BUREAU OF ENGINEERING & CONSTRUCTION
DEPARTMENT OF PUBLIC WORKS
111 WEST CHESAPEAKE AVENUE, ROOM 219
TOWSON MD 21204

REQUEST FOR EXPRESSION OF INTEREST
Project No. 2013-07
On-Call Submerged Aquatic Vegetation Services

Due Date: November 21, 2013
Due Time: 2:00 PM EST
Location: County Office Building, Room 219
111 West Chesapeake Avenue
Towson, Maryland 21204

Bruce F. Keller PE
Chief, Engineering Design Division
410-887-3788
bkeller@baltimorecountymd.gov

Amendments to solicitations may occur prior to the due date. It is the potential vendor's responsibility to frequently visit the website to obtain amendments once they have downloaded a solicitation.

Expression of Interest Checklist

_____ Have you filled out all the required forms?

_____SF255

_____Minority forms (As per the MBE/WBE participation summary.)

_____Prequalification forms (SF254 and DPW 101A) if not prequalified in the current cycle

_____ Are all of the subconsultants prequalified?

_____ Are both firms of a Joint Venture prequalified?

_____ Do all the forms have original signatures?

_____ Are there 2 complete unbound sets of the Expression of Interest included?

_____ Have you verified the time the Expressions of Interest are due?

Notice Of Interest To Assign Project

NOTE: for email notification of new Baltimore County professional service projects and prequalification reminders, go to http://www.baltimorecountymd.gov/Subscribe/index.html

In the near future, the Professional Services Selection Committee (PSSC) for Baltimore County will choose a consulting firm for the following assignment:

On-Call Professional Services are required for the collection and mapping of submerged aquatic vegetation (SAV). Project assignment may include but are not limited to a variety of tasks such as bi-annual surveys and bathymetry, geographic information system services and geotechnical services. Consultants will provide technical analysis of survey data for use in preparation of annual reports and maps.

Consideration will be given to those firms exhibiting expertise and experience in SAV monitoring services and plant science. Projects submitted will be rated accordingly. Interested firms are to provide a detailed description of the approach to SAV data collection. The summary should include descriptions of the problem assessment, design approach, and outcome of the project.

Tasks will be assigned on an "as required" or emergency basis though the utilization of an on-call form agreement. Two consultants and one alternate will be selected for this project. The upset limit for each contract will be $700,000.

SUBMITTALS

Prequalified firms to be considered for award must submit a separate Standard Form 255 in response to each project. Sub-consultants not specializing in the professional practices of architecture, landscape architecture and engineering do not need to be, and cannot be prequalified. All sub-consultant specialties must be clearly indicated in the 255 form, block 6.

MINORITY BUSINESS REQUIREMENT

See the attached Baltimore County, Maryland MBE/WBE participation summary. Please note the information presented in the summary applies to the professional services solicitations.

Contract Goals: For the purpose of these contracts, two goals have been established:

20% any combination of MBE /WBE

Minority and Women Business firms must be certified. They may be certified by either the Maryland Department of Transportation (MDOT) minority business certification program or by the Baltimore City's minority business certification program.
Note: MBE/WBE firms must also be prequalified.

MBE/WBE OUTREACH EFFORTS

MBE/WBE Firms which are interested in working on this project may submit their information (firm name, contact person, phone number and email address) to Jane Miller (jmmiller@baltimorecountymd.gov) or 410-887-3788.This information is due **by Thursday October 31, 2013**. The County will post this information via addendum the following week.

Confidentiality: Offerors must specifically identify any portions of their proposals deemed to contain confidential information, proprietary information or trade secrets. Those portions must be readily separable from the balance of the proposal. Such designations will not be conclusive, and offerors may be required to justify why such material should not, upon written request, be disclosed by the County under the Public Information Act, State Government Article, Title 10, Sub-Title 6, of the Annotated Code of Maryland, as amended. The County may disclose such information if required by law, court order or subpoena.

SUBMITTAL DUE DATE

All required forms must be received on or before, but not later than **2:00 p.m.** EST on **Thursday November 21, 2013**. Late or incomplete submittals will not be considered. Material submitted will not be returned. Do not bind, fax or e-mail submittals. Two copies of the SF255 are requested.

Send to the attention of: Bruce F. Keller, PE, Engineering Design Division Chief
Bureau of Engineering and Construction
County Office Building Room 219
111 West Chesapeake Avenue
Towson, Maryland 21204

Edward C. Adams, Jr., Director
Department of Public Works

BALTIMORE COUNTY, MARYLAND
MBE/WBE PARTICIPATION SUMMARY

Executive Order: Minority business enterprises and women business enterprises (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed in whole, or in certain circumstances, in part with County funds. Accordingly, on June 4, 2009, the County Executive adopted the attached Executive Order addressing MBE/WBE participation in County contracts.

Each Contract: The County shall establish a minimum MBE/WBE participation amount for each contract, as applicable.

Bidder Responsibility: The bidder shall ensure that MBE/WBE participation occurs in accordance with the contract requirements and the County Executive's Executive Order. All bidders shall ensure that MBE/WBE have the maximum opportunity to compete for and perform County contracts, as applicable. Baltimore County, Maryland, and/or its bidders and contractors shall not discriminate on the basis of race, color, national origin, disability or sex in the award and performance of any County contract.

APPROVED MBE/WBE LISTINGS

Published compilations of approved and certified MBE/WBE, contractors, subcontractors, material suppliers, etc. include:

1. BALTIMORE COUNTY MINORITY AND WOMEN BUSINESS ENTERPRISE DIRECTORY (PRISM):
   http://www.baltimorecountymd.gov/Agencies/fairpractices/minoritybusiness/directory.html

2. DIRECTORY OF MINORITY BUSINESS ENTERPRISE (MDOT):
   http://mbe.mdot.state.md.us/directory/search_select.asp

3. MINORITY BUSINESS DIRECTORY OF THE CITY OF BALTIMORE:
   http://cityservices.baltimorecity.gov/mwboo/

BIDDER'S ACTIONS

Seeking Commitments: The bidder will seek commitments by subcontract or otherwise from MBE/WBE for supplies and/or services, any combined value of which equals or exceeds the required percentage of MBE/WBE participation for the County contract.

Expenditures for Materials and Supplies: A bidder may count toward its MBE/WBE contract requirements, all expenditures for materials and supplies obtained from MBE/WBE suppliers and manufacturers, provided that the MBE/WBE assumes the actual and contractual responsibility for the provision of the materials and supplies.

Information to be Supplied: All bidders shall submit the following information to the County at the time of bid submission:

1. The name of an employee designated as the bidder's liaison to the County's Office for Fair Practices.

2. The following forms shall be completed and submitted
   - Certified MBE/WBE Utilization and Fair Solicitation Affidavit (**Form A);** from among those names appearing in the Approved MBE/WBE Listings (excepting Federal Highway Administration projects, which exclusively require MBE/WBE approved and certified by the Maryland Department of Transportation Certification Committee);

   - A MBE/WBE Participation (**Form B**) completed by the prime contractor for each MBE/WBE listed on the Form.

   - A MBE/WBE Disclosure and Participation Statement (**Form C**) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.

   - If applicable, MBE/WBE Subcontractor Unavailable Certificate (**Form D**) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.

- If applicable, MBE/WBE Outreach Efforts - Compliance Statement (**Form E**) completed and signed by the Bidder.

3. For DPW contracts, if the bidder intends to fulfill the MBE/WBE requirements by use of a joint venture, he/she must submit a Joint Venture Disclosure Affidavit (**Form D-EEO-006-A** and **B** showing the extent of MBE/WBE participation. If a bidder intends to use a MBE/WBE joint venture as a subcontractor to meet its MBE/WBE requirements, the affidavit must be submitted through the bidder by the proposed subcontractors and signed by all parties.

4. If the bidder's proposed MBE/WBE participation does not meet the MBE/WBE contract requirements, information sufficient to demonstrate that the bidder has made every effort to meet the requirements must be submitted. (See DETERMINATION OF BID RESPONSIVENESS hereafter)

RECORDS AND REPORTS

Records to be Kept: The bidder must keep such records as are necessary to determine compliance with its MBE/WBE utilization requirements:

1. The MBE/WBE and non-minority contractors, type of work being performed, actual values of work and services.

2. Documentation of all correspondence, contacts, telephone calls, etc., to obtain MBE/WBE services for the contract.

3. All prime contractors and MBE/WBE sub-contractors are required to report monthly to the County through an online system called PRISM. If the contractor cannot submit his/her report on time, he/she will notify the County MBE/WBE office and request additional time to submit the report. Failure of the contractor to report in a timely manner may result in a finding of noncompliance. The County in its sole discretion and/or upon written request may require additional reports regarding MBE/WBE.

Retaining Records: All MBE/WBE records must be retained for 3 years following the expiration or any earlier termination of the contract and shall be available for inspection and photocopying by the County.

Investigation and Notification: Whenever the County believes the bidder, contractor, or any subcontractor may not be operating in compliance with the MBE/WBE requirements, the County may, in its sole discretion, conduct an investigation. If the County finds the bidder, contractor, or any subcontractor is not in compliance with the MBE/WBE requirements, the County may exercise any and all rights and remedies available to the County, under the contract, at law or equity, as deemed applicable and appropriate by the County in its sole discretion.

DETERMINATION OF BID RESPONSIVENESS

Request for Deviation: If the bidder is unable to procure from MBE/WBE's (by subcontract or otherwise), supplies and services, any combined value of which equals the required percentage of the total value of the contract, the bidder shall request, in writing, a deviation or waiver of the contract requirements. To obtain such a waiver, the bidder must submit the following information at the time bids are due:

The request for waiver request shall include (1) a signed unavailability statement (Form D) executed by all MBEs and WBEs that the bidder solicited for participation and (2) Outreach Efforts/Compliance Statement (Form E) that demonstrates the bidder's good faith efforts to comply with the contract requirements, including copies of solicitation documentation to all potential subcontractors:

Emails, letters, facsimile transmittals and confirmations containing plans, specifications, and anticipated time schedule for portions of the work to be performed and meeting notes and agendas clearly identifying the certified MBE or WBE classification and dates that the bidder contacted each MBE/WBE; and

Telephone logs containing names, addresses, dates, telephone numbers, work to be performed, anticipated time schedule and classification of certified MBEs and WBEs contacted.

Bid Rejection/Liquidated Damages/Contract Breach: For Purchasing contracts, the apparent low bidder's failure to provide a responsive MBE/WBE Plan as required by the solicitation may result in the bidder being deemed non-responsive and the County's rejection of the bid. FOR DPW CONTRACTS, (a) THE SOLICITATION, INCLUDING BUT NOT LIMITED TO THIS MBE/WBE PARTICIPATION SUMMARY AND ALL RELATED COUNTY MBE/WBE DOCUMENTS, AND (b) THE BID RESPONSE SHALL COLLECTIVELY OVERRIDE, CONTROL AND GOVERN OVER Section GP 7.29 of the February 2000 *Baltimore County Department of Public Works' Standard Specifications for Construction and Materials*. For DPW contracts, the apparent low bidder's failure to provide a responsive MBE/WBE Plan in the bidder's response as required by (a) described above, may result in the Director of the Department of Public Works' determination that the bid is non-responsive and recommendation to reject the bid as non-responsive despite the bidder being the apparent low bidder. For DPW contracts, if the County awarded the contract to the apparent low bidder who provided a responsive MBE/WBE Plan, but, if after said award and before execution of Contract Documents, the apparent low bidder fails to comply with the MBE/WBE Plan as required in (a) and (b) above, such failure may result in the Director of the Department of Public Works' recommendation to annul the award and forfeiture of the bidder's Proposal Guaranty to the County, not as a penalty, but as liquidated damages sustained. In such case, the County may proceed as it determines to be in its best interest, including but not limited to, the Notice of Award may be made to the next lowest responsive and responsible bidder or the work may be re-advertised.

After execution of each and any applicable County contract, in the event a contractor becomes aware it may or will fail to fulfill the applicable MBE/WBE requirements and/or may or will deviate from the contractor's bid response/contract terms, the contractor shall promptly advise the County of this in writing. Thereafter, the County will determine what action or remedy, if any, is appropriate on a case-by-case, contract by contract, basis. For example, such contractor failure may result in (i) a breach for which the County determines it is appropriate to declare a contract default and thereafter take further action and/or remedy as deemed appropriate by the County in its sole discretion, or (ii) a contract breach upon which the County may elect take no further action if deemed appropriate by the County in its sole discretion, or (iii) if mutually agreeable to the County and the contractor, such revision shall be documented via a contract amendment, executed by legally authorized representatives of the County and the contractor as described below in "Approval Required for Changes", or (iv) other actions or remedies as deemed appropriate by the County. Each action and/or remedy described above is at the sole discretion of the County.

Cooperation in Reviews: The bidder will cooperate with the County in any reviews of the contractor's procedures and practices with respect to MBE or WBE firms, which the County may from time to time conduct in its sole discretion.

Approval Required for Changes: Any and all changes to the contractor's use of MBE/WBE subcontractors during the contract term must be mutually agreeable to the County and the contractor and shall be documented via a contract amendment, executed by legally authorized representatives of the County and the contractor.

Other: If the documents used to determine the contractor's efforts, achievement of, and/or the status of an MBE/WBE requirement or fulfillment thereof contain false, misleading or misrepresenting information, the contractor may be declared in breach of the contract and/or the County may take any and all actions and/or remedies available to the County under the contract, at law, or in equity. If an MBE/WBE is disqualified by any public entity, including but not limited to, Baltimore City, the State or MDOT, at any time after award or during the term of the contract, the County may, in its sole discretion, take any action or no action, as deemed appropriate by the County, including but not limited to, review of each situation on a case-by-case basis, require the prime contractor to promptly submit for County approval, the contractor's plans for fulfilling the required MBE/WBE participation under the contract, and/or request such detail and additional information as the County, in its discretion deems appropriate.

BALTIMORE COUNTY, MARYLAND
CERTIFIED MBE/WBE UTILIZATION AND FAIR SOLICIATION AFFIDAVIT
(FORM A)

This document must be completed and submitted with Bid/Proposal to Baltimore County.

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

* * * * * * * * * * * * * *

I acknowledge the:

- The goals, if applicable, of:
  - ____ % for certified MBE-owned businesses and
  - ____ % for certified WBE-owned businesses.

I have made a good-faith effort to achieve this MBE/WBE requirement. If awarded the contract, I will comply with this MBE/WBE contract requirement and will continue to use my best efforts to increase MBE/WBE participation during the contract term.

PLEASE CHECK ONE BOX (EITHER 1, 2, OR 3)

NOTE: ANY INCONSISTENCY BETWEEN THIS FORM AND FORM B *MBE/WBE PARTICIPATION* MAY RENDER A BID NON-RESPONSIVE AND THE COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

1 ☐ Prime contractor has met the MBE/WBE contract requirements for this solicitation and contract. I submit the MBE/WBE Participation Form B and Form C, along with this Affidavit, which details how the prime contractor will achieve the contract requirements.

or

2 ☐ After having made a good-faith effort to achieve the MBE/WBE requirements, the prime contractor can only achieve partial success. I submit the MBE/WBE Participation Form B, Form C, Form D and Form E along with this Affidavit, which details how the prime contractor will partially achieve the contract requirements.

