
REQUEST FOR EXPRESSIONS OF INTEREST
EOI NO. 05-2020
NPDES WATERSHED MANAGEMENT PROGRAM / NPDES
MUNICIPAL PERMIT ANNUAL REQUIREMENTS

OPENING: FEBRUARY 19, 2020 AT 11:00 A.M.

BUYER: Evangeline Bolder, CPPB, Senior Buyer
PHONE: 410-313-6373 ▪ EMAIL: ebolder@howardcountymd.gov



HOWARD COUNTY, MARYLAND

OFFICE OF PURCHASING

6751 Columbia Gateway Drive, Suite 226, Columbia, MD 21046
www.howardcountymd.gov/purchasing



Formal EOI Solicitations and Submittal Results are available on our website

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MINORITY BUSINESS ENTERPRISES are encouraged to respond to this solicitation. For more information, please contact Mr. Mahesh Sabnani, Equal Business Opportunity Coordinator, at 410-313-3694.

IMPORTANT NOTICE REGARDING ADDENDA

Addenda to solicitations often occur prior to bid opening. It is the potential Consultant's responsibility to visit the Office of Purchasing web site for updates to solicitations. www.howardcountymd.gov/purchasing

**NPDES WATERSHED MANAGEMENT PROGRAM / NPDES
MUNICIPAL PERMIT ANNUAL REQUIREMENTS**

GENERAL CONDITIONS

- 1 PROJECT SCOPE: The County intends to establish an on-call contract with a Consultant to provide engineering services on an as-needed basis.
- 2 AGREEMENT:
 - 2.1 The County and Consultant must execute an Agreement resulting from the award of this solicitation. This process typically takes approximately three weeks from the date the successful Consultant is identified. In order to expedite this process, a sample Consultant Agreement is attached for review as part of this solicitation. Exceptions, if any, to the County's Agreement (Appendix B) must be noted in the submission to be considered during evaluation. Exceptions to the County's Agreement may result in rejection of the submission. The County will not accept any exceptions to the Agreement after the opening date and time of this solicitation.
 - 2.2 Do not fill in or sign the sample Consultant Agreement attached as Appendix B. The County will prepare an Agreement specific to this solicitation for execution by the successful Consultant.
- 3 AGREEMENT PERIOD: The Agreement period shall be for one year commencing on or about August 1, 2020 after approval and proper execution of the Agreement documents, with renewal options for four additional years in one-year increments, exercisable at the sole discretion of the County Purchasing Agent or Designee.
 - 3.1 Prices and hourly rates shall be firm for one year from the effective date of the Agreement. Prices and hourly rate adjustments for each renewal period beyond the first contract year will be at the sole discretion of the County.
 - 3.2 During each renewal period, the County will entertain requests for escalation in accordance with the current Consumer Price Index at the time of the request or up to a maximum 5% increase, whichever is lower. *(For purposes of this section, "Consumer Price Index" shall be the Mid-Atlantic Consumer Price Index-All Urban Consumers (CPI-U), Washington-Arlington-Alexandria, DC-MD-VA-WV, All Items, Not Seasonally Adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.)* The County reserves the right to grant or deny the request for a price increase and will do so in writing. If the price increase is granted, the price increase will be effective upon written approval and will remain firm through the renewal period. All requests for rate and salary adjustments shall be accompanied by certified payrolls and/or audited overheads showing the actual salaries and expenses justifying the increase.
 - 3.3 Requests for price adjustments shall be submitted to the Office of Purchasing, 6751 Columbia Gateway Drive, Suite 226, Columbia, Maryland 21046 referencing this Expressions of Interest number and the contract number and title.
- 4 METHOD OF ORDERING:
 - 4.1 Purchase Orders (also referred to as task orders) will be issued from time to time for such tasks as may be required by the County. Purchase Orders issued against the Agreement, even if not completed within the term of the Agreement, shall continue to be bound by the terms and conditions until completion.
 - 4.2 Small purchases may also be made by the County's procurement card (currently Visa). The Consultant agrees to accept the card for such quantities as may be required by the County. Consultants are prohibited from charging additional fees over and above their bid prices to accept

payments on procurement cards.

- 5 PROJECT DESCRIPTION: Howard County, Maryland (the “County”) desires to secure professional services to provide the following items noted below under Anticipated Scope of Work:

5.1 Anticipated Scope of Work: The County is currently working with The Maryland Department of the Environment (MDE) for the renewal of its National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Discharge Permit No. 11-DP-3318 (MD0068322). The current permit was due to expire on December 17, 2019 and has been administratively continued by MDE. A renewal permit has not been issued by MDE to date. The selected Consultant will be required to support the County in completing the requirements of the current and renewed permit. In general, work required for the project will cover, but may not necessarily be limited to, the following anticipated areas under the current and renewed permits:

5.1.1 Legal Authority

Report on the County’s status to enforce the regulations.

5.1.2 Source Identification

Support the County’s efforts to compile and submit all source identification information required in the NPDES permit in the format required by MDE (for example, permitted NPDES dischargers, industrial and commercial sources, SWM facilities and infrastructure, major storm drain outfalls, impervious surfaces, SWM monitoring locations, restoration project locations, etc.).

5.1.3 Management Programs

5.1.3.1 Support the County’s efforts for reporting the results of its various management programs.

5.1.3.2 Perform illicit discharge outfall field inspections and report results to the County.

5.1.3.3 Assist the County with developing Good Housekeeping Plans (GHP) for County properties not required to be covered under Maryland’s Stormwater Industrial General Permit.

5.1.3.4 Develop public education materials.

5.1.4 Watershed Assessments and Total Maximum Daily Loads (TMDL)

5.1.4.1 Conduct watershed assessments in accordance with the new permit requirements, including conducting field investigation, reports, supporting documentation and associated geodatabase data. The County anticipates that multiple watershed studies will be required, leading up to and during the effective term of the renewed NPDES permit.

5.1.4.2 Support County efforts for public participation.

5.1.5 Restoration Plans

5.1.5.1 Have a working knowledge of restoration crediting methodologies and report on the implementation of restoration activities conducted by the County.

5.1.5.2 Develop new and revise existing restoration plans, as necessary.

- 5.1.6 Total Maximum Daily Load (TMDL) Compliance
 - 5.1.6.1 Have a working knowledge of TMDL (including modeling) as they apply to the County for local TMDL and the Chesapeake Bay TMDL.
 - 5.1.6.2 Support the County's efforts for evaluating and documenting progress toward meeting the County's stormwater wasteload allocations and TMDL.
- 5.1.7 Assessment of Controls
 - 5.1.7.1 Perform the chemical, biological, and physical monitoring to support the permit.
 - 5.1.7.2 Compile the chemical, biological and physical monitoring results and organize, analyze and report the data to the County.
 - 5.1.7.3 Conduct hydrologic and hydraulic modeling as required by the permit.
 - 5.1.7.4 Develop pollution load estimates as required.
- 5.1.8 Program Funding

Support the County's efforts to report on the program funding including Watershed Protection and Restoration Program (WPRP) Annual Reports and biennial Financial Assurance Plan (FAP) reporting.
- 5.1.9 Annual Progress Reports

Support the County's efforts for preparing annual progress reports of the previous year's activities as required by the permit, including all information, data and analyses as required in narrative and geodatabase formats.
- 5.2 The selected Consultant is required to be familiar with and have experience with MDE MS4 Geodatabase, its format and its requirements. The geodatabase shall be updated as necessary to include but not be limited to current design data, inspection data, and maintenance information on all best management practices (BMP) in-service; information on potential BMP; restoration credits and pollutant load reduction quantities for each BMP. The geodatabase shall be required to provide outputs in conformance with the current and any subsequent reporting formats required by MDE.
- 5.3 While the selected Consultant may not be specifically asked to perform all of the tasks noted above, the selected Consultant should have the experience and be qualified to do so if requested by the County.
- 5.4 Copies of the County's current NPDES permit, past annual reports, and supporting information are available for viewing in the Storm Water Management Division, 9801 Broken Land Parkway, Columbia, Maryland 21046. If the Consultant wishes to review any of this information, it is suggested that an appointment be scheduled by contacting Radhika Wijetunge at 410-313-6429 or rwijetunge@howardcountymd.gov.
- 5.5 The selected Consultant is expected to provide the personnel with experience to do all the various tasks required to respond to the permit requirements. The range of disciplines needed will include, but not be limited to; water resource engineering, watershed and water quality modeling, project management, biology, environmental science, geographic information system (GIS) specialties, public outreach and education, computer-aided design (CAD), survey and various support fields.
- 5.6 The selected Consultant must work in a system compatible with the County's GIS, ESRI software. Work will require the transfer of the County GIS and database system to the Consultant and from

the Consultant's GIS and database system to the County. The Consultant is responsible for ensuring that all information is completely compatible.

- 5.7 Submittals may be by joint ventures as well as individual firms capable of providing all the required services.
- 6 QUESTIONS AND INQUIRIES: Questions concerning this Expressions of Interest must be directed to Evangeline Bolder, Senior Buyer, telephone number 410-313-6373, Fax 410-313-6388, email ebolder@howardcountymd.gov. Questions must be received by 2:00 p.m. on February 6, 2020. The Buyer in the Office of Purchasing is the sole point of contact for this solicitation.
- 7 TECHNICAL SUBMITTAL:
- 7.1 The Consultant's technical understanding and approach to the project, including innovativeness and any special expertise or resources that the firm intends to use, or other relevant information shall be submitted on **no more than 5 (five) typewritten pages** (minimum font size 11 point). Photographic exhibits, charts and figures, if included, will count towards the page limit. The transmittal letter, which shall be limited to one page, shall not be used to circumvent or supplement the above limit. The transmittal letter will not be used in the evaluation. **Failure to comply with the page limit may result in rejection of the Expression of Interest.**
- 7.2 Consultants shall provide answers to the following questions, in paragraph essay format, limited to no more than 3 (three) typewritten pages, 11 point font minimum. These 3 (three) pages will not count towards the 5 (five) page maximum specified in paragraph 7.1.
- 7.2.1 Have you conducted or assisted with a proactive illicit discharge prevention public outreach campaign? If so, please describe what group this was aimed at, what outreach materials you prepared, and how they were presented to the group. Examples of groups could be, but would not be limited to, lawn care services, pet day care facilities, or food packaging/processing facilities. If you have not been a part of such a campaign, please describe how you would do this if asked by the County to do so and which group do you think would benefit most from such a campaign?
- 7.2.2 It is anticipated that the County's next generation NPDES MS4 Permit will have restoration requirements more focused on local and Chesapeake Bay TMDL pollutant load reduction goals rather than impervious surface area restoration goals. How would you suggest the County approach its restoration program to maximize pollutant load reduction goals and meet TMDL?
- 7.2.3 The County anticipates the option in its next permit to pay into a pooled monitoring fund in lieu of continuing to perform in-house biological, chemical, and physical monitoring as has been done for previous permit cycles. If the County chooses the pooled monitoring option, what question or questions are most critical to get answered through pooled monitoring process that would benefit the County and the Phase 1 NPDES community as a whole relative to pollutant load reductions and achieving permit and TMDL requirements? How would the County benefit from not paying into the pooled monitoring fund and continuing in-house monitoring?
- 7.2.4 Describe your experiences with utilizing MDE NPDES MS4 Geodatabase, MDE Accounting Guidance for Stormwater Wasteload Allocations and Impervious Acres Treated, and the Chesapeake Bay Program's various approved Expert Panel recommendations and methodologies for calculating water quality credits for Phase 1 jurisdictions. What challenges have you faced with tracking and documenting the restoration credits, and how have you overcome these challenges?
- 7.3 Consultants must complete and submit Appendix D with their submission. This form will not count



towards the page limit.

