



INVITATION FOR BID
TOWN OF MIDDLEBURG, VIRGINIA
Well Abandonment Services
Issue Date: March 7, 2019

The Town of Middleburg ("Town") is soliciting bids for well abandonment services. One of the Town's strategic goals is to reduce the number of private wells in Town, and the Town is the recipient of a Virginia Department of Health ("VDH") grant to assist private property owners in abandoning and closing their wells. The Town would enter into agreements with private property owners, allowing the Town's contractor to conduct the work on private property.

The wells under consideration are no longer in use but have yet to be abandoned. The Town is seeking a contractor who can obtain the necessary permits and abandon and close the wells in accordance with state and local regulations and standards.

NOTE: The VDH grant requires all funds to be spent by July 14, 2019, so time is of the essence.

DUE DATE AND TIME FOR SUBMISSION: March 27, 2019 at 12:00 noon local time

BONDS
(Check mark indicates bond is required)

Bid Bond (5% of bid)
 Performance Bond (full amount of contract price)
 Payment Bond (full amount of contract price)

ADDRESS FOR SUBMISSION: 10 W. Marshall Street, Middleburg, Virginia 20117

CONTACT INFORMATION FOR QUESTIONS OR COMMENTS ON THIS INVITATION TO BID:

Danny Davis, Town Administrator, Town of Middleburg
ddavis@middleburgva.gov or
via phone at 540-687-5152

Authorized by the Principal Public Purchasing Officer:



Danny Davis, Town Administrator

Date: 3/7/19

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I) SUBMISSION OF BID

A) Scope and Specifications of Procurement

The Town is soliciting Procurement of well closure services. The specifications for this Procurement are as follows:

The Town will cause each well covered by this project to be capped in accordance with professional standards (“the Work”), with no expectation or provision for reopening the well. The pipes connecting wells to houses will be abandoned in place.

Permitting and Preparation: The Contractor will:

1. Provide a firm schedule to Town staff so that it can alert private property owners as to when to expect the work to be performed.
2. Give the town at least seven days’ advance written notice of the date that the work will be performed on a specific property.

Well Abandonment and Closure: The Contractor will:

3. Cap existing wells in accordance with state and local regulations and standards.
4. Restore any disturbed property to its pre-activity condition
5. Provide all documentation necessary for the Town to receive reimbursement from VDH through the approved grant.

Schedule: All work must be completed by July 14, 2019. Because time is of the essence due to the potential expiration of the VDH grant funding, liquidated damages will apply as follows: For each well where the Work was agreed to and is not completed by July 14, 2019, the Contractor will be liable to the Town for \$1000 in liquidated damages, plus an additional \$50 per day between July 14, 2019, and the date of completion of the Work.

Procurement by the Town is governed by the Virginia Public Procurement Act, Sections 2.2-4300 et seq. of the Code of Virginia, as amended but only to the extent that any such law is mandatorily applied to towns with a population of less than 3,500. All Bidders are referred to the specific provisions of Town Code and law for guidance in dealing with Invitations to Bid. If an inconsistency exists between the Specifications of this Invitation to Bid, the General Provisions, Contract, or other included document, and the Virginia Public Procurement Act, the inconsistency shall be resolved by giving precedence to the following documents in the following order:

- 1) Virginia Public Procurement Act, as amended, but only to the extent that any such law is mandatorily applied to towns with a population of less than 3,500
- 2) Town of Middleburg Town Code,
- 3) The specifications of this Invitation to Bid (this section I),

- 4) The Standard Town of Middleburg Contract,
- 5) The general provisions of this Invitation to Bid (Sections II – V).

B) Insurance Checklist

The minimum limits of the Contractor's liability coverage shall be as provided in this section. Insurance may be obtained from a single insurance company and policy or from multiple companies and policies. With all types of required insurance except Worker's Compensation, the Contractor must add the Town as an additional insured. Proof of insurance and certificates showing the Town as an additional insured are not required at the Invitation to Bid stage but are a condition precedent to the award of a Contract.

1) Worker's Compensation

REQUIRED NOT REQUIRED

- a) State.....Statutory
- b) Applicable FederalStatutory
- c) Employer's Liability.....\$100,000.
- d) Benefits Required by Union Labor ContractorsAs Applicable

2) Comprehensive General Liability (including Contractor's Protective: Products and Completed Operations; Broad Form Property Damage):

REQUIRED NOT REQUIRED

a) Bodily Injury:

- \$1,000,000.....Each Occurrence
- \$2,000,000.....Aggregate, Products & Complete Operations

b) Property Damage:

- \$ 1,000,000.....Each Occurrence
- \$ 2,000,000.....Aggregate

c) Products and Completed Operations Insurance shall be maintained for a minimum period of one (1) year after final payment, and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis.

d) Contractual Liability (Hold Harmless Coverage):

i) Bodily Injury:

\$1,000,000.....Each Occurrence

\$2,000,000.....Aggregate, Products & Complete Operations

ii) Property Damage:

\$ 1,000,000.....Each Occurrence

\$ 2,000,000.....Aggregate

e) Personal Injury, with Employment Exclusion deleted:

\$ 2,000,000.....Aggregate

3) Comprehensive Automobile Liability (Owned, Non-Owned, Hired)

REQUIRED NOT REQUIRED

a) Bodily Injury:

\$1,000,000.....Each Occurrence

\$2,000,000.....Aggregate, Products & Complete Operations

b) Property Damage:

\$ 1,000,000.....Each Occurrence

\$ 2,000,000.....Aggregate

C) Type of Contract

The Town is anticipating the award of a contract on an estimated quantities basis.

Questions and Comments Regarding Terms of the Invitation to Bid and Modification of Terms

A Bidder may submit questions and comments regarding this Invitation to Bid only to the Town Administrator for this Invitation to Bid. To receive an answer, all questions must be submitted no later than five (5) business (working) days before the due date. The

Town may also issue clarifications or modifications of the terms of the Invitation to Bid even if no Bidder requests it.

Any revisions to the terms of the Invitation to Bid will be made only by written addendum issued by the Town Administrator’s Designee, no later than three (3) days before the date set for opening of the Bids. The Bidder will not rely on any information provided orally, or by anyone other than the Town Administrator’s Designee.