I request a partial waiver and will meet the following MBE/WBE participation goals:

- Partial waiver of MBE/WBE subcontract participation subgoals, if applicable:
  - ____ % for certified MBE-owned businesses and
  - ____ % for certified WBE-owned businesses.

or

3 ☐ After having made a good faith effort to achieve the MBE/WBE requirements for this contract, the prime contractor is unable to achieve the requirements and/or sub requirements for this contract. I submit the MBE/WBE Participation Form D and Form E, along with this Affidavit, which details the steps the prime contractor has taken in an attempt to achieve the contract requirements.

I request a full waiver.

IF YOU HAVE CHECKED BOX 2 OR 3, THE FOLLOWING IS APPLICABLE:

1) If a bidder is unable to comply with the goals established in a bid for a project, the bidder may submit a request for a waiver at the time of bid submission. However, occasions for granting waivers will be limited.
2) The request for waiver shall include documentation that demonstrates the bidder's good faith efforts to comply with the goals, including:
   (I) Signed unavailability statements from all MBEs and WBEs that the bidder solicited for participation; and
   (II) Copies of solicitation documentation to all potential subcontractors, including:

      (a) Emails, letters, facsimile transmittals and confirmations containing plans, specifications, and anticipated time schedule for portions of the work to be performed and meeting notes and agendas clearly identifying the certified MBE or WBE classification and dates that the bidder contacted each; and
      (b) Telephone logs containing names, addresses, dates, telephone numbers, work
      to be performed, anticipated time schedule and classification of certified MBEs and WBEs contacted.

As I have checked Box 2 or 3 of this Affidavit, I understand I must submit the following supporting documentation with the bid:

- *MBE/WBE Participation Schedule* (Form B)
- *MBE/WBE Disclosure and Participation Statement* (Form C)
- *MBE/WBE Subcontractors Unavailable Certificate* (Form D) (if applicable)
- *MBE/WBE Outreach Efforts – Compliance Statement* (Form E)
- Any other documentation in accordance with Section 6 (E) Bid Requirements of the attached Executive Order.

I acknowledge that the MBE/WBE subcontractors/suppliers listed on the *MBE/WBE Participation Schedule* (Form B) will be used to accomplish the percentage of MBE/WBE participation that the prime contractor shall achieve.

In the solicitation of subcontract quotations or offers, MBE/WBE subcontractors were provided the same information and amount of time to respond, as were non-MBE/WBE subcontractors.

The solicitation process was conducted in such a manner so as to not place MBE/WBE subcontractors at a competitive disadvantage to non-MBE/WBE subcontractors.

I solemnly affirm under the penalties of perjury that this Affidavit is true to the best of my knowledge, information, and belief.

_____	_____
Bidder/Offeror Name	Affiant Signature
_____	_____
Address	Printed Name & Title
_____	_____
Address (continued)	Date

BALTIMORE COUNTY, MARYLAND
MBE/WBE PARTICIPATION SCHEDULE
(FORM B)

This document must be completed and submitted with Bid/Proposal to Baltimore County.NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

PLEASE COMPLETE THE FOLLOWING INFORMATION FOR EACH MBE/WBE PARTICIPANT

Prime Contractor's Name	**Prime Contractor's Address and Telephone Number**
Project Name and Description	**Project Location**
	Base Bid $_____
1. MBE/WBE Firm Name	**MBE/WBE Firm Address**
MBE/WBE Firm Telephone Number _____ **MBE/WBE Firm Fax Number** _____ ☐ **MDOT Certification** ☐ **Baltimore City Certification** **#** _____	**MBE/WBE Group Type** ❑ **(African American)** ❑ **(Women)** ❑ **(Asian)** ❑ **(Hispanic)** ❑ **(American Indian)** ❑ **(Other)**
Work to be Performed and Subcontract Dollar Amount	**Percent of Total Contract**
2. MBE/WBE Firm Name	**MBE/WBE Firm Address**
MBE/WBE Firm Telephone Number _____ **MBE/WBE Firm Fax Number** _____ ☐ **MDOT Certification** ☐ **Baltimore City Certification** **#** _____	**MBE/WBE Group Type** ❑ **(African American)** ❑ **(Women)** ❑ **(Asian)** ❑ **(Hispanic)** ❑ **(American Indian)** ❑ **(Other)**
Work to be Performed and Subcontract Dollar Amount	**Percent of Total Contract**
3. MBE/WBE Firm Name	**MBE/WBE Firm Address**
MBE/WBE Firm Telephone Number _____ **MBE/WBE Firm Fax Number** _____ ☐ **MDOT Certification** ☐ **Baltimore City Certification** **#** _____	**MBE/WBE Group Type** ❑ **(African American)** ❑ **(Women)** ❑ **(Asian)** ❑ **(Hispanic)** ❑ **(American Indian)** ❑ **(Other)**
Work to be Performed and Subcontract Dollar Amount	**Percent of Total Contract**
MBE/WBE Total Dollar Amount	**Total MBE/WBE Percent of Entire Contract**
Form Prepared by: **Name** _____ **Title** _____ **Date** _____	**Reviewed and Accepted by Minority Business Enterprise Officer** **Name** _____ **Title** _____ **Date** _____

Total MBE Participation: _____% $ _____
Total WBE Participation: _____% $ _____
Total Participation: _____% $ _____

BALTIMORE COUNTY, MARYLAND
MBE/WBE DISCLOSURE AND PARTICIPATION STATMEMENT
(FORM C)

This document must be completed and submitted with Bid/Proposal to Baltimore County.

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

Contract Name and Description: _____

Name of Prime Contractor: _____

Name of MBE/WBE Subcontractor: _____

☐ MDOT ☐ Baltimore City # _____
Certification Number

1. Work/Services to be performed by MBE/WBE Subcontractor: _____

   _____

2. Subcontract Amount: $ _____
3. Bonds - Amount and type required of Subcontractor if any: _____
4. MBE/WBE Anticipated Commencement Date: _____ Completion Date: _____
5. This MBE/WBE subcontract is _____ percent of the County contract cost:
6. This is a MBE-Owned Business Firm: Yes _____No _____
7. This is a WBE-Owned Business Firm: Yes _____No _____

****

The undersigned MBE/WBE subcontractor and prime contractor will enter into a contract for the work/service indicated above upon the prime contractor's execution of a contract for the above referenced project with the Baltimore County. The undersigned subcontractor is a MDOT or Baltimore City certified MBE/WBE. The terms and conditions stated above are consistent with our agreements.

Signature of MBE/WBE Subcontractor: _____ Date: _____

The terms and conditions stated above are consistent with our agreements.

Signature of Prime Contractor: _____ Date: _____

BALTIMORE COUNTY, MARYLAND
MBE/WBE - SUBCONTRACTOR UNAVAILABILITY CERTIFICATE
(FORM D)

If applicable, this document must be completed and submitted with Bid/Proposal to Baltimore County.

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

1. It is hereby certified that the firm of _____
(Name of Minority firm)

located at _____
(Number) (Street)

_____
(City) (State) (Zip)

was offered an opportunity to bid on the _____ contract.

2. The_____ (MBE/WBE Firm), is either unavailable for the work/service or unable to prepare a bid for this project for the following reason(s):

_____

_____

_____

_____ _____ _____
Signature of Minority Firms MBE/WBE Representative Title Date

_____ _____
MDOT/Baltimore City Certification # Telephone #

3. PRIME CONTRACTOR SIGNATURE AND CERTIFICATION

I certify under oath that I contacted the Certified MBE/WBE and they advised me that they are unavailable, unable to perform the work/services for the above-contract or failed to respond to repeated requests for a price proposal for the above-contract.

_____ _____ _____
Signature of Prime Contractor Title Date

BALTIMORE COUNTY, MARYLAND
MBE/WBE - OUTREACH EFFORTS - COMPLIANCE STATEMENT
(FORM E)

If applicable, this document must be completed and submitted with Bid/Proposal to Baltimore County.

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

In conjunction with the bid or offer submitted in response to Solicitation Number _____, I state the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories:

2. Attached to this form are copies of the solicitation documentation in accordance with Section 6 (E) Bid Requirements of the Executive Order, used to solicit certified MBE/WBEs for the subcontract opportunities accompanied with the signed MBE/WBE Subcontractor Unavailability Certificate (Form D).

3. Bidder/Offeror made the following attempts to solicit MBE/WBEs:

_____
Signature – Bidder Offeror

_____
Print or Type Name of Firm

_____
Street Address

_____
City State Zip Code

_____
Date

Joint Venture Form

A. FIRM:

_____

(Name of Firm)

_____

(Number) (Street) (City) (State) (Zip)
(Telephone)

B. NAME: _____ C. MINORITY OWNERSHIP: _____%
(Majority Owner of Firm)

_____ _____

(Title) (Home Telephone) (Business Telephone)

D. LIST CAPITAL CONTRIBUTIONS: TOTAL CASH: $_____

EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST

INDICATE ESTIMATED CASH FLOW: $_____

LIST ALL PROFESSIONAL LICENCES HELD BY YOUR FIRM WHICH AUTHORIZE WORK/SERVICE					
Professional License	Number	Licensee	Professional License	Number	Licensee

SECOND PARTY OF JOINT VENTURE:

A. FIRM:

_____

(Name of Firm)

_____

(Number) (Street) (City) (State) (Zip)
(Telephone)

B. NAME: _____ C. MINORITY OWNERSHIP: _____%
(Majority Owner of Firm)

_____ _____

(Title) (Home Telephone) (Business Telephone)

D. LIST CAPITAL CONTRIBUTIONS: TOTAL CASH: $_____

EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST

INDICATE ESTIMATED CASH FLOW: $_____

LIST ALL PROFESSIONAL LICENCES HELD BY YOUR FIRM WHICH AUTHORIZE WORK/SERVICE					
Professional License	Number	Licensee	Professional License	Number	Licensee

THIRD PARTY OF JOINT VENTURE:

A. FIRM:

_____

(Name of Firm)

_____

(Number) (Street) (City) (State) (Zip)
(Telephone)

B. NAME: _____ C. MINORITY OWNERSHIP: _____%
(Majority Owner of Firm)

_____ _____

(Title) (Home Telephone) (Business Telephone)

D. LIST CAPITAL CONTRIBUTIONS: TOTAL CASH: $_____

EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST

INDICATE ESTIMATED CASH FLOW: $_____

LIST ALL PROFESSIONAL LICENCES HELD BY YOUR FIRM WHICH AUTHORIZE WORK/SERVICE					
Professional License	Number	Licensee	Professional License	Number	Licensee

4. DESCRIBE IN DETAIL THE ACCOUNTING PROCEDURES TO BE USED IN THE JOINT VENTURE.

5. PARTY OF THE VENTURE WHICH WILL SUPERVISE THE ON-SITE WORK/SERVICE (Name and Address of Firm).

6. PARTY OF THE VENTURE WHICH WILL SUPERVISE THE ADMINISTRATIVE OFFICE (Name and Address of Firm).

NOTE: Include for each party of this joint venture a complete Business Resume to include such items as: business qualifications, experience, etc.

7. PARTY OF THE JOINT VENTURE ESPONSIBLE FOR MATERIAL PURCHASES (Name and Address)

8. ESTIMATE COST OF MATERIAL PURCHASES: $

9. WILL A SEPARATE COST CENTER BE ESTABLISHED FOR THIS JOINT VENTURE? ☐ YES ☐NO
IF YES, FURNISH FOLLOWING INFORMATION:

a. Where will cost center be located (Street, Number, city, State)?

b. Describe in detail the accepted accounting method of allocating overhead applicable to the joint venture. (Use separate sheet if necessary).

10. THE JOINT VENTURE PARTY RESPONSIBLE FOR MAINTAINING THE ACCOUNTING RECORDS (Name and Address)

11. REIMBURSABLE EXPENSES AND MANNER OF REIMBURSEMENT

12. AUTHORITY OF EACH JOINT VENTURE PARTY TO COMMIT OR OBLIGATE THE OTHER.

13. REMARKS

The affidavit should be subscribed and sworn to by the principles of each joint venture and should contain the following statement at the close thereof, above the signatures:

"The undersigned do hereby swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the terms and operation of the joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to Maryland Department of Transportation current, complete and accurate information regarding actual joint venture work and the payment therefore and any proposed changes in any of the arrangements hereinabove stated and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the Maryland Department of Transportation or the Federal Government PRIOR TO INCLUSION IN THE MARYLAND DEPARTMENT OF TRANSPORTATION MINORITY BUSINESS ENTERPRISE DIRECTORY AND SUBSEQUENT TO AWARD OF CONTRACT AS DEEMED NECESSARY. It is recognized and acknowledged that the statements herein are being given under oath and any material misrepresentation will be grounds for terminating any contract which may be awarded in reliance hereon."

Trade secrets, information privileged by law, and confidential commercial, financial, geological, or geophysical data furnished will be protected.

Sworn and subscribed before me this
_____ day of _____, 20_____

_____
Notary Public

My Commission Expires:_____

_____
Signature of Affiant

_____
Printed Name

_____
Signature of Affiant

_____
Printed Name

_____
Signature of Affiant

_____
Printed Name

ADDITIONAL COMMENTS MAY BE ATTACHED TO THIS MAY AFFIDAVIT ON PLAIN BOND PAPER, IF APPLICABLE.

THE MARYLAND DEPARTMENT OF TRANSPORTATION REQUEST ADDITIONAL INFORMATION IF NEEDED.

"The undersigned, as a representative of _____ Company, does hereby swear that I am authorized to act on its behalf and that in this capacity and to the best of my knowledge and belief, the information provided herewith relevant to the joint venture of _____ is accurate, complete and current, and fairly represents the joint venture; further, that I have personally reviewed the material and assured myself of its accuracy. It is recognized and acknowledged that the statements herein are being given under oath and any material misrepresentation will be grounds for terminating any contract which may be awarded in reliance hereon."

Professional Services
Draft Agreement

1. The County's form contract is attached as part of this solicitation. The architect's/engineer's submission of an expression of interest without identifying exceptions expressly acknowledges and formally evidences the architect's/engineer's acceptance of all terms and conditions of the form contract. Any and all exceptions must be submitted in writing in the architect's/engineer's bid response.

2. If the architect/engineer submits an exception, which alters the County's risk, liability, exposure in, or the intent of this solicitation/procurement/agreement, the County reserves the right in its' sole and absolute discretion to deem the architect/engineer non-responsive.

3. All architects/engineers understand and agree that the County will accept no architect/engineer exceptions to the form contract at any time after submission of the bid response.

ON CALL ENGINEERING AGREEMENT FOR ENGINEERING SERVICES

THIS ON CALL ENGINEERING AGREEMENT FOR ENGINEERING SERVICES, (the **"Agreement"**), made this [__] day of [_____], 20___, (the **"Effective Date"**) by and between _____, a [Maryland] [_____] [corporation] [limited liability company] [partnership], its successors and assigns (collectively and severally, the **"Engineer"**), and Baltimore County, Maryland, a body corporate and politic (the **"County"**).

WHEREAS, the Professional Services Selection Committee (the **"PSSC"**), in accordance with the Executive Order dated January 29, 2010 selected the Engineer to _____ (the **"Project"**); and

WHEREAS, the Engineer hereby covenants and agrees to complete the Project in strict and entire conformity with this Agreement and [insert reference to solicitation used and/or specific Project criteria used]; and

WHEREAS, upon the selection of the Engineer, the County's [Department of Public Works (**"DPW"**)] and the Engineer negotiated the terms pursuant to which the Engineer shall perform the Project.