8 FORM SF330:

- 8.1 Interested firms are requested to submit a completed Standard Form 330 which is separate from and does not count towards the page limit of the technical submittal. If your firm does not have a blank SF330, the form may be obtained from the Office of Purchasing website at www.howardcountymd.gov/departments/county-administration/purchasing under Current Solicitations Standard Form 330.
- 8.2 SF330 shall include, if applicable, all Howard County Government contract work currently in progress or completed in the last five years, in addition to other relevant contract work completed in the last five years.
- 8.3 SF330 shall indicate only the number of personnel by discipline the firm proposes to involve in the specific project. It shall identify all sub-consultants, including Equal Business Opportunity (EBO) Enterprises, which will participate in this project. Responses should only address the key personnel who will be specifically assigned to this project (including those of any joint ventures, Consultants, sub-consultants, EBO Enterprise, etc.) and shall include no more than 10 resumes. Each individual resume shall be limited to no more than one standard page. Responses shall list no more than 10 projects and shall include the name and telephone number of a person who may be contacted for references for each listed project and shall indicate which of the key personnel listed were involved on the specific projects listed and in what capacity. Responses shall identify a maximum of 10 projects, with priority given to projects that are similar to the specific project for which services are being procured.
- 8.4 The Consultant shall provide a separate Project Organizational Chart showing the personnel and their specific involvement/responsibilities in this effort. This chart will not count towards the page limit of the technical submittal. Elaborate brochures or voluminous samples of irrelevant past experience are not required or desired. During the course of the project, the Consultant may not change the key personnel who are listed without written authorization from the County.
- 8.5 The project manager shall have a minimum of ten (10) years' experience in the State of Maryland similar to that required for this project. Documentation of this experience shall be incorporated as part of the SF330 form.

9 INSURANCE:

- 9.1 If a contract is awarded, the successful Consultant will be required to indemnify and hold the County and its agents and/or employees harmless from and against all liability and expenses, including attorney's fees, howsoever arising or incurred, alleging damage to property including environmental damage, or injury to, or death of any person arising or attributable to the Consultant or any if its sub-consultant's performance of the contract awarded.
- 9.2 The Consultant shall purchase and maintain during the term of the contract, including any renewals thereof, such policies of insurance acceptable to the County as will protect the Consultant and the County from claims or losses, regardless of whether such claims or losses result from the Consultant's actions or omissions or those of a sub-consultant or those of anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The following coverage is mandatory but may not be all inclusive, based on the parameters of the proposal:
 - 9.2.1 Workers' Compensation Insurance with limits of coverage as follows:
 - 9.2.1.1 Coverage A: Statutory, covering Maryland jurisdiction.
 - 9.2.1.2 Coverage B: \$100,000.

- 9.2.2 Automobile Liability Insurance with limits of liability of at least \$1,000,000 combined single limit per occurrence. Coverage for non-owned and hired vehicles shall be included. If hazardous materials are transported, insurance shall comply with applicable law relating to such transport.
- 9.2.3 Commercial General Liability Insurance with combined single limits of \$1,000,000 per occurrence, naming “Howard County, Maryland, its officials, employees, agents and volunteers” as Certificate Holder and as Additional Insured. Unless deemed unnecessary by the County, the policy shall contain, but not be limited to, the following coverage endorsements:
- 9.2.3.1 Contractual Liability, including Sub-Consultants.
 - 9.2.3.2 Personal and Advertising Injury.
 - 9.2.3.3 Products and Completed Operations.
 - 9.2.3.4 Explosion, Collapse and Underground Hazards (XCU), required if such exposure exists due to the nature of the work to be performed.
- 9.2.4 Professional Liability/Errors and Omissions insurance to the Consultant’s profession with policy limits of at least \$1,000,000 per claim. Consultant shall continue to maintain such insurance, covering incidents occurring or claims made, for a period of three years after substantial completion of the project.
- 9.3 If any of the insurance policies required to fulfill the requirements of the work are written on a claims-made basis, Consultant shall continue to maintain such insurance, covering incidents occurring or claims made, for a period of three years after substantial completion of the project.
- 9.4 All policies of insurance shall be underwritten by companies ~~licensed~~ to do business in the State of Maryland.
- 9.5 The Consultant shall assure that all sub-consultants performing services in accordance with this EOI carry identical insurance coverage required of the contract, either individually or as an Additional Insured on the policies of the Consultant. Exceptions may be made only with the approval of the County. Consultant shall indemnify the County for any uninsured losses relating to the contractual services involving sub-consultants, including workers’ compensation claims. 
- 9.6 The Consultant shall not commence work under the contract until evidence of all required coverage is received by the County. Further, the Consultant shall continue to provide the County with evidence of policy renewals until the completion of the contract and shall not ~~reduce or cancel or change~~ any of the required coverage without 30 days’ notice of such change to the County.
- 9.7 The Consultant will not hold the County liable for any injuries to the employees, servants, agents, sub-consultants or assignees of the contract arising out of or during the course of services relating to this agreement. 
- 9.8 The providing of any insurance required herein does not relieve the Consultant of any of the responsibilities or obligations assumed by the Consultant in the contract awarded of for which the Consultant may be liable by law or otherwise.
- 9.9 The Consultant shall provide the County with Certificates of Insurance within ten days of award notification, naming “Howard County, Maryland, its officials, employees, agents and volunteers” as Certificate Holder and as Additional Insured on the certificate. Failure to provide the certificates as required shall result in rejection of award by the County. Such certificates shall provide that the County be given at least 30 days prior written notice of any cancellation of, intention to not renew, ~~or material change in such coverage~~. Failure to maintain such insurance as required above shall be deemed as a material breach of the contract and shall operate as an immediate termination thereof.

10 SUBMISSION OF EXPRESSIONS OF INTEREST:

- 10.1 All Expressions of Interest shall be submitted in sealed, clearly marked envelopes to the Office of Purchasing. A total of 5 (five) copies of the Expression of Interest package (one original and 4 copies) shall be submitted.
- 10.2 All firms will be notified of the status of their Expression of Interest. Please do not call the County.
- 10.3 The County will dispose of, in a secure manner, all Expressions of Interest upon completion of the selection process.

11 EVALUATION OF EXPRESSIONS OF INTEREST:

- 11.1 Evaluation of Expressions of Interest and subsequent award of the contract shall be made according to the conditions, stipulations, and provisions of the Howard County Code, the Howard County Purchasing Manual and the Qualifications Based Selection (QBS) process. The technical evaluations of the submittals will be made based on the criteria listed in Appendix A, rating the firm's experience, project management ability, approach to the project, understanding of the work effort and qualifications of personnel to be assigned to the project.
- 11.2 In accordance with Howard County Code Sec. 4.117 (a) (4), the quality of performance of previous contracts or services shall be considered in the evaluation. Quality of performance may be determined through contracts or services provided to the County or to other entities. Quality of performance to other entities will be determined from reference checks when references are required. The determination of quality performance includes the Consultant's history of reasonable and cooperative behavior and commitment to customer satisfaction and the Consultant's businesslike concern for the interests of the customer. The County reserves the right to reject any submittal deemed not responsible or non-responsive.

12 SELECTION OF TOP-RANKED FIRM:

- 12.1 After evaluation of the Expressions of Interest, the firms will be ranked by a selection committee. A minimum of three top-ranked firms will be interviewed. The selection of the top ranked firm will be based on this interview.
- 12.2 Upon completion of the interview evaluation, the top ranked firm may be requested to submit a technical proposal. The County will then undertake negotiations with that firm. Should the County be unable to negotiate a satisfactory agreement with that firm, negotiations shall be formally terminated. The County shall then undertake negotiations with the second top-ranked firm, and so forth.
 - 12.2.1 The County will utilize its standard QBS consulting services agreement, attached as Appendix B.
 - 12.2.2 The County expects firms to utilize competitive overhead and labor rates. The Department of Public Works has instituted a ceiling multiplier of 2.8 times the hourly rate, inclusive of a maximum profit of 10%. This is not a proffered rate, but a ceiling, with Howard County committed to achieving cost-effective methods and services, at the time of the negotiations, the Consulting firm shall submit a certified payroll and a current audited overhead rate.

IMPORTANT: Please note the page limit in paragraph 7, Technical Submittal. Failure to comply with page limit may result in rejection of your submittal.

13 COOPERATIVE PURCHASE:

- 13.1 The County reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of any Agreement resulting from this solicitation to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities including non-public schools. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The Consultant agrees to notify the issuing body of those entities that wish to use any Agreement resulting from this solicitation and will also provide usage information, which may be requested.
- 13.2 The County assumes no authority, liability or obligation, on behalf of any other public or non-public entity that may use any Agreement resulting from this solicitation. All purchases and payment transactions will be made directly between the Consultant and the requesting entity. Any exceptions to this requirement must be specifically noted in the bid response.

APPENDIX A

CONSULTANT SELECTION PROCEDURE

1. Experience: Background experience of Consultant within the specialty under review. Evaluation shall reflect the amount of work Consultant has done, the complexity of such work, and relevance of the work to the project tasks under review.

