

**Middle Peninsula Planning District Commission  
REQUEST FOR PROPOSAL #RFP-FY23-RAISE**

**ISSUE DATE:** June 8, 2023  
**DUE DATE:** July 6, 2023  
**TIME:** 4:00 PM  
**RFP #:** RFP-FY23-RAISE  
**TITLE:** Designing Multimodal Working Waterfronts to Meet the 21<sup>st</sup> Century Needs of Rural Coastal Seafood and Maritime Industries  
**ISSUING AGENCY:** Middle Peninsula Planning District Commission (MPPDC)  
**CONTACT:** Curtis Smith  
Deputy Director  
Middle Peninsula Planning District Commission  
P.O. Box 286  
Saluda, Virginia 23149  
Email: csmith@mppdc.com

MPPDC solicits proposals from qualified firms with experience in public waterfront and public access infrastructure assessment and design to conduct a region-wide planning project to address the needs of commercial seafood and marine industries at publicly owned, rural, working waterfronts in Virginia's Middle Peninsula region.

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 4:00 P.M. EST on July 6, 2023, 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.**

## **I. Introduction**

### **A. RAISE Grant**

MPPDC applied to receive and was awarded a Fiscal Year 2021 Rebuilding American Infrastructure with Sustainability and Equity Grant (RAISE Grant) from the United States Department of Transportation (the “USDOT”). The USDOT identifies this award with the following federal award identification number: 693JF72240024.

Pursuant to the terms of the RAISE Grant, MPPDC is responsible to conduct a condition assessment at each of the sixty (60) public wharves, landings and harbors in Virginia’s Middle Peninsula region for needs related to commercial seafood industry. The public working waterfront facilities to be targeted by this project are either owned by state agencies, jointly owned and maintained by state agencies and local governments or owned by local or regional government entities. These sites are generally relatively smaller sites without a substantial amount of existing infrastructure beyond docks, ramps, parking areas, etc.; however, they collectively provide critical access to the region’s commercial seafood and maritime industries. Many of the sites were either not designed for specific commercial needs in mind or they were designed during a previous era of the seafood and maritime industries and no longer adequately meet the needs stemming from the modernization of those industries. Additionally, many of the sites were not designed in a manner which considers future conditions and impacts stemming from relative sea-level rise and increased coastal storm frequencies and intensities.

The condition and needs assessments compose a region-wide planning project that will culminate in a suite of shovel-ready, high-priority multi-modal transportation infrastructure improvements intended to address critical needs related to the region’s publicly owned rural working waterfronts. Existing plans for public wharves and harbors will be provided by the MPPDC for sites which have such and are to be reviewed to determine how assessed commercial seafood and marine industry infrastructure needs could be incorporated into the existing plans, visions, and designs. Where appropriate, a certified professional engineer may be required to develop certain designs for infrastructure improvements for sites prioritized by the MPPDC and its partners.

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

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

**C.** 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:

**Curtis Smith**  
*Deputy Director*  
Middle Peninsula Planning District Commission  
125 Bowden Street  
Saluda, VA 23149  
Email: csmith@mppdc.com

*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.*

## **II. General Scope of Services**

The successful offeror's proposal will exhibit an emphasis on designs which reduce adverse environmental impacts to air or water quality, wetlands, and endangered species. The designs and cost estimates developed during the planning grant will result in the redevelopment of working waterfront in a manner that provides environmental and marine habitat benefits.

With respect to energy use and reduction of carbon footprint, the successful offeror will produce a proposal that promotes energy efficiency by emphasizing the incorporation of alternative energy and/or highly efficient energy sources for lighting and other electricity needs as practical and feasible. The development of new market opportunities at the public working waterfronts is anticipated to reduce the number of miles of necessary travel for transporting seafood products to non-local markets, thus reducing the overall carbon footprint of the facilities.

Racial equity shall guide the planning process. The successful offeror should describe how an equity and inclusion plan will be developed and adopted to ensure racial equity in the overall project delivery, creating new connections and opportunities for underserved communities and maritime workers including accessibility enhancements for the disabled, and planning for new or improved freight access to underserved communities to increase access to goods and job opportunities for underserved communities.

The Project includes: (i) an equity and inclusion plan to ensure racial equity in the overall Project delivery; (ii) a state of good repair condition assessment at each of the 60 public wharves, landings, and harbors in the region including cost estimates for needed repairs and a public survey and public meeting; (iii) a needs assessment for the current and future needs of the commercial seafoods and maritime industries including a public survey and meeting; and (iv) the development of implementation strategies to address identified infrastructure needs. The Successful Offeror will conduct a needs assessment to identify unsafe and neglected facilities at public wharves, landings, and harbors in the Middle Peninsula region to identify needed improvements. The Successful Offeror will develop plans to revitalize infrastructure needed to connect marine resources to inland markets with the intention of growing local and regional maritime-based economies.

Responding firms shall provide in their proposals contingency plans and costs estimates for retention of a certified professional engineer (PE) to assess certain safety or other appropriate situations. The PE will be responsible for making a recommendation for fixing the issue and to provide a cost estimate for completing the work.

Supplemental information regarding the scope of work may be accessed in the following documents which are available at <http://www.mppdc.com/index.php/pdcinfo/bids> or the MPPDC office:

- Exhibit A: MPPDC USDOT RAISE Proposal Summary, 2021;

- Exhibit B: Middle Peninsula Public Working Waterfront Site Information (Maps, Tables, & Site Profiles), 2021. Note: the sites listed here should be considered preliminary and the final site list utilized will be contingent upon the direction of the project stakeholder advisory group. Exhibit B is provided to give Offerors an enhanced understanding of the types of facilities, conditions, and locations to be targeted during the project.

**A. Project deliverables:**

*Task 1 — Racial Equity Analysis – adopt equity and inclusion plan that ensures racial equity in the project delivery<sup>1</sup>*

- Create new connections and opportunities for underserved communities and marine workers
- Include accessibility enhancements for the disabled, and
- Plan for new or improved freight access to underserved communities to increase access to goods and job opportunities for underserved communities.
- The Racial Equity Analysis must include a description of the analysis and results.

*Task 2 — State of Good Repair Condition Assessments*

- Conduct condition assessment site visits. The condition assessments will establish a baseline and identify improvements for compliance with the Americans with Disabilities Act (ADA). The successful Offeror will coordinate with MARAD NEPA staff to ensure that the condition assessments are completed so that they may serve as the environmental assessments needed for NEPA review.
- Develop, publish, and promote public survey
- Schedule public meeting (may be held in-person and/or virtual)
- Develop cost estimates for identified repair needs
- Compile results of public survey
- Complete public meeting
- Compile all condition assessment and public feedback and incorporate stakeholder feedback (stakeholder interviews to be conducted separately and outcomes delivered to successful Offeror for incorporation into final condition assessment report)

*Task 3 — Multimodal Working Waterfront Needs Assessment & Improvement Strategies*

- Develop public survey
- Schedule public meeting (may be held in-person and/or virtual)
- Complete public survey and meeting
- Compile all needs assessment and improvement information and public feedback and incorporate stakeholder feedback (stakeholder interviews to be conducted separately and

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<sup>1</sup> Note – the Racial Equity Analysis must be completed prior to and in conjunction with the environmental assessments, NEPA alternative analyses, and engineering designs on selected priority sites.

outcomes delivered to successful Offeror for incorporation into final needs assessment report)

- Hold public working waterfront owner meetings to prioritize and finalize the scope of work for engineering designs
- Complete conceptual designs (at a ~10-30% level) and cost estimates for infrastructure improvements at selected priority sites and coordinate with MARAD NEPA staff to ensure that the designs may serve as the impacts analysis needed for NEPA review and compliance.
- Complete full engineering designs and cost estimates on selected priority sites upon completion of NEPA impacts analysis and selection of preferred alternative by the public facility owners.

*Task 4 — Multimodal Working Waterfront Implementation Plan Development*

- Hold meetings with public working waterfront owners and Recipient to identify implementation plan strategies. This will include identifying the designed construction projects which best align with and may be achieved within the maximum budget allowed for under the USDOT RAISE program and identifying additional funding strategies for each remaining need and cost estimate designed under Tasks 2 and 3.
- Complete implementation plan.

**B. Project Timeline:**

<b>Milestone Schedule</b>	<b>Date</b>
Compile all condition assessment and public/stakeholder feedback	July 31, 2023 (+/-)
Complete environmental assessments, NEPA alternative analyses, and engineering designs on selected priority sites	October 31, 2024 (+/-)
Complete Implementation Plan	January 31, 2025 (+/-)
Planned Project Completion Date	January 31, 2025

<b>Critical Milestone Deadline</b>	<b>Date</b>
Completion and Submission of Racial Equity Analysis	October 31, 2024

**III. Pricing**

MPPDC will award a fee-for-service contract with a capped funding amount. The RAISE Grant budgeted \$1,848,473.00 for planning and design services.

Provide estimates of the anticipated costs, including all materials, labor, equipment, appliances, clean-up, applicable sales, use and other taxes, permits or fees, and the Contractor's labor, overhead, profit, mobilization and other mark-ups.

#### **IV. Proposal Format**

The proposals are to be submitted in a format that allows for 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. All proposals shall provide a delineation of capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.

The items to be addressed in the proposal in the order listed are:

1. Cover Sheet
2. Description of Services to be Provided and Project Approach
3. Statement of Qualifications
4. Response Capability
5. Insurance
6. References
7. Other Supporting Data
8. Submission of Proprietary Information

#### **Evaluation & Selection Criteria**

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

Scoring shall follow:

- Understanding of the project, familiarity with the content of the proposal, quality of the response. 30%
- The Offeror's ability to meet the stated requirements in the RFP, including the qualifications of the project manager and project team, demonstrated knowledge, and understanding of the type of work to be performed. 30%
- The overall stability, ability, capacity, and skill of the firm to perform the Contract as scheduled, including a demonstrated ability to complete projects within a project schedule and specific plans and procedures to meet the deadline for this project. 20%
- The Offeror can demonstrate previous successful experience with administering and conducting USDOT RAISE funded projects. 10%
- The Offeror is a registered business or is partnering with a registered business with the Middle Peninsula Fight the Flood resilience and flood mitigation program ([www.FightTheFloodVA.com](http://www.FightTheFloodVA.com)) at the date of RFP issuance. 10%

## **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, in ink, 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 – Description of Services to be Provided and Project Approach**

The Offeror should describe its understanding of the scope of work and how the firm proposes to conduct its work including engineering analyses, application of coastal engineering tools for the design and formulation of this project, and the field work that will be required (e.g., site inspections and surveys). Provide a proposed schedule that will demonstrate that the Offeror can complete underlying benchmarks to ensure that the project is completed within the Project Timeline.

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

1. Include the organizational chart, functional discipline, and responsibilities of the project team members.
2. Provide concise resumes of each team member's education, relevant professional experience, length of time employed by the Offeror and/or subcontractor, and professional licensure. Describe professional staffing available for development, training, implementation, and support services. Additionally, 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.
3. 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.
4. Include the following for any key project partners: resume, company background, and experience performing shoreline project work.

## **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 respond to MPPDC. 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.

### **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 this section prior to or upon submission of the data or the materials, 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.



An authorized representative of the Offeror shall sign proposals. 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.

Proposals should clearly respond to the Scope of Work.

All pages of the proposal should be numbered.

Proposals should be organized and include all required information as required in this solicitation, including the Proposal Form (**Appendix A**).

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.

B. 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.

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

D. 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.

E. 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.

F. 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.

G. 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.

Upon the award or announcement of the decision to award a contract as a result of this solicitation, the MPPDC will publicly post such notice at [www.MPPDC.com](http://www.MPPDC.com).

**B. 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.

**C. Payment Terms**

Vendor will propose a payment schedule that includes initial draw, and milestone draws, balance upon final deliverable. Terms shall be agreeable to MPPDC, MARAD 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.

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

**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 \_\_\_\_\_

**RETURN PROPOSAL FORM TO MPPDC. SIGN CERTIFICATION ABOVE.**

## 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.

**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

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

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 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 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. 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:

- 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 Contactor'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. Omitted.**
- 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. 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.
- 6. 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.

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

**8. 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.

**9. 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 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.

**10. 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.

**11. 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.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

**16. 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



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

Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend MPPDC as herein provided.

**17. 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
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).

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.
- 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.

**24. 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.

**25. 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.

**26. Substitutions.** No substitutions, including key personnel, or cancellations are permitted after award without written approval by the MPPDC Executive Director or their designee.

**27. 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.

**28. 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

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

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 for RAISE 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:<sup>2</sup>

**1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Maritime Administration (MARAD), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**2. Non-discrimination:** The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

**3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor’s obligations under this Contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

**4. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MPPDC or MARAD to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the MPPDC or MARAD, as appropriate, and will set forth what efforts it has made to obtain the information.

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<sup>2</sup> MPPDC, pursuant to the terms of Exhibit B, Additional Standard Terms, to the U.S. Department of Transportation Exhibits to MARAD grant agreements under the Fiscal Year 2021 RIASE Grant Program, is required to include clauses 1-6 found at Appendix A, United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination Assurances, in every contract or agreement subject to the Acts and the Regulations.

**5. Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the Non-discrimination provisions of this contract, MPPDC will impose such contract sanctions as it or MARAD may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
- b. cancelling, terminating, or suspending a contract, in whole or in part.

**6. Incorporation of Provisions:** The Contractor will include the provisions of these paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant B-7 thereto. The contractor will take action with respect to any subcontract or procurement as MPPDC or MARAD may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request MPPDC to enter into any litigation to protect the interests of MPPDC. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**7. Required non-discrimination assurances<sup>3</sup>**

*A. MPPDC, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this request and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.*

*B. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:*

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

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<sup>3</sup> MPPDC, pursuant to the terms of **Exhibit B**, Additional Standard Terms, to the U.S. Department of Transportation Exhibits to MARAD grant agreements under the Fiscal Year 2021 RIASE Grant Program is required to include these clauses found at **Appendix E**, United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination Assurances, in every contract or agreement subject to the Acts and the Regulations.

**Appendix D**  
**Special Terms and Conditions for RAISE Grant**

- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

**8. Additional Terms and Conditions Required by RAISE Grant**

**A. Minimum Wage Rates.**

Contractor shall include, in all contracts in excess of \$2,000 for work on the Project that involves labor, provisions establishing minimum rates of wages, to be predetermined by the United States Secretary of Labor, in accordance with the Davis-Bacon Act, 40 U.S.C. 3141-3148, or 23 U.S.C.

113, as applicable, that contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the request for proposals and shall be included in proposals or bids for the work.

**B. Equipment Disposition.**

(a) In accordance with 2 C.F.R. 200.313 and 1201.313, if MPPDC, Contractor or a subcontractor acquires equipment under this award, then when that equipment is no longer needed for the Project:

(1) if the entity that acquired the equipment is a State or a subrecipient of a State, that entity shall dispose of that equipment in accordance with State laws and procedures; and

(2) if the entity that acquired the equipment is neither a State nor a subrecipient of a State, that entity shall request disposition instructions from the Administering Operating Administration.

(b) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313—200.316 and 2 C.F.R. 1201.313.

**C. Financial Records and Audits.**

(a) Contractor hereby agrees to retain all books, records, and other documents relative to this Contract for five years after final payment, or until audited by MPPDC, whichever is sooner. MPPDC, its authorized agents, and/or MPPDC auditors shall have full access to and the right to examine any of said materials during said period. MPPDC must monitor Contractor's activities under the Contract to ensure that the Contractor and those entities for who it is responsible engage in activities that comply with the RAISE Grant and that funds provided under this award are not expended on costs that are not allocable to this award.

(b) MPPDC shall keep all project accounts and records that fully disclose the amount and disposition by MPPDC of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the project.

(c) MPPDC shall keep accounts and records in accordance with a financial management system that meets the requirements of Title 2 of the Code of Federal Regulations as further explained in the RAISE Grant and the attachments, appendices and exhibits thereto.

**D. Compliance with Applicable Federal Authorities.**

By entering into a contract with MPPDC to carry out the terms of RAISE Grant No. 693JF72240024, Contractor assures and certifies, with respect to this Contract, 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 contract shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of Contractor and any applicable



**Appendix D**  
**Special Terms and Conditions for RAISE Grant**

subcontractor. The applicable provisions to this agreement include, but are not limited to, the following:

**(1) General Federal Legislation**

- a. Davis-Bacon Act - 40 U.S.C. §§ 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- c. Hatch Act - 5 U.S.C. §§ 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – 42 U.S.C. §§ 4601, et seq.
- e. National Historic Preservation Act of 1966 - 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501, et seq.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- h. Clean Air Act — 42 U.S.C. §§ 7401, et. seq.
- i. Clean Water Act - 33 U.S.C. §§ 1251, et seq.
- j. Endangered Species Act — 16 U.S.C. §§ 1531 et seq.
- k. Coastal Zone Management Act — 16 U.S.C. §§ 1451 et seq.
- l. Flood Disaster Protection Act of 1973 — 42 U.S.C. §§ 4001 et seq.
- m. Age Discrimination Act of 1975, as amended - 42 U.S.C. §§ 6101, et seq.
- n. American Indian Religious Freedom Act, 42 U.S.C. 1996
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. §§ 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. §§ 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. §§ 3701, et seq.

**Appendix D**  
**Special Terms and Conditions for RAISE Grant**

- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- w. Wild and Scenic Rivers Act — 16 U.S.C. §§ 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- y. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- z. Title [IX of the Education Amendments of 1972, as amended - 20 U.S.C. §§ 1681-1683 and §§ 1685-1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- bb. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d, et seq.
- cc. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. §§ 1101-1104
- dd. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions — 31 U.S.C. § 1352
- ee. Freedom of Information Act - 5 U.S.C. § 552, as amended
- ff. Magnuson-Stevens Fishery Conservation and Management Act — 16 U.S.C. §§ 1801, et seq.
- gg. Farmland Protection Policy Act of 1981 — 7 U.S.C. §§ 4201, et seq.
- hh. Noise Control Act of 1972 — 42 U.S.C. §§ 4901, et seq.
- ii. Fish and Wildlife Coordination Act of 1956 — 16 U.S.C. §§ 661, et seq.
- jj. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
- kk. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303 and 23 U.S.C. § 138
- ll. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) — 42 U.S.C. §§ 9601, et seq.
- mm. Safe Drinking Water Act — 42 U.S.C. §§ 300f, et seq.
- nn. The Wilderness Act — 16 U.S.C. §§ 1131, et seq.
- oo. Migratory Bird Treaty Act 16 U.S.C. §§ 703, et seq.

**Appendix D**  
**Special Terms and Conditions for RAISE Grant**

- pp. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110—252)
- qq. Cargo Preference Act of 1954 — 46 U.S.C. § 55305
- rr. Build America, Buy America Act — Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298
- ss. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

**(2) Executive Orders**

- a. Executive Order 11246 — Equal Employment Opportunity
- b. Executive Order 11990 — Protection of Wetlands
- c. Executive Order 11988 — Floodplain Management
- d. Executive Order 12372 — Intergovernmental Review of Federal Programs
- e. Executive Order 12549 — Debarment and Suspension
- f. Executive Order 12898 — Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 — Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 13985 — Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 14005 — Ensuring the Future is Made in All of America by All of America’s Workers
- j. Executive Order 14008 — Tackling the Climate Crisis at Home and Abroad

**(3) General Federal Regulations**

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards — 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment — 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures — 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates — 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part

**Appendix D**  
**Special Terms and Conditions for RAISE Grant**

by loans or grants from the United States — 29 C.F.R. Part 3

- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) — 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) — 41 C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying — 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964 — 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs — 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance — 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance — 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation — 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors — 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) — 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A — 49 C.F.R. Parts 37 and 38
- r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs — 49 C.F.R. Part 26 (as applicable under RAISE Grant No. 693JF72240024)
- s. Preference for Privately Owned Commercial U.S. Flag Vessels — 46 C.F.R. Part 381

**Appendix D**  
**Special Terms and Conditions for RAISE Grant**

Specific assurances required to be included in a contract between MPPDC and the Contractor for the Project funded through RAISE Grant No. 693JF72240024 by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

**(4) Assurance of Compliance.**

- a. Contractor acknowledges and agrees that this Contract is awarded under RAISE Grant No. 693JF72240024.
- b. Contractor acknowledges and agrees that it has reviewed RAISE Grant No. 693JF72240024 in its entirety, including its terms and conditions.
- c. 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 RAISE Grant No. 693JF72240024, regardless of whether that statute or regulation is identified by name or incorporated by full text in RAISE Grant No. 693JF72240024. 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.
- d. Contractor acknowledges and agrees that any provision RAISE Grant No. 693JF72240024 requires to be incorporated into any contract or subcontract awarded under RAISE Grant No. 693JF72240024, regardless whether already referenced or incorporated into this agreement by full text, is incorporated as if set forth in full text into this Contract.
- e. Contractor acknowledges and agrees that the federal government may audit Contractor's performance and business records as provided in RAISE Grant No. 693JF72240024. Contractor agrees to provide reasonable access to all personnel and documents requested for such an audit. Contractor agrees that it is responsible for and fees or damages MPPDC incurs due to Contractor's failure to comply with this section.
- f. Contractor agrees to incorporate this Section into any subcontract awarded under this Contract.

**E. Indemnification.**

(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 RAISE Grant No. 693JF72240024 caused by Contractor's acts or omissions.

(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

**Appendix D**  
**Special Terms and Conditions for RAISE Grant**

indemnification under Section E(1). MPPDC's failure to provide a Claim Notice to Contractor under this Section E.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.

(3) Notwithstanding anything to the contrary in this Section E, MPPDC may select its own legal counsel to represent its interests, and Contractor shall:

- a. reimburse MPPDC for its costs and attorneys' fees immediately upon request as they are incurred; and
- b. remain responsible to MPPDC for any Losses indemnified under Section E(1) above.

(4) Contractor shall give prompt written notice to MPPDC of any proposed settlement of a claim that is indemnifiable under Section E(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.