NOW, THEREFORE, the County and the Engineer intending to be legally bound, in consideration of the performance on their respective obligations and duties herein contained, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, hereby memorialize the terms and conditions negotiated between the parties for the Project.

Notwithstanding any other terms or provisions of this Agreement, in the event the County is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the County Council, by a court of competent jurisdiction or by administrative delay not due to the fault of the County (and its members and agents), then the County shall not be liable or financially obligated in any manner, amount, or nature, directly or indirectly, for any claims caused to or suffered by the Engineer, its subcontractors, outside associates, consultants, subconsultants, or agents, or any other person in connection with or as a result of such prevention, restriction or delay.

ARTICLE 1 – SUBMISSIONS OF ENGINEER

1.1 The Engineer submitted various prequalification documents for review by the PSSC and [DPW], including but not limited to, DPW Form 101A, Standard Form 254, and Standard Form 255,

SAMPLE

collectively the **"Prequalification Documents"** and the Engineer's organizational documents, all of which are incorporated herein as part of the Agreement. The Engineer may also have submitted either (a) a copy of the Engineer's most recent fiscal year end audited financial statement prepared by a certified public accountant in accordance with Section 7.9 of this Agreement, which was performed no more than two (2) years prior to the Effective Date of the Agreement, or (b) written documentation of the Engineer's business operations/overhead and payroll burden historical cost data from a state or federal agency or private entity in a form acceptable to the County, in the County's sole discretion, that evidences the Overhead and Payroll Burden rate of the Engineer, the **"Rate Documentation,"** which Rate Documentation is hereby attached hereto and incorporated herein as part of the Agreement.

1.2 The Engineer has submitted a written proposal to the County for the Project dated [_____], and in accordance with terms negotiated with [DPW] and attached hereto and incorporated herein, which includes (a) a detailed description of the goods to be provided and services to be performed by the Engineer and/or its subconsultants or subcontractors approved in writing by the County for the Project and the costs associated therewith; (b) DPW Form 105 entitled Cost Summary Format, to be attached throughout the Term of this Agreement for each Project task that may be assigned under this Agreement; (c) a breakdown of tasks and associated man hours for each phase of the Project including a schedule of personnel for the Engineer and each subconsultant or subcontractor by legal name and/or identification number, classification, hourly rate of pay, and effective date of pay (**"Schedule of Personnel"**); (d) a salary roster including each individual listed on the Schedule of Personnel (**"Salary Roster"**); and (e) a detailed completion schedule showing the proposed order of work and indicating the time required for the completion of the work for the Project (the **"Completion Schedule"**) (subsections (a) through (e) are collectively, the **"Scope of Work"**). The Scope of Work is attached to this Agreement as **Exhibit A** and incorporated herein as part of the Agreement. Direct Labor costs, as used in the Scope of Work and herein, shall only be for be actual salaries paid for work on the Project to productive personnel directly engaged in the performance of the Scope of Work that are listed on the Schedule of Personnel previously approved in writing by the County. Direct Labor costs are before tax and other deductions, and shall not include overhead expenses, administrative support time, payroll taxes, workmen's compensation, other insurances paid on behalf of any employee, allowances for vacation, holidays, sick leave, bonuses, and other incentives.

1.3 Each subconsultant and/or subcontractor, if and as applicable, for the Project and this Agreement must (a) be approved in writing by the County; (b) be pre-qualified with the County; (c) submit an audit of its overhead, in form and substance acceptable to the County; and (d) submit a signed, certified Salary Roster as further described in Sections 1.2 and 7.8 hereto.

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ARTICLE 2 – REPRESENTATIONS & WARRANTIES OF ENGINEER

2.1 The Engineer represents and warrants that the Engineer is a [corporation][limited partnership][general partnership][limited liability company], duly formed and validly existing under the laws of the State of [INSERT STATE OF ORGANIZATION] and is qualified to do business and is in good standing in the State of Maryland.

2.2 The Engineer represents and warrants that the Engineer has the power and authority to consummate the obligations and responsibilities contemplated hereby, and has taken all necessary action to authorize the execution, delivery, and performance required under this Agreement.

2.3 The Engineer represents and warrants that the person executing this Agreement for the Engineer is legally and duly authorized by the Engineer pursuant to the Engineer's organizational documents incorporated herein to execute this Agreement on the Engineer's behalf and legally bind the Engineer to the terms and conditions of this Agreement.

2.4 The Engineer represents and warrants that the Engineer has obtained and shall continue to maintain, at its sole cost, such licenses and certifications as are necessary to perform the Services, as defined in Section 4.3, and provide the Work Product, as defined in Section 4.2, required under this Agreement, and shall present such licenses to the County upon its request for the same.

2.5 All representations and warranties by the Engineer made in connection with the Project, including but not limited to, the Prequalification Documents, the Scope of Work, the Procurement Affidavit, attached hereto and incorporated herein as **Exhibit B**, and the Rate Documentation (if any) submitted by the Engineer shall remain true and correct in all respects throughout the Term of this Agreement.

2.6 The Engineer currently employs and shall continue to employ on a full-time basis a Maryland-licensed professional engineer throughout the Term of this Agreement who will perform the Project and sign-off on Project and Scope of Work items, including, but not limited to, the Work Product, sealed plans, and As-Built Drawings, as defined in Section 7.5.

2.7 The Engineer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Engineer to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company or corporation, individual or firm, other than a bona fide employee working solely for the Engineer any favor, commission, percentage, gift, fee or any other consideration contingent upon or resulting from the award or making of this Agreement.

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ARTICLE 3 – COUNTY RELIANCE UPON ENGINEER'S SUBMISSIONS AND REPRESENTATIONS AND WARRANTIES

3.1 The Engineer understands that the County has relied upon the Prequalification Documents, the Rate Documentation and the Engineer's representations and warranties within this Agreement in evaluating the Engineer's fitness to execute satisfactorily the Scope of Work required by this Agreement. Any material misstatement, as determined in the reasonable discretion of the County, within the Prequalification Documents, the Rate Documentation, the Scope of Work, the Engineer's representations and warranties, and/or this Agreement shall render this Agreement voidable at the option of the County's Director of [DPW] (the **"Director"**), WITHOUT THE COUNTY BEING LIABLE FOR ANY PART OF THE TOTAL PRICE (AS DEFINED IN SECTION 7.14 HEREOF) HEREUNDER OR FOR ANY DAMAGE, LOSS, COST, AND EXPENSE OF ANY KIND TO THE ENGINEER OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT AND THE PROJECT. Should the County exercise its rights as aforementioned, this Agreement shall be void and the Engineer hereby agrees to release the County from any liability hereunder and to save the County harmless and indemnify the County from liability for any such damages, losses, costs, and expenses.

3.2 It is expressly agreed and understood by the Engineer that the County is relying on the experience, comprehensive knowledge, expertise, full disclosure and truthfulness of the Engineer in the performance of the obligations and duties contained in this Agreement, and that the County shall make decisions and take actions in reliance on the Engineer's statements, representations, and warranties with regard to the Project.

3.3 The Engineer understands and agrees that the County is not obligated in any manner, form or respect to assign any projects to the Engineer or to utilize the Engineer for any project hereunder. Further, the County's decision to assign or not assign any project to the Engineer or to utilize the Engineer for any project under this Agreement shall be in the sole discretion of the County.

ARTICLE 4 – RESPONSIBILITIES OF THE ENGINEER

4.1 The Engineer shall timely, professionally, competently, and accurately perform all tasks for the Project as described in detail in the Scope of Work. The Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all such tasks. The generalized tasks for the Project shall include, but not be limited to engineering services for various County projects on an as-needed basis.

4.2 The Engineer shall produce, as necessary, all designs, drawings, plans, specifications, incidental work reports, design calculations, computer programs, technical reports, operating manuals,

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and other subject data and materials required to complete the Scope of Work and fulfill the Engineer's obligations and responsibilities under this Agreement, including, but not limited to, professional engineer or architect sealed mylar plans and As-Built Drawings hereinafter defined (collectively, the **"Work Product"**).

4.3 The Engineer shall perform such professional services as may be necessary to prepare and provide the Work Product and complete the Scope of Work and fulfill the Engineer's obligations and responsibilities required under this Agreement (collectively, the **"Services"**).

4.4 The Engineer shall perform the Services and provide the Work Product under this Agreement competently, with due care, in a timely manner, and in accordance with all applicable laws, codes, ordinances, regulations, licensing requirements, industry standards, and this Agreement.

4.5 The Engineer shall perform the Services and provide the Work Product to be delivered hereunder in a timely manner and in compliance with all implied and express warranties provided in the Prequalification Documents, the Scope of Work and under this Agreement.

4.6 The Engineer shall, without additional compensation, correct or revise any errors, omissions, or deficiencies in the Work Product and Services. The Engineer understands and agrees that the Engineer shall be liable and financially responsible for any and all damages, loss, cost, and expense incurred by the County as result of any and all corrections, revisions, errors, and/or omissions with regard to the Work Product and Services if resulting from or due to the negligence of the Engineer or its subconsultants or subcontractors.

4.7 The Scope of Work to be performed by the Engineer shall include the Engineer's timely performance of all of the Services and timely provision of the Work Product as required to timely complete the Scope of Work to the satisfaction of the County, in its reasonable discretion, in accordance with the Completion Schedule and this Agreement, and all applicable laws, regulations, codes, and licensing requirements.

4.8 The Engineer shall timely complete the Scope of Work. The Completion Schedule provided by the Engineer (within the Scope of Work) shall be used by the County to monitor the progress of the Engineer's work. Not later than thirty (30) calendar days from the end of each [month] [quarter] [____] of the Project, the Engineer shall submit [monthly] [quarterly] [____] progress schedules to the County, in form and substance approved by the County, indicating the Engineer's progress on the Project and the Scope of Work in relation to the Completion Schedule (each a **"Progress Schedule"** and collectively, the **"Progress Schedules"**). If the Engineer fails to timely submit the Progress Schedules, the Engineer understands and agrees that the County may exercise any rights and remedies available under this Agreement, including but not limited to, withholding of the County's

SAMPLE

approval of the Engineer's invoices until such time as the Engineer submits the required Progress Schedules to the County. Further, if, in the reasonable opinion of the County, the Engineer fails to adhere to the Completion Schedule, the Engineer shall take any and all steps necessary to improve its progress, all without additional cost and expense to the County. The County reserves the right to terminate this Agreement pursuant to Section 9.2 of this Agreement if the Engineer fails to adhere to the Completion Schedule and fails to take any reasonable steps to improve its progress, as determined in the County's sole discretion.

4.9 Not later than thirty (30) calendar days from the end of each month of the Project, the Engineer shall submit monthly progress reports for the Work Product and Services rendered to date in sufficient detail as deemed acceptable, in the sole discretion of the County, to enable the County to evaluate the ongoing progress of the Project (each a **"Progress Report"** and collectively, the **"Progress Reports"**). The Engineer shall submit to the County two (2) copies of each Progress Report. On all Progress Reports, the Engineer shall clearly indicate (a) Project name; (b) contract number as assigned by the County; (c) task number, if applicable; (d) purchase order number; and (e) the County Project Manager, and shall indicate "Progress Report" on the bottom left corner of any envelope used to mail and/or deliver any Progress Report to the County. All Progress Reports shall be sent to [insert address] by [insert method of mailing/delivery]. If the Engineer fails to adhere to the Completion Schedule, the County may require the Engineer to submit supplemental Progress Report(s) detailing the specific operational changes to be instituted by the Engineer to regain and/or comply with the Completion Schedule, all without additional cost and expense to the County. The County reserves the right to terminate this Agreement pursuant to Section 9.2 of this Agreement if the Engineer fails to adhere to the Completion Schedule and fails to take any reasonable steps to improve its progress, as determined in the County's sole discretion.

4.10 Approval by the County or other regulatory agencies of any or all of the Scope of Work, any or all of the Work Product, or any or all of the Services, or any or all of the Progress Schedules, or any or all of the Progress Reports, shall not in any way relieve the Engineer of the sole responsibility for the Scope of Work, Work Product, Services, and for achieving the professional standards of quality, technical accuracy and timeliness required by this Agreement, including, but not limited to, the Completion Schedule. The County's or any other regulatory agencies' review, approval, acceptance of, and/or payment for any of the Scope of Work, Work Product, or Services, or any Progress Schedule or Progress Report, furnished hereunder shall not be construed to and shall not operate as a waiver of any of the County's rights or remedies under this Agreement or of any cause of action arising out of the Engineer's performance of this Agreement. The Engineer shall be and shall remain liable for all

SAMPLE

damages, losses, costs and expenses incurred by and/or alleged against the County or any regulatory agency caused by the Engineer's negligent errors or omissions in the performance of any of the Scope of Work, any of the Services, or the provision of any of the Work Product required under this Agreement.

When an alleged error and/or omission is discovered, the Chief of Design for the County's DPW, Bureau of Engineering and Construction, Design Division, or his authorized designee (the **"Chief of Design"**) shall advise the Engineer accordingly and the Engineer may be given a reasonable opportunity to participate in the determination of the solution to rectify the alleged error and/or omission; provided, however, should the Chief of Design determine, in his sole discretion, that an immediate response is required with regards to an alleged error and/or omission, prior notice and an opportunity to participate in the determination need not be provided. The Engineer shall make every effort to cooperate with the County and make suggested revisions in a timely fashion to avoid and/or minimize any delay claims.

ARTICLE 5 - TERM

This Agreement shall be effective for an original term of __ (_) years from the date of execution by the Chairman of the County Council, and shall automatically be renewed for up to ____ (__) additional ____ (__) year periods unless [DPW] provides written notice of non-renewal to the Engineer prior to the end of the then-current term (collectively, the **"Original Term"**). Notwithstanding the Original Term, but expressly including the Original Term, this Agreement shall remain in full force and effect until the earlier of the date upon which (a) the Engineer has fully performed the Project, Scope of Work, Work Product, and Services as required under the Completion Schedule and this Agreement or (b) the County terminates this Agreement in accordance with Article 9 hereof (the **"Term"**). Unless set forth in a written amendment executed by the County and the Engineer, the compensation and manner of payment set forth herein shall remain as provided herein, including the maximum amount of compensation as stated in Section 7.14 of this Agreement. Any renewal that changes the terms and conditions set forth herein may be subject to the approval of the County Council.

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ARTICLE 6 - CHANGES

6.1 The County may, at any time, by written order, make changes to the Scope of Work to be performed by the Engineer, including but not limited to, the Services and Work Product to be provided by the Engineer hereunder. The Engineer may, at any time, request changes to the Scope of Work to be performed by the Engineer and such request shall be in writing and include, but not be limited to, the Engineer's written proposal, a revised DPW Form 105, as applicable for any Project task, and Subcontractors, in a form satisfactory to the County, in its sole discretion (which shall be attached to

and incorporated into **Exhibit A** of this Agreement, as applicable). Any such written request must indicate whether the proposed change will cause an increase or decrease in the Engineer's cost of or time required for the Engineer's performance of any Services or Work Product under this Agreement, or changes to the Completion Schedule.