D) Method for Making Submission

- 1) **Contents of submission:** Bidders shall submit one (1) original and three (3) copies of the completed Bid Submission Form and Bidder Information Form and all supporting documentation. The signed forms must be returned in a separate envelope or package, sealed, addressed as directed on the cover page, and identified as follows:

From:

Name of Bidder	Due Date	Due Time
Street/Box Number	IFB Title	IFB Number
City	State/Zip Code	Name of Buyer

Bids sent via express delivery service must be sealed in an envelope inside the express container. The bidder assumes the risk that an envelope not properly marked will be mistakenly opened, and thus rendered ineligible for consideration. No responsibility shall attach to the Town for the premature opening of a bid not properly addressed and identified as specified herein.

- 2) **Determination of deadline:** The official time used in the receipt of Bids is established by the Town Administrator.
- 3) **Place for submission:** Bids must be received at the place stated on the cover page of the Invitation to Bid. Bidders who use a delivery company, U.S. Mail, or courier bear the risk that the bid will not be received at the correct location by the deadline.
- 4) **Extension of deadline:** Before the deadline passes, the Town may extend the date and time for opening of Bids or change the location of the bid opening if it believes it is necessary and in the best interest of the Town. If that happens, all Bidders will be notified of the new date and time or new location and Bids already received will not be opened until the new date and time.
- 5) **Process for receipt of bids:** At the bid opening, the responsible Town employee shall receive bids, open them, and read aloud the names of the Bidders that submitted Bids. The amount of each Bid, however, will not be read at that time and will not be made known to other Bidders until a decision is made as to whether to award a contract or cancel the Invitation to Bid. Thereafter, the provision on Examination of Documents, V(C), applies to release of bid data.

E) Bidder Information Form and Certifications

- 1) **Bidder Information Form:** The Bidder must complete and file responses to questions posed in the attached Bidder Information Form and demonstrate to the satisfaction of the Town that it has the capability to perform the Contract.
- 2) **Certifications:** The Bidder shall certify, through execution of the Certification portion of the Bidder Information Form, that the following statements are true and not misleading:
 - a) That its Bid is made without any kickbacks or inducements or any prior understanding, agreement, or connection with any corporation, firm, or person submitting a Bid for the same Goods, Services, Insurance or Construction, and is in all respects fair and without collusion or fraud;
 - b) That it is not currently debarred by the Commonwealth of Virginia or the Town from submitting Bids on contracts for the Goods, Services, Construction or Insurance that is the subject of this Invitation to Bid, nor is the Bidder an agent of any person or entity that is currently so debarred.
 - c) That it has not offered or 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 or minimal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
 - d) That to the best of its knowledge no Town official or employee having official responsibility for this Invitation to Bid or member of his or her immediate family has received or will receive any financial benefit of more than Nominal Value 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 Bid or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information required above may result in suspension or debarment of the Bidder, rescission of the Contract, or reduction in payment under the terms of the Contract of the value of such benefit.
 - e) That it has submitted a single Bid.
 - f) That it is satisfied, from its own investigation of the conditions to be met, that it fully understands its obligations if the Town awards it a Contract, and that it will not have any claim or right to cancellation or relief from the Contract because of any misunderstanding or lack of information.
- 3) **Duty to supplement:** If the Bidder becomes aware of any information which makes any part of the Bidder Information Form or Certifications no longer accurate or complete or reveals that any part of my previously submitted information is misleading, the Bidder will immediately bring that information to the attention of the Town Administrator's Designee.

F) Compliance with Directions

The Bidder shall comply with all procedural instructions that may be issued by the Town.

II) EVALUATION OF BID

A) Net Prices and Delivery Terms; Tax Exemption and Responsibility

- 1) **Net prices:** Prices per well closure and for any additional services are all inclusive of related services, insurance, overhead, and required goods. Extra charges not made a part of the Bid price will not be allowed.
- 2) **Default delivery schedule:** Unless otherwise agreed by the Town Administrator, the Work is to be performed between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Delivery and invoicing must be received within 30 working days of receipt of purchase order, but no later than July 26, 2019.
- 3) **Prices to remain firm:** If a Contract is awarded, the prices offered by the successful Bidder shall remain firm for the period of the Contract.
- 4) **Tax exemption:** The Town is exempt from state and federal taxes. The Town will not pay any tax charges assessed on Goods, Services, Construction or insurance provided by the Bidder. The Town will not indemnify the Bidder against any tax charges. Any tax assessed against the Bidder as a result of the contract resulting from this Invitation to Bid is the responsibility of the Contractor. However, when under established trade practice any Federal excise tax is included in the list price, the Bidder may quote the list price and shall show separately the amount of Federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the Town.

B) Required Elements of Bid Package

To be considered, the Bid must contain the completed Bid Invitation Form, any bid bond required, the Bidder Information Form with Acknowledgement of Receipt of Addenda Form, and any other documents, samples, or information required by the terms of the Invitation to Bid. Incomplete Bids will be rejected as non-responsive unless the omitted material constitutes an Informality. Any Bidder which submits a Bid agrees that such Bid becomes the property of the Town and all costs incurred for its preparation are the responsibility of the Bidder. Information written on the outside of an envelope containing a Bid will be disregarded; any Bidder wishing to amend a previously submitted Bid must timely submit a new complete Bid package that expressly supersedes all previous ones.

1) Completed Invitation to Bid forms:

All information required by the Invitation to Bid must be supplied before the Due Date and time for submission of Bids in order for a Bid to be considered complete and responsive. Bids cannot be modified after they are opened.

2) Required permits, bonds and licenses:

- a) By submitting a Bid, Bidder represents that it has or can acquire all necessary federal, state and local permits and all necessary licenses, including licenses to use intellectual or real property, as of the date of performance.
- b) If the blank for bid bond is checked on the cover sheet of this Invitation to Bid, the Bidder must provide a bid bond with its bid. If the blank(s) for performance and payment bonds are checked on the cover sheet of this Invitation to Bid, the Bidder represents that it is able to obtain the required bond(s) before it begins performance under the Contract. If a Bidder fails to obtain a required performance or payment bond, the Town will reject the Bidder's bid and, if a Contract is awarded to the next-lowest Responsive and Responsible Bidder, the Town will call the bid bond of the Bidder who was unable to obtain the performance or payment bond. Bonding requirements are not waivable except by canceling the Invitation to Bid and issuing a new one without the bond requirement.

3) Acknowledgment of receipt of all addenda:

The Bidder will complete and execute the Acknowledgment of Receipt of addenda form.