5	Superior
4	Excellent
3	Good
2	Average
1	Below Average
2. Diversity: Ability of Consultant to provide the disciplines related to the specific work effort:

5	All
4	75%
3	50%
2	35%
1	Specialty Only
3. Consultant's approach to project, including innovativeness:

5	Superior
4	Excellent
3	Average
2	Below Average
1	Poor
4. Consultant's understanding of the work effort and of similar projects:

5	Superior
4	Excellent
3	Good
2	Average
1	Below Average
5. Qualifications of personnel to be assigned to the project:

5	Very qualified - has worked on many similar projects
4	Qualified - has worked on similar projects
3	Qualified - has worked within discipline
2	Qualifications vague - may be able to complete work
1	Qualifications questionable
6. Response to questions asked in paragraph 7.2:

5	Superior
4	Excellent
3	Good
2	Average
1	Below Average

APPENDIX B

CONSULTING SERVICES

AGREEMENT CA XX-XX

**NPDES WATERSHED MANAGEMENT PROGRAM/
NPDES MUNICIPAL PERMIT ANNUAL REQUIREMENTS**

BY AND BETWEEN

HOWARD COUNTY, MARYLAND

AND

[NAME OF FIRM]

ARTICLE 1. PARTIES

This Agreement is made and entered into by and between **HOWARD COUNTY, MARYLAND**, a body corporate and politic, hereinafter referred to as the “County,” and the firm of **[NAME AND ADDRESS OF CONTRACTOR – ALL CAPS AND BOLD]**, hereinafter referred to as “Consultant” as a result of Expression of Interest No. ____-____.

ARTICLE 2. DOCUMENTS

The documents constituting the Agreement between the County and Consultant shall consist of this Agreement and the following exhibits:

- A: Scope of Work attached hereto as Exhibit A.
- B: Schedule of Prices attached hereto as Exhibit B.
- C: Related information attached as Exhibit C.

ARTICLE 3. WORK EFFORT [AND TERM OF AGREEMENT] ADD THIS TO HEADING AND ITEM F FOR REQUIREMENTS CONTRACT.

- A. Consultant hereby agrees to undertake the work efforts generally and specifically defined within Exhibit A, and to adhere to, comply with and respond to all performance requirements, conditions, restrictions and provisions stated therein.
- B. Consultant, in consideration of the fee specified hereinafter, covenants and agrees to perform, in connection with this Project, with the assistance of competent registered professional staff, and/or sub-consultants, the professional services detailed in one or more of the following major phases of the Agreement described hereinafter and in the Contract Documents.
- C. All professional services are to be performed in accordance with generally accepted professional practices and in accordance with all applicable laws and regulations, including but not limited to, the latest Howard County criteria, Howard County Design Manuals, BOCA Code, Plumbing Code and Electrical Code as well as the criteria of all other Federal, State and local agencies that may have jurisdiction.
- D. Consultant acknowledges the importance to the County of the County’s project schedule. Where

applicable, the project schedule is included in Exhibit A. The Consultant agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

- E. Where applicable, the Services to be provided by Consultant shall be performed in the phases described in Exhibit A and shall include, but not be limited to all other services required in accordance with generally accepted practices consistent with the terms of this Agreement, and specifically identified and described in the Contract Documents.
- F. This Agreement represents a requirements type contract and shall be effective when executed by the County and shall continue through [Insert Date – spelled out] [, at which time the County may exercise its option to renew.] The County reserves the right to renew this Agreement for [insert renewal period] on the same terms and conditions set forth herein. Unless set forth in a written amendment, the compensation and manner of payment set forth herein shall remain as is. In the event any renewal changes the terms and conditions set forth herein, the approval of the Howard County Council may be required.

ARTICLE 4. SCHEDULE

- A. Consultant shall commence work within seven (7) days upon receipt of written notice to proceed and a Purchase Order from the County, such notice being contingent upon the execution of this Agreement by the County and Consultant. The work shall be completed in an expeditious manner and in such sequence as agreed upon between the Consultant and the County and as set forth in the Project Schedule. Time is of the essence of this and all other obligations of Consultant under the Agreement. If there is a conflict between the provisions set forth in the Purchase Order Terms and Conditions and/or the General Conditions of the solicitation and/or this Agreement, the terms and conditions set forth in the Agreement shall govern.
- B. If the County determines that Consultant is behind schedule, Consultant shall expedite and accelerate its efforts, including providing additional staff and/or overtime, to maintain the Project Schedule, all at no additional cost to the County. In the event that such acceleration is necessary, Consultant shall provide to the County any such verification the County requires in order to allow the County to determine that such accelerated effort is in fact being performed.
- C. Except when circumstances beyond the control of Consultant and concurred in writing by the County shall warrant alteration, adjustment or deviation from the Schedule, the following circumstances shall constitute a sufficient basis for the issuance of a Termination Notice in accordance with Article 10 of this Agreement:
 - 1. Failure to meet or maintain the Project Schedule;
 - 2. Failure to maintain the scheduled level of effort as proposed and prescribed; and/or
 - 3. Deviation from the Project Schedule without prior approval of the County.

If Consultant fails to meet or to maintain the Project Schedule, and the County does not terminate, any such forbearance by the County shall not waive its rights to terminate at any time in accordance with this subparagraph or any other provision of this Agreement.

Consultant shall indemnify and hold harmless the County from claims or damages incurred by the County by reason of Consultant's failure to meet or to maintain the Project Schedule.

ARTICLE 5. PERSONNEL AND SUB-CONSULTANTS

Unless otherwise required by the EOI, all key Personnel and Sub-Consultants listed in response to the RFP shall not be changed, except with prior written approval of the County. Consultant must submit to the County's Project Manager a list of all proposed additional Consultants and may not retain any without the prior written approval of the County. Consultant shall utilize the personnel and Sub-consultants listed. All personnel and Sub-

consultants shall be and remain satisfactory to the County and shall not be changed without prior written consent of the County unless personnel cease to be in Consultant's employ in which case substitutes must be provided and must be acceptable to the County.

Consultant represents that all necessary personnel required to perform the services under this Agreement are not employees of and do not have any contractual relationship with agencies providing funds for the project.

ARTICLE 6. DEVIATIONS FROM THE DESIGN MANUAL

Any deviations from the standards or criteria established in the Howard County Design Manual which Consultant believes to be necessary for the completion of the design must be listed in a letter to the Project Manager, either submitted separately or submitted with the drawings and specifications. The deviations are to be clearly identified with reasons why they are necessary. Approval of the deviations will be by return letter from the Bureau of Engineering signed by the Bureau Chief.

ARTICLE 7. COST ESTIMATES AND DESIGN REVISIONS

Unless otherwise required in the RFP, Consultant, based upon approved design documents, shall prepare for approval by the County an estimate of construction cost. The estimate shall be the most reasonable estimate possible and shall be broken down to show for each building, structure or bid items, quantity and unit costs. A 10% contingency shall be included in the final estimate. If the project budget is exceeded by the lowest bona fide bid or negotiated proposal, the County may cooperate in revising the project scope and quality as required to reduce the construction cost. Where applicable, Consultant without additional charge shall modify the contract documents as necessary to comply with the project budget. This article shall be the limit of Consultant's responsibility by reason of the project budget.

ARTICLE 8. CLAIMS AND DISPUTES

A claim is a demand or assertion by Consultant seeking adjustment or interpretation of the terms of this Agreement, payment of money, extension of time or other relief with respect to the terms of this Agreement. "Claim" also includes other disputes and matters in question between Consultant and the County arising out of or relating to this Agreement. Claims must be made by written notice and shall be made by Consultant promptly after the occurrence of the event giving rise to the claim, but in no event later than 21 days after such occurrence or within 21 days after Consultant first recognizes the condition giving rise to the claim, whichever is later. Supporting data shall be provided with the notice of a claim. As to any supporting data that is not available at the time of the notice, Consultant shall provide with the notice its best estimate of the total cost of the claim and further supporting data shall be provided as soon as it becomes available. Consultant shall certify that the claim is made in good faith, that the supporting data is accurate and complete to the best of its knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which Consultant believes the County is liable. All provisions of this paragraph are conditions precedent to any claim and all provisions must be satisfied otherwise the claim shall not be valid. Any additional claim made after the initial claim has been implemented by change order or amendment to this Agreement shall not be considered. No claim by Consultant shall be allowed if demanded or asserted after final payment under this Agreement.

Pending final resolution of the Claim, including litigation, unless otherwise agreed in writing, Consultant shall proceed diligently with the performance of its services under this Agreement and the County shall continue to make payments in accordance with the terms of this Agreement.

Prior to the institution of any litigation by Consultant, and as an express condition precedent thereto, the parties shall attempt to resolve the dispute by agreement between Consultant and the County and any dispute which is not so disposed of by Agreement shall be decided by the Director of the Department of Public Works, or his/her designee who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to Consultant. At the sole option of the County, the Appeal to the Director may be designated in writing to the Consultant as a final arbitration proceeding or otherwise as a proceeding under Md. Code Article 25A, §1A "Determination by County Officer Subject to Court Review". In this event, a formal hearing shall be held before the Director or his designee and

the Consultant shall have the right to call witnesses and submit documents or other evidence as well as such other rights as are provided in the Howard County Administrative Procedure Act. Either party may appeal the decision of the Director of the Department of Public Works to the appropriate Howard County Court as designated herein. No such appeal or litigation shall be instituted later than 30 days after the date of receipt of the Director's decision. Failure to institute such proceedings within such 30 day period shall result in the Director's decision becoming final and binding upon Consultant and the County.

Any controversy, dispute or claim arising out of, touching upon, or related to this Agreement or the breach thereof shall be resolved in the Circuit Court (or District Court) for Howard County, Maryland and the parties hereby consent to and agree to the jurisdiction of that Court as the exclusive forum for the resolution of such controversies, disputes or claims. Provided, however, in the event the presence of third parties is required for the complete resolution of the dispute, and the Howard County courts do not have jurisdiction over such third parties, then the County, at its sole option, may elect to have the dispute resolved in any court of appropriate jurisdiction.

At the County's option, Consultant may be joined in any jurisdiction as a party to any dispute initiated by any Third Party.

All references in this Agreement to the Director of the Department of Public Works shall be deemed to include the Director or his/her designee.

Any failure of the Consultant to give any notice, to provide supporting data or claim certification, or to file any appeal within the times set forth in this Agreement, shall forever bar and waive the claim regardless of whether the County incurred or demonstrates any prejudice resulting from the Consultant's failure to meet the time limits set forth in this Agreement.