6.2 Any Engineer proposed changes to the Scope of Work, ***for which no additional compensation or equitable adjustment is requested***, will be reviewed and either approved or denied by both the appropriate County DPW Design Section Chief, or his authorized designee (the **"Design Section Chief"**), and the Chief of the County's DPW, Bureau of Engineering and Construction, or his authorized designee (the **"Bureau Chief"**), and upon initial approval, if any, will be transmitted to the County Administration for final approval. Any Engineer proposed changes to the Scope of Work, ***for which additional compensation or equitable adjustment is requested***, will be initially reviewed and either approved or denied by both the Design Section Chief and the Bureau Chief, and then upon initial approval, if any, will be transmitted to the County Administration and the County Council for final approval. NO CHANGES TO THE SCOPE OF WORK SHALL BE PERFORMED OR FURNISHED BY THE ENGINEER WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COUNTY. IN ANY AND ALL INSTANCES, THE PARTIES AGREE THERE SHALL ONLY BE AN INCREASE IN THE TOTAL PRICE UNDER THIS AGREEMENT PURSUANT TO A PROPERLY EXECUTED AMENDMENT TO THIS AGREEMENT.

SAMPLE

ARTICLE 7 – PAYMENT

All cost terms that are capitalized in this Article 7 shall be in accordance with the DPW Forms 105 for all Project tasks assigned under this Agreement, said Forms to be attached hereto and incorporated herein when each applicable Project task is assigned.

7.1 Upon the Engineer's performance of the Services and provision of the Work Product, in manner, form, and content satisfactory to the County in its reasonable discretion, the Engineer shall submit certified invoices and the County shall remit payment to the Engineer up to the amounts reflected on the DPW Forms 105 for all Project tasks assigned under this Agreement (each DPW Form 105 to be attached hereto as part of the Scope of Work as each Project task is assigned). In no event shall the County pay the Engineer in excess of the Total Price, as reflected in Section 7.14 and collectively reflected on the DPW Forms 105 for all Project tasks assigned under this Agreement, said Forms to be attached hereto and incorporated herein as part of the Agreement when each applicable Project task is assigned.

7.2 The Engineer shall submit to the County one (1) signed original of each certified invoice along with three (3) copies of each such certified invoice and one (1) complete set of supporting documentation and affidavits therefor, which supporting documentation shall be attached to the signed original certified invoice. On all invoices, the Engineer shall clearly indicate (a) Project name; (b) contract number as assigned by the County; (c) task number, if applicable; (d) purchase order number; and (e) the name of the County Project Manager and shall indicate "Invoice" on the bottom left corner of any mailing or delivery envelope to the County. All certified invoices, copies of invoices, and supporting documentation shall be sent to [insert address] by [insert method of mailing/delivery].

7.3 Not later than thirty (30) calendar days from the end of each month during the Project, the Engineer shall submit certified invoices and supporting documentation on a monthly basis. Any and all invoices MUST be submitted to the County within six (6) months from the date the Services and/or Work Product were performed and/or provided under this Agreement, and the ENGINEER'S FAILURE TO TIMELY SUBMIT INVOICES WITHIN THIS SIX (6) MONTH PERIOD, SHALL CONSTITUTE THE ENGINEER'S WAIVER AND RELINQUISHMENT OF ITS RIGHT FOR REIMBURSEMENT FOR SUCH SERVICES AND/OR WORK PRODUCT UNDER THIS AGREEMENT.

7.4 The invoices and the required supporting documentation shall be in accordance with this Agreement and acceptable to the County, in its reasonable discretion. Thereafter, the County shall remit payment in a timely and reasonable manner to the Engineer for invoices in the proper form and approved by the County. The County reserves the right to approve such invoices, in its sole discretion, and to request such detail and additional information as the County, in its reasonable discretion deems appropriate.

7.5 At the completion of construction for the Project, and for each individual task of the Project, the Engineer shall furnish the County with a complete set of sealed and signed as-built Mylar record drawings that are based on the marked-up prints or red-lined drawings received from the applicable contractor, the shop drawings, any addenda, any change orders, any requests for information, and any other data utilized by the Engineer so as to provide a complete and accurate as-build record (collectively, the **"As-Built Drawings"**). The Engineer shall also furnish the County with electronic copies or files of the As-Built Drawings. The As-Built Drawings shall show the exact location of all exposed and concealed pipe runs, valves, plugged outlets, clean outs, other control points including electrical conduit and ducts, and any other items requested by the County. The location of pipes or control points concealed underground, including, but not limited to, under concrete, in chases or above hung ceilings shall be dimensioned by the Engineer.

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Where the As-Built Drawings need to be certified, as required by any applicable regulatory agencies or any applicable authorities having jurisdiction, the appropriate design professional of the Engineer who certifies the As-Built Drawings shall visit the Project worksite during the construction and provide on-going inspection of the relevant portions of the Project, and shall provide and certify signed and sealed As-Built Drawings showing surveyed as-built field conditions.

7.6 Final payment to the Engineer shall only be made upon completion and acceptance by the County of the Services, Work Product, and Scope of Work provided by the Engineer in accordance with this Agreement, including, but not limited to, the County's receipt of all sealed and signed As-Built Drawings for the Project, as defined in Section 7.5, and the Engineer's submission of a final invoice to the County. The County reserves the right to withhold final payment until the Engineer fully complies with this Section 7.6, as determined in the County's sole discretion. The Engineer's final invoice shall be prominently marked "FINAL INVOICE." In the event the County provides the Engineer with a written request for a final invoice, the Engineer shall provide the Engineer's final invoice within thirty (30) calendar days of the Engineer's receipt of the County's written request therefore.

7.7 IN NO EVENT SHALL THE COUNTY REMIT PAYMENT OF INTEREST TO THE ENGINEER AND THE ENGINEER HEREBY WAIVES ANY CLAIM FOR INTEREST IN CONNECTION WITH THIS AGREEMENT.

7.8 The Engineer submitted in writing (as part of the Scope of Work), a Schedule of Personnel by legal name and/or identification number, classification, rate of pay, and effective date of pay for each phase of the Project approved by the County. The Engineer, and all subconsultants/subcontractors, submitted in writing (as part of the Scope of Work), Salary Roster(s) to be kept on file by the County.

7.9 **Audits.**

a. The Engineer is not required to submit an independent audit to the County if the Engineer bills for reimbursement of Indirect Costs, comprised of Overhead and Payroll Burden, under Section 7.10 below, at a rate less than one hundred ten percent (110%). The Engineer, however, may be subject to a County audit.

b. The Engineer is required to submit an independent audit to the County if the Engineer bills for reimbursement of Indirect Costs, comprised of Overhead and Payroll Burden, under Section 7.10 below, at a rate equal to or greater than one hundred ten percent (110%). The Engineer may submit (a) an audit from the Maryland State Highway Administration or (b) an audit performed by an independent certified public accountant (**"ICPA"**) in accordance with auditing standards generally accepted in the United States, as established by the American Institute of Certified Public Accountants

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and the standards applicable to financial audits contained in the Government Auditing Standards issued by the Comptroller General of the United States (the **"ICPA Standards"**), to satisfy this Section 7.9(b). The ICPA Standards require an ICPA to plan and perform the audit to obtain reasonable assurance about whether the direct labor, fringe benefits, and general overhead schedules are free of material misstatement. An audit by a ICPA pursuant to the ICPA Standards shall include, but is not limited to, consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Engineer's internal control over schedule reporting, and examining, on a test basis, evidence supporting the amounts and disclosures in the schedule of direct labor, fringe benefits, and general overhead, assessing the accounting principles used and the significant estimates made by the Engineer's management, as well as evaluating the overall schedule presentation. The schedules to be audited by an ICPA pursuant to the ICPA Standards for direct labor, fringe benefits, and general overhead should be prepared on the basis of accounting practices prescribed in the Code of Federal Regulations, Title 48, Chapter 99, Subparts 9904.401, 402, 405 and 406, as amended, and Subchapter E-Part 31 of the Federal Acquisition Regulations, as amended, and do not need to be presented in conformity with generally accepted accounting principles.

c. The County reserves the right to request a revised audit from the Engineer for any Project, or task of the Project, longer than three (3) years. The County, in its sole discretion, will determine if any revised audit from the Engineer is required with regard to the Project and this Agreement. Any revised audit from the Engineer shall not result in an increase of the Total Price, as defined in Section 7.14.

7.10 During the Term of this Agreement, the Engineer will bill for reimbursement of Indirect Costs, comprised of Overhead and Payroll Burden, at a rate that shall not exceed [one hundred ten percent (110%)] [the lesser of (a) ____ which is the overhead and payroll burden rate reflected in the Rate Documentation (as defined in Section 1.1. of this Agreement) or (b) one hundred thirty-one and eight-tenths percent (131.80%) which is the maximum Overhead and Payroll Burden allowable under this Agreement]. The Overhead and Payroll Burden rate may only be increased or decreased during the Term of this Agreement in the sole discretion of the County upon the County's receipt of documentation from the Engineer, in form and content satisfactory to the County. Any such increase or decrease in the Overhead and Payroll Burden rate shall not change any other terms and conditions of this Agreement, shall not increase the Total Price, and shall not require an amendment to this Agreement, but rather, shall be formally documented by written notification to the Engineer signed by the Director or the Bureau Chief. IN ANY AND ALL INSTANCES, THE PARTIES AGREE THERE SHALL BE NO

SAMPLE

INCREASE IN THE TOTAL PRICE UNDER THIS AGREEMENT EXCEPT PURSUANT TO A PROPERLY APPROVED AND EXECUTED WRITTEN AMENDMENT TO THIS AGREEMENT.

7.11 The maximum hourly salary rates for direct labor for all engineers and architects shall be the lesser of (a) the salary rate reflected in the Scope of Work, or (b) $60.00 per hour. The maximum salary rates for direct labor for engineers and architects who are also principals of the Engineer shall be the lesser of (a) the salary rate reflected in the Scope of Work or (b) $110.00. The maximum hourly salary rates may only be increased or decreased during the Term of this Agreement in the sole discretion of the County upon the County's receipt of documentation from the Engineer, in form and content satisfactory to the County. Any such increase or decrease in the maximum hourly salary rates shall not change any other terms and conditions of this Agreement, shall not increase the Total Price, and shall not require an amendment to this Agreement, but rather, shall be formally documented by written notification by the Engineer signed to the Director or Bureau Chief. IN ANY AND ALL INSTANCES, THE PARTIES AGREE THERE SHALL BE NO INCREASE IN THE TOTAL PRICE UNDER THIS AGREEMENT EXCEPT PURSUANT TO A PROPERLY APPROVED AND EXECUTED WRITTEN AMENDMENT TO THIS AGREEMENT.

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7.12 Profit shall be fixed at and shall not exceed ten percent (10%) of the Total Of Direct Labor Costs & Indirect Costs, as collectively reflected on the DPW Forms 105 for all Project tasks assigned under this Agreement, said Forms to be attached hereto and incorporated herein as part of the Agreement when each applicable Project task is assigned (collectively, the **"Profit"**). No Profit shall be allowed as a percentage of or upon Other Direct Costs.

7.13 Payment for Other Direct Costs incurred incidental to and directly attributable to the Project may be reimbursable only with prior written approval of the County. All costs and expenses for Travel and Transportation shall be documented by the Engineer with invoices, receipts, and other relevant original documentation, all to the satisfaction of the County, but shall in no event exceed the U.S. General Services Administration per diem rates for the County. Any payments made to the Engineer's subcontractors, outside associates, consultants, subconsultants, or agents (Direct Labor, Indirect Costs, Profit, and Other Direct Costs) shall be included as an Other Direct Costs line item.

7.14 THE MAXIMUM AMOUNT PAYABLE BY THE COUNTY TO THE ENGINEER UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL PRICE OF _____ DOLLARS AND ___ CENTS ($_____) (the **"Total Price"**). NO INCREASE IN THE TOTAL PRICE SHALL BE ALLOWED UNLESS DOCUMENTED IN WRITING BY A PROPERLY APPROVED AND EXECUTED AMENDMENT TO THE AGREEMENT.

7.15 No overtime work shall be performed or payment made therefore without prior written authorization from the Director.

ARTICLE 8 – DISPUTES

8.1 Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this Agreement that are not disposed of by mutual agreement shall be resolved in accordance with this Article 8.

8.2 As used herein, "dispute" means a written demand by one of the parties seeking, as a legal right, the payment of money adjustment or interpretation of Agreement terms, or other relief, arising under or relating to this Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a dispute under this Article. However, if the submission subsequently is not acted upon in a reasonable time, or is in question either as to liability or amount, it may be converted to a dispute pursuant to a written demand as described above in this Section 8.2 for the purpose of this Article.

8.3 Any dispute by the Engineer shall be made in writing and submitted to the Chief of Design for decision. The written request shall set forth all the facts surrounding the controversy.

8.4 Any dispute by the County shall be decided in like manner.

8.5 Either or each party to this Agreement, at the discretion of the Chief of Design, may be afforded an opportunity to be heard and to offer evidence regarding the dispute.

8.6 The Chief of Design shall decide any and all disputes. The Chief of Design's decision shall be issued within ninety (90) calendar days of the later to occur of (a) the Chief of Design's receipt of the written dispute, or (b) the Chief of Design's hearing and receipt of evidence regarding the dispute. The written decision of the Chief of Design shall be final and binding unless appealed in writing to the Director within thirty (30) calendar days of delivery of the written decision to the parties.

8.7 Pending resolution of any and every dispute, the Engineer shall proceed diligently with the performance of the Scope of Work, Services, and Work Product under this Agreement and in accordance with the Chief of Design's written decision.

8.8 If and as necessary, the Director, serving as referee, will review the written appeal submitted to assure all reasonable attempts were made to resolve the dispute. When the Director is satisfied all efforts at the County's [DPW] level were made to resolve the dispute, it shall be resolved as follows:

a. The parties appoint the County Administrative Officer as an administrative hearing officer for any and all disputes hereunder.

SAMPLE

b. The parties grant the County Administrative Officer the right to delegate this responsibility and authority in writing to a County official who is a registered professional engineer, independent of the County's DPW, Division of Engineering and Construction, or to any other County official. For disputes involving $10,000.00 or more the decision of the administrative hearing officer shall be final and binding on both parties, subject only to an appeal on the record by a court of competent jurisdiction. For disputes involving less than $10,000.00, the decision of the administrative hearing officer shall be final and binding on both parties.

8.9 The parties understand and agree that any and all suits in connection with this Agreement shall be filed in Baltimore County Circuit Court in Baltimore County, Maryland or the United States District Court for the Northern District of Maryland.

ARTICLE 9 – TERMINATION AND DEFAULT

9.1 **Termination for Convenience.** The County may terminate this Agreement, in whole or part, without cause, by providing written notice thereof to the Engineer at least thirty (30) calendar days prior to the intended date of termination at the address set forth in Article 17 of this Agreement, or at such other address as may be later designated by the Engineer in writing. The Engineer acknowledges that the absence of a reciprocal right of termination for convenience does not render this Agreement illusory or unenforceable.