4) Descriptive literature and specifications:

- a) Except where the Bidder intends to provide the Brand Names identified in the Invitation to Bid or follow blueprints or similarly detailed specifications, the Bidder shall clearly and specifically identify the Goods, Services, insurance or Construction being offered and shall enclose complete and detailed descriptive literature and specifications with the Bid to enable the Town to determine if the Bid meets the requirements of the Invitation to Bid. The Bidder is responsible for clearly and specifically indicating the Goods, Services, insurance or Construction being offered and for providing sufficient descriptive literature, samples, catalog cuts and/or technical detail to enable the Town to determine if the Bid meets the requirements of the Invitation to Bid. Only the information furnished with the Bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a Bid non-responsive.
- b) Unless the Bidder clearly indicates in its Bid that the product offered is an "equal" product, its Bid will be considered to offer the brand name product referenced in the Invitation to Bid.

- c) Unless otherwise expressly provided in the specifications, the name of a certain brand, make or manufacturer shall not restrict Bidders to the specific brand, make or manufacturer named but conveys the general style, type, character, and quality of the article desired. The Town Administrator's Designee for this Invitation to Bid shall determine equivalency, considering quality, workmanship, economy of operation, and suitability for the purpose intended, including compatibility with existing equipment or facilities and the need for any specialized training, peripherals, supplies, and infrastructure.

C) Bid Form and Evaluation of Alternates

- 1) **Waiver of Informalities:** The Town reserves the right to waive any Informality in any Bid. However, Bids which are received after the date and time specified for the opening of Bids will be neither opened nor considered.
- 2) **One Bid received:** When only one Bid is received and it is from a Responsive and Responsible Bidder, the Invitation to Bid may be canceled or a Contract may be awarded to the low Bidder if the price bid is reasonable and in the best interest of the Town. When only one Bid is received for an item in an Estimated Bid Quantities or Requirements Invitation to Bid, the Town will award a contract for that item if the price bid is reasonable and in the best interest of the Town; otherwise, the Town will not make an award of bid on that item.
- 3) **Tests and inspections:** The Town reserves the right to conduct any test or inspection it may deem advisable to ensure the proposed Goods or Services conform to the specifications of this Invitation to Bid.
- 4) **Method of evaluating lowest bid:** Unless otherwise expressly stated in this Invitation to Bid, the Town will determine the lowest Bid(s) on the basis of the total cost of all items measured by the Estimated Bid Quantities, without regard to any alternates. Alternates may be made part of the award to the lowest responsive and responsible bidder at the discretion of the Town to the extent of available funds.

D) Determining if Bidder is Responsible

- 1) **Award only to a "Responsible Bidder":** The Contract shall only be awarded to a Bidder that, through evidence submitted or information available to the Town, has shown that it is has the capability, in all respects, to perform fully the contract requirements and has shown that it has the moral and business integrity and reliability that will assure good faith performance.
- 2) **Additional information:** The Bidder, if requested, must present within two business days, evidence satisfactory to the Town of the Bidder's ability to perform the Contract and possession of necessary facilities, financial resources, and adequate Insurance to comply with the terms of this Invitation to Bid and any resulting Contract. The Town reserves the right to inspect the Bidder's physical facilities and

conduct additional investigation prior to award to satisfy questions regarding the Bidder's capabilities.

- 3) **Bidder in default:** No Contract will be accepted awarded to any Bidder that is in arrears, or is in default to the Town upon any debt, or that is a defaulter as surety or otherwise upon any obligation to the Town, until all such debts are paid. A Bidder which previously defaulted on a Contract with the Town may be disqualified for a period of time, depending on the size of the defaulted Contract and the circumstances of the default.
- 4) **Process for determination:** The Town shall follow the process set forth in Virginia Code § 2.2-4359 before making a determination of nonresponsibility.

E) Exceptions to Terms of the Invitation to Bid

Bidders are encouraged to use the question and comment process provided in paragraph 0 of this Invitation to Bid. A Bidder may take exception to the terms of the Invitation to Bid by making the exceptions clear in writing attached to the Bid and suggesting alternatives that will meet the Town's needs as identified in the Invitation to Bid. However, if the exceptions involve more than minor variations or if they negatively affect the price, quality, quantity or delivery schedule for the Goods, Services, or Construction being procured, then the Bidder's Bid will be rejected.

F) Bid Acceptance Period

Unless withdrawn under the terms of this provision or as otherwise provided in this Invitation to Bid, the Bidder's Bid is binding upon the Bidder for at least thirty (30) calendar days following the Invitation to Bid Due Date. This thirty calendar day acceptance period may be extended by mutual agreement of the Bidder and Town in writing signed by the Town Administrator's Designee and the Bidder's Contact Person as identified on the Bidder Information Form. Bidder further agrees and understands that (except to the extent of any bid bond and the requirement to indemnify the Town for costs incurred in protection of the Bidder's confidential information under V(C)3)) there is no binding agreement, no contractual relationship, no understanding nor mutual assent until a Contract is signed, executed and exchanged by and between the Bidder and the Town. Except where the Town Administrator, Procurement Officer, or other Town officer or employee is authorized to execute Contracts under Town Policy, no Contract with the Town can be executed or has any effect until the Town Council approves it by recorded affirmative vote.

G) Withdrawal of Bids

Withdrawal of Construction Contract Bids is strictly governed by Virginia Code § 2.2-4330, which is hereby adopted for all Town Invitations to Bid and incorporated mutatis mutandis herein. If a Bid may be lawfully withdrawn under said Section, notice of withdrawal must be provided in writing within two (2) business days after the Bid opening, pursuant to method (i) in § 2.2-4330A.

III) METHOD OF AWARD OF CONTRACT

A) Award to Lowest Responsive and Responsible Bidder

The Town is not at liberty to change the terms of the bargain after the opening of Bids. Award will be to the lowest responsive and responsible Bidder unless multiple awards are made, in which case the award will be in accordance with the terms of this Specification. If available funds are less than the lowest bid from a Responsive and Responsible Bidder, then the Town may negotiate with the lowest Responsive and Responsible Bidder to obtain a price within available funds. The negotiations may vary the quantity, quality, type, delivery schedule, scope or extent of the Goods, Services, insurance or Construction to be obtained, and/or the base term or extension term(s) of the Contract.

The Town expressly reserves the right to reject all bids if such action is deemed to be in its best interest. The reasons for such rejection shall be made part of the contract file. The Town will not reject all bids solely to avoid awarding a Contract to a particular Responsive and Responsible Bidder. The Town may reissue the Invitation to Bid if doing so is in the public interest.

B) Award in Whole or in Part

Based on its evaluation of Bids as provided above, if the Town does not reject all Bids it will award a Contract for all or part of the Procurement to the Bidder or Bidders submitting the best Bid or Bids with respect to the items in question. A partial award will be made only where the subject of the Procurement permits division based on units, phase, or other elements separately priced in the Bidder submission.

C) Multiple Awards

Except with a Requirements Contract, a Contract for Non-Professional Services, or as expressly provided otherwise in the Specifications, the Town will award a single Contract.

IV) FORM OF CONTRACT AND RELATED DOCUMENTS

A) Use of Town Standard Form Contract

Unless otherwise specified in this Invitation to Bid, use of the Town Standard Form Contract for Goods, Services, Construction or Insurance attached hereto is mandatory for Competitive Sealed Bidding.

B) Use of AIA and Similar Forms

If a Bidder wishes to use copyrighted forms, it shall provide the forms and indemnify the Town against any infringement by their use. The Town does not permit the use of Engineers Joint Contract Documents. All forms submitted for use are subject to amendment by the Town for consistency with State law, Town Policy, this Invitation to Bid, and the best interests of the Town.

C) Differing Terms in Contractor-Supplied Forms

No term in a Bidder-supplied form may alter, contradict, or supersede the terms in this Invitation to Bid and the resulting Contract.

V) MISCELLANEOUS

A) Authority of Agents

- 1) **Bidder's agent:** Each Bid, and any Contract, must be signed by a person authorized to bind the Bidder to a valid Contract with the Town. For a sole proprietorship, the principal may sign. The Town may require that any agent submit a power of attorney or other appropriate documentation showing the authority of the agent to act on the Contractor's behalf. If, whether such proof of agency has been demanded or not, it later appears that the signatory was not authorized to act, the Town may declare the Contract void if it is in its best interest to do so.
- 2) **Town's agent:** The Town Administrator has the final responsibility and full authority for issuance of invitations to bid, negotiations, placing and modifying invitations, requests, purchase orders and recommendations of award issued by and for the Town of Middleburg. Where permitted by Town Policy, the Town Administrator may execute Contracts in the name of the Town. The Town Administrator may delegate authority to Administrative staff by general assignment or by specific authorization in an Invitation to Bid. No other Town officer or employee is authorized to add to, vary, or waive terms of the Invitation to Bid, place purchase orders or issue notices to proceed, enter into purchase negotiations or contracts, or in any way obligate the

Town for indebtedness. Any purchase order or contract made without authority is void *ab initio*. The Town will not honor or ratify any void action of its employees or agents.

3) **Non-appropriation:**

- a) The authority of agents for the Town is limited by appropriations. In subsequent fiscal years, the Town may reduce or eliminate appropriations related to the procurement which is the subject of this Invitation to Bid without liability to the Bidder or any third party.
- b) By issuing this Invitation to Bid, the Town Administrator represents that sufficient appropriations have been made to meet the estimated cost of the procurement in the current fiscal year.

B) Cooperative Procurement

If authorized by the Bidder, any Contract resulting from this Invitation to Bid may be extended to other jurisdictions. The Bidder shall indicate whether it is willing to contract with other agencies on the Cooperative Procurement Form.

C) Examination of Documents

Except as provided herein, all proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen or representative of the news media in accordance with the Virginia Freedom of Information Act.

- 1) **Estimates:** Cost estimates relating to a proposed transaction prepared by or for a public body shall not be open to public inspection.
- 2) **Prior to award:** Any Bidder upon request shall be afforded the opportunity to inspect proposal records within a reasonable time after the opening of all Bids, but prior to award, unless the Town decides not to accept any of the Bids and to reissue the Invitation to Bid. Otherwise, Bid records shall be open to public inspection only after award of the Contract or the decision neither to award the Contract nor to reissue the Invitation to Bid. Any inspection of Procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- 3) **Trade secrets:** Trade secrets or proprietary information submitted by a Bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act if the Bidder invokes the protection of this provision in writing prior to or upon submission of the data or other materials, identifies the data or other materials to be protected, and states the reasons why protection is necessary. By asserting such trade secret or proprietary information privilege, the Bidder agrees to indemnify the Town for any costs, including attorney's

fees, incurred defending that Bidders' protected information in any action under the Virginia Freedom of Information Act.

D) Definitions

Capitalized terms that are defined in the VPPA or Town Policy have the same meanings in this Invitation to Bid as are given in that law or policy. Capitalized terms not defined in the VPPA or Town Policy but used in this Invitation to Bid have the following meanings, unless the context clearly requires otherwise. Undefined terms have their common meanings appropriate to their context.

- 1) **Bid:** An offer of a price or prices submitted in response to this Invitation to Bid.
- 2) **Bidder:** The person or business entity submitting a bid in response to this Invitation to Bid. For purposes of provision dealing with collusion and conflict of interest, it includes all of the business entity's departments, divisions, affiliates and interconnected business entities.
- 3) **Town:** The Town of Middleburg or its authorized agents. Unless the context clearly requires otherwise, such as for an affirmative vote of the elected body, the Town Administrator or the Town Administrator's Designee may always act on behalf of the Town.
- 4) **Town Administrator's Designee:** The person designated as having authority to bind the Town with regard to this Invitation to Bid and identified as such on the cover sheet of this Invitation to Bid or by addendum.
- 5) **Town Policy:** The Town of Middleburg Town Code, Chapter 20.
- 6) **Due Date:** The date stated on the cover page of this Invitation to Bid for receipt and opening of the Bids.
- 7) **Estimated Bid Quantities:** In this type of contract, the Town estimates its needs in advance and the Bidder bids prices for each of these items. The Town does not guarantee buying its estimated quantities or any given quantity from the selected Bidder, and may purchase the items covered by the award through other Procurement transactions. For each shipment of Goods, the Town will issue a purchase order.
- 8) **Firm Fixed Price:** In this type of contract, the Bidder submits a flat price for the entire Procurement. This does not preclude additions or deletions on a unit price basis where provided for in the Invitation to Bid.
- 9) **Hourly Rate:** In this type of contract, the Bidder submits a stated hourly rate for the work to be performed. The Bid may include reimbursement for incidental expenses, such as materials and travel, only if expressly provided for in the Invitation to Bid.