ARTICLE 9. NOTICES

Any notice required by this Agreement to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows:

As to the County: _____

As to the Consultant: _____

or to such other address as shall be duly given by notice meeting the requirement of this Article.

ARTICLE 10. TERMINATION

Upon written notice to Consultant, the County may terminate the performance of work under this Agreement, in whole or part, in accordance with the following criteria:

A. For Default:

Whenever Consultant shall default in performance of the terms of this Agreement and shall fail to cure such default within a period of ten days (or such longer period as the County may allow) after receipt from the County of a notice specifying the default. Consultant shall not be entitled to further payment until the work required under this Agreement is completed. Consultant shall pay to the County any incidental or consequential costs or damages incurred by the County, together with any completion costs incurred by the County in excess of what would otherwise have been payable under this Agreement.

B. For Convenience:

Whenever for any reason the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Consultant of a Notice of Termination specifying the basis for the termination, the extent to which performance of work is terminated and the effective date of such termination. In the event of termination for convenience under this provision, Consultant shall be entitled to receive compensation for the portion of its fee earned up to the date of termination and all substantiated expenses reimbursable under this Agreement, if any, as of the date of termination. No other or additional sums, whether for lost profits, overhead, consequential damages, or any other damages or claims whether in contract or in tort, shall be payable by the County.

- C. If after termination of this Agreement or any part thereof for default under “A” above it is determined that Consultant was not in default pursuant to “A,” or that Consultant’s failure to perform satisfactorily is due to causes beyond the control and without fault or negligence on the part of Consultant, the Notice of Termination shall be deemed to have been issued under “B” above, and the rights and obligations of the parties shall be governed and resolved accordingly.
- D. Upon receipt of a Notice of Termination and except as otherwise directed by the County, Consultant shall: (1) stop work under the Agreement on the date and to the extent specified in the Notice of Termination; (2) take all necessary or appropriate steps to limit disbursements and minimize costs; and (3) furnish a report, as of the date of receipt of notice of suspension or termination, of the status of all activities conducted under the terms of this Agreement, including the work effort, funds, results accomplished, conclusions resulting there from and such other matters as the County may require.
- E. In the event of termination under this Article, Consultant consents to the County’s selection of another Consultant of the County’s choice to assist the County in any way in completing the Project. Consultant further agrees to cooperate and provide any information requested by the County in connection with the completion of the Project including assignment of any contract rights the County may require. Consultant consents to and authorizes the making of any reasonable changes to the design of the Project by the County and such other Consultant as the County may desire. Except for the status report required in (D) above, any services provided by Consultant which are requested by the County after termination shall be fairly compensated by the County in accordance with the Rate Schedule set forth in the Contract Documents (“Rate Schedule”).
- F. Notwithstanding the provisions of this Article, Consultant shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of this Contract by Consultant and the County may withhold any payments to Consultant for the purpose of set-off until such time as the exact amount of damages due to the County from Consultant is determined.

ARTICLE 11. RECORDS AND AUDIT

- A. Consultant and its sub-consultants or subcontractors shall maintain books, records, documents and other evidence directly pertinent to costs, estimates and performance under this Agreement and any Federal, State or local rule or regulation, in accordance with accepted professional practice, appropriate accounting procedures and practices. The County, or any of its duly authorized representatives, shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. Consultant will provide proper facilities for such access and inspection.
- B. Audits conducted pursuant to this Article shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the American Institute of Certified Public Accountants. Consultant agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraph (A) above. Where the audit concerns Consultant, the auditing agency shall afford Consultant an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the pertinent written comments, if any, of the audited parties.

- C. Records under paragraph (A) above shall be maintained and made available during performance under this Agreement and until three (3) years from the date of final completion of the Project. In addition, those records that relate to any dispute or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken shall be maintained and made available until three (3) years after the date of resolution of such dispute, litigation, claim or exception.
- D. The Consultant shall include the provisions of this Article in every sub-consultant contract or subcontract for the Work.
- E. If Consultant or his subcontractors or sub-consultants fail to retain for the period of time required by this Article the documents referenced herein, Consultant herein shall be entitled to no damages, compensation or equitable adjustments (including time extensions) for any claims based on information available from, or which may be verified by, documents that have not been retained.

ARTICLE 12. DEFECTIVE WORK

Neither the performance of services by the Consultant nor County acceptance of required reports shall relieve Consultant from the obligation to correct any defective work, whether previously or subsequently noted, and all defective work shall be remedied by Consultant on demand and at no cost to the County. Defective work includes, but is not limited to, such matters as erroneous or missing tabulations, drawings, contract documents, incomplete surveys, maps, or reports and incorrectly assembled reports, publications, etc. which is caused by error or omission. The County may withhold a reasonable amount from funds otherwise due Consultant on account of incomplete or defective work until such defective or incomplete work is cured.

ARTICLE 13. CHANGES OR ADDITIONAL SERVICES

The County may, from time to time, require changes in the scope of the services of Consultant to be performed hereunder. Such authorized changes or additional services, including any increase or decrease in the amount of the compensation to the Consultant, shall be incorporated in written change orders to the purchase order to this agreement and payment or adjustment effected as set forth in Article 25 of this Agreement. No such work shall proceed until Consultant receives an executed Change Order from the County.

ARTICLE 14. WAIVERS

The failure of the parties to enforce, at any time, the provisions of this Agreement or to exercise any option which may be provided herein shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Agreement or any part thereof or the right of the parties to enforce thereafter each and every provision.

ARTICLE 15. COUNTY FURNISHED DATA

Where existing information, data, reports, records, and maps as are existing and identified by Consultant, available to the County without significant cost, and necessary for the carrying out of the work, the County shall furnish such data to Consultant without charge.

The County shall provide no clerical assistance to Consultant for this Project and County personnel shall not be asked to undertake surveys, analyses, tabulations, summaries, etc., of Consultant-produced data or documentation. However, County employees may participate in Consultant-conducted surveys as questionnaire recipients or survey groups for the purpose of providing information and opinions.

ARTICLE 16. MEETINGS

Throughout all phases of the Project, Consultant and its sub-consultants must meet periodically with the County Project Manager when reasonably requested. Attendees shall be as determined by the County Project

Manager. When requested by the County Project Manager or the Director, selected Consultant personnel shall attend meetings, conferences and presentations with County staff, public agencies, private organizations and others concerned with this project. Consultant shall take and transcribe minutes of all project meetings and provide them to the County within 10 days of such meeting(s).

ARTICLE 17. PAYMENT

The Consultant hereby agrees to undertake the project for the fee and/or the unit prices set forth in Exhibit B attached hereto and any additional sums added by approved change order. Payment shall be in proportion to the services performed so that the compensation at the completion and issuance of written approval of each phase of the work shall not exceed the amounts set forth in Exhibit B.

County-directed adjustments in direction or emphasis of the work effort will not be considered as adequate justification for cost renegotiation, provided such adjustments do not constitute a change in the general scope of the Project.

Payments for Additional Services of Consultant as described under Article 25 shall be made monthly upon presentation of Consultant's statement of services, fully supported by invoices, time records, and other documentation as requested by the County. The fee for such Additional Service shall be so identified on the Consultant's invoice or statement.

OPTION A:

In no event shall the total compensation paid to the Contractor under this Agreement exceed the sum of _____ Dollars (\$ _____) during the entire term of this Agreement.

OPTION B: [CHOOSE THIS OPTION FOR PROJECT SPECIFIC AGREEMENTS TO ACCOMMODATE DISCRETIONARY FUNDS. THIS OPTION MAY BE USED ON REQUIREMENTS CONTRACTS, WHEN APPROVED BY THE PURCHASING ADMINISTRATOR.]

In no event shall the total compensation paid to the Contractor exceed the budget appropriation. **[ADD FOR TERM AGREEMENTS: during the term of this Agreement][, including renewals thereof] REMOVE THE RENEWAL PHRASE ON PROJECT SPECIFIC AGREEMENTS SINCE THERE ARE NO RENEWALS.**

(For Requirements Contract's Only):

Prices shall be firm for one year from the effective date of the Agreement. Salary and rate adjustments for each renewal period beyond the first year's contract will be at the sole discretion of the County. During each renewal period, the County will entertain requests for escalation in accordance with the current Consumer Price Index at the time of the request or up to a maximum 5% increase on the current pricing, whichever is lower. *(For purposes of this section, "Consumer Price Index" shall be the Consumer Price Index-All Urban Consumers (CPI-U), Washington-Baltimore, DC-MD-VA-WV, All Items, Not Seasonally Adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.)* The County reserves the right to grant or deny the request for a price increase and will do so in writing. If the price increase is granted, the price increase will be effective upon written approval and will remain firm through the renewal period. All requests for rate and salary adjustments shall be accompanied by certified payrolls and/or audited overheads showing the actual salaries and expenses justifying the increase. Requests for price adjustments shall be submitted to the Office of Purchasing, 6751 Columbia Gateway Drive, Suite 226, Columbia, MD 21046 referencing this Expression of Interest number and the contract number and title.

All labor rates shall be fixed for a period of two (2) years from the date of Purchase Orders, or six (6) months beyond the applicable completion date set forth in the Project Schedule, whichever is later. Where the Project is extended beyond such date, Consultant shall be entitled to an increase in fee. The increase shall be calculated by comparing Consultant's expenses and payroll rates in effect at the specified completion date for the Project and those expenses incurred and payroll rates in effect as of a date at least six months beyond the completion date shown on the Project Schedule. Consultant shall be allowed the appropriate percentage of increase in payroll and expenses providing such increases actually reflect increases in payroll and expenses occurring since the completion date in the original Project Schedule. Such increases shall be verified by submitting such documentation as the County may require reflecting any cost increases claimed. Such increases shall be limited to direct costs and expenses only and

shall not include overhead or profit or any increase in any multiplier.

ARTICLE 18. COVENANT AGAINST CONTINGENT FEES

Consultant warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement. For breach or violation of this warranty Howard County shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

ARTICLE 19. METHOD OF PAYMENT

- A. Consultant shall, at the designated time set forth in the Project Schedule incorporated into this Agreement, submit on its standard form an invoice for its services rendered. The invoices shall indicate the percentage completion of each of the major tasks, and the total amount due for the billing period.
- B. Consultant will submit the original and two copies of the invoice directly to the Howard County Department of Public Works, Capital Projects Division, 9250 Bendix Road, Columbia, MD 21045. This invoice will be reviewed and verified for work accomplished as set forth in the Scope of Work attached hereto as Exhibit A and when certified as acceptable, will be forwarded to the County's Director of Finance for payment.
- C. In event of dispute or defective work, the County reserves the right to withhold payment until such time as the dispute is resolved, the defective work corrected, or settlement is achieved through other means. Any such withholding shall not excuse Consultant from proceeding diligently with the performance of services under the Contract Documents.