In the event of termination, without cause, the County shall advise the Engineer in writing of the termination date and of the Scope of Work to be performed during the final days prior to Agreement termination. Provided that the Engineer is not in violation of or in breach of any portion of this Agreement and provided the termination for convenience is not due to the County's non-appropriation as described in Article 28 of this Agreement, then in the event the Project, or any portion thereof, is terminated for convenience by the County prior to completion of the Scope of Work or the Project, the County shall pay the Engineer, in the County's reasonable discretion, the portion of the Total Price earned by the Engineer for Work Product provided to satisfaction of the County and Services performed to the satisfaction of the County up to the date of the termination for convenience. No amount of the Total Price shall be allowed or paid for Work Product not yet provided or not provided to the satisfaction of the County or for Services not yet performed or not performed to the satisfaction of the County, including but not limited to anticipated profit. IN NO EVENT SHALL THE COUNTY BE LIABLE FOR ANY OTHER LOSSES, COSTS, EXPENSES, OR DAMAGES OF ANY NATURE, KIND, OR AMOUNT.

9.2 **Default.** The term **"Default"** as used in this Agreement shall mean the occurrence or

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happening, from time to time, of any one or more of the following:

a. Representations and Warranties. If any representation or warranty, expressed or implied including, but not limited to, those contained in the Prequalification Documents, this Agreement, and/or the Rate Documentation, and pertaining to this Agreement, any **Exhibit** hereto, and/or any other document incorporated herein, shall prove at any time during the Term of this Agreement to be incorrect or misleading in any material respect either on the date when made, on the date when reaffirmed, or at any time during the Term of this Agreement.

b. Compliance with Conditions and Fulfillment of Responsibilities. If the Engineer shall fail to fulfill all responsibilities under this Agreement or comply with the terms of any requirement, covenant, condition, agreement, or any express or implied warranty contained in this Agreement, any **Exhibit** hereto, and/or any other document incorporated herein.

c. Performance of Covenants and Contractual Obligations. If the Work Product, Services and/or Scope of Work required hereunder are not provided and performed in good faith and in accordance with the provisions of this Agreement including, but not limited to, time frames required by the Completion Schedule.

d. Conditions Precedent to Any Disbursement. If the Engineer shall be unable to satisfy any condition precedent to its right to receive a disbursement.

e. Bankruptcy. If the Engineer becomes insolvent or generally does not pay its debts as they become due, or if a petition for relief is filed by the Engineer in a bankruptcy court, or if the Engineer applies for, consents to, or acquiesces in the appointment of a trustee, custodian, or receiver for the Engineer or any of its assets and property, or makes a general assignment for the benefit of creditors; or in the absence of such application, consent, or acquiescence, a trustee, custodian, or receiver is appointed for the Engineer or for a substantial part of the assets and property of the Engineer and is not discharged within thirty (30) calendar days; or any bankruptcy, reorganization, debt arrangement, or other proceeding or case under any bankruptcy or insolvency or any dissolution or liquidation proceeding is instituted against the Engineer and is consented to or acquiesced to by the Engineer or remains for sixty (60) calendar days undismissed; or the Engineer takes any action to authorize any of the actions described in this subsection.

9.3 Remedies for Default.

The County shall have the right upon the happening of any Default, without providing notice to the Engineer:

a. In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part;

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b. To suspend the Engineer's authority to receive any undisbursed funds; and/or

c. To proceed at any time or from time to time to protect and enforce all rights and remedies available to the County, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under this Agreement, including but not limited to, calling upon any security, letter of credit, or bond and any other action authorized or permitted by this Agreement, applicable law, regulation, code, or in equity.

Upon termination of this Agreement for Default, the County may elect to pay the Engineer for Services provided by the Engineer that are acceptable to the County and/or Work Product delivered in a form acceptable to the County up to the date of termination, less the amount of damages caused by the Default, all as determined by the County in its sole discretion. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements to the Engineer in connection with the Project and this Agreement.

9.4 The rights and remedies of the County provided for under this Agreement are in addition to any other rights and remedies as may be provided by applicable laws, codes, regulations, requirements, or in equity.

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ARTICLE 10 – PROJECT DESIGN

10.1 All work for the Project shall be designed in conformance with the following:

a. Baltimore County Design Manual – originally adopted by the County Council in 2010 and the latest version thereto, including, but not limited to, any revisions, amendments, and supplements thereto (the **"Design Manual"**).

b. Baltimore County DPW's Standard Specifications for Construction and Materials, February 2000, and any and all revisions thereto, including but not limited to the supplemental specification known as Addendum 3 and General Conditions Building Projects, as applicable (**"Standard Specifications"**).

c. All laws, codes, and regulations that pertain or apply to the Project.

In the event of a conflict between the Design Manual and/or the Standard Specifications and this Agreement, the provisions of this Agreement (without the conflicting terms in the Design Manual and/or the Standard Specifications) shall prevail.

10.2 In the performance of the Project, Work Product, Services, and Scope of Work required under this Agreement, the Engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily

available through competitive procurement, or through standard, proven, or industry accepted production techniques, methods and processes.

10.3 The Engineer shall not, in the performance of the Project, Work Product, Services, and Scope of Work called for by this Agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the Engineer to be available only from a sole source, unless such use has been adequately justified in writing by the Engineer as necessary for the minimum needs of the Project and approved in writing by the County.

ARTICLE 11 - ACCESS TO RECORDS

11.1 The Engineer shall maintain books, records, documents and other evidence directly related to or pertinent to the Engineer's performance of this Agreement in accordance with generally accepted accounting principles, procedures and practices (**"GAAP"**). The Engineer shall make such materials available to the County, its employees or agents, at all reasonable times during the period of this Agreement and for three (3) years from the date of final payment; provided, however, if the Project is funded in whole or in part by federal or state grants, records shall be maintained for a period of three (3) years after final payment is received by the County from the federal or state government or agency providing said grant funds, as applicable.

11.2 At any time during normal business hours and as often as the County may deem necessary, the Engineer shall make available to and permit inspection by the County, its employees or agents, of all records, information and documentation of the Engineer related to this Agreement, the Scope of Work, Services, and Work Product, including, but not limited to, all contracts, invoices, payroll, and financial audits. The County shall have the right to audit the Project, or any portion thereof, at any time during this Agreement and for up to three (3) years after the date of final payment under the Agreement. The Engineer hereby agrees that the County, its employees and agents, has the right to make photocopies and/or scans of said books, records, documents and other evidence directly pertinent to the Project.

ARTICLE 12 - PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

12.1 If the County determines that any line item, cost, or price in the Scope of Work, including but not limited to Profit, provided by the Engineer, negotiated in connection with this Agreement, or any cost reimbursable under this Agreement was overstated, misstated, or inflated by any material sum or amount (in the reasonable discretion of the County) because the Engineer, or any of its

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subcontractors, consultants, subconsultants, agents, or outside associates, furnished incomplete or inaccurate line item, cost, or pricing data or data not current as represented in the Scope of Work, then such line item, price, or cost in the Scope of Work, including but not limited to Profit, shall be reduced accordingly and this Agreement shall be promptly amended in writing to reflect such reduction in accordance with Article 22 of this Agreement.

12.2 Failure of the parties hereto to agree on a reduction to the applicable line item of the Scope of Work and the resulting decrease to the Total Price shall be subject to Article 8 of this Agreement.

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ARTICLE 13 - SUBCONTRACTS

13.1 Any subcontractors, outside associates, consultants, subconsultants, or agents utilized or engaged by the Engineer in connection with the Work Product, Services, or Scope of Work required by this Agreement shall be limited to such subcontractors, outside associates, consultants, subconsultants, and agents (a) identified in the Scope of Work and approved in writing by the County, or (b) approved in writing by the County during the performance of this Agreement. Nothing in this Agreement creates a contract between the County and any of the Engineer's subcontractors, outside associates, consultants, subconsultants, or agents, and no consent by the County to any subcontract, or other agreement with regard to the delegation of work by the Engineer shall relieve the Engineer of its duty to the County hereunder.

13.2 Except as otherwise provided in this Agreement, the Engineer may not subcontract Services and/or Work Product collectively in excess of fifty percent (50%) of the Total Price, as reflected in Section 7.14 and collectively reflected on the DPW Forms 105 for all Project tasks assigned under this Agreement, said Forms to be attached hereto and incorporated herein as part of the Agreement when each applicable Project task is assigned, to subcontractors, outside associates, consultants, subconsultants, and agents without prior written approval of the County.

ARTICLE 14 - EQUAL EMPLOYMENT OPPORTUNITY

14.1 In the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Engineer shall not:

a. Fail or refuse to hire, or discharge, any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, national origin, marital status, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or

b. Limit, recruit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment

opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, marital status, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

14.2 All solicitations or advertisements for employees shall state that the Engineer is an equal opportunity employer.

14.3 Should the Engineer retain the services of a subcontractor, outside associate, consultant, subconsultant, or agent to perform work in connection with this Agreement, the Engineer shall be responsible to ensure that its subcontractor, outside associate, consultant, subconsultant, or agent adheres to this Agreement and to all applicable affirmative action plans for Equal Employment Opportunity.

14.4 In addition to the foregoing, should the Engineer employ fifteen (15) or more employees, in the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Engineer shall also not:

a. Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's sexual orientation or genetic information unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test; or

b. Request or require genetic tests or genetic information as a condition for hiring or determining benefits.

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ARTICLE 15 - NO CONTINGENT FEES

15.1 The Engineer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Engineer to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company or corporation, individual or firm, other than a bona fide employee working solely for the Engineer any favor, commission, percentage, gift, fee or any other consideration contingent upon or resulting from the award or making of this Agreement.

15.2 In the event of a breach or violation of Section 15.1, the County shall have the right to terminate this Agreement without liability to the Engineer or any person or third party and, at the County's sole discretion, deduct from the Total Price, as reflected in Section 7.14 and collectively reflected on the DPW Forms 105 for all Project tasks assigned under this Agreement, said Forms to be attached hereto and incorporated herein as part of the Agreement when each applicable Project task is assigned,, or otherwise recover, the full amount of such favor, commission, percentage, gift, fee or other consideration. In addition, the Engineer will be removed from the County's list of prequalified and/or

eligible engineering consultants until such time as the County determines, in its sole discretion, that requalification is warranted. In no event shall requalification of the Engineer occur sooner than three (3) years from the date of the removal of Engineer from County's prequalified and/or eligible engineering consultant list. The remedies provided herein are not exclusive but rather are in addition to all other remedies available to the County under this Agreement.

ARTICLE 16 - RIGHTS IN DATA

16.1 The Engineer agrees that the Work Product is the sole and absolute property of the County. All finished and unfinished work, reports, or goods, including but not limited to the Work Product that are the subject of this Agreement, are owned by the County and remain the property of the County at all times from the Effective Date, regardless of whether the County has or will remit payment therefor.

16.2 All such Work Product prepared by, generated, or furnished by the Engineer pursuant to this Agreement are prepared, generated, and furnished with respect to the Project. It is understood that the Work Product is not represented by the Engineer to be suitable for reuse on any other project. However, the Engineer understands and agrees that the County may use, reuse, modify, and/or alter the Work Product in any manner without restriction as deemed appropriate by the County in its sole discretion. Any use, reuse, modification, and/or alteration by the County of the Work Product for another use or another project without specific written verification or adaptation by the Engineer will be at the risk of the County and without liability or legal exposure of any kind to the Engineer. Should the County request that the Engineer perform any such verification or adaptation associated with the County's use, reuse, modification, and/or alteration of the Work Product that is unrelated to the Project and this Agreement, then the Engineer will be entitled to compensation at rates to be agreed upon by the County and the Engineer at such time pursuant to a separate written agreement unrelated to this Agreement.

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ARTICLE 17 - NOTICES

Any notice, certified invoice, or other correspondence required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier with signed receipt, or hand delivered with signed receipt to the following address and individual or at such other address and/or such other individual as a party may identify in writing to the other party.

Engineer's Name _____

Address _____

_____

_____

Baltimore County: Baltimore County Department of Public Works
Bureau of Engineering and Construction
111 W. Chesapeake Avenue
Towson, Maryland 21204
Attention: Chief

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ARTICLE 18- JURISDICTION

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with the laws, codes, regulations, and requirements of the State of Maryland and Baltimore County, Maryland.

ARTICLE 19 - WAIVER

It is particularly understood and agreed that in the event of a written waiver at any time by the parties of any particular covenant or condition of this Agreement, said waiver shall extend to the specific and particular incident or case only and in the manner specified and such written waiver shall not be construed or understood as applying to or waiving in any manner any further or other rights hereunder or any character whatsoever. No failure or delay by the County to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach of any portion or terms of this Agreement, at any time during the entire Term of this Agreement, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the County from exercising any such right, power, or remedy at any later time or times.

ARTICLE 20 - VOIDABLE PROVISIONS

It is agreed that if any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, all of which other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

ARTICLE 21 - INTEGRATION

This Agreement, all **Exhibits** described herein, and all other documents incorporated herein shall constitute the entire agreement between the parties and any prior understanding, writing, or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be in the form of an amendment to this Agreement and shall be binding only if evidenced in writing, duly approved and signed by a legally authorized representative of each party. The parties hereto further agree that this Agreement controls and shall not be altered or amended in any manner by the County's subsequent purchase orders.

ARTICLE 22 - INSURANCE

The Engineer shall execute a certificate of insurance form furnished by the County in accordance with the certificate of insurance form attached hereto as **Exhibit C** and incorporated herein prior to or simultaneous with the execution of this Agreement. The Engineer shall maintain the insurance coverages in the amounts and as required by the County (Commercial General Liability Insurance, Automobile Liability Insurance, Workers' Compensation and Employers' Liability Insurance, Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage, and Professional Liability/Errors and Omissions Liability Insurance) as described in **Exhibit C**, 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. In the event of a conflict between the provisions of the attached insurance requirements and this Agreement, the provisions of this Agreement shall prevail. All of said insurance certificates shall name the County as a certificate holder and Commercial General Liability Insurance, Automobile Liability Insurance, Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage shall each also name the County as an additional insured. The Professional Liability/Errors and Omissions insurance coverage shall remain in effect for a period of not less than three (3) years from the expiration or earlier termination of the Agreement and shall include full prior acts coverage.

ARTICLE 23 – NO PAYMENT

In no event shall the Engineer be paid in excess of the Total Price under this Agreement for this Project as described in Section 7.14 of this Agreement. The Engineer understands that the Engineer is solely responsible for monitoring its billings versus the progress of the Project and that the Engineer

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shall complete the Scope of Work, perform all of the Services, and provide all Work Product required under this Agreement in accordance with this Agreement.

ARTICLE 24 – CONFIDENTIAL INFORMATION

24.1 The Engineer understands and agrees that confidential information includes but is not limited to personal information and protected health information. The Engineer shall take all actions necessary to ensure that its employees, officers, agents and assigns, including, but not limited to, subcontractors, outside associates, consultants, subconsultants and agents adhere to these restrictions and conditions with regard to the County's confidential information, protected health information and personal information. The Engineer has consented and hereby affirms in writing its prior consent to the inclusion of its pricing information including, but not limited to, Scope of Work, pricing terms, demographic data, rating information, formulas, methodologies, etc. provided to the County. The Engineer has consented and hereby affirms in writing its prior consent to allow the County to reproduce those materials provided to the County by the Engineer in connection with this Agreement to allow for review and consideration of said materials by the County's applicable departments and boards to review said materials and this Agreement. The Engineer understands and agrees this reproduction is necessary to allow the County's applicable departments, executive branch and legislative branch to review those materials provided to the County by the Engineer and this Agreement.