- 10) **Non-Professional Services:** All services other than Professional Services.
- 11) **On Call:** Services that a Bidder makes available at an Hourly Rate when needed by the Town. No particular amount of work is guaranteed. If the Specifications do not give minimum response times or similar measures of performance, then it is implied that recognized industry standards or the Bidder's published standards apply, whichever is more beneficial to the Town.
- 12) **Percentage:** In this type of contract, the Bidder is compensated with a percentage of the construction cost. The percentage is negotiated prior to any contract award.
- 13) **Procurement:** The receipt of Goods, Services, Insurance or Construction by a public body from a nongovernmental source with payment from the public body or a third party.
- 14) **Requirements:** In this type of contract, the Bidder submits a Bid to supply the Town's needs for all Goods meeting the specifications. Except in an emergency, the Town will not obtain the specified Goods from a different source. For each shipment of Goods, the Town will issue a purchase order.
- 15) **Using Department:** The Town's Administration department. The initial Contract Administrator will be Danny Davis, Town Administrator.
- 16) **VPPA:** The Virginia Public Procurement Act, Virginia Code §§ 2.2-4300 et seq.

E) Nondiscrimination; Participation of Small Businesses and Businesses Owned By Women, Minorities and Service-Disabled Veterans

- 1) **In general:** The Town does not discriminate against a bidder because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. The Town does not discriminate against faith-based organizations on the basis of the organization's religious character or impose conditions that restrict the religious character of the faith-based organization, except as permitted or required by law, or impair, diminish, or discourage the exercise of religious freedom by the recipients of such Goods, Services or disbursements. Any Bidder believing that it or another Bidder has been discriminated against on that basis should immediately make the Town Administrator's Designee aware of the basis for that belief.
- 2) **Opt-out rights with faith-based organizations:** If an award of Contract is made to a faith-based organization, and an individual who applies for or receives Goods, Services, or disbursements provided pursuant to that contract objects to the religious character of the faith-based organization from which the individual receives or would receive the Goods, Services, or disbursements, the Town shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursement from an alternative provider.

- 3) **Facilitating disadvantaged businesses:** It is the policy of the Town to facilitate the participation of Small Businesses and businesses owned by women, minorities, and service disabled veterans in all aspects of procurement to the maximum extent feasible. If awarded a contract, the Bidder will use its best efforts to carry out this policy and insure that Small Businesses and businesses owned by women, minorities and service disabled veterans have the maximum practicable opportunity to compete for subcontract work, consistent with the efficient performance of this contract. If federal grant money is to be used to pay for this Procurement, then the specifications will indicate the extent of any specific participation required for Small Businesses and businesses owned by women and minorities.

F) TERMS AND CONDITIONS FOR FEDERALLY FUNDED GRANT CONTRACTS

Any Bidder must abide by the Terms and Conditions for Federally Funded Grant Contracts, as applicable. These Terms and Conditions are attached at the end of this document. Any questions about the applicability of a given section should be made to the Town's Contract Administrator.

BID SUBMISSION FORM

Base Bid:

Item Description	Unit	Quantity	Unit Price	Unit Price x Quantity
Well closure and capping	Each	3-5 estimated		
			TOTAL:	

Alternates:

Item Number	Description	Unit	Quantity	Unit Price
1	Additional related work	Hour	TBD	
2	[intentionally left blank]			
				TOTAL:

BIDDER INFORMATION FORM

NAME OF INVITATION TO BID: _____

INVITATION TO BID NO: _____

A. SUBMITTING BUSINESS ENTITY IDENTIFICATION AND OWNERSHIP DISCLOSURE

COMPANY:

CONTACT PERSON:

TITLE:

ADDRESS:

TELEPHONE:

FORM OF BUSINESS: __ Corporation __ General Partnership
 __ Sole Proprietor __ Other (specify): _____

Is Bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Virginia Code? _____ Yes/No _____
If so, what is the Bidder’s identification number issued by the SCC? _____
If not, state why the Bidder is not required to be so authorized: _____

Check if applicable: ___ Minority-Owned Business
 ___ Small Business
 ___ Women-Owned Business
 ___ Service Disabled Veteran-Owned Business

Note: The terms “Minority-Owned,” “Small Business,” “Women-Owned Business” and “Service Disabled Veteran-Owned Business” as used above are defined in Virginia Code § 2.2-4310. This information is requested in connection with the Town’s program to facilitate the participation of Small Business and Businesses owned by women and minorities in procurement transactions.

Organized under the laws of the State of: _____

Principal place of business located at: _____

Following are the names and addresses of any persons having an ownership interest of 3% or more in the above named Business entity who are either related to or are an officer, employee or appointee of the Town or Town Council (attach more sheets if necessary):

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. VIRGINIA CONFLICTS OF INTEREST AND PUBLIC PROCUREMENT

This Invitation to Bid is subject to the provisions of §§ 2.2-3100 et seq. of the Virginia Code, the Virginia State and Local Government Conflict of Interests Act, and Sections 2.2-4300 et seq. of the Code, the Virginia Public Procurement Act (VPPA) but only to the extent that any such law is mandatorily applied to towns with a population of less than 3,500.

The Bidder (___) is or (___) is not aware of any information bearing on the existence of any potential conflicts of interest or violation of ethics in public contracting provisions of the VPPA, Virginia Code §§ 2.2-4367 through 2.2-4377. If the Bidder checks the “is” blank, the Bidder shall provide details in a separate document attached to this Invitation to Bid.

C. QUALIFICATIONS AND REFERENCES

Please provide a response to each of the questions listed below on a separate sheet of paper and attach it to your Bid.

1. What is the general character of work performed by your firm?
2. Has your firm ever failed to complete any work awarded to you?
3. Has your firm ever defaulted on a Contract?
4. Which of your local sales and support offices will be servicing the Town of Middleburg (please list with all relevant contact information)?
5. Who are the contact person(s) responsible for any resulting Contract you may be awarded (please list names, responsibilities, phone numbers, fax numbers, and email addresses)?

D. CERTIFICATIONS

By my signature on this form, I certify on behalf of the Bidder I represent that this Bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Bid for the same Goods, Services, Insurance or Construction, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the state and Federal law and can result in fines, prison sentences, and civil damage awards.

I further certify that the statements regarding debarment, ethics in public procurement, submission of a single bid, and understanding of the conditions, contained in section D(E) of the Invitation to Bid are true and not misleading as to the Bidder.