ARTICLE 20. EQUAL EMPLOYMENT

By signature hereon Consultant agrees and affirms that it accepts and will conform to the Howard County Affirmative Action Program, which states that:

"Howard County expects that the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, gender identity/expression, sex or age. The Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, national origin, sex or age."

In addition, Consultant further certifies that it now complies and will continue to comply with all federal, state and local laws and regulations pertaining to equal opportunity and equal employment practices.

ARTICLE 21. CONFLICT OF INTEREST

- A. No officer or employee of the County and no member of its governing body, and no other public official of the governing body of the locality or localities in which the study is situated or being carried out, or of other local public agencies, who exercises any functions or responsibilities in review or approval of the undertaking or carrying out of this study, during his tenure or one year thereafter shall have any personal interest, direct or indirect, apart from his official duties, in this Agreement or the proceeds thereof.
- B. Consultant covenants that it has presently no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this

Agreement no person having such interest shall be employed.

ARTICLE 22. INDEMNIFICATION AND INSURANCE

A. Indemnification

1. The Consultant shall be responsible for all damage to life and property arising out of or resulting from the negligent performance of the professional services of consultant's sub-consultants, agents, or employees under this agreement.

Further, to the extent permitted by law, the Consultant shall indemnify, hold harmless and defend the County, its officials, agents, employees, successors and assigns against and with respect to any and all losses, damages, suits, claims, judgments and expenses whatsoever ("losses"), including without limitation costs of investigation, litigation and attorney's fees, arising directly or indirectly from the negligent performance of this Agreement by the Consultant, its officers, employees, agents, or sub-consultants. The foregoing shall apply, without limitation, to losses of all types including destruction or degradation of the environment and all clean-up costs, fines, penalties and other pollution-related items. This indemnification is not to be deemed as a waiver of any immunity which may exist in any action against Howard County, MD. In the event that there is a conflict between the indemnification provision set forth in the Purchase Order Terms and Conditions and/or the General Conditions of the solicitation and/or this Agreement, the terms set forth in the Agreement shall govern.

2. In any and all claims against the County or any of its agents or employees or any employee of the Consultant, or any sub-consultant, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under subsection 1 above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any sub-consultant under workers' compensation laws, disability benefits acts, or other employee benefits.
3. Unless otherwise stated within this Agreement, any property or work to be provided by the Consultant under this Agreement will remain at the Consultant's risk until written acceptance by the County. Until that time, the Consultant will replace, at Consultant's expense, all property or work damaged or destroyed by any cause whatsoever.
4. The Consultant shall not disclose any work product created by the Consultant under this Agreement to any other parties, except as may be authorized in writing by the County as required or permitted by public law.
5. The Consultant shall be considered for all purposes of this Agreement as an independent Consultant, shall not be an agent of the County and shall have no right or authority to enter into any agreements or otherwise bind the County or create any obligations on behalf of the County with other parties whatsoever.

B. Insurance Requirements

1. Insurance Coverage Required: The Contractor shall provide insurance required by the County pursuant to the insurance requirements specified in the Expression of Interest, including naming "Howard County, Maryland, its officials, employees, agents and volunteers" as Certificate Holder and as Additional Insured. The contractor shall maintain the insurance coverages required by the County while this Agreement is in force, and provide documentation of such insurance in a form satisfactory to the County. Such documentation may, in the discretion of the County, be in the form of binders or declarations from the insurance company.

Unless otherwise stated, the Consultant shall purchase and maintain during the term of the Agreement, the following coverages:

a. Workers' Compensation Insurance with limits of coverage as follows:

- (1) Coverage A: Statutory, covering Maryland jurisdiction.
- (2) Coverage B: \$100,000

In cases where work is subcontracted, the Consultant shall require all sub-consultants to provide evidence that all of its employees are covered under Maryland workers' compensation insurance prior to the commencement of work.

b. Automobile Liability Insurance with limits of liability of at least \$1,000,000 combined single limit per occurrence. Coverage for hired and non-owned vehicles shall be added by endorsement.

c. Commercial General Liability Insurance combined single limits of \$1,000,000 per occurrence, naming Howard County, Maryland as an additional insured. At the discretion of the County, an aggregate limit greater than the occurrence limit may be required. As appropriate to the job and as deemed necessary by the County, the policy shall contain, but not be limited to, the following coverage endorsements:

Contractual Liability, including sub-consultants
Personal Injury
Advertising Injury
Products and Completed Operations
Broad Form Property Coverage
Fire Legal Liability

Explosion, Collapse, and Underground Hazards (XCU) - required if such exposure exists due to the nature of the construction site.

d. The County is not responsible for any damage or loss of materials stored on or within County-owned facilities. The Consultant shall provide necessary insurance coverage for such losses or shall assume full risk for replacement cost for its own materials and those of all sub-consultants.

e. IF ANY ARCHITECTURAL, ENGINEERING, DESIGN, INSPECTION OR PLANNING SERVICES ARE RENDERED, INCLUDING APPROVAL OF SUCH ACTIVITIES OF OTHERS, the following insurance is also required: Professional Liability\Errors and Omissions coverage appropriate to the profession with limits of at least \$1,000,000.00 per claim. Such coverage shall contain a retroactive date not later than the effective date of the Consultant's services in relation to this Agreement and shall contain, an agreement to maintain identical insurance, covering incidents occurring or claims made, for a period of three (3) years after substantial completion of the project.

2. General Insurance Provisions:

- a. All policies of insurance shall be underwritten by companies licensed to do business in the State of Maryland.
- b. The Consultant shall assure that all sub-consultants carry identical coverage as

shown above, either individually or as an additional insured on the policies of the Consultant. Exceptions may be made only with the approval of the County.

- c. The Consultant and all sub-consultants not named on the policies of the Consultant shall purchase commercial insurance for the coverages listed above. Approval for deductibles higher than \$100,000 for the liability policies must be obtained from the County.
- d. The purchase of insurance does not relieve the Consultant of any obligations assumed under this Agreement.
- e. Monies to become due the Consultant under this Agreement may be retained by the County as may be considered necessary until all suits or claims for damages have been settled or until Consultant furnishes to the County satisfactory evidence of insurance coverage with respect to such suits or claims.
- f. The Consultant shall not commence work under the Agreement until satisfactory evidence of all required coverage is received by the County. Further, the Consultant shall not reduce or cancel or change any of the required coverages without 30 days notice of such change to the County. Failure to maintain required insurance shall be viewed as a material breach of the Agreement by the Consultant. Upon notification by the County that required coverage has lapsed for the Consultant or any of its sub-consultants, the County shall have the right to purchase such insurance and the Consultant shall be responsible for the payment of any applicable insurance premiums.

ARTICLE 23. SUBCONTRACTING OR ASSIGNMENT

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, provided any such successor to the Consultant, whether such successor be an individual, a partnership or a corporation, is acceptable to the County, and neither this Agreement nor the services to be performed thereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the Department.

ARTICLE 24. DELAYS AND EXTENSIONS OF TIME

Consultant agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by him for any delays or hindrances, from any cause whatsoever during the progress of any portion of the services specified in this Agreement, unless expressly stated elsewhere in the Agreement Documents. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the County may decide. Time extensions will be granted only for excusable delays such as delays beyond the control and without the fault or negligence of Consultant.

Consultant must notify the County in writing upon discovery of an excusable delay with documentation concerning the cause(s) for delay. Any delay prior to notification shall not be considered excusable delay.

Consultant shall not be responsible for delay which may be occasioned by actions which a professional could not reasonably foresee but shall be responsible for those which would have been avoided by the exercise of usual and customary professional care. Consultant shall not be held liable for any failure to perform this Agreement within the time limitations if such failure arises out of causes beyond the control and without the fault or negligence of Consultant. Such causes include: Acts of God or of the public enemy; fires, floods; epidemics and quarantine restrictions; but in every case, the failure to perform must be beyond the control and without the fault or negligence of Consultant. However, Consultant shall only be excused if written notification of the delay is received no later than ten (10) days from the beginning of an excusable delay under this Article, and the County ascertains that any failure to perform is excusable under this Article. Except as provided in this Article, the County's contractual

rights and remedies in the event of a breach shall remain as provided by this Agreement and applicable law.

ARTICLE 25. CHANGES, ALTERATIONS OR MODIFICATIONS IN THE SERVICES, ADDITIONAL SERVICES

The County shall have the right, at its discretion, to change, alter or modify the services provided for in this Agreement and such changes, alterations or modifications may be made even though it will result in an increase or decrease, or addition to, the services of Consultant or in the contract cost thereof. Such changes, alteration or modification to the services provided for in this Agreement shall be made by written change orders to this Agreement.

Any such change, alteration or modification that either separately or in combination results in a change in the scope of services or an adjustment in the amount payable to Consultant shall be processed by written change order requisition and is effective only when the change order to the purchase order is issued by the County.

Any additional services performed shall be paid in accordance with unit prices set forth in the proposal or, if not covered by unit prices, in accordance with the additional service rates, with multiplier, as set forth in the Contract Documents ("Rate Schedule"). In the event that the scope of any work based upon a lump sum is reduced, any such lump sum reduction shall be based upon the prices set forth in Exhibit B for the particular activity involved or, at the County's option, upon the rates and multipliers as described in the Rate Schedule applied to the breakdown of tasks described herein. As to any lump sum item, Consultant shall submit to the County, prior to the start of the work, a breakdown of the tasks involved in each lump sum item and hours by discipline estimated to be used by Consultant on each task. At the County's option such listing may be the basis for reductions to Consultant's fee for reductions in scope not covered by unit price items.

It is assumed that where development of a design is contemplated by this Agreement, Consultant's work leading to final contract documents is normally an evolutionary process and changes occurring as a result of the County's review and participation in the process will not be considered as a change in scope and the basis for any additional compensation.

No additional services shall be performed by Consultant without prior notice to the County that the activity in question is considered to be an additional service by Consultant, together with a proposed fee adjustment. The County shall issue notice to proceed for the additional services. No additional services shall be paid for without such prior notice to the County and issuance of the County's Notice to Proceed. In the event the amount of or fact of additional services is subject to dispute, Consultant shall promptly proceed to perform the work subject to the dispute resolution provisions of this Agreement. Absent any dispute, payment shall be made upon satisfactory completion of said additional services. Payment shall be made upon satisfactory completion of any appropriate additional service and submission of additional service itemization on the application for payment.

Consultant shall not be responsible for payment for structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law that are not otherwise called for in this Agreement.

Consultant shall not be responsible for payment for necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

ARTICLE 26. AVAILABILITY OF DATA

Each party hereto shall make available to the other party, without cost, all non-proprietary technical data under its control reasonably necessary to the performance of the services required under this Agreement.

ARTICLE 27. OWNERSHIP OF DOCUMENTS AND RELEASE OF DATA

Consultant agrees that all data including but not limited to reports, drawings, studies, specifications, estimates, maps, photographs and computations prepared by or for him under the terms of this Agreement shall at any time during the performance of the services, or upon termination, be made available to the County upon request by

the County and shall become and remain the property of the County upon termination or completion of the services. The County shall have the right to use same without restriction or limitation and without compensation to Consultant other than that provided in the Agreement.

The type and quantity of work product or data to be provided by Consultant as the product of this effort is defined in Exhibit A, and the County reserves the right to use, duplicate and disclose this data, in whole or in part, in any manner for any purpose whatsoever and to authorize others to similarly do so. Consultant shall not release the results of any study or any reports or other material pertaining to it without the express written consent of the County except to comply with appropriate state and federal requirements; and in such instances shall consult with the County prior to so doing. Further, materials approved for release by Consultant cannot be distributed for profit.

ARTICLE 28. DISSEMINATION OF INFORMATION - CONFIDENTIALITY

During the term of this Agreement, the Consultant shall not release any information related to the services or performance of the services under this Agreement nor publish any final reports or documents without the prior written approval of the County.

ARTICLE 29. SANCTIONS UPON IMPROPER ACTS

If Consultant, or any of its officers, partners, principals, or agents, or if an employee of Consultant acting with its acquiescence, is convicted of a crime arising out of or in connection with the procurement of this Agreement or the services or any payment under it, the Agreement may be terminated as provided in Article 10. In the event of a conviction, Consultant shall be liable for the refund of all fee paid under the Agreement. The rights and remedies set forth herein shall be in addition to, and the exercise thereof shall in no way be considered or construed as a waiver of, any other rights or remedies granted or available to the County.

ARTICLE 30. REPRESENTATIONS AND RESPONSIBILITY OF CONSULTANT

- A. Consultant shall perform the services with that standard of care, skill, and diligence normally provided by a Consultant, Architect or Engineer in the performance of service similar to the services hereunder.
- B. Consultant represents and agrees that it is an experienced firm having the appropriately licensed personnel in sufficient numbers with the ability and skill necessary to perform all of the services required under this Agreement in connection with the design and/or construction and/or supervision of a project having the scope and complexity of the project contemplated herein; that it has the capacities and resources necessary to perform its obligations hereunder; and that it is fully familiar with all laws, rules, ordinances and regulations, state, federal or county which are applicable to all work required by or which may be ordered under the Contract Documents. This includes appropriate local ordinances, building codes of city, county, state and federal authorities applicable to the project, local sanitary laws and the rules and regulations and appropriate orders and interpretations by governing public authority of such requirements, laws, rules and regulations in effect at the time of commencement of services on the Project, and that all drawings, specifications and other documents prepared by Consultant shall be prepared in accordance with and shall accurately reflect and incorporate appropriate laws, rules and regulations.
- C. Consultant represents and agrees that drawings, specifications, reports and other documents prepared by it pursuant to this Agreement shall be complete and functional for the purposes intended and, except as to any deficiencies which are due to causes beyond the control of Consultant, Consultant further agrees that if any construction project is built in accordance with any such document it shall be structurally sound and complete and a properly functioning facility suitable for the purpose for which it is intended.
- D. Notwithstanding any review, approval, acceptance or payment by the County for Consultant's services, Consultant shall be and remain responsible for professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by Consultant under this

Agreement.

- E. If Consultant fails to perform the services, or any part of the services, in conformance with the standard set forth in Paragraph A above, and such failure is made known to Consultant within two years after expiration of this Agreement, it shall, if required by the County perform at its own expense and without additional cost to the County, those services necessary for the correction of any deficiencies or damage resulting, in whole or in part, from Consultant's failure. This obligation is in addition to and not in substitution for any other remedy available to the County.
- F. Consultant shall be required to furnish, upon request by the County, proof that it has the financial capacity to provide the services and that it is financially able -- through its own resources or through a qualified surety -- to protect the County from errors and omissions that might arise from direct performance of the services or the performance of the services by third parties relying on the completed design or work product.
- G. If applicable, the Contractor has complied with Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into, during any 12 month period, one or more contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, involving a cumulative consideration of at least \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions to a candidate, or a series of such contributions, in a cumulative amount in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

ARTICLE 31. CHOICE OF LAW

- A. This Agreement was made and entered into in Maryland, and is to be construed under the laws of Maryland. As to Consultant, this Agreement is intended to be a contract under seal and a specialty.
- B. The laws of Maryland and Howard County shall govern the resolution of any issue arising in connection with this Agreement, including, but not limited, to all questions on the validity of this Agreement, the capacity of the parties to enter therein, any modification or amendment thereto and the rights and obligations of the parties hereunder.

ARTICLE 32. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate Federal or State court located within the State of Maryland.

ARTICLE 33. COMPLIANCE WITH LAWS

Consultant hereby represents and warrants:

- A. That it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. That it is not in arrears with respect to the payment of any monies due and owing the County, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement;
- C. That it shall comply with all Federal, State and local laws, ordinances and legally enforceable rules and regulations applicable to its activities and obligations under this Agreement.
- D. That it shall procure, at its expense, all licenses, permits, insurance and governmental approvals, if

any, necessary to the performance of its obligations under this Agreement.

- E. That the facts and matters set forth in the Affidavit, incorporated into and made a part of this Agreement, are true and correct.

In addition to any other remedy available to the County, breach of any of the Paragraphs this Article shall, at the election of the County, be grounds for termination as provided for in Section IV, provided, however, that failure of the County to terminate this Agreement shall not be considered or construed as a waiver of such breach nor as a waiver of any rights or remedies granted or available to the County.

ARTICLE 34. COORDINATION WITH THE COUNTY

The respective requirements of County agencies shall be incorporated into the project to assure their concurrence and where required, their written approval of the development of the construction documents. The County will coordinate Consultant's request for specific information available from County agencies.

ARTICLE 35. PRECEDENCE OF DOCUMENTS

The order of precedence for interpretation of the services to be performed under this Agreement shall be this Agreement (including attached Exhibits) and subsequent change orders, if any.

ARTICLE 36. NOTICES AND WAIVER OF LEGAL RIGHTS

- A. Failure to provide a required notice or to submit a claim or appeal within the time prescribed in this Agreement shall operate as a waiver of any such claim regardless of whether the County incurred or demonstrates any prejudice by the failure to give such notice or to submit such claim or appeal.
- B. The waiver of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach. Any waiver by the County of a requirement of this Agreement or of any of the Contract Documents, including without limitation, any requirement that a notice be made in writing or that a notice or submission be made within a certain time, shall not operate as a waiver of the same or any other requirement of the Contract Documents, in any other circumstance or at any other time. The County need not incur or demonstrate prejudice in order to assert that a waiver of the Construction Manager's rights or claims results from the Construction Manager's failure to comply with any provision of this Agreement or any Contract Document, when this Agreement or the Contract Documents provide for any such waiver of any right or claim.

ARTICLE 37. ETHICS

- A. The Contractor certifies that the officer of the corporation who is executing this Agreement has read and understands Howard County Charter and Code References to Ethics, which contains the provisions of Section 901(a) of the Howard County Charter dealing with conflicts of interest and Section 22.204 of the Howard County Code dealing with conflicts of interest.
- B. The Contractor certifies that he/she has (1) not been a party to an agreement to bid a fixed or uniform price; (2) not offered nor will offer any gratuity to any county official or employee; and (3) not violated any of the fair employment provisions of Code Sec. 4.119 Ethics and Fair Employment Practices detailed in Howard County Charter and Code References to Ethics.

ARTICLE 38. MISCELLANEOUS

- A. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the County or Consultant.
- B. With the County's prior written approval, Consultant shall have the right to include representations of the project, including photographs, among Consultant's promotional and professional materials.

Consultant's material shall not include the County's confidential or proprietary information if the County has previously advised Consultant in writing, of the specific information considered by the County to be confidential or proprietary. Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Project are released for public information, advertisement or publicity, appropriate and proper credit shall be given to the County and Consultant.

- C. This Agreement represents the entire and integrated Agreement between the County and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instruments signed by appropriate County personnel and Consultant. The County and Consultant, respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- D. This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. This Agreement shall be construed to bind the parties hereto in accordance with the Constitution and laws of the State of Maryland.

IN WITNESS WHEREOF, the parties have caused this Agreement **CA-XX-XXXX** to be executed by affixing here on their respective seals and that he/she has authority to execute this Agreement on behalf of Consultant.

WITNESS:

[INSERT LEGAL NAME OF CONSULTANT]

Signature

Print Name:

By: _____

[Typed Name]

(SEAL)

[Title]

WITNESS:

HOWARD COUNTY, MARYLAND

By: _____

Lonnie R. Robbins

Chief Administrative Officer

Calvin Ball

County Executive

(Date)

APPROVED FOR LEGAL SUFFICIENCY

this _____ day of _____, 20**XX**:

Gary W. Kuc

County Solicitor

REVIEWING ATTORNEY:

Type Name: _____

Title: _____

APPROVED FOR SUFFICIENCY OF
FUNDS:

Janet Irvin

Director of Finance

DEPARTMENT APPROVED:

James M. Irvin

Director of Public Works

HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

Charter Section 901. Conflict of Interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Code Section 4.119. Ethics and Fair Employment Practices.

(a) **Conflict of Interest.** Bidders, vendors, purchasers and county employees involved in the purchasing process shall be governed by the provisions of the Howard County Charter and Howard County law regarding conflict of interest. No vendor shall offer a gratuity to an official or employee of the county. No official or employee shall accept or solicit a gratuity.

(b) **Discouragement of Uniform Bidding.**

(1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.

(2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.

(3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms and conditions of a bid submitted by a competitor.

(c) **Fair Employment Practices**

(1) Bidders, vendors and purchases may not engage in unlawful employment practices as set forth in Subtitle 2 "Human Rights" of Title 12 of the Howard County Code, Subtitle 6 of Title 20 of the State Government Article, Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engaged in such unlawful employment practices, they shall be subject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

(2) The Howard County Office of Human Rights shall notify the county purchasing agent when any bidder is found, by a court of competent jurisdiction, to have engaged in any high unlawful employment practices.

(3) If any bidder has been declared to be an irresponsible bidder for having engaged in an unlawful employment practice and has been debarred from bidding pursuant to this subtitle, the Howard County Office of Human Rights shall review the employment practices of such bidder after the period of debarment has expired to determine if violations have been corrected and shall, within 30 days, file a report with the county purchasing agent informing the agent of such corrections before such bidder can be declared to be a responsible bidder by the County Purchasing agent.

(4) **Payment of subcontractors.** All contractors shall certify in writing that timely payments have been made to all subcontractors supplying labor and materials in accordance with the contractual arrangements made between the contractor and the subcontractors. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented to the county purchasing agent.

Code Section 22.204. - Prohibited Conduct and Interests.

(a) **Participation Prohibitions.**

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;

d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

e. An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

f. A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph 1. of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) **Employment and Financial Interest Restrictions.**

(1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or

b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) **Post-Employment Limitations and Restrictions.**

(1) A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) For a year after the former member leaves office, a former member of the County Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(d) **Contingent Compensation.** Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the County.

(e) **Use of Prestige of Office.**

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(f) **Solicitation and Acceptance of Gifts.**

- (1) An official or employee may not solicit any gift.
- (2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.
- (3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:
 - (i) Is doing business with or seeking to do business with the County office, agency, board or commission with which the official or employee is affiliated;
 - (ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;
 - (iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
 - (iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.
- (4)
 - (i) Subsection (4)(ii) does not apply to a gift:
 - a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;
 - b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or
 - c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.
 - (ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:
 - a. Meals and beverages consumed in the presence of the donor or sponsoring entity;
 - b. Ceremonial gifts or awards that have insignificant monetary value;
 - c. Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;
 - d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;
 - e. Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;
 - f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the County and that the gift is purely personal and private in nature;
 - g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or
 - h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related, in any way, to the official's or employee's official position.

(g) **Disclosure of Confidential Information.** Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(h) **Participation in Procurement.**

- (1) An individual or a person that employs an individual who assists a County, agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.
- (2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

APPENDIX C**AFFIDAVIT**

Must be signed by an officer of the company (President, CEO, Vice President, etc.)

Contractor _____

Address _____

I, _____, the undersigned, _____ of the above named
(Print Signer's Name) (Print Office Held)

Contractor does declare and affirm this _____ day of _____, _____, that I hold the aforementioned office
(Month) (Year)
in the above named Contractor and I affirm the following:

AFFIDAVIT I

The Contractor, his Agent, servants and/or employees, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein.

AFFIDAVIT II

No officer or employee of Howard County, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will receive subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the County, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the County received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the County in connection with this contract, job, work, or service for the County, excepting, however, the receipt of dividends on corporation stock.

AFFIDAVIT III

Neither I, nor the Contractor, nor any officer, director, or partners, or any of its employees who are directly involved in obtaining contracts with Howard County have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state, or of the federal government for acts of omissions committed after July 1, 1977.

AFFIDAVIT IV

Neither I, nor the Contractor, nor any of our agents, partners, or employees who are directly involved in obtaining contracts with Howard County have been convicted within the past 12 months of discrimination against any employee or applicant for employment, nor have we engaged in unlawful employment practices as set forth in Section 12.200 of the Howard County Code, or Subtitle 6 of Title 20 of the State Government Article, Annotated Code of Maryland or, of Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended.

AFFIDAVIT V

The Contractor:

- i. Is not currently identified on the list created by the Maryland State Board of Public Works as a person engaging in investment activities in Iran as described in Section 17-702 of the *Maryland State Finance and Procurement Article* ; or
- ii. Is not currently engaging in investment activities in Iran as described in Section 17-702 of the *Maryland State Finance and Procurement Article*.

If the person is unable to make the certification, it will provide the County, a detailed description of the Contractor's investment activities in Iran.

AFFIDAVIT VI

If applicable, the Contractor has complied with Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into, during any 12 month period, one or more contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, involving a cumulative consideration of at least \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions to a candidate, or a series of such contributions, in a cumulative amount in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavits are true and correct to the best of my knowledge, information and belief.

Signature

Printed Name

Title

Rev. 07/20/2017

APPENDIX D**TECHNICAL SUBMITTAL SIGNATURE COVER PAGE****NPDES WATERSHED MANAGEMENT PROGRAM/
NPDES MUNICIPAL PERMIT ANNUAL REQUIREMENTS**

TO: HOWARD COUNTY OFFICE OF PURCHASING
6751 Columbia Gateway Drive, Suite 226
Columbia, MD 21046

The undersigned agrees to furnish and deliver the above services in accordance with the specifications issued for same, and subject to all terms, conditions, and requirements in the solicitation, and in the various solicitation documents:

COMPANY NAME: _____

FEDERAL TAX IDENTIFICATION NO./SOCIAL SECURITY NO.: _____

ADDRESS: _____

TELEPHONE _____ E-MAIL ADDRESS _____

REPRESENTATIVE'S NAME: _____

Provide the name and title of the person with legal authority to sign on behalf of the Contractor. If the title of the individual is not "President" or "Vice President", provide verification of the signatory authority with your submittal.

NAME OF COMPANY SIGNATORY (Printed): _____

TITLE OF COMPANY SIGNATORY (Printed): _____

Howard County prefers to email Purchase Orders when possible, please provide an **EMAIL ADDRESS FOR RECEIPT OF PURCHASE ORDERS:** _____

Is the company a Minority-, Women-, or Disabled-Owned Business Enterprise? ☐ YES ☐ NO

If yes, indicate the type of minority ownership:

☐ African American ☐ Asian American ☐ Disabled ☐ Eskimo
☐ Female ☐ Hispanic ☐ Native American

Is the company certified? If yes, indicate the certification(s) held:

☐ Howard County Government ☐ MD Dept. of Transportation ☐ City of Baltimore ☐ Other

Certification Number(s) and Expiration Date(s) _____

Does the company have a written non-discrimination policy (i.e.: race, creed, religion, handicap, color, sex, national origin, age, occupation, marital status, political opinion, sexual orientation, gender identity/expression, personal appearance, familial status, source of income)? ☐ YES ☐ NO

(The County reserves the right to request such documentation, if desired, at a later date.)

Payment Terms: (The payment terms shall be considered net 30 days unless otherwise indicated.) _____

ACKNOWLEDGEMENT OF ADDENDA: The company shall identify by number and date the following addenda and agree that the prices shown in the bid reflect all changes made by addenda. In addition to acknowledging addenda here, the actual addenda must be signed and returned with the bid. To check for addenda go to: www.howardcountymd.gov/departments/county-administration/purchasing

Number: _____ Date: _____ Number: _____ Date: _____
Number: _____ Date: _____ Number: _____ Date: _____

SIGNATURE _____ DATE: _____

PRINTED NAME _____ TITLE: _____

APPENDIX E

EQUAL BUSINESS OPPORTUNITY PARTICIPATION

NOTICE TO PRIME CONTRACTORS
15% SUBCONTRACTING GOAL ON CONTRACTS
VALUED AT \$50,000 OR MORE

Howard County Code Section 4.122 established an Equal Business Opportunity program to foster overall equity and fairness to all citizens in relation to business enterprises conducting business with the County.

If a contract is \$50,000 or more, the Prime Contractor shall make a good faith effort to comply with the Howard County Equal Business Opportunity (EBO) program's 15% subcontracting goal. The Prime Contractor shall make a good faith effort to obtain minority subcontractor participation even if the Prime Contractor has the capability to complete the work with its own workforce. Certified MBE/WBE/DBE prime contractors can count 100% of the work they self-perform on contracts with EBO subcontracting goals. The subcontracting goal percentage may vary if the contract is funded by a federal or state agency. Prime Contractors should submit the following completed *Equal Business Opportunity Subcontractor Participation Form* with the bid. Identify subcontractors prior to submitting the proposal. After contract award, changes in subcontractors require the written approval of the EBO Coordinator.

Possible areas of obtaining subcontracting participation include, but are not limited to, flagging services, hauling, copying and printing, and the purchase of materials used in performing the contract. Contractors may use minority, women or disabled business enterprises certified by Howard County, Maryland; the Maryland Department of Transportation; the City of Baltimore, Maryland; or another certifying entity in order to satisfy the 15% subcontracting goal. The website addresses for lists of minority businesses are:

<http://www.howardcountymd.gov/Purchasing>
http://www.mdot.state.md.us/MBE_Program/index.html
<http://cityservices.baltimorecity.gov/mwboo>

Contractors should submit a completed *Equal Business Opportunity Subcontractor Participation Form* with the bid identifying each certified EBO firm they intend to use on the contract. However, if the EBO Subcontractor Participation Form is not submitted with the bid, the County may request EBO subcontractor participation of the successful contractor.

Contractors failing to achieve the Equal Business Opportunity Program goal following a good faith effort to obtain participation must complete the *Equal Business Opportunity Program Request for Subcontracting Waiver* and provide documentation of its good faith attempts to obtain EBO participation. The County will determine if the efforts made satisfy a good faith attempt. A waiver will only be considered in rare contracts after a determination that the Contractor has made a good faith effort and thoroughly documented the efforts. Contractors should submit the *Equal Business Opportunity Program Request for Subcontracting Waiver* with the bid. However, if the request for waiver form is not submitted with the bid, the County may obtain the request for waiver of the successful contractor.

If the County exercises its option to renew the contract, it is expected that the EBO subcontracting goal will be met for each subsequent contract year when the contract amount is \$50,000.00 or more. Questions relating to the EBO program shall be directed to the EBO Coordinator 410-313-6370.

PRIME CONTRACTORS' COMPLIANCE OF EBO SUBCONTRACTOR PARTICIPATION

Prime Contractors that are awarded County contracts shall maintain adequate records of EBO participation on County contracts. The County may require that prime contractors report whether or not they met the proposed EBO subcontracting goal, so that the County can track compliance of EBO participation on County contracts.

Revised 12/05/2017



HOWARD COUNTY, MARYLAND

EQUAL BUSINESS OPPORTUNITY (EBO)

SUBCONTRACTOR PARTICIPATION FORM

COUNTY USE ONLY

EBO APPROVAL

CONTRACT TITLE:		
SOLICITATION #	CAPITAL PROJECT #	CONTRACT / PO #
TERM:	RENEWAL #	AMOUNT \$

PRIME CONTRACTOR NAME:			
ADDRESS:			PHONE:
EBO STATUS (Y/N):	*EBO TYPE:	CERTIFYING AGENCY:	CERTIFICATION #

PRIME CONTRACTOR SHOULD LIST ALL EBO SUBCONTRACTORS / SUBCONSULTANTS / SUPPLIERS

INSTRUCTIONS FOR COMPLETING THIS FORM

- Complete the section below identifying each certified EBO firm (Minority (MBE), Woman (WBE), and Disabled (DBE) Business Enterprises) you intend to use on this project. Attach additional sheets if more than two (2) subcontractors.
- This form represents the contractor's commitment to utilize the named EBO firms at the percentages indicated should the contract be awarded to the contractor. This form should accompany your bid or proposal.
- ***EBO Types:** AA (African American), ASA (Asian American), HIS (Hispanic American), NA (Native American), FEM (Female), DIS (Disabled)

SUBCONTRACTOR NAME:			
ADDRESS:			PHONE:
CONTACT REPRESENTATIVE:		EMAIL:	
*EBO TYPE (Check One) <input type="checkbox"/> AA <input type="checkbox"/> ASA <input type="checkbox"/> HIS <input type="checkbox"/> NA <input type="checkbox"/> FEM <input type="checkbox"/> DIS			
CERTIFYING AGENCY:	CERTIFICATION #	EBO PARTICIPATION %	
DESCRIPTION OF WORK:		EBO PARTICIPATION \$	

SUBCONTRACTOR NAME:			
ADDRESS:			PHONE:
CONTACT REPRESENTATIVE:		EMAIL:	
*EBO TYPE (Check One) <input type="checkbox"/> AA <input type="checkbox"/> ASA <input type="checkbox"/> HIS <input type="checkbox"/> NA <input type="checkbox"/> FEM <input type="checkbox"/> DIS			
CERTIFYING AGENCY:	CERTIFICATION #	EBO PARTICIPATION %	
DESCRIPTION OF WORK:		EBO PARTICIPATION \$	

PRINTED NAME

EMAIL

SIGNATURE (VENDOR OFFICIAL)

TITLE

DATE



APPENDIX F
Veteran-Owned Business Enterprise Program Form

In accordance with Section 4.130 of the Howard County Code, it is the policy of Howard County Government to encourage increased participation by Veteran-Owned Business Enterprises in the procurement of all goods and services through all solicitations by the County. The Veteran-Owned Business Enterprise (VOBE) program includes an overall aspirational goal of 1% of the County's total dollar value of procurement contracts to be made directly or indirectly with Veteran-Owned Business Enterprises. Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis.

For the purposes of the Veteran-Owned Business Enterprise Program, a Veteran-Owned Business Enterprise (VOBE) is defined as a business enterprise that is verified by the Center for Verification and Evaluation of the United States Department of Veterans Affairs as a Veteran-Owned Small Business Enterprise. To search the database of business enterprises that are verified by the Center for Verification and Evaluation of the United States Department of Veterans Affairs visit <https://www.vip.vetbiz.va.gov>.

Complete this form and return it with your response to the solicitation.

Complete Part 1 below if: Supplier is verified by the Center for Verification and Evaluation of the United States Department of Veterans Affairs as a Veteran-Owned Small Business Enterprise.

Complete Part 2 below if: Supplier is proposing to subcontract with a business that is verified by the Center for Verification and Evaluation of the United States Department of Veterans Affairs as a Veteran-Owned Small Business Enterprise.

Complete Part 3 below if: Supplier proposes NO Veteran-Owned Business Enterprise participation.

Check as applicable

1. ☐ Veteran-Owned Business Enterprise Certification:

Supplier is verified by the Center for Verification and Evaluation of the United States Department of Veterans Affairs

2. ☐ Veteran-Owned Business Enterprise Subcontract Participation:

Supplier proposes to subcontract with a business that is verified by the Center for Verification and Evaluation of the United States Department of Veterans Affairs in the contract as described below:

Name(s) of VOB Subcontractor(s): _____

Description of Work: _____

Percentage of Participation: _____ %

3. ☐ NO Veteran-Owned Business Enterprise Subcontract Participation Proposed.

Name of company: _____

Printed name: _____ Title: _____

Authorized signature: _____ Date: _____

Email: _____ Phone: _____

APPENDIX G

Information on Howard County, Maryland's Living Wage Requirement

Basics of the Howard County Living Wage Legislation

In 2007, the Howard County Council passed legislation requiring a minimum "living wage" for employees of certain contractors and subcontractors of Howard County. A Contractor that is defined as a "Covered Employer" under Howard County Code Section 4.122A shall pay each employee an hourly rate sufficient to at least equal 125% of the federal poverty guidelines for a family of four individuals calculated on the basis of a 40-hour work week for 52 weeks.

Howard County Code Sec. 4.122A applies to service contracts estimated to be over \$100,000.00 per year. The code does not apply to commodities contracts, contractors who employ fewer than 5 employees during the contract term, public entities, non-profit organizations, or contracts awarded under sole source, emergency, or expedited procedures. Other contractors may also be exempt; see the complete list of exemptions in Section 1 on the front of this form.

The living wage requirements do not apply to an employee:

- who performs no measurable work related to any contract with the County
- who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under the law
- who participates for not longer than 120 days in a calendar year in a government-operated or government-sponsored summer youth employment program
- for whom a different wage rate is expressly set in a collective bargaining agreement, or
- for whom a higher wage is required by a federal, state, or County law.

This form serves as written certification to the County of your firm's intent to comply with the County's wage requirements during this term and any subsequent renewals. A Covered Employer shall not subdivide a contract; pay an employee through a third party; or treat an employee as a subcontractor or independent Contractor to avoid the imposition of any requirement under this law. Failure to comply with this requirement at any time during the initial term and subsequent renewals may be sufficient cause for termination for default. A violation of this law is a Class A civil offense; in addition to a fine, the County may suspend or debar the violator under Howard County Code Sec. 4.117.

Current Living Wage Rate in Howard County

As of January 11, 2019, the Living Wage Rate is **\$15.47 per hour**.

How the Living Wage Rate is Calculated

The Howard County Living Wage Rate is calculated by taking 125% of the Federal Poverty Guideline for a family of 4, then using this amount to determine the hourly rate based on 40 hours/week. On January 11, 2019, the Federal HHS Poverty Guideline was published as \$25,750 for a family of 4 (see <https://aspe.hhs.gov/poverty-guidelines>).

$$125\% \text{ of } \$25,750 = \$32,187.50 \quad \$32,187.50 \div 52 \text{ weeks} \div 40 \text{ hrs/week} = \mathbf{\$15.47 \text{ per hour}}$$

This hourly rate must be paid to employees (full-time or part-time) during the time the employees actually provide services to the County. The current Living Wage remains in effect until new federal poverty guidelines are published, which is usually the following January. If there is a change, the Office of Purchasing will attempt to notify all current contractors via email using the email address provided on this form. The current rate is posted on our website at www.howardcountymd.gov/purchasing. It is the contractor's responsibility to ascertain the current rate.

Since the rate is subject to change annually, you must ensure that your bid pricing is sufficient to cover the cost of any increases during the term of the contract, including subsequent renewals. All prices shall take the current wage rate, and subsequent increases in the wage rate, if any, into account and there shall be no unit price adjustment for future wage rate increases during the initial term of this agreement and any subsequent renewals thereof. Future wage rate increases are hereby defined as any new rates approved by the County that take effect after and supersede the rate shown in this solicitation.

If you have questions about the Living Wage Requirement or how to complete this form, please contact the Office of Purchasing at purchasing@howardcountymd.gov or 410-313-6370.

Howard County, Maryland Wage Rate Requirements for Service Contracts Exemption Status Subtitle 1, Howard County Code Section 4.122A(b)(2)

Prime Contr. Sub-Contr.

Section 1: Exemptions

Check all that apply, then continue to Section 2. If none of these statements apply to your company or the Subcontractor, check the last box in this section and continue to Section 2.

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor employs fewer than 5 employees at any time during the contract term. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor received less than \$100,000 from the County in the most recent 12-month period prior to the start date, and will be entitled to receive less than \$100,000 from the County within the next 12-month period. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor is a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor is expressly precluded from complying with Howard County Code Sec. 4.122A by the terms of any federal, state, or County law, federal or state contract or grant, and the contract falls within that preclusion. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor is a public entity. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor participates in a contract awarded under Howard County Code Secs. 4.110 (Sole Source), 4.111 (Emergency), or 4.112 (Expedited). |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor is a regulated public utility. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract was awarded under a cooperative procurement with another government or organization of governments. |

Check here ☐ if none of the above statements are applicable to your company or to the Subcontractor, then continue to Section 2.

Section 2: Certifications

- If you checked any exemptions in Section 1, skip this section and continue to Section 3.
- If you did not check any exemptions in Section 1, check each box in Section 2 that applies to your company, then complete Section 3 below.

I do hereby certify that I have read and understand the provisions of Section 4.122A of the Howard County Code, that I am an authorized representative of the Contractor named below, and that:

- ☐ As a "covered employer," the Contractor and all Subcontractors will comply with the County's Wage Rate Requirements for Service Contracts (Howard County Code Sec. 4.122A) and will pay all employees not exempt under the wage requirements, and who perform direct measurable work for the County, the applicable wage requirements at the time the work is performed. The Contractor will keep the records necessary to show compliance and will submit such records to the Purchasing Agent on request of the Purchasing Agent; and will publicize the requirements of this law to any employees who may be covered by the law. The Contractor's proposed pricing is sufficient to meet the current living wage rate requirements during the initial term of the agreement and any increases applicable to subsequent renewals.
- ☐ **If health insurance is provided to employees**, the per employee hourly cost of the premium for health insurance to an employee who provides services to the County that appears in the bid or proposal is correct.

Section 3: Contact Information

Provide your contact information in the space below, then sign and date this form and submit it with your bid.

Contractor Name _____	Vendor Federal ID Number _____
Address _____	Phone Number _____
_____	Email Address _____
Authorized Signature _____	Date _____
Print Name of Signatory _____	Title of Signatory _____

To be completed by the Buyer	Contract Title:		Buyer's Initials:
	Contract #:	Contract Term:	
	Capital Project No:	Renewal #:	