24.2 Each party may use confidential information provided by another party hereto solely in connection with this Agreement, shall only use or disclose such information as necessary to fulfill its obligations under this Agreement and shall in no event violate any applicable ordinance, regulation, law or statute or any other provision of this Agreement with regard to the disclosure or use of such confidential information. Notwithstanding the foregoing, no party shall release any other party's confidential information in contradiction of the terms of this Article 25 except as otherwise permitted in this Agreement. Each party shall take commercially reasonable actions to ensure that its employees, officers, agents and assigns, including but not limited to subcontractors, outside associates, consultants, subconsultants and agents, adhere to these restrictions and conditions with regard to confidential information.

24.3 Upon the termination of this Agreement in its entirety, or as otherwise instructed by the County, the Engineer shall return all confidential information previously received from the County, including, to the extent reasonable and practical, all copies of confidential information in any form, including copies maintained in digital, electronic, magnetic, optical or other mediums. The Engineer shall execute a data inspection and perform a data scrub of the electronic files containing confidential

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information provided by the County, so that upon completion of a data scrub of such confidential information, all such confidential information in all live electronic files owned or operated by the Engineer and its employees, officers, directors, subcontractors, outside associates, consultants, subconsultants, agents and assigns will be deleted. To the extent confidential information of a disclosing party cannot be returned, such confidential information shall be destroyed. The Engineer shall certify to the County in an affidavit executed under oath and by a legally authorized representative of the Engineer that all confidential information disclosed to the Engineer, its employees, officers, directors, subcontractors, outside associates, consultants, subconsultants, agents, and assigns, has been returned to the County or destroyed, as applicable under this Agreement.

24.4 The Engineer shall carefully restrict access to the confidential information to those employees, officers, directors, subcontractors, outside associates, consultants, subconsultants, agents and assigns who clearly need such access in order to perform their obligations under this Agreement. The Engineer warrants and represents that it will advise each of the persons to whom it provides access to the County's confidential information, in conformance with the terms of this Agreement, that such persons are strictly prohibited from making any use of, publishing, or otherwise disclosing to others, or permitting others to use, any such confidential information.

24.5 Each party may disclose to the others hereto, and their respective officials, officers, employees, assigns, subcontractors, outside associates, consultants, subconsultants, or agents, confidential information of such party to the extent permitted by state and federal privacy laws. Except as otherwise provided in this Article 25 or as required by law, each recipient of confidential information shall hold the confidential information in confidence and shall not, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed or otherwise transfer such confidential information to any third party or utilize such confidential information for any purpose whatsoever other than as expressly contemplated by this Agreement. This obligation shall continue throughout the Term of this Agreement, and beyond the expiration or earlier termination or non-renewal of this Agreement for a period of not less than five (5) years thereafter, and for as long as the recipient of the confidential information maintains such confidential information, and thereafter such confidential information shall be destroyed (or if in electronic format shall be deleted) in accordance with the terms and conditions of this Agreement. Each party understands and acknowledges that any disclosure or misappropriation of any of the confidential information in violation of this Agreement may cause the disclosing party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the disclosing party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for

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such other relief as the disclosing party shall deem appropriate. With regard to this Section 25.5, such right of the disclosing party is to be in addition to the remedies otherwise available to the disclosing party at law or in equity.

24.6 Notwithstanding the terms in this Article 25, upon prior written notice to the other party hereto, the recipient of the confidential information may only disclose such information if, upon advice of counsel, such disclosure is required by a subpoena, court order, law, statute, or regulation, or other compulsion of law (in which case the parties shall cooperate to the extent reasonable to preserve the confidential information from public disclosure beyond what is absolutely necessary or legally required).

24.7 **Exceptions.** These confidentiality obligations shall not apply to confidential information, including but not limited to proprietary information or intellectual property, if and to the extent it is established that the information communicated: (a) is already known to recipient, without obligation to keep such information confidential, at the time of recipient's receipt of the proprietary information or intellectual property, as evidenced by documents in possession of the recipient prepared or received prior to such communication; (b) was received by recipient in good faith from an unrelated third party lawfully in possession thereof and having no obligation to keep such information confidential; (c) was publicly known at the time of recipient's receipt thereof or has become publicly known other than by a breach of this Agreement; (d) prior to recipient's disclosure of such information, such disclosure was consented to in writing by the disclosing party; (e) is independently developed by the receiving party; (f) is required for the review, approval, execution, delivery or performance of this Agreement by the County, or (g) is required by subpoena, court order, law, statute, or regulation, or other compulsion of law.

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ARTICLE 25 – NO ASSIGNMENT

Subject to Article 13 of this Agreement, the Engineer shall not assign, sublet, delegate, or transfer its interest or obligations under this Agreement to any third party, without the prior written consent of the County.

ARTICLE 26 - CONFLICT OF INTEREST

26.1 The Engineer represents and warrants to the best of the Engineer’s knowledge, information, and belief, that there exists no actual or potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the Term of this

Agreement, or any extension thereof, the Engineer shall immediately advise the County in writing thereof.

26.2 **Employment of Federal, State, City or County Personnel.**

a. The Engineer shall not engage, on a full or part time or other basis, during the Term of this Agreement, any professional or technical personnel who are in the employ of the federal government or in the organization of any state, city or county, including, but not limited to, the County, except regularly retired employees, without the prior written consent of the public employer of such person and the County.

b. The intent of Article 26.2(a) is to preclude a governmental employee involved with the Project from also being simultaneously employed by the Engineer to work on the Project. It is not the intent of the Article to prevent or preclude such a governmental employee from being recruited, interviewed or hired by the Engineer.

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ARTICLE 27 – INDEMNIFICATION

27.1 **COMMERCIAL GENERAL LIABILITY INDEMNIFICATION:** OTHER THAN ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES, THE ENGINEER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COUNTY, ITS EMPLOYEES, AGENTS AND OFFICIALS FROM ANY AND ALL LOSSES, COSTS, PENALTIES, DAMAGES, EXPENSES, LIABILITY, CLAIMS, SUITS, AND/OR DEMANDS, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND DEFENSE COSTS, BUT EXPRESSLY EXCEPTING THOSE DUE TO THE PERFORMANCE OF PROFESSIONAL SERVICES, WHICH MAY BE ALLEGED, SUFFERED, OR INCURRED BY OR MADE AGAINST THE COUNTY, ITS EMPLOYEES, AGENTS AND/OR OFFICIALS RESULTING FROM ANY NEGLIGENT ACT OR OMISSION COMMITTED IN THE PERFORMANCE OF THE NON-PROFESSIONAL SERVICE DUTIES IMPOSED BY OR PERFORMED IN CONNECTION WITH THIS AGREEMENT BY THE ENGINEER OR ANY OF THE ENGINEER'S SUBCONTRACTORS, OUTSIDE ASSOCIATES, CONSULTANTS, SUBCONSULTANTS OR AGENTS OR ANYONE UNDER AGREEMENT WITH THE ENGINEER TO PERFORM NON-PROFESSIONAL SERVICE DUTIES UNDER THIS AGREEMENT. THE ENGINEER SHALL NOT BE RESPONSIBLE FOR ACTS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT COMMITTED BY THE COUNTY.

27.2 **PROFESSIONAL LIABILITY INDEMNIFICATION:** THE ENGINEER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COUNTY, ITS EMPLOYEES, AGENTS AND OFFICIALS FROM ANY AND ALL LOSSES, COSTS, PENALTIES, DAMAGES,

EXPENSES, LIABILITY, CLAIMS, SUITS, AND/OR DEMANDS, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND DEFENSE COSTS THAT ARISE DURING THE PERFORMANCE OF PROFESSIONAL SERVICES, AND WHICH MAY BE ALLEGED, SUFFERED, OR INCURRED BY OR MADE AGAINST THE COUNTY, ITS EMPLOYEES, AGENTS AND/OR OFFICIALS RESULTING FROM ANY NEGLIGENT ACT OR OMISSION COMMITTED IN THE PERFORMANCE OF THE PROFESSIONAL SERVICE DUTIES IMPOSED BY OR PERFORMED IN CONNECTION WITH THIS AGREEMENT BY THE ENGINEER OR ANY OF THE ENGINEER'S SUBCONTRACTORS, OUTSIDE ASSOCIATES, CONSULTANTS, SUBCONSULTANTS OR AGENTS OR ANYONE UNDER AGREEMENT WITH THE ENGINEER TO PERFORM PROFESSIONAL SERVICE DUTIES UNDER THIS AGREEMENT TO THE EXTENT IT IS INSURED AS STIPULATED IN **EXHIBIT C**. THE ENGINEER SHALL NOT BE RESPONSIBLE FOR ACTS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT COMMITTED BY THE COUNTY.

27.3 THE ENGINEER SHALL ALSO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY, ITS EMPLOYEES, AGENTS, AND OFFICIALS AGAINST ALL LOSSES, COSTS, PENALTIES, DAMAGES, EXPENSES, LIABILITY, CLAIMS, SUITS, OR DEMANDS, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND DEFENSE COSTS, ALLEGED, SUFFERED, OR INCURRED BY ANY THIRD PARTY ARISING FROM THE ENGINEER'S AND/OR ANY OF THE ENGINEER'S SUBCONTRACTORS, OUTSIDE ASSOCIATES, CONSULTANTS, SUNCONSULTANTS OR AGENTS ALLEGED VIOLATION OF ANY THIRD PARTIES' TRADE SECRETS, PROPRIETARY INFORMATION, TRADEMARK, COPYRIGHT, PATENT RIGHTS, OR INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH THE PROJECT AND/OR THIS AGREEMENT.

27.4 IF A CLAIM OR A WRITTEN ALLEGATION IS MADE BY A THIRD PARTY THAT ALLEGES ANY WORK PRODUCT PROVIDED OR SERVICES PERFORMED HEREUNDER BY THE ENGINEER AND/OR ANY OF THE ENGINEER'S SUBCONTRACTORS, OUTSIDE ASSOCIATES, CONSULTANTS, SUBCONSULTANTS AND/OR AGENTS, OR ANY PORTION THEREOF, INFRINGES A PATENT RIGHT, INTELLECTUAL PROPERTY RIGHT, PROPRIETARY INFORMATION, TRADEMARK, COPYRIGHT, OR TRADE SECRET, UPON RECEIPT OF THE COUNTY'S WRITTEN NOTICE OF SUCH CLAIM OR WRITTEN ALLEGATION, THE ENGINEER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE COUNTY, ITS EMPLOYEES, AGENTS AND OFFICIALS AGAINST ALL DAMAGES, LOSSES,

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COSTS, PENALTIES, EXPENSES, CLAIMS, AND LIABILITIES ARISING THEREFROM OR ASSOCIATED THEREWITH.

27.5 THE ENGINEER SHALL PROVIDE DEFENSE FOR THE COUNTY, ITS EMPLOYEES, AGENTS AND OFFICIALS IN ACCORDANCE WITH THIS ARTICLE 27 AND IN DOING SO THE ENGINEER SHALL ALLOW THE COUNTY TO PARTICIPATE IN SAID DEFENSE OF THE COUNTY, ITS EMPLOYEES, AGENTS AND OFFICIALS, TO THE EXTENT AND AS MAY BE REQUIRED BY THE COUNTY, AND THE ENGINEER SHALL COOPERATE WITH THE COUNTY IN ALL ASPECTS IN CONNECTION THEREWITH.

SAMPLE

ARTICLE 28 – FUNDING

28.1 The parties hereto agree that the failure of the County to appropriate sufficient funds in any fiscal year to provide funds for this Agreement shall entitle the County to immediately terminate this Agreement without prior notice to the Engineer and without further liability, of any kind or amount, under this Agreement, at law, or in equity. THE ENGINEER UNDERSTANDS AND AGREES THAT TERMINATION RESULTING FROM NON-APPROPRIATION FOR THIS PROJECT DOES NOT ENTITLE THE ENGINEER TO PAYMENT BEYOND THE COUNTY'S THEN-APPROPRIATED FUNDS FOR THE PROJECT AND MAY RESULT IN THE ENGINEER NOT BEING COMPENSATED FOR THE SCOPE OF WORK PROVIDED TO THE COUNTY.

28.2 THE ENGINEER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT THE DISBURSEMENT AND/OR DISBURSEMENTS, IF AND AS APPLICABLE, OF FUNDS UNDER THIS AGREEMENT ARE SUBJECT TO THE CONTINUING AVAILABILITY OF THE COUNTY'S FUNDS FOR SUCH PURPOSE, THE COUNTY'S FISCAL POSITION, AND/OR THE COUNTY'S COMPLIANCE WITH THE COUNTY CHARTER AND ANY AND ALL APPLICABLE LAWS AND REGULATIONS. ACCORDINGLY, THE COUNTY MAY, AT ANY TIME, ASSESS OR REASSESS THE COUNTY'S FISCAL POSITION AND FINANCIAL RESOURCES AND THE COUNTY MAY REDUCE, ELIMINATE OR RESTRICT THE AMOUNT OF THE UNDISBURSED FUNDS UNDER THIS AGREEMENT IN ITS SOLE AND ABSOLUTE DISCRETION, PURSUANT TO THIS ARTICLE 28. THE ENGINEER UNDERSTANDS AND AGREES THAT, IN SUCH INSTANCE, THE COUNTY SHALL NOT BE FINANCIALLY OBLIGATED OR LIABLE, DIRECTLY OR INDIRECTLY, IN ANY AMOUNT, MANNER OR EXTENT, FOR ANY LOSSES, COSTS, EXPENSES, DAMAGES AND/OR CLAIMS CAUSED TO OR SUFFERED BY THE ENGINEER OR ANY OTHER PERSON IN CONNECTION WITH OR AS A RESULT OF SUCH REDUCTION, ELIMINATION, OR RESTRICTION PURSUANT TO THIS ARTICLE 28. THE

ENGINEER, IN ENTERING INTO THIS AGREEMENT AND ALL DOCUMENTS ASSOCIATED WITH THIS AGREEMENT, UNDERSTANDS AND ACKNOWLEDGES THE POSSIBILITY OF AND ASSUMES FULL AND SOLE RESPONSIBILITY FOR ANY AND ALL RISK, LOSS, COST, EXPENSE, DAMAGE AND/OR CLAIM ASSOCIATED WITH THE COUNTY'S REDUCTION, ELIMINATION OR RESTRICTION OF THE AMOUNT OF UNDISBURSED FUNDS UNDER THIS AGREEMENT, PURSUANT TO THIS ARTICLE 28. FURTHER, THE ENGINEER HEREBY RELEASES THE COUNTY AND FOREVER WAIVES ITS RIGHT TO INITIATE, MAKE OR FILE ANY CLAIM, CAUSE OF ACTION, OR LEGAL PROCEEDING, AND ITS RIGHT TO ANY AND ALL OTHER REMEDY OR RECOURSE AGAINST THE COUNTY FOR ANY AND ALL RESULTING LOSS, COST, EXPENSE, DAMAGE AND/OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THE COUNTY'S REDUCTION, ELIMINATION OR RESTRICTION OF THE AMOUNT OF THE UNDISBURSED FUNDS UNDER THIS AGREEMENT, PURSUANT TO THIS ARTICLE 28. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO CREATE ANY PERSONAL OR INDIVIDUAL LIABILITY UPON ANY EMPLOYEE, OFFICER OR ELECTED OFFICIAL OF THE COUNTY, NOR SHALL THIS AGREEMENT BE CONSTRUED TO CREATE ANY RIGHTS HEREUNDER IN ANY PERSON OR ENTITY OTHER THAN THE PARTIES OF THIS AGREEMENT.

