPPDC or any third party’s remedies against Contractor for a violation of the aforementioned statutes or regulations.

1.3. Contractor acknowledges and agrees that any provision the Grant requires to be incorporated into any contract or subcontract awarded under the Grant, regardless whether already referenced or incorporated into this agreement by full text, is incorporated as if set forth in full text into this Contract. This includes, but is not limited to:

1.3.1. The Davis-Bacon Act, as amended (40 U.S.C. 3141–3148) and the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”) per 2 CFR Appendix-II-to-Part-200(D).

1.3.2. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) per 2 CFR Appendix-II-to-Part-200(E).

1.3.3. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended, per 2 CFR Appendix-II-to-Part-200(G).

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1.3.4. The OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension" 2 CFR Appendix-II-to-Part-200(H).

1.3.5. The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) per 2 CFR Appendix-II-to-Part-200(I).

1.3.6. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act per 2 CFR 200.323.

1.3.7. The federal government's prohibition on certain telecommunications and video surveillance services or equipment per 2 CFR 200.216.

1.3.8. The federal government's domestic preference for procurements per 2 CFR 200.322.

1.3.9. Any and every applicable requirement in 2 CFR Part 200.

1.4. During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job

functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(2) [Reserved]

1.5. Contractor grants MPPDC and its assigns all audit rights needed to ensure compliance with this contract and compliance with [GRANT]. Contractor agrees to provide access to all personnel and documents requested for such an audit. Contractor agrees that it is

responsible for and will reimburse MPPDC for any fees or damages MPPDC incurs due to Contractor's failure to comply with this section.

1.6. Contractor agrees to incorporate this Section into any subcontract awarded under this Contract.

2. Indemnification.

2.1. Contractor shall indemnify and defend MPPDC and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "MPPDC") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by MPPDC (collectively, "Losses"), arising out of or related to any third-party claim alleging any breach of any term of [GRANT] caused by Contractor's acts or omissions.

2.2. MPPDC shall give notice to Contractor (a "Claim Notice") within ten days after obtaining knowledge of any Losses or discovery of facts on which MPPDC intends to base a request for indemnification under Section 2.1. MPPDC's failure to provide a Claim Notice to Contractor under this Section 2.2 does not relieve Contractor of any liability that Contractor may have to MPPDC, but in no event shall Contractor be liable for any Losses that result directly from a delay in providing a Claim Notice, which delay materially prejudices the defense of the related third-party claim. Contractor's duty to defend applies immediately, regardless of whether MPPDC has paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any third-party claim.

2.3. Notwithstanding anything to the contrary in this Section 2, MPPDC may select its own legal counsel to represent its interests, and Contractor shall

2.3.1. reimburse MPPDC for its costs and attorneys' fees immediately upon request as they are incurred; and

2.3.2. remain responsible to MPPDC for any Losses indemnified under Section 2.1.

2.4. Contractor shall give prompt written notice to MPPDC of any proposed settlement of a claim that is indemnifiable under Section 2.1. Contractor may not, without MPPDC's prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder.

3. Termination

3.1. Termination for MPPDC's convenience. MPPDC reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract

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price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of MPPDC using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give MPPDC any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

3.2. Termination for cause. MPPDC may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide MPPDC, upon request, with adequate assurances of future performance. In the event of termination for cause, MPPDC shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to MPPDC for any and all rights and remedies provided by law. If it is determined that MPPDC improperly terminated this contract for default, such termination shall be deemed a termination for convenience.