

# Merrimack Valley Planning Commission

## Request for Proposals

### Regional Aggregation Program

MVPC002.13

**Bid Due Date: Monday, June 17, 2013, 12:00 P.M.**

Merrimack Valley Planning Commission  
160 Main Street  
Haverhill, MA 01830  
Telephone: (978) 374 - 0519  
Facsimile: (978) 372 - 4890

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The Merrimack Valley Planning Commission (MVPC) was created in 1959 to promote cooperation, coordination and the orderly development in the region. There are 15 communities that comprise the Merrimack Valley region; Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, North Andover, Newbury, Newburyport, Rowley, Salisbury, and West Newbury. The region has over 270 square miles and over 325,000 people. In 2007 the CEOs from the five cities (Amesbury, Haverhill, Lawrence, Methuen, and Newburyport) and the MVPCs with MVPC managers (Andover, North Andover and Salisbury) formed the Merrimack Valley Mayors & Managers Coalition (MVMCM). The Coalition was formed to identify common challenges the communities faced with the hope of working together to address these issues. The MVPC has been retained as the administrative agent for the Coalition. One of the initiatives started by the Coalition was the potential to offer electric aggregation to the communities they represent. The intent is to retain the services of one consultant to advise all communities interested in participating and to solicit proposals from electricity suppliers collectively to obtain the best pricing option. To provide these services for this initiative the MVPC is issuing this RFP.

Your participation is invited with regard to the above referenced Request for Proposals. The Merrimack Valley Planning Commission assumes no liability for proposals mistakenly opened due to improperly labeled envelopes and will return same to the proposer without notice. (It is strongly suggested that documents sent via carriers other than first class mail should be placed in properly labeled and sealed envelopes prior to being placed in the carrier packaging in order to avoid premature opening.

## **I. GENERAL INFORMATION AND PROPOSAL SUBMISSION REQUIREMENTS**

1.1 Pursuant to Chapter 30B, the Merrimack Valley Planning Commission (“MVPC”) as the Awarding Authority, through its Executive Director, hereby issues a Request for Proposals (“RFP”) seeking proposals from qualified consultants or companies to develop a plan to aggregate the electrical load of electricity users within the Merrimack Valley region, both residential and commercial, and, in consultation with the Department of Energy Resources (“DOER”) and the Department of Public Utilities (“DPU”), develop, prepare, implement, secure regulatory approval and perform all services related to administering the MVPC Regional Aggregation Plan as defined by and in compliance with all applicable provisions of §134 of Chapter 164 of the General Laws, as amended, and any other applicable statute or regulation related to this process, including 220 CMR 11.00, MA D.T.E. 06-102, MA D.T.E. 06-104 and the policies and procedures of both the Department of Public Utilities (“DPU”) and the Department of Energy Resources (“DOER”).

The MVPC intends to select and enter into an agreement (“the Contract” or “this Agreement”) with the most highly qualified proposer for a term of three (3) years commencing as of August 1, 2013 and terminating July 31, 2016.

1.2 The **Request for Proposals (RFP) package** is available at the MVPC, 160 Main Street, Haverhill, MA 01830 as of **May 28, 2013 @ 12:00 PM** and **separately sealed price and non-price (technical) proposals** will be accepted at the MVPC until **June 17, 2013 @ 2:00 PM**, when a register of proposals will be made. Separately sealed proposals, including the proposer’s name and address in the upper left hand corner of the envelope, shall be clearly

identified in lower left-hand corner of the proposal envelope as **PRICE PROPOSAL: Regional AGGREGATION CONSULTANT** and **NON-PRICE (TECHNICAL) PROPOSAL: Regional AGGREGATION CONSULTANT**. The MVPC will not be responsible for the premature opening of any proposal not properly identified, and any such proposals will be rejected.

1.3 The MVPC endeavors to expedite the award and execution of the contract documents. A sub-committee from the MVMMC will review the proposals and will identify qualified firms using the comparative evaluation criteria and may seek interviews with the finalist to determine the preferred vendor. A Contract will be awarded within ten (10) calendar days after the decision has been made. Services under the Contract will commence as soon as practical thereafter.