SAMPLE

ARTICLE 29 – SURVIVAL

Those articles and sections in this Agreement which by their nature are intended to survive, including but not limited to Article 2 (Representations & Warranties of Engineer), Article 3 (County Reliance Upon Engineer's Submissions), Article 4 (Responsibilities of the Engineer), Section 7.10 (Indirect Costs), Article 8 (Disputes), Section 9.3 (Remedies for Default), Article 11 (Audit and Access to Records), Article 12 (Price Reduction for Defective Cost or Pricing Data), Article 16 (Rights in Data), Article 18 (Jurisdiction), Article 25 (Confidential Information), Article 27 (Indemnification), Article 28 (Funding), and Article 34 (Consent Decree Projects), shall survive the expiration or earlier termination of this Agreement.

ARTICLE 30 – RECITALS

All of the recitals in this Agreement are incorporated into this Agreement.

ARTICLE 31 - TRUTH-IN-NEGOTIATION CERTIFICATE

The Engineer shall execute and complete the Truth-In-Negotiation Certificate attached hereto as **Exhibit D** and incorporated herein simultaneous with the Engineer's execution of this Agreement.

ARTICLE 32 – POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

The Engineer affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, as the same may be amended from time to time, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, of at least $100,000.00, to file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of $500.00 during defined reporting periods.

SAMPLE

ARTICLE 33 - MBE/WBE REPORTING REQUIREMENTS

The Engineer is expected to and shall comply with the County's Executive Order dated June 4, 2009, as amended, in connection with this Agreement throughout the Term of the Agreement and/or in connection with the Project, the Scope of Work, and each Work Product and Service thereunder, if and as applicable. The Engineer understands and agrees that a MBE/WBE participation requirement, if and as applicable, shall be determined and issued by the County pursuant to and under this Agreement, and any and all forms provided to the Engineer by the County, attached to and incorporated herein as **Exhibit E**, if and as applicable, and thereafter the Engineer shall accordingly fulfill any and all such MBE/WBE participation requirements, if and as applicable.

ARTICLE 34 - CONSENT DECREE PROJECTS

34.1 SHOULD THE PROJECT BEING PERFORMED BY THE ENGINEER UNDER THIS AGREEMENT BE SUBJECT TO OR MENTIONED IN THE CONSENT DECREE ENTERED ON SEPTEMBER 20, 2005, IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF MARYLAND, BY AND AMONG THE UNITED STATES OF AMERICA, THE STATE OF MARYLAND AND THE COUNTY (**"CONSENT DECREE"**), THE PARTIES ACKNOWLEDGE AND AGREE THAT IT IS POSSIBLE THAT THE COUNTY MAY INCUR SIGNIFICANT AND SUBSTANTIAL STIPULATED PENALTIES IF THE PROJECT IS NOT COMPLETED IN ACCORDANCE WITH THE COMPLETION SCHEDULE ESTABLISHED BY THE COUNTY AND THE ENGINEER FOR EACH PROJECT ASSIGNMENT, INCLUDING THE SCOPE OF WORK AND ANY WORK PRODUCT, UNDER THIS AGREEMENT AND/OR WITHIN THE TIME PERIOD REQUIRED BY THE CONSENT DECREE. THE ENGINEER UNDERSTANDS THAT ALL PROJECT WORK, INCLUDING THE SCOPE OF WORK AND ANY WORK PRODUCT, ASSOCIATED WITH THE CONSENT DECREE MUST BE DILIGENTLY COMPLETED PURSUANT TO THE COMPLETION SCHEDULE, THIS AGREEMENT, AND THE CONSENT DECREE REQUIRED TIME PERIOD. IN ACCORDANCE WITH ARTICLE 27 OF THIS AGREEMENT, THE ENGINEER SHALL BE LIABLE FOR ALL LOSSES, COSTS, PENALTIES, DAMAGES,

EXPENSES, LIABILITY CLAIMS, SUITS, AND/OR DEMANDS INCURRED BY OR MADE AGAINST THE COUNTY, ITS EMPLOYEES, AGENTS, AND/OR OFFICIALS, IF RESULTING FROM ANY NEGLIGENT ACT OR OMISSION BY THE ENGINEER, OR ITS SUBCONTRACTORS, OUTSIDE ASSOCIATES, CONSULTANTS, SUBCONSULTANTS, OR AGENTS, INCLUDING, BUT NOT LIMITED TO, A DEFAULT OF THIS AGREEMENT. THEREFORE, IN THE EVENT THE ENGINEER FAILS TO MEET AND ACHIEVE THE COMPLETION SCHEDULE FOR THE PROJECT AND/OR COMPLY WITH ALL TERMS AND CONDITIONS OF THIS AGREEMENT, AND SUCH FAILURE AND/OR DEFAULT CAUSES THE COUNTY TO INCUR STIPULATED PENALTIES UNDER THE CONSENT DECREE, THE ENGINEER UNDERSTANDS THE STIPULATED PENALTIES SHALL BE ACTUAL DAMAGES TO THE COUNTY AND PURSUANT TO THE CONSENT DECREE ARE PER CALENDAR DAY AS FOLLOWS:

For Designated Rehabilitation and Replacement Projects pursuant to Article XI, Paragraph 38(A) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day
Day 31 through Day 60 - $2,500.00 per calendar day
Day 61 and thereafter - $6,000.00 per calendar day.

For Delays in Submission of Deliverables pursuant to Article XI, Paragraph 38(B) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day
Day 31 through Day 60 - $1,500.00 per calendar day
Day 61 and thereafter - $2,250.00 per calendar day.

For SSO Structures (failure to timely submit plan) pursuant to Article XI, Paragraph 38(C)(i) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day
Day 31 through Day 60 - $2,500.00 per calendar day
Day 61 and thereafter - $6,000.00 per calendar day.

For SSO Structures (failure to timely complete) pursuant to Article XI, Paragraph 38(C)(ii) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day
Day 31 through Day 60 - $2,500.00 per calendar day
Day 61 and thereafter - $6,000.00 per calendar day.

For SSO Structures (failure to monitor) pursuant to Article XI, Paragraph 38(C)(iii) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day
Day 31 through Day 60 - $2,000.00 per calendar day
Day 61 and thereafter - $3,000.00 per calendar day.

SAMPLE

For Collection System Inspection (failure to inspect) pursuant to Article XI, Paragraph 38(D)(i) of the above Consent Decree:

$250.00 per calendar day for each mile of pipe not inspected

$50.00 per calendar day for each manhole or other appurtenance or Force Main not inspected.

For Collection System Inspection (failure to timely complete) pursuant to Article XI, Paragraph 38(D)(ii) of the above Consent Decree:

Day 1 through Day 30 - $200.00 per calendar day

Day 31 through Day 60 - $500.00 per calendar day

Day 61 and thereafter - $1,000.00 per calendar day.

For Rainfall and Flow Monitoring (failure to comply with requirements) pursuant to Article XI, Paragraph 38(E)(i) of the above Consent Decree:

Day 1 through Day 30 - $250.00 per calendar day

Day 31 through Day 60 - $500.00 per calendar day

Day 61 and thereafter - $1,000.00 per calendar day.

For Rainfall and Flow Monitoring (failure to comply with any requirements) pursuant to Article XI, Paragraph 38(E)(ii) of the above Consent Decree, the amount of $250.00 for each failure to comply with the requirements of the County's Rainfall and Flow Monitoring Plan.

For Rainfall and Flow Monitoring (failure to timely complete) pursuant to Article XI, Paragraph 38(E)(iii) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day

Day 31 through Day 60 - $1,500.00 per calendar day

Day 61 and thereafter - $2,250.00 per calendar day.

For SRRR Plans pursuant to Article XI, Paragraph 38(F) of the above Consent Decree:

Day 1 through Day 30 - $1,500.00 per calendar day

Day 31 through Day 60 - $3,000.00 per calendar day

Day 61 and thereafter - $6,000.00 per calendar day.

For FOG Program (failure to inspect a Grease Generating Facility) pursuant to Article XI, Paragraph 38(G)(i) of the above Consent Decree, the amount of $250.00 per Grease Generating Facility not timely inspected or notified.

For FOG Program (failure to timely complete) pursuant to Article XI, Paragraph 38(G)(ii) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day

SAMPLE

Day 31 through Day 60 - $2,500.00 per calendar day

Day 61 and thereafter - $5,000.00 per calendar day.

For Illegal Storm Water Discharges pursuant to Article XI, Paragraph 38(H) of the above Consent Decree:

Day 1 through Day 30 - $250.00 per calendar day

Day 31 through Day 60 - $500.00 per calendar day

Day 61 and thereafter - $1,000.00 per calendar day.

For Pump Stations (failure to timely complete implementation) pursuant to Article XI, Paragraph 38(I)(i) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day

Day 31 through Day 60 - $1,500.00 per calendar day

Day 61 and thereafter - $2,250.00 per calendar day.

For Pump Stations (failure to timely correct deficiency) pursuant to Article XI, Paragraph 38(I)(ii) of the above Consent Decree:

Day 1 through Day 30 - $1,000.00 per calendar day

Day 31 through Day 60 - $1,500.00 per calendar day

Day 61 and thereafter - $2,250.00 per calendar day.

For Operation and Maintenance Inspection and Cleaning Requirements pursuant to Article XI, Paragraph 38(J)(i-ii) of the above Consent Decree:

$250.00 per calendar day for each mile of pipe not inspected

$50.00 per calendar day for each manhole or other appurtenance not inspected

$250.00 per calendar day for each mile of pipe not cleaned.

For Emergency Response Plan pursuant to Article XI, Paragraph 38(K) of the above Consent Decree, the amount of $1,000.00 for each failure to comply with the requirements of the County's approved Emergency Response Plan.

For Reporting of Discharges pursuant to Article XI, Paragraph 38(L) of the above Consent Decree, the amount of $2,000.00 for each failure to provide oral or written notification of a Discharge.

For Quarterly and Annual Reporting pursuant to Article XI, Paragraph 38(M) of the above Consent Decree:

Day 1 through Day 60 - $750.00 per calendar day

Day 61 and thereafter - $2,000.00 per calendar day.

For Certifications pursuant to Article XI, Paragraph 38(N) of the above Consent Decree:

Day 1 through Day 60 - $750.00 per calendar day

SAMPLE

Day 61 and thereafter - $2,000.00 per calendar day.

For Supplemental Environmental Projects (failure to satisfactorily complete) pursuant to Article XI, Paragraph 38(P)(i) of the above Consent Decree, the amount of the difference between the amount required to be spent for the SEP and the Eligible SEP Costs actually expended by the County on the SEP, plus an additional amount equal to fifteen percent (15%) of the estimated cost of the SEP.

For Supplemental Environmental Projects (failure to satisfactorily complete but with good faith effort) pursuant to Article XI, Paragraph 38(P)(ii) of the above Consent Decree, the amount of the difference between the amount required to be spent for the SEP and the Eligible SEP Costs actually expended by the County on the SEP.

For Supplemental Environmental Projects (failure to expend total amount required) pursuant to Article XI, Paragraph 38(P)(iii) of the above Consent Decree, the amount of the difference between the amount required to be spent for the SEP and the Eligible SEP Costs actually expended by the County on the SEP.

For Supplemental Environmental Projects (failure to timely complete) pursuant to Article XI, Paragraph 38(P)(iv) of the above Consent Decree:

Day 1 through Day 30 - $150.00 per calendar day

Day 31 through Day 60 - $300.00 per calendar day

Day 61 and thereafter - $600.00 per calendar day.

For SEP Deliverables (failure to submit) pursuant to Article XI, Paragraph 38(P)(v) of the above Consent Decree, the amount of $500.00 per calendar day after the submission of the deliverable was originally due until the document is submitted.

THE PARTIES AGREE THAT THESE STIPULATED PENALTIES PURSUANT TO THE CONSENT DECREE CONSTITUTE ACTUAL DAMAGES, ALONG WITH ANY AND ALL OTHER DAMAGES, COSTS, LOSSES, AND/OR EXPENSES OF THE COUNTY IN CONNECTION WITH THIS AGREEMENT, AND ALL SUCH DAMAGES SHALL BE THE LIABILITY OF AND OBLIGATION OF THE ENGINEER. THE ENGINEER'S PAYMENT OF THESE STIPULATED PENALTIES, PURSUANT TO THE CONSENT DECREE – WHICH ARE ACTUAL DAMAGES TO THE COUNTY, IF ASSESSED AND/OR INCURRED, AND ALL OTHER DAMAGES, COSTS, LOSSES, AND/OR EXPENSES OF THE COUNTY IN CONNECTION WITH THE PROJECT AND THIS AGREEMENT, SHALL NOT BE THE SOLE REMEDY OF THE COUNTY AND THE COUNTY EXPRESSLY RESERVES ALL OTHER RIGHTS AND REMEDIES AVAILABLE AT LAW, UNDER THE AGREEMENT, AND/OR IN EQUITY. THE ENGINEER SHALL NOT BE

SAMPLE

RESPONSIBLE FOR DELAYS IN THE COMPLETION SCHEDULE CAUSED *SOLELY* BY THE COUNTY.

34.2 **"Force Majeure"** means an event arising from causes beyond the control of the Engineer and/or the County which delays or prevents the performance of any obligation under this Agreement. Unanticipated or increased costs or expenses associated with the Engineer's implementation of this Agreement and changed financial or staffing circumstances of the Engineer shall not, in any event, be considered Force Majeure events. The Engineer shall adopt all reasonable measures to avoid or minimize such delay. The Engineer shall file written notice to the County within fifteen (15) calendar days after the earlier of the date on which the Engineer knew, or in exercise of reasonable diligence under the circumstances, should have known of an event that might delay completion of any requirement of the Project or this Agreement, whether or not the event is a Force Majeure event. The Engineer's written notice shall include, but not be limited to, a description of the event and an explanation of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or mitigate the delay or the effect of the delay, the timetable by which those measures will be implemented, whether the Engineer claims that the delay should be excused as a Force Majeure event, and the Engineer's rationale for attributing such delay to a Force Majeure event if the Engineer intends to assert such a claim. The Engineer shall include all available documentation supporting its claim that the delay was attributable to a Force Majeure event. Further, the Engineer shall state what steps it is taking to ensure timely performance and completion of the Project, and shall supply any and all documentation available to show what steps it has taken. The Engineer shall have the burden of proving by a preponderance of the evidence that the delay is, or was, caused by a Force Majeure event and that the amount of additional time, if any, requested by the Engineer is necessary solely due to the Force Majeure event.

34.3 The Engineer shall maintain copies of any reports, plans, permits, and documents related to this Agreement for a period of five (5) years from the date of the this Agreement.

THESE ARTICLE 34 PROVISIONS ARE ONLY APPLICABLE IN THE EVENT THIS PROJECT IS SUBJECT TO OR MENTIONED IN THE CONSENT DECREE.

ARTICLE 35 - EXHIBITS

The following **Exhibits** attached hereto are an integral part of this Agreement and are incorporated herein by reference:

EXHIBIT A Scope of Work: Detailed Description of Goods to be Provided/Services to be Performed, Form 105, Rate Documentation, Schedule of Personnel, Salary Roster, Completion Schedule

SAMPLE

EXHIBIT B Procurement Affidavit
EXHIBIT C Insurance Certificate
EXHIBIT D Truth-In-Negotiation Certificate
EXHIBIT E MBE/WBE (if and as applicable)

SAMPLE

IN WITNESS WHEREOF, it is the intent of the parties that the Engineer has signed this Agreement under seal and further, that the parties have executed this Agreement on the day and year first written above.