I hereby certify that the responses to the above representations, certifications, and other statements, including all attachments, are accurate and complete. If after I sign these forms I learn of any information which makes any of the above representations, certifications or other statements inaccurate or incomplete, or reveals that any part of my previously submitted information is misleading, I will immediately bring it to the attention of the Town Administrator's Designee. I agree to abide by all conditions of this Invitation to Bid and certify that I am authorized to sign for the Bidder.

SIGNATURE: _____ DATE: _____

NAME: _____ TITLE: _____
Please Print

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

I certify that I received the following Addenda to this Invitation to Bid:

<u>Number</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SIGNATURE: _____ DATE: _____

NAME: _____ TITLE: _____
Please Print

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- 1. ACORN FUNDING PROHIBITION:** In compliance with section 163 of the Continuing Appropriations Resolution, 2010, Division B of Pub. L. No. 111-68 (CR), none of the funds made available by this joint resolution or any prior Act may be provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations. Federal agencies are expressly prohibited from providing funds to ACORN and its associated organizations directly through grants and cooperative agreements (financial assistance). The prohibition also extends to subgrants/subawards and procurement contracts awarded by financial assistance recipients.
- 2. APPLICABLE LAWS:** This Contract shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.
- 3. APPLICATION FOR ASSISTANCE:** If grant funding assistance is continued year to year, the Grantee shall submit a complete application, including the proposed workplan, to the Department at least 75 days prior to the beginning of the next project period unless otherwise specified in the Special Terms and Conditions.
- 4. ASSURANCES - CONSTRUCTION PROJECTS:** By entering this contract, the authorized representative of the Grantee certifies that, if applicable, the Grantee will comply with the following requirement: Parts II and III of Executive Order 11246 (30 F.R. 12319, 1965) as amended by Executive Orders 11375 (32 F.R. 14303, 1967) and 12086 (43 F.R. 46501, 1978) requiring federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246 (41 CFR § 60-1.4(b), 1991).
- 5. ASSURANCES - NON-CONSTRUCTION PROGRAMS:** By entering this contract, the authorized representative of the Grantee certifies that it is in compliance with each of the following applicable requirements:

 - (a) Has the legal authority to apply for federal assistance, and institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management and completion of the project description.
 - (b) Will give the Department, the awarding federal agency, and the Comptroller General of the United States, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the agreement; and will establish a proper accounting system in accordance with generally accepted accounting standards or Department directives.
 - (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
 - (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the Department.
 - (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the

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nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

- (f) Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (4) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (5) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (6) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, related to nondiscrimination on the basis of alcohol abuse or alcoholism; (7) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (8) Title VII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (9) The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) prohibiting discrimination on the basis of disability; (10) any other nondiscrimination provisions in the specific statute(s) under which these federal funds are being paid; and (11) the requirements of any other nondiscrimination statute(s) which may apply to the contract.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.
- (h) Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
- (i) Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subcontracts.
- (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- (k) Will comply with environmental standards which may be prescribed pursuant to the following: (1) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (2) notification of violating facilities pursuant to EO 11738; (3) protection of wetlands pursuant to EO 11990; (4) evaluation of flood hazards in floodplains in accordance with EO 11988; (5) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C §§ 1451 et seq.); (6) conformity

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of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C §§ 7401 et seq.); (7) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (8) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

- (l) Will comply with Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of national wild and scenic rivers system.
 - (m) Will assist the Department in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
 - (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
 - (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
 - (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
 - (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
 - (r) Will comply with all applicable requirements of all other federal laws, executive orders, regulations and policies governing this program.
- 6. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Department shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.
- 7. CERTIFICATION - CONFLICT OF INTEREST:** The Grantee warrants that it has fully complied with the State and Local Government Conflict of Interests Act.
- 8. CERTIFICATION-DRUG-FREE WORKPLACE:** The Grantee warrants that it shall comply with the provisions of Public Law 100-690, Title V, Subtitle D, "Drug-Free Workplace Act of 1988", and all applicable federal implementing regulations, including 15 CFR Part 26 or 40 CFR Part 32, which require that the Grantee take steps to provide a drug-free workplace.

The Grantee certifies that it will or will continue to provide a drug free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace
 - (2) The Grantee's policy of maintaining a drug free workplace
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs, and

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- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Contract, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - (e) Notifying the Department in writing, within ten calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction.
 - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance of rehabilitation program approve for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;
 - (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- 9. CERTIFICATION - LOBBYING:** The Grantee certifies that:
- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.
 - (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative contract, Standard Form-LLL, "Disclosure Form to Report Lobbying" will be completed and submitted, in accordance with its instructions.
 - (c) That the language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative contracts) and that all subrecipients shall certify and disclose accordingly.

MUST BE INCLUDED IN ALL SUBAWARDS EXCEEDING \$100,000: The Grantee agrees to comply with the Title 40 CFR Part 34, New Restrictions on Lobbying. Grantees must submit certification and disclosure forms accordingly.

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In accordance with the Byrd Anti-Lobbying Amendment, any Grantee who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

Grantees shall ensure that no grant funds awarded under the federal grant contract are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The Grantee shall abide by its OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

STATEMENT FOR LOAN GUARANTEES AND LOAN INSURANCE: The Grantee agrees that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

10. CERTIFICATION - NONDISCRIMINATION: During the performance of this Contract, the Grantee agrees as follows:

- (a) The Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Grantee. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (b) The Grantee, in all solicitations or advertisements for employees placed by or on its behalf, will state that such Grantee is an equal opportunity employer.
- (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Grantee will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

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- 11. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:** The recipient shall fully comply with Subpart c of 2 CFR Part 180 and 2 CFR part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," including a term or condition requiring compliance with Subpart C. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. The recipient may access the Excluded Parties List System at <http://epls.arnet.gov>. This term and conditions supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."
- 12. COLLATERAL CONTRACTS:** Where there exists any inconsistency between this Contract and other provisions of collateral contracts which are made a part of this Contract by reference or otherwise, the provisions of this Contract shall control.
- 13. CREATION OF INTELLECTUAL PROPERTY (NOT APPLICABLE TO CONTRACTS WITH OTHER STATE AGENCIES):** All copyrightable material created pursuant to this Contract shall be considered work made for hire and shall belong exclusively to the Department. Neither party intends any copyrightable material created pursuant to this Contract, together with any other copyrightable material with which it may be combined or used, to be a "joint work" under the copyright laws. If any copyrightable material created pursuant to this Contract cannot be deemed work made for hire or is deemed part of a joint work, the Grantee agrees to irrevocably assign, and does hereby irrevocably assign, its entire copyright interest in such material or work to the Department and shall execute and deliver such further documents as the Department may reasonably request for the purpose of acknowledging such assignment.

The Grantee warrants that no individual, other than regular employees of the Grantee or Department working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Contract, unless such individual and his or her employer, if any, have signed an intellectual property contract satisfactory to the Department before commencing such participation.

The Department shall have all rights, title and interest in or to any invention reduced to practice pursuant to this Contract. The Grantee shall not patent any invention conceived in the course of performing this Contract.

The Grantee hereby agrees that, notwithstanding anything else in this Contract, in the event of any breach of this Contract by the Department, the Grantee's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no termination of this contract by the Department shall have the effect of rescinding the provisions of this Section.

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This provision applies only to materials or documents developed with Contract funds. It does not apply to materials or documents previously copyrighted or registered under the Grantee's copyright or trademark or to materials or documents which are developed with other funds.

- 14. DISCLAIMER:** Nothing in this Contract shall be construed as authority for either party to make commitments which will bind the other party beyond the project or work contained herein. Furthermore, the Grantee shall not assign, sublet, or subcontract any work related to this Contract or any interest it may have herein without the prior written consent of the Department.
- 15. DOCUMENTS:** The Grantee may retain any reports, studies, photographs, negatives, or other documents prepared by the Grantee in the performance of its obligations under this Contract and not required to be delivered to the Department. The Department shall have the copyright to all such materials, and unlimited rights to use any such materials. Where necessary for the Department's full enjoyment of its copyrights and other rights referenced in this Contract, the Grantee shall provide a clear, reproducible copy of such materials (machine readable upon request) to the Department.

The Grantee has permission to reproduce and distribute any material or documents prepared by the Grantee and for which the Department owns the copyright, but only where necessary or expeditious to the performance of the Grantee's obligations under this contract.

This provision applies only to materials or documents developed with contract funds. It does not apply to materials or documents previously copyrighted or registered under the Grantee's copyright or trademark or to materials or documents which are developed with other funds.

- 16. DUN AND BRADSTREET DATA UNIVERSAL NUMBERING SYSTEM (DUNS):** To implement the Federal Financial Accountability and Transparency Act (FFATA), it requires sub-recipients for federal awards to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, and it is strongly recommended that the subrecipient register in the Central Contractor Registry (CCR) system.
- 17. FAIR SHARE GOAL: GENERAL COMPLIANCE, 40 CFR, PART 33:** The Grantee agrees to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.
- SIX GOOD FAITH EFFORTS, 40 CFR, PART 33, SUBPART C (Section 33.301):** Grantee agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under this grant contract and prime contractors also shall comply. Records documenting compliance with the six good faith efforts shall be retained.
- (a) Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.** For Indian Tribal, State and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

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- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government recipients, this will include dividing total requirements when economically feasible into smaller task or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce or VA Department of Minority Business Enterprise (DMBE) in finding DBEs. MBE/WBE businesses must now be officially certified as such in order to be counted towards an EPA grantee's "Fair Share" MBE and WBE goals accomplishments.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

Grantee agrees to complete EPA Form 5700-52A (MBE/WBE Utilization) and EPA Form 5700-53 (Lobbying and Litigation Certification Form) annually on awards of subcontract(s) to a minority or women's business. Reports shall continue until the final subcontract is awarded, whether or not a sub-contract(s) is awarded to a minority or women's business in the subsequent quarters. Reports shall be submitted to the Department in accordance with the contract.

EPA Form 5700-52A Reports shall include all subcontracts made by the Grantee with minority or women's businesses. Reports may, but are not required to, include subsequent tiers of subcontracts. Reference BIDDERS LIST, 40 CFR, Section 33.501(b) and (c) – Grantee agrees to create and maintain a bidders list.

18. FEDERAL AND NON-FEDERAL COST SHARING RELATED TO GRANTS: If actual allowable project costs are less than the total approved estimated budget, the federal and non-federal cost share ratio as reflected in the approved estimated budget shall apply. If actual allowable costs are greater than the total approved estimated budget, the federal share shall not exceed the total federal dollar amount as reflected in the contract.

19. FINANCIAL RECORDS AVAILABILITY: The Grantee agrees to retain all books, records, and other documents relative to this contract for five years after final payment, or until audited by an independent auditor, whichever is earlier. The Department, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

20. FIRE SAFETY: Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the Grantee agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines

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of the Hotel and Motel fire Safety Act (PL 101-391, as amended). Grantees may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

21. FISCAL CONTROL: The Grantee shall establish fiscal control and fund accounting procedures which assure proper disbursement of, and accounting for, contract funds. The Grantee shall for the purpose of this contract:

- (a) Provide all accounting, bookkeeping, fiscal, and administrative services required by or related to this Contract.
- (b) Request partial payment due from the Department in accordance with the terms of this Contract.
- (c) Maintain appropriate support for all expenditures incurred and maintaining all books, documents, papers, accounting records, and other evidence supporting the costs incurred associated with this Contract. It shall make such materials available at its offices at all reasonable times during the Contract period, and for three years from the date of final payment under this Contract, for inspection and audit by the Department or any authorized representative of the Department.

22. INDEMNIFICATION (NOT APPLICABLE TO CONTRACTS WITH OTHER STATE AGENCIES): Grantee agrees to indemnify, defend and hold harmless the Department and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Grantee/any services of any kind or nature furnished by the Grantee, provided that such liability is not attributable to the sole negligence of the Department or to failure of the Department to use the materials, goods, or equipment in the manner already and permanently described by the Grantee on the materials, goods or equipment delivered.

23. INDIRECT COSTS: Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the Contract.

24. INTEGRATION AND MODIFICATION: No alteration, amendment or modification in the provisions of this Contract shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

25. LIABILITY (NOT APPLICABLE TO CONTRACTS WITH OTHER STATE AGENCIES): The Grantee shall take out and maintain, during the life of this Contract, such bodily injury liability and property damage liability insurance as will protect it from claims of damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this contract. If the Grantee has a self-insurance program, it may self-insure the risks associated with this Contract in lieu of the commercial insurance required herein.

26. MAINTENANCE OF RECORDS AND AUDIT (COMPLIANCE WITH CIRCULAR A-133 REQUIREMENTS): The Grantee is required to do the following: provide the Department

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access to records and financial statements to determine compliance with federal requirements; facilitate the Department's monitoring and oversight activities; inform the Department in writing when not required to undergo a single audit; on request, inform the Department whether the relevant program would be audited as major using the risk-based approach (determined solely by the auditor) or, if not, the cost of having it audited as such (if desired by the Department, the Grantee must have the program audited as a major); send a copy of its audit reporting package to the Department when a single audit is required and the schedule of findings and questioned costs discloses audit findings (or the summary schedule of prior audit findings reports on the status of audit findings) related to the Department's award of federal funds; inform the Department in writing that an audit was conducted in accordance with Circular A-133 and that no audit findings and questioned costs (for the current or prior year) were related to the award (sending a copy of the audit reporting package is a sure way to meet this notification requirement); on request, send the Department a copy of the audit reporting package and any management letters issued by the auditor, even when not required to do so (e.g., no audit findings were related to the award); resolve audit findings (including the preparation of a corrective action plan) and comply with any management decision issued by the Department (due within six months of receiving the Grantee's audit report); follow-up on audit findings, unless no longer valid because they occurred at least two years earlier, the Department did not follow-up on the findings, and a management decision was never issued; and keep copies of audit reports and related documentation on file for at least three years following the audit period for review by the Department.

- 27. OBLIGATING FUNDS BEYOND PROJECT PERIOD:** The Grantee shall not incur costs or obligate funds for any purpose pertaining to the project beyond the expiration date stipulated in the contract.

Any extension of the award period can only be authorized by the Department. Verbal or written assurances of funding from other than the Department shall not constitute authority to obligate funds for programmatic activities beyond the expiration date.

The Department has no obligation to provide any additional prospective funding. Any renewal of the award to increase funding and to extend the period of performance is at the sole discretion of the Department.

- 28. OTHER FEDERAL GRANT AWARDS:** The Grantee shall immediately provide written notification to the Department in the event that, subsequent to receipt of federal funds under this contract, other federal financial assistance is received relative to the scope of work of this contract.

- 29. PRECEDENCE OF TERMS:** The Contract consists of several documents. In the event of a conflict between or among terms in these documents, the following documents control in order from the most important to the least important: Special Terms and Conditions; General Terms and Conditions; the signed Contract form; and the Scope of Work.

- 30. PRIOR WRITTEN APPROVAL OF CHANGES:** The Grantee must obtain prior written approval from the Department for changes to the Contract, including, but not limited to, changes

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of substance in program activities, designs, or plans set forth in the approved scope of work or project workplan.

- 31. RECYCLED PAPER:** In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.
- 32. REGULATORY COMPLIANCE:** The Grantee shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the project and shall give all Notices required thereby. The Grantee hereby consents to inspection by any state regulatory agency having jurisdiction over any part of the work performed with the assistance of the contract funds.
- 33. RENEWAL OF CONTRACT:** The Contract may be renewed by the Department upon written contract by both parties under the terms of the current contract, prior to the expiration.
- 34. PURCHASE OF PRODUCTS CONTAINING RECYCLED MATERIALS:** Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 24.7.
- 35. SEVERABILITY:** Each paragraph and provision of this Contract is severable from the entire contract; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.
- 36. SUBCONTRACTS:** No portion of the Scope of Work shall be subcontracted without the prior written consent of the Department. The Grantee shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall ensure compliance with all requirements of the Contract. The Grantee shall comply with all applicable provisions of the Virginia Public Procurement Act in making such awards.
- 37. SUBRECIPIENTS (Applicable only to contracts with other state agencies):** All federally funded grants awarded by the Department to other state agencies are considered pass-thru and

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shall be reported as such by the Grantee and the Department on the Federal Schedules of Financial Assistance.

- 38. TERMINATION FOR CAUSE:** The Department reserves the right to terminate the grant in whole, or in part, at any time before the date of completion, upon written notice to the Grantee that it has failed to comply with the conditions of the Contract. In connection with such termination, payments made to the Grantee or recoveries by the Department shall be in accord with the legal rights and liabilities of the parties.
- 39. TERMINATION FOR CONVENIENCE:** The Department may terminate the Contract if its funding is terminated. The Department or the Grantee may terminate the contract, in whole, or in part, if both parties agree that the continuation will not produce beneficial results commensurate with further expenditure of funds. The Department and the Grantee shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible.
- 40. UNIFORM ADMINISTRATIVE REQUIREMENTS:** The Grantee shall comply with all applicable federal regulations pertaining to "Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments" and "Cost Principles for State and Local Government", including but not limited to the requirements of OMB Circular A-102, the provisions stipulated in the Common Rule, 2 C.F.R. Part 225 (formerly OMB Circular A-87), and any specific implementing regulations promulgated by the federal awarding agency.

If the Grantee is an Institution of Higher Education or a Non-profit Organization, the Grantee shall comply with all applicable federal regulations pertaining to "Uniform Administrative Requirements for Grants and Cooperative Contracts with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, 2 C.F.R. Part 215 (formerly OMB Circular A-110) and for Institutions of Higher Education including but not limited to the requirements of 2 C.F.R. Part 220 (formerly OMB Circular A-21), and for Non-profit Organizations including but not limited to the requirements of 2 C.F.R. Part 230 (formerly OMB Circular A-122).

- 41. USE OF GRANT FUNDS:** Grant funds shall only be used for the purposes and activities covered in the Project Workplan.
- 42. TRAFFICKING VICTIM PROTECTION ACT {PROHIBITION STATEMENT}:** You as the subrecipient under this subrecipient contract and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the subrecipient contract.

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SPECIAL TERMS AND CONDITIONS

- 1. WHISTLEBLOWER PROTECTION STATUTE:** Congress has enacted the whistleblower protection statute 41 U.S.C. Section 4712 to encourage employees to report fraud, waste, and abuse without repercussions. This statute applies to all employees working for contractors, grantees, subcontractors, and sub grantees in accordance with this agreement. All contractors, grantees, sub grantees, and subcontractors for federal grants and contracts are required to:
- (a) Inform their employees in writing of the whistleblower protections under 41 U.S.C. Section 4712 in the predominant native language of the workforce, to include the specific requirements of the statute, and
 - (b) Include this term and condition in any agreement made with a subcontractor or sub grantee.
- The employees' rights under 41 U.S.C. Section 4712 shall survive termination of this agreement.

END OF DOCUMENT