1.4 If any changes are made to this RFP, an addendum will be issued. Addenda will be e-mailed or faxed to all proposers on record as having received the RFP. If the MVPC issues any addenda to this RFP, each proposer shall acknowledge on the Proposal Form the receipt of each addendum by addendum number and date.

1.5 Questions concerning this Request for Proposals must be submitted in writing to: Dennis DiZoglio, MVPC, 160 Main Street, Haverhill, MA 01830 **before 12:00 PM on June 10, 2013**. Questions may be delivered, mailed, emailed, or faxed to (978) 374-0519 or [ddizoglio@mvpc.org](mailto:ddizoglio@mvpc.org). Written responses will be emailed or faxed to all proposers on record as having received the RFP. All questions and answers will be incorporated into this RFP.

1.6 The MVPC reserves the right to cancel this RFP, or reject in whole or in part any and all proposals, if the MVPC determines that cancellation or rejection serves the best interests of the MVPC.

1.7 All proposal prices submitted in response to this RFP must remain firm for forty five (45) days following the proposal due date.

1.8 If, at the time of the scheduled date and time proposals are due, MVPC is closed due to uncontrolled events, such as fire, snow, ice, wind, or building evacuation, the proposal submission deadline will be postponed until 2:00 PM on the next normal business day. Proposals will be accepted until that date and time.

**1.9 One (1) original and eight (8) copies of the proposal are required.**

1.10 The following forms, incorporated herein and included elsewhere in the bid documents, must be submitted with the bid:

- Appendix A - Price Proposal Form
- Appendix B - Certifications
- Proposal pricing sheet;
- Appendix C – References

1.11 A proposal must be signed as follows: if the proposer is an individual, by her/him personally; if the proposer is a partnership, by the name of the partnership, followed by the signature of each general partner; and if the proposer is a corporation, by the authorized officer.

1.12 Proposals which are incomplete, conditional, not properly endorsed or signed, or which are otherwise contrary to these instructions may be rejected.

## **II. SCOPE OF SERVICES**

### **1 – LEGISLATIVE RESEARCH**

In 1997 the Commonwealth of Massachusetts passed legislation relative to restructuring the electric utility industry. Retail access to the electricity market commenced March 1, 1998. The Consultant selected by the MVPC will review any subsequent amendments to the legislation and conduct a review of any statutory changes pending at the Legislative Branch and any regulatory changes pending at the Department of Public Utilities (“DPU”). The Consultant will also be responsible for monitoring federal restructuring legislation for potential impacts to the MVPC’s aggregation program or the MVPC.

### **2 – MANAGEMENT AND MONITORING OF AGGREGATION PROGRAM**

The MVPC seeks a qualified Consultant possessing a thorough understanding of load profiling, power procurement and pricing issues to perform the essential functions of operating the MVPC’s aggregation program approved pursuant to §134 of Chapter 164 of the Massachusetts General Laws. The Consultant or firm will be responsible for all technical and legal aspects of analyzing load data, administering the RFP process, leading negotiations with suppliers, and providing ongoing management and monitoring of any energy service agreements (“ESA”) executed on behalf of the Communities’ eligible consumers.

### **3 – PREPARATION AND ISSUANCE OF RFP’S FOR SUPPLY OF POWER**

When necessary, the Consultant shall develop a Request for Proposals (“RFP”) for power supply for review and approval by the MVPC Executive Director, Dennis DiZogio. In general, the procurement document shall include several components:

- a description of the load aggregation (potential size of the aggregated load, and the number of customers and/or accounts);
- the services and features desired by the Community;
- the qualification criteria required in order to have a bid considered;
- the criteria used to select the supplier;
- the essential provisions of the standard contract between the chosen supplier and the Community on behalf of participating eligible consumers; and the term of service.

The Consultant shall ensure when accepting bids from suppliers, that each bidder has included with their responses a Certificate of Non-Collusion, signed by a bidder, stating his/her bid is made freely without consultation with any other bidder and a signed State Taxes Certification form demonstrating compliance with the Commonwealth of Massachusetts tax laws.

The Consultant shall assist the Communities with the review and analysis of all responsive and responsible bids from suppliers, and shall be responsible for recommending the bid that is in the best interests of the Communities and meets the goals of the MVPC’s Regional Aggregation Program. Bids from suppliers shall be evaluated based on price, the supplier’s proposed contract terms and conditions, reputation of supplier, quality of supplier’s service, extent to which service meets Community’s needs, supplier’s past relationship with the Community, and previous work experience with governmental agencies. Nothing herein shall preclude the Community from having outside legal counsel review such a recommendation.

The Consultant shall obtain and verify references for similar supply contracts, if available.

#### **4 –BROKER SERVICES AND NEGOTIATIONS FOR SUPPLY CONTRACT**

The Consultant shall act as the Communities' broker during the procurement process. The Consultant shall provide all technical and legal services during the negotiations and terms of any contract with prospective power suppliers.

No contract negotiated by the Consultant shall allow the pass-through of any additional cost or the assessment of any incremental charges for volumetric related adjustments, the impact of congestion charges, capacity charges or any other ancillary costs, fees or charges without the express, written approval of the Community. Any negotiations shall include a requirement that billing for the provider shall be included in the electric bill from National Grid (the "local distributor"), its successors and assigns. Nothing herein shall preclude the Community from having outside legal counsel review the terms and conditions of any negotiated contract.

#### **5 – CUSTOMER ENROLLMENT/TRANSITION PROCESS**

After approval of the price and term of the agreement by the Communities with a supplier, the Consultant shall take all measures necessary to effectuate the transfer of customer data from the local distributor to the new supplier. The Consultant shall have established procedures to respond to:

- consumer queries and problems;
- power supplier problems;
- Distribution Company problems;
- media queries; and
- governmental shifts and proposed changes in policy.

#### **6 – PUBLIC EDUCATION**

The Consultant shall prepare or cause to be prepared all informational and educational materials for the general public and for the media, subject to the approval of the participating communities, including meetings with representative from the media. The Consultant shall include a recommended public education and information strategy to be used as part of the regional aggregation program following commencement of the supply contract.

#### **7 – LEGAL ASSISTANCE**

The Consultant shall prepare all required filings for the Department of Energy Resources ("DOER"), the Department of Public Utilities ("DPU"), or any other state agency if applicable to contracts executed by the community on behalf of the its residents.

#### **8 – MANAGEMENT OF REGIONAL AGGREGATION PROGRAM**

The Consultant will administer and provide technical oversight of the Regional Aggregation Program including:

- monitoring and reporting on compliance by the supplier with all contract terms and conditions;
- resolution of contract issues;
- transition administration of the "opt-out" process for customers;
- participation in negotiations with the competitive suppliers and the distribution company serving the Community as it relates to the procurement of the Regional Aggregation Program;

- preparation of written reports on the ongoing operations of the Regional Aggregation Program to be submitted on a quarterly basis to the MVPC; and routine updates and attendance at meetings with the Mayors & Managers Coalition, which meets the second Wednesday of each month at MVPC, 160 Main Street, Haverhill, MA at 8:30am.

## **9 –MAINTENANCE OF EFFORT**

The Consultant, as the administrator of the electricity supply contract shall, after a contract is executed between the Communities and an electricity supplier, ensure supplier's compliance with the contract, conduct ongoing power supply analyses, be the advocate for ratepayers, provide answers to questions from ratepayers, and provide a hotline and web site where ratepayers can seek information related to the Regional Aggregation Program. The Consultant shall provide reports as directed by the MVPC Executive Director in addition to any reporting requirements outlined in this RFP.

The Consultant shall provide a written report concerning the following issues and items to the Executive Director on a quarterly basis:

- supplier's compliance with all terms and conditions of contract;
- contract issues and resolutions, if any;
- whether supplier's contract milestones have been met;
- administration/customer service, defaults, litigation and penalties in order to ascertain compliance with DPU regulatory standards and procedures, as well as additional standards and procedures employed by the supplier;
- customer participation review;
- changes in the financial stability of the supplier if any; and
- changes in organizational structure of the supplier if any.

The Consultant shall provide a written report concerning the following issues and items to the Executive Director prior to the expiration, extension or renewal of the contract:

- assessment on achievement of contract milestones;
- possible revision or upgrading of goals;
- market assessment or new feasibility study if conditions in the service area or operations have changed significantly;
- public process to affirm goals and evaluation;
- bidding and negotiation process;
- formulation of new contract; and
- service transition process, if needed.

## **10 – SUMMARY OF RESPONSIBILITIES**

The Consultant shall, if not hereinbefore required, provide the following services:

- obtain and analyze the electrical load data for all consumers of electricity in the Communities;
- provide broker services including preparing Request For Proposals for a competitive supplier of electricity, if necessary;
- prepare and implement a public education plan and consumer outreach program;
- prepare and submit, with the approval of the Communities, all filings with the DPU, DOER, or any other state agency, if applicable;
- prepare and negotiate agreements with competitive providers on terms favorable to the Communities;
- monitor all aspects of the Regional Aggregation Program and any resulting contractual agreements with supplier(s);

- continually analyze the development of market and regulatory issues, and advise the Communities on any proposed changes in law or regulation, including those offered by ISO and any pending at the Federal Energy Regulatory Commission (“FERC”) which may affect the Regional Aggregation Program or the Communities.

Nothing herein shall preclude the Communities from having its legal counsel review the terms and conditions of any contract, agreement and/or filing; and/or performance under same.

## **11 – MANAGEMENT FEE FOR AGGREGATION PROGRAM SERVICES**

The Consultant shall offer a management fee per kilowatt hour (“kWh”) that the Communities will consider in making an award for the Contract. The price per kWh shall be the complete price for all services and expenses incurred by the Consultant, and shall be paid directly to the Consultant by the supplier of electric power. No proposal shall require the payment by the MVPC or the Communities of any costs, expenses or expenditures.

Any consultant agreement shall not impose an obligation upon the Communities to execute any contract with any electric supplier, or to operate, execute or maintain the Regional Aggregation Program. Compensation shall only be paid to the Consultant by a supplier to the extent the Communities elects, in the Communities’ sole discretion, to execute a supply contract that is procured or negotiated on behalf of the Community, as part of an aggregation program.

### **III. MINIMUM QUALITY REQUIREMENTS:**

3.1 Proposers must have previous experience in the energy industry and in consulting on the development and implementation of a plan for municipal aggregation for retail customers, pursuant to M.G.L. Chapter 164, §134 of the similar to the proposed contract.

3.2 Proposers must be equipped to undertake and commence the services specified upon the execution of the Contract. Proposers shall include a brief schedule for the completion of the above services and the deliverables, including the proposed start and end dates and intermediate delivery dates. Describe projected resource availability for the anticipated duration of the project.

3.3 Proposers must possess the following qualifications to perform the services, and must attach information demonstrating such qualifications titled “Description of Proposer’s Qualifications” to the Proposal Form:

- location of the offices from which the services will be managed;
- at least one member of the firm or the consultant has detailed knowledge of MGL Chapter 164, §134;
- detailed knowledge of MA DTE 06-102;
- must have competent legal resources with experience in the deregulation of electricity in Massachusetts;
- must be or have on staff a broker licensed by the DPU to do business in the area served by the local distributor.

3.4 Proposers must possess any necessary licenses and/or approvals required to act as the MVPC’s agent for Municipal Aggregation to be eligible to submit a proposal.

3.5 Proposer shall not be owned or be a subsidiary of the any energy supplier.

### **IV. COMPARATIVE EVALUATION CRITERIA:**

All responsive and responsible non-price (technical) proposals will be evaluated and rated on the basis of the following comparative criteria.

4.1 Relevant experience of proposer and/or proposed staff: **Highly Advantageous:** The proposer has at least six (6) years or more of experience consulting with municipalities on municipal aggregation services of similar size and scope to this contract. **Advantageous:** The proposer has at least three (3) years but less than six (6) of experience consulting with municipalities on municipal aggregation services of similar size and scope to this contract. **Non Advantageous:** The proposer has one (1) but less than three (3) years of experience consulting with municipalities on municipal aggregation services of similar size and scope to this contract.

4.2 Proposer's demonstrated ability to develop and complete an electrical or municipal aggregation process on a timely basis: **Highly Advantageous:** All of the proposer's references indicate that the process was completed on schedule or with minimal, insignificant delays. **Advantageous:** Only one of the proposer's references indicates that the process was completed with substantial delays attributable to the proposer, and no current process or process completed in the last three years experienced substantial delays attributable to the proposer. **Not Advantageous:** Two of the proposer's references indicate that the process was completed with substantial delays attributable to the proposer, and no current process or process completed in the last year experienced substantial delays attributable to the proposer.

4.3 Proposer has the qualifications and resources necessary to perform the service objectives stated in the RFP for administering and monitoring energy related contracts for the Regional Aggregation Program: **Highly Advantageous:** The proposer possesses all of the qualifications necessary to meet all of the Communities' objectives stated in the RFP. **Advantageous:** The proposer possesses most of the qualifications necessary to meet all of the Communities' objectives stated in the RFP. **Non Advantageous:** The proposer possesses few of the qualifications necessary to meet all of the Communities' objectives stated in the RFP.

## **V. REFERENCES:**

5.1 Proposers must submit a complete list of current clients for which they provide services similar in size and scope to the services requested by the MVPC herein. References must include firm names, contact persons and contact numbers.

5.2 Poor references may be a basis for a determination that the proposer is not a responsible proposer.

## **VI. RULE FOR AWARD:**

6.1 The Contract will be awarded to the responsive and responsible proposer offering the most advantageous proposal, taking into consideration all evaluation criteria.

6.2 The Contract price will remain firm for the term of the Contract, including any extension option term which is exercised by the MVPC in its sole discretion.

6.3.1 The award of the Contract will be made by MVPC. To be eligible to receive a contract award, a proposer must be equipped to undertake and perform all the services specified in the proposal documents, and must satisfy all other requirements of this RFP.

6.3.2 The selected consultant will be required to execute a contract in substantially the same form as provided in Appendix D.

## **VII. ADDITIONAL TERMS AND CONDITIONS:**

7.1 General Laws Compliance: The Consultant will comply with all federal, state and municipal laws, ordinances, rules and/or regulations as amended which are applicable to the Consultant's obligations pursuant to this contract for services.

7.2 Fair Employment Practices: The Consultant shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion or physical or mental handicap.

The Consultant agrees to comply with all applicable federal and state statutes, rules and regulations prohibiting discrimination in employment including: Title VII of the Civil Rights Act of 1964; The Age Discrimination in Employment Act of 1967; The Americans with Disabilities Act of 1991; Massachusetts General Laws Chapter 151B Section 4 (and all relevant subsections); and all relevant Administrative Orders and Executive Orders (including Executive Order No. 227).

### **Forms to be Included in the Technical Proposal Package**

All proposers shall submit proposals in strict accordance with the submission requirements listed below. Any contractor failing to provide all of the following submission requirements will be considered "not responsive" and their proposal may be rejected without further consideration.

1. The information submitted must include the following items:
  - a. Cover letter: A letter signed by an officer of the firm, binding the firm to all comments made and a brief statement of the vendor's understanding of the project and services to be performed is required.
  - b. Firm/Individual History including length of time the firm/individual has been in business, legal form (sole proprietorship, partnership, corporation and State of incorporation), number and location of offices, number of employees, and other pertinent data. Please describe any parent/subsidiary/affiliate relationships.
  - c. Submit the name and telephone number of the person who will be the main contact from the firm for this contract.
  - d. Resumes of all personnel that will support and service this account. Describe what each individual's role will be and what services they will perform.
  - e. Indicate whether or not your firm has been dismissed or disqualified from a bid/contract within the past five years, and if yes, the reason(s) why.
  - f. Disclose any conditions (e.g. bankruptcy or other financial problems, pending litigation, planned office closures, impending merger) that may affect your organizations' ability to perform contractually.
  - g. Signed and completed Appendix B (Certifications).
  - h. References: Provide client references on Appendix C - References.
2. Acknowledgment of Addenda: each proposer shall acknowledge the receipt of any addenda by signing and including it with their proposal.

### **Forms to be Included in the Price Proposal Package**

All proposers shall submit proposals in strict accordance with the submission requirements listed below. Any contractor failing to provide all of the following submission requirements may be considered “not responsive” and their proposal may be rejected without further consideration.

The information submitted must include the Price Proposal Form, Appendix

**Appendix A**

**Price Proposal**

The Consultant shall offer a management fee per kilowatt hour (“kWh”) that the Communities will consider in making an award for the Contract. The price per kWh shall be the complete price for all services and expenses incurred by the Consultant, and shall be paid directly to the Consultant by the supplier of electric power.

Management Fee per Kilowatt hour                      \$\_\_\_\_\_

This RFP contains Addendum \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Signature of Company Official \_\_\_\_\_

Printed Name & Title of Company Official \_\_\_\_\_

Phone number \_\_\_\_\_

E-Mail \_\_\_\_\_

Date \_\_\_\_\_

Appendix B

Certifications

**NON-COLLUSION**

The undersigned certifies under penalties of perjury that this proposal or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

TAX COMPLIANCE

Pursuant to M.G.L. Chapter 62C, Sec. 49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

CERTIFICATE OF FOREIGN CORPORATION

The undersigned hereby certifies that it has been duly established, organized, or chartered as a corporation under the laws of: \_\_\_\_\_

(Jurisdiction)

The undersigned further certifies that it has complied with the requirements of M.G.L. c. 30, & 39L, and with the requirements of M. G. L. c. 181 relative to the registration and operation of foreign corporations within the Commonwealth of Massachusetts.

Signature of individual submitting proposal

\_\_\_\_\_

Print Name

\_\_\_\_\_

Name of Business

\_\_\_\_\_



APPENDIX D

MVPC  
CONSULTANT AGREEMENT  
FOR MANAGEMENT OF THE REGIONAL AGGREGATION PROGRAM  
AND ENERGY RELATED SERVICES

This Consultant Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the MVPC, an a-political body having its principal place of business at 160 Main Street, Haverhill, MA 01830 (hereinafter, the "MVPC") as represented by the MVPC Executive Director, Dennis DiZoglio acting for and on behalf of the MVPC who signs these presents in his official capacity and incurs no liability in his individual capacity, and [Consultant name and address to be inserted] It is agreed between the parties hereto as follows:

**SCOPE OF SERVICES, DELIVERABLES:** (To be inserted as outlined in the Specifications and the Request for Proposals.)

**CONTRACTUAL RELATIONSHIP:** The Consultant shall provide services described in the contract documents, which shall be as detailed in the specifications contained in the Request for Proposal which are incorporated herein and made a part hereto, including all addenda issued prior to execution of this Agreement. While so performing the services under this Agreement, Consultant and the MVPC agree, understand and recognize that pursuant to M.G.L. Chapter 149, §148B, Consultant is: (1) free from control and direction in connection with the performance of the service, both under this Agreement and in fact; and (2) the service is performed outside the usual course of the business of the MVPC; and, (3) the Consultant is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the execution of the service.

**APPLICABLE LAW:** This Agreement shall be construed in accordance with the Uniform Procurement Act, Chapter 30B, and other laws of the Commonwealth of Massachusetts.

**PAYMENT TERMS AND SCHEDULE:** The Consultant shall receive a price of \_\_\_\_\_ [to be inserted] per kilowatt hour ("kWh"). Said price per kWh shall be the complete price for all services and expenses incurred by the Consultant, and shall be paid directly to the Consultant by the supplier of electric power.

**TAX COMPLIANCE:** The Consultant has provided certification of tax compliance in accordance with M.G.L. Chapter 62C, §49A.

**UNEMPLOYMENT CONTRIBUTION:** The Consultant has provided certification of unemployment contribution or payments in lieu of contributions in accordance with M.G.L. Chapter 151A, §19A.

**DEBARMENT:** The Consultant certifies under penalty of perjury that the said undersigned is not presently debarred from entering into a public contract in the Commonwealth of Massachusetts under the provisions of M.G.L. Chapter 29, §29F, or any other applicable debarment provisions of any other chapter of the Massachusetts General Laws or any rule or regulation promulgated there under.

**INDEMNIFICATION:** The Consultant, at its expense, shall to the maximum extent permitted by law, indemnify and save harmless the MVPC and participating communities, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, and expenses (including reasonable attorney's fees) for any personal injury or property damage or other damages that the MVPC or communities may sustain which arise out of or in connection with the Consultant's performance of a Contract, by the Consultant, its employees, or agents, including but not limited to negligence and/or reckless or intentional conduct of the Consultant, its agents, officers, employees, sub-consultants, or subcontractors. The existence of insurance shall in no way limit the scope of this indemnification. Consultant further agrees to reimburse the MVPC for damage to the MVPC's property caused by the Consultant, its employees or agents, unless damage is caused by the MVPC's gross negligence or willful misconduct. After prompt notification of a claim by the MVPC, the Consultant shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The MVPC or the communities shall not be liable for any costs incurred by the Consultant arising under this paragraph.

**ASSIGNMENT PROHIBITED:** Consultant agrees that it will not be permitted to assign or underlet the contract, nor assign either legally or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the Executive Director.

**AMENDMENTS OR CHANGES:** Any amendments or changes to this Agreement must be in writing, in compliance with M.G.L. Chapter 30B, and signed by officials with authority to bind the Consultant and the MVPC.

**ABANDONMENT OF WORK OR OTHER DEFAULT:** Consultant agrees that abandonment or delay of services, or the supply of reports after the date of execution of this Agreement, shall be a breach of this Agreement. The MVPC may, by whatever legal remedies are available to it, complete or cause to be complete, the work or services and the Consultant shall bear full responsibility of the entire cost of completing the terms of the Agreement and agrees to pay to the MVPC or Communities any losses, damages, costs and expenses, including attorney's fees, sustained or incurred by the MVPC by reason of any of the foregoing causes.

**PROCUREMENT ERRORS:** If errors in the procurement or bidding laws or regulations of the Commonwealth, whether said errors were made by the Consultant or the MVPC, are found to exist by any agency of the Commonwealth or by any court of competent jurisdiction, this Agreement shall become null and void.

**TERMINATION:** This Agreement shall terminate on the date specified in this Agreement, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated under this Section upon prior written notice to the Consultant; provided however, that it is further agreed by the Consultant that any breach by the Consultant of the provisions of this Agreement and its incorporated attachments shall be sufficient cause for the MVPC to terminate this Agreement five (5) calendar days after the date of a written notice to the Consultant.

**SEVERABILITY:** And it is further agreed by the Consultant and the MVPC that the provisions of this Agreement are severable. If any provision of this Agreement is held invalid or if any court of competent jurisdiction holds any provision unlawful or not legal, the remaining provisions shall remain in effect.

**ENTIRE AGREEMENT CLAUSE:** The MVPC and Consultant agree that this Agreement and its attachments constitute the entire Agreement between the MVPC and Consultant, and no other binding agreement exist other than those incorporated herein.

**DURATION OF CONTRACT:** It is agreed the duration of this Agreement shall be [to be inserted] with options to renew/extend for [to be inserted]. These options are exercisable solely at the MVPC's discretion. It is understood and agreed that there is no financial contractual obligation of the MVPC in this Agreement or in any years subsequent to the fiscal year in which this Agreement is executed.

<p>IN WITNESS WHEREOF, the said Consultant, and the said MVPC hereto set our hands and seals.</p> <p>FOR THE CONSULTANT BY:</p> <p>_____</p> <p>(INSERT NAME AND TITLE)</p> <p>Date: _____</p>	<p>FOR THE MVPC:</p> <p>_____</p> <p>Dennis DiZoglio, Executive Director</p> <p>Date: _____</p>
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