NAME OF ENGINEER

Federal ID #_____

_____

By: _____ (SEAL)
Name:
Title:
(A legally authorized representative of the Engineer)

_____

By: _____(Engineer's Seal)
Name:
Title:
(A Maryland licensed engineer)

BALTIMORE COUNTY, MARYLAND

By:_____
Fred Homan,
Acting Administrative Officer

Recommended For Approval:

By:_____

Edward C. Adams, Jr., Director Date
Department of Public Works

APPROVED FOR LEGAL FORM AND SUFFICIENCY
(Subject to execution by the duly authorized administrative official and Chairman of the County Council, as indicated)

_____

Office of the County Attorney Date
Approval of Legal Form and Sufficiency does not convey approval or disapproval of the substantive nature of this transaction. Approval is based upon typeset document. All modifications require re-approval.

FUNDS AVAILABLE AND ENCUMBERED

By:_____
Office of Budget and Finance Date

BALTIMORE COUNTY COUNCIL

By: _____
Chairman Date

SAMPLE

EXHIBIT A
SCOPE OF WORK

Detailed Description of Goods to be Provided/Services to be Performed,
Form 105, Rate Documentation, Schedule of Personnel, Salary Roster, Completion Schedule

SAMPLE

EXHIBIT B
PROCUREMENT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title]_____ and the duly authorized representative of [entity name] _____ (the "**Engineer**") and that I possess the legal authority to make this Affidavit on behalf of myself and the Engineer for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Grantee, nor any of its officers, directors, partners, or any of its employees, if any and as applicable, directly involved in obtaining or performing under agreements, contracts, loans or grants with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Section 6-225 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the Grantee]:
_____
_____
_____
_____.

SAMPLE

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Engineer, nor any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), or (4) above;

(6) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(7) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the Engineer, and the status of any debarment]:

_____

_____.

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Engineer, nor any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows [list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceeding, the name(s) of the person(s) involved and their current positions and responsibilities with the Engineer, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension]:

_____

_____.

SAMPLE

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The Engineer was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The Engineer is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows: [you must indicate the reasons why the affirmations cannot be given without qualification]:

_____

_____.

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Engineer, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, engineering services, construction related services, leases of real property, or construction.

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Engineer, nor any of its officers, directors, members or partners, nor any of its employees, have in any way:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise take any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted;

(3) Colluded with anyone to obtain information concerning the bid that would give the Engineer an unfair advantage over others.

H. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

The Engineer affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, or at least $100,000.00, shall file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of $500.00 during defined reporting periods.

SAMPLE

I. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The Engineer is a [Maryland] [_____] [corporation] [limited liability company] [limited partnership] [general partnership] [_____], that it [is] [is not] registered in accordance with the Corporations and Associations Article of the Annotated Code of Maryland, that it [is] [is not] in good standing in the State of Maryland, and that it [has] [has not] filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:
Name: _____
Address: _____
_____.

(2) Except as validly contested, the Engineer has paid, or has arranged for payment of, all taxes due the State of Maryland and Baltimore County, and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security

Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The Engineer has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Engineer, to solicit or secure the Agreement, and that the Engineer 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 other consideration contingent on the making of the Agreement.

K. NONDISCRIMINATION IN EMPLOYMENT STATEMENT

I FURTHER AFFIRM THAT:

During the performance of any contract awarded pursuant to the solicitation of which this affidavit is a part:

(1) The Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, marital status, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, marital status, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment. Such action shall include, but not be limited to the following: employment, promotion, upgrading, demotion or transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth provisions of this nondiscrimination clause. Should the Engineer employ fifteen (15) or more employees, in the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. Such action shall include, but not be limited to the following: employment, promotion, upgrading, demotion or transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth provisions of this nondiscrimination clause.

(2) The Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test.

(3) The Engineer shall send to each labor union or representative of workers with which the Engineer has a collective bargaining agreement or other contract or understanding, a notice, to be provided by

SAMPLE

the owner, advising the said labor union or workers' representative of these commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Engineer shall furnish, if requested by the County, a compliance report concerning our employment practices and policies in order for the County to ascertain compliance with the special provisions of this affidavit concerning nondiscrimination in employment.

(5) In the event of the Engineer's noncompliance with the nondiscrimination clause of this affidavit, the contract may be canceled, terminated, or suspended in whole or in part, and the Engineer may be declared ineligible for further County work.

(6) The Engineer shall include the special provisions outlined herein pertaining to nondiscrimination in employment in every subcontract, so that such nondiscrimination in employment provisions shall be binding on each subcontractor or vendor.

L. FOREIGN CONTRACTS

I FURTHER AFFIRM THAT:

The Engineer affirms that it is aware of, and will comply with, the provisions of Sections 10-2-110 Article 10. Finance, Title 2 – Purchasing, Baltimore County Code 2003, as amended, which requires that prior to the award of a contract for services under the provisions of this title, and during the entire term of a contract award, the bidder or vendor shall disclose to the County whether any services covered by the bid or contract, including any subcontracted services, will be performed outside the United States. The disclosure shall be made in writing to the Office of Budget and Finance, Purchasing Bureau.

M. ACKNOWLEDGMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the County and may be distributed to units of (1) Baltimore County; (2) the State of Maryland; (3) other counties or political subdivisions of the State of Maryland; (4) other states; and (5) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of Baltimore County, or the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the Engineer with respect to (a) this Affidavit, (b) this Agreement, and (3) other Affidavits comprising part of this Agreement.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:_____ By:_____

Name:

Title:

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EXHIBIT D
TRUTH-IN-NEGOTIATION CERTIFICATE

Project Name _____

Job Order No. _____

I hereby certify that I am the _____(title) and duly and legally authorized representative of _____ (the **"Engineer"**), whose address is _____.

In connection with the Engineer's technical and price proposal for the Agreement, I hereby certify, to the best of my knowledge, information and belief, that:

a) the wage rates and other factual unit costs supporting the Engineer's compensation, as set forth in the Agreement and the Exhibits attached thereto, are accurate, complete and current as of the time of the execution of the Agreement;

b) it is my understanding and the understanding of the Engineer that I here represent that if any of the items of compensation under the Agreement were increased due to the furnishing of inaccurate, incomplete or non-current wage rates or other units of costs, the County is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. It is also my understanding and that of the Engineer I here represent that the County's right of adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor, outside associate, consultant, subconsultant, and/or agent;

c) it is my understanding and the understanding of the Engineer I represent that if additions are made to the original price of the Agreement, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or non-current wage rates and other factual costs.

_____ _____

(Date) (Signature)

Sworn to and subscribed before me this

_____ day of _____, 20 ___ (seal)

_____

Notary Public

My commission expires:

SAMPLE

Exhibit C

BALTIMORE COUNTY, MARYLAND

INSURANCE PROVISIONS

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1. **GENERAL REQUIREMENTS**

1.1 Coverages Required:
Unless otherwise required by the specifications or the contract, the Contractor/Vendor shall purchase and maintain the insurance coverages listed herein.

1.2 Certificate of Insurance:
Before starting work on the contract or prior to the execution of the Contract on those bid, the Contractor/Vendor shall provide Baltimore County, Maryland with a Certificate of Insurance provided by the County, or an exact replica thereof, evidencing the required coverages.

1.3 Baltimore County as Insured:
The coverage required, excluding Worker's Compensation and Employers' Liability and Medical Malpractice Liability/Professional Liability/Errors and Omissions Liability, must include Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.

1.4 Contractor's/Vendor's Responsibility:
The providing of any insurance herein does not relieve the Contractor/Vendor of any of the responsibilities or obligations the Contractor/Vendor has assumed in the contract or for which the Contractor/Vendor may be liable by law or otherwise.

1.5 Failure to Provide Insurance:
Failure to provide and continue in force the required insurance shall be deemed a material breach of the contract.

2. **INSURANCE COVERAGES**

2.1 General Liability Insurance

2.1.1 Minimum Limits of Coverage:
Personal Injury Liability and Property Damage Liability
Combined Single Limit - $500,000.00 each occurrence

2.1.2 Such insurance shall protect the Contractor/Vendor from claims which may arise out of, or result from, the Contractor's/Vendor's operations under the contract, whether such operations be by the Contractor/Vendor, any subcontractor, anyone directly or indirectly employed by the Contractor/Vendor or Subcontractor, or anyone for whose acts any of the above may be liable.

2.1.3 Minimum Coverages to be Included:
(a) Independent Contractor's coverage;
(b) Completed Operations and Products Liability coverage; and
(c) Contractual Liability coverage.

2.1.4 Damages not to be Excluded:
Such insurance shall contain no Exclusions applying to operations by the Contractor/Vendor or any Subcontractor in the performance of the Contract including but not limited to: (a) Collapse of, or structural injury to any, building or structure;
(b) Damage to underground property; or (c) Damage arising out of blasting or explosion.

2.2 Automobile Liability Insurance

2.2.1 Minimum Limits of Coverage:
Bodily Injury Liability and Property Damage Liability
Combined Single Limit - $500,000 any one accident

2.2.2 Minimum Coverages to be Included:
Such insurance shall provide coverage for all owned, non-owned and hired automobiles.

2.3 Workers' Compensation and Employers' Liability Insurance

Such insurance must contain statutory coverage, including Employers' Liability insurance with limits of at least:
Bodily Injury by Accident - $250,000 each accident
Bodily Injury by Disease - $500,000 policy limit
Bodily Injury by Disease - $250,000 each employee

2.4 Medical Malpractice Liability/Professional Liability/Errors and Omissions Liability Insurance

2.4.1 Minimum Limits of Coverage:
$2,000,000 Per Claim or Each Occurrence
$2,000,000 in the Aggregate

2.4.2 Such insurance shall be in effect for a period of not less than three (3) years from the termination of the Contract and shall include full Prior Acts Coverage.

2.5 Valuable Papers and Records Coverage and
Electronic Data Processing (Data and Media) Coverage

2.5.1 Minimum Limits of Coverage:
$100,000 Per Claim and Each Occurrence
$100,000 in the Aggregate

2.6 Other

Such other insurance in form and amount as may be customary for the type of business being undertaken by the Contractor/Vendor.

BALTIMORE COUNTY, MARYLAND
CERTIFICATE OF INSURANCE

THIS FORM MUST BE COMPLETED BY LEGALLY AUTHORIZED REPRESENTATIVE OF INSURANCE COMPANY OR INSURANCE AGENCY.

THE CONTRACTOR/VENDOR MUST MAINTAIN THE INSURANCE COVERAGES REQUIRED UNDER THE TERMS AND CONDITIONS OF THIS CONTRACT WHILE THIS CONTRACT IS IN EFFECT INCLUDING RENEWAL AND EXTENSION TERMS. THE CONTRACTOR /VENDOR SHALL ALSO MAINTAIN COVERAGE ON MEDICAL MALPRACTICE AND / OR PROFESSIONAL LIABILITY /ERRORS AND OMISSIONS LIABILITY INSURANCE FOR A PERIOD OF NOT LESS THAN THREE (3) YEARS FROM TRMINATION OF THE CONTRACT INCLUDING, FULL PRIOR ACTS COVERAGE.

TO: BALTIMORE COUNTY, MARYLAND
Department of Public Works
111 Chesapeake Avenue - Room 219
Towson, Maryland 21204

Solicitation/Contract/Purchase Order No. _____

Name of Contractor/Vendor _____

THIS IS TO CERTIFY THAT:

(1) The undersigned has received and reviewed the INSURANCE PROVISIONS of the above-numbered Solicitation/Contract/ Purchase Order No.; and

(2) **THE FOLLOWING INSURANCE HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY AND AS REQUIRED UNDER THE SOLICITATION/CONTRACT/PURCHASE ORDER NO.; AND**

Type of Insurance	Insurance Company	Policy Numbers	Amt. Of Coverage
General Liability			
Automobile Liability			
Worker's Compensation and Employers' Liability			
Medical Malpractice and/or Professional Liability/Errors And Omissions			
Valuable Papers and Electronic Data			
Other			

SAMPLE

(3) GENERAL LIABILITY, AUTOMOBILE LIABILITY AND VALUABLE PAPERS AND ELECTRONIC DATA INSURANCE COVERAGE SHALL NAME BALTIMORE COUNTY, MARYLAND AND ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, AND APPOINTED AND ELECTED OFFICIALS AS AN ADDITIONAL INSURED.

(4) THE MEDICAL MALPRACTICE AND/OR PROFESSIONAL LIABILITY /ERRORS AND OMISSIONS SHALL INCLUDE FULL PRIOR ACTS COVERAGE.

(5) THE WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE COVERAGE SHALL NAME BALTIMORE COUNTY, MARYLAND AND ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, AND APPOINTED AND ELECTED OFFICIALS AS A CERTIFICATE HOLDER.

THE UNDERSIGNED AGREES that should any of the insurance coverages indicated above be cancelled, not renewed, or changed in such a manner as would make the coverage not in conformity with the provisions mentioned above, thirty (30) days advance written notice shall be given to BALTIMORE COUNTY, MARYLAND at the address shown above; EXCEPT IN THE CASE OF NON-RENEWAL, notice shall be given as soon as known, if that be less than thirty (30) days, but in no event, less than ten (10) days. This notice requirement shall be reduced to only ten (10) days in case of cancellation for non-payment of insurance premiums for the coverages certified. All notice requirements shall identify the Contractor/Vendor and the number of the Solicitation/Contract/Purchase Order No.

_____
Name of Insurance Company or Agency

_____
Address

_____
City, State, Zip Code

_____
Area Code/Telephone No.

_____
Signature of Authorized Representative of Insurance Company or Agency

_____
Type/Print Name

_____
Date

This Certificate of Insurance was adopted to eliminate the uncertainty regarding different forms of such documents and to reduce clerical errors. Insurer may provide ACORD Certificate of Insurance also reflecting policy duration and amount of coverage, however, in the event of any conflict between the Certificate of Insurance form and any ACORD forms, the terms and conditions of Baltimore County's Certificate of Insurance form shall prevail.

EXHIBIT D
TRUTH-IN-NEGOTIATION CERTIFICATE

Project Name _____

Job Order No. _____

I hereby certify that I am the _____(title) and duly and legally authorized representative of _____ (the **"Engineer"**), whose address is _____.

In connection with the Engineer's technical and price proposal for the Agreement, I hereby certify, to the best of my knowledge, information and belief, that:

d) the wage rates and other factual unit costs supporting the Engineer's compensation, as set forth in the Agreement and the Exhibits attached thereto, are accurate, complete and current as of the time of the execution of the Agreement;

e) it is my understanding and the understanding of the Engineer that I here represent that if any of the items of compensation under the Agreement were increased due to the furnishing of inaccurate, incomplete or non-current wage rates or other units of costs, the County is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. It is also my understanding and that of the Engineer I here represent that the County's right of adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor, outside associate, consultant, subconsultant, and/or agent;

f) it is my understanding and the understanding of the Engineer I represent that if additions are made to the original price of the Agreement, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or non-current wage rates and other factual costs.

SAMPLE

_____ _____

(Date) (Signature)

Sworn to and subscribed before me this

_____ day of _____, 20 ___ (seal)

_____

Notary Public

My commission expires: