

**Middle Peninsula Planning District Commission  
REQUEST FOR PROPOSAL #FY23-001**

ISSUE DATE: December 20, 2022

DUE DATE: January 25, 2023

TIME: 4:00 P.M. EST

RFP #: FY23-001

ISSUING AGENCY: Middle Peninsula Planning District Commission (MPPDC)  
PO Box 286  
Saluda, Virginia 23149

CONTACT: Lewis L. Lawrence  
Executive Director  
Phone: (804) 758-2311  
Email: llawrence@mppdc.com

MPPDC invites qualified firms with experience designing shoreline solutions to submit sealed proposals to design a solution to keep sand from filling in a public boat ramp.

All responses to this Request for Proposal and any resulting contract shall be consistent with and governed by the Virginia Public Procurement Act. The budget for this project is \$40,000 and MPPDC will not award a contract over the amount of \$40,000.

**All proposals shall be turned in no later than 4:00 P.M. EST on January 25, 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.* MPPDC reserves the right to reject any and all proposals, to waive informalities, and to negotiate with the successful Offeror(s). 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. MPPDC is seeking an assessment of a boat ramp offering public access to the Rappahannock River. The purpose of the assessment is to develop a design stamped by a certified Professional Engineer licensed in Virginia resulting in an enduring solution that will prevent storm driven sand from blocking the ramp. The total funds available for the project, once completed and accepted, are up to \$40,000.

- B. This procurement shall utilize competitive negotiation.
- 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:

Lewis Lawrence  
Executive Director  
Middle Peninsula Planning District Commission (MPPDC)  
PO Box 286  
Saluda, Virginia 23149  
Email: llawrence@mppdc.com

## II. General Scope of Services

Migrating sand resulting from the wind and tides has destroyed the accessibility of the public boat ramp installed decades ago at Carlton Road, Wake, Virginia 23176 (-76.40882962, 37.58143882). The property is located at the end of the public road where there is a right of way. Historically, it has served as a public boat ramp and supports usage by watermen for commercial purposes as well as many individuals engaged in leisure and recreation. The facility was previously maintained by the Virginia Department of Wildlife Resources (DWR). Over the past two years, Middlesex County undertook the responsibility to remediate the sand was accumulating at the boat ramp and preventing the public from being able to utilize the ramp. The shoaling has become so significant that maintaining the current structure and design of the ramp and surrounding area is no longer feasible or sustainable.



**Figure 1 – Vicinity Map**



**Figure 2** – Site Map with Approximate Property Boundaries.

This proposal seeks a nature-based solution or, if necessary, hybrid design solutions when nature-based design solutions are not preferable, to a living shoreline at the end of Carlton Road in Wake. The successful offeror will utilize and incorporate sustainable planning, design, environmental management, and engineering practices that weave natural features and/or processes into the built environment to combat climate change, reduce flood risks, improve water quality, protect coastal property, restore, and protect wetlands, stabilize shorelines, reduce heat, and promote adaptation and resilience. Designs utilizing innovative Additionally, MPPDC intends that the design provide for additional recreational space as feasible.

The successful offeror is expected to conduct an assessment of current environmental conditions at and adjacent to the site to determine the coastal geomorphological dynamics to determine the current and projected impacts of shoaling at the site. Once the site has been assessed, the offeror will provide a variety of conceptual alternatives for solutions to mitigate shoaling at the site as well as associated costs for each alternative. The MPPDC and Middlesex County will then choose a preferred alternative and the offeror will complete a full P.E.-stamped design with costs for the selected alternative.

As part of the RFP, MPPDC will request that the successful bidder develop a complete Joint Permit application (JPA) to be submitted to the Virginia Marine Resources Commission (VMRC) should Middlesex County desire to move forward with implementation of the Offeror’s design solution.

This project will be a partnership between MPPDC and one public property owner and is supported by Middlesex County.

### **III. Proposal Format**

All Offerors will need to include the following information in their response: a conceptual sketch of a long-term solution from sand erosion from the wind and tides and using the same for a nature-based solution. 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. 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 including Conceptual Sketch of Potential Solution
3. Statement of Qualifications
4. Response Capability
5. Insurance
6. References
7. Other Supporting Data
8. Submission of Proprietary Information (If applicable. See Section 8 below for more 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, 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 including Conceptual Sketch of Potential Solution**

The Offeror should describe its understanding of the scope of services 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. Provide a conceptual sketch of a potential long-term solution for mitigating shoaling and erosion at the property. The purpose for requiring a conceptual sketch is to give the proposal review team the ability to gauge an Offeror's ability to demonstrate their understanding of coastal processes and their ability to come up with innovative, effective, and cost efficient solutions in settings involving public waterfront facilities.

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

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. State clearly which team member will be developing and providing the required P.E. stamp on the final design. 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.

### **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.

### **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.

**IV. Project Timeline**

Project should be completed within four to six months of Contract execution.

**V. Pricing**

The budget for this project is \$40,000. MPPDC intends to award a contract in an amount under \$40,000. The payment schedule will be four draws of \$10,000 with proposed deliverables due at the time of each draw. The final draw is held for the delivery of all final deliverables and approval of Middlesex County for those deliverables MPPDC reserves the right to cancel this RFP in the event no acceptable proposal is received and negotiated to final acceptance.

**VI. Submittal Instructions**

- A. Each Offeror shall submit one (1) original and five (5) copies of their proposal.
  - 1. 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.
  - 2. Proposals should clearly respond to the Scope of Services.
  - 3. All pages of the proposal should be numbered.

4. Proposals should be organized and include all required information as required in this solicitation.
  5. 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. **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."**

**VII. Evaluation & Selection Criteria**

- A. All proposals received shall be evaluated based upon the criteria listed below.
  1. Understanding of the project, familiarity with the content of the proposal, quality of the response. 20%
  2. 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 as evidenced by the conceptual sketch for a solution, previous experience in projects comparable to the project described in this RFP. 40%
  3. The overall stability, ability, capacity, and skill of the firm to perform the Contract as scheduled, including a demonstrated ability to complete 30%

projects within a project schedule and specific plans and procedures to meet the deadline for this project.

4. The Offeror is 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%

B. MPPDC may arrange for discussions with Offerors submitting proposals for the purpose of obtaining additional information or clarification if needed.

C. MPPDC may make such reasonable investigations as it deems proper and necessary to determine the ability of the Offeror to perform the work.

D. Based on the consensus rankings, the highest ranked Offeror(s) will be invited to engage in discussions with MPPDC.

### **VIII. Contract Award**

A. MPPDC shall engage in individual discussions with two (2) or more Offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The Offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, Offerors shall be informed of any ranking criteria that will be used by MPPDC in addition to the review of the professional competence of the Offeror. Proprietary information from competing Offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, MPPDC shall select in the order of preference two (2) or more Offerors whose professional qualifications and proposed services are deemed the most meritorious. Negotiations shall then be conducted, beginning with the Offeror ranked first. If a contract satisfactory and advantageous to MPPDC can be negotiated at a price considered fair and reasonable, the award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked first shall be formally terminated and negotiations conducted with the Offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. 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 and suitable than the others under consideration, a contract may be negotiated and awarded to that Offeror.

B. The Contract shall be for the length of the project until the date of final payment for all work related to the project.

C. Payment Terms:

A total not to exceed \$40,000 paid via four draws of \$10,000 including:



- Initial Draw: \$10,000.00 with deliverable of site assessment report
- Second Draw: \$10,000.00 with deliverable of conceptual design solution alternatives report
- Third Draw: \$10,000.00 with deliverable of draft final design for selected solution
- Final Draw: \$10,000.00 with deliverable of final design for selected solution and draft Joint Permit Application and issuance of approval statement by Middlesex County.

## APPENDIX A: 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 Executive 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 his or her 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 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.

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

**Standard Terms & Conditions**

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. Audit. 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.

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 for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions 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.

- a. 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.
- b. "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.
- c. 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.

- a. 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.
- b. 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 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; Automobile Liability Insurance; and Engineer's Professional Liability Insurance. MPPDC shall be provided a certificate(s) of such insurance coverage. 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 \$4 Million (\$5 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 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.