

REQUEST FOR EXPRESSIONS OF INTEREST



Howard County, Maryland
OFFICE OF PURCHASING
6751 Columbia Gateway Drive, Suite 501
Columbia, Maryland 21046

EOI NO. 32-2013

**CAPITAL PROJECT No. W-8320
WHISKEY BOTTOM ROAD
WATER PUMPING STATION REPLACEMENT
ENGINEERING DESIGN SERVICES**

OPENING: May 15, 2013 @ 2:00 PM

PRE-SUBMITTAL CONFERENCE: April 17, 2013 @ 10:00 AM

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



National Purchasing Institute



MINORITY BUSINESS ENTERPRISES are encouraged to respond to this solicitation. For more information, please contact Mr. Mahesh Sabnani, Equal Business Opportunity Coordinator, at 410-313-6370.

IMPORTANT NOTICE REGARDING ADDENDA

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

Formal EOI Solicitations and Submittal Results are available on the Website:
www.howardcountymd.gov/purchasing

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REVISED: 9/12

**CONSULTANT SERVICES FOR:
CAPITAL PROJECT No. W-8320
WHISKEY BOTTOM ROAD WATER PUMPING STATION REPLACEMENT**

GENERAL CONDITIONS

1 PROJECT DESCRIPTION:

- 1.1 Howard County, Maryland (the “County”) desires to secure the services of a qualified engineering consultant firm (the “Consultant”) to provide design, bidding and construction phase engineering services for a new 2 MGD (ultimately 5 MGD) water pumping station to replace the existing 2 MGD Whiskey Bottom Road Water Pumping Station (see Appendix F for Location Map). Project is anticipated to include the design of approximately 3,500 linear feet of ± 16 ” water suction main and 2,100 linear feet of ± 12 ” water discharge main, plus approximately 200 linear feet of additional ± 12 ” water main to provide adequate looping. Existing SCADA system controls must be relocated to the new station.
- 1.2 The Consultant’s scope of work is anticipated to include the preliminary and detailed design phases, assistance during the bidding phase and engineering construction services. During the preliminary phase, the Consultant will determine the size pumping station required and study options for the best location and site layouts of the new pumping station, the size and location of suction and discharge mains, and make recommendations to the County. In the detailed engineering design phase, the Consultant shall develop detailed plans and specifications and land acquisition documents for construction of the water pumping station and associated water pipelines in accordance with Howard County Standards and lead the County through the local, state and federal permit approval processes. Additionally, the Consultant shall provide geotechnical, environmental and surveying services as needed to complete the aforementioned tasks. The Consultant shall assist the County during the bidding process and provide shop drawing review and on-call design consultation services during construction and as-built drawing preparation after construction. The successful firm must demonstrate experience in all engineering disciplines related to design and construction of water pumping station projects 5 MGD or larger.
- 1.3 All services provided shall be performed in a cost-effective manner and shall be in accordance with the Howard County Design Manuals, all applicable codes and local, State, and national design standards.

- 2 **PRE-SUBMITTAL MEETING:** A pre-submission meeting will be held on Wednesday, April 17, 2013 at 10:00 A.M. in Conference Room 2 of the Bureau of Engineering, Thomas B. Dorsey Building, 9250 Bendix Road, Columbia, Maryland 21045 to brief prospective consultants on the scope of the project and provide an opportunity for questions.
- 3 **QUESTIONS AND INQUIRIES:** Questions concerning this Expression of Interest must be directed to Evangeline Bolder, CPPB, Buyer, telephone number (410) 313-6373, Fax (410) 313-6388, email ebolder@howardcountymd.gov. The Buyer in the Office of Purchasing is the sole point of contact for this solicitation.

4 TECHNICAL SUBMITTAL:

- 4.1 The Consultant's technical understanding of the project, approach, and innovativeness in design shall be submitted on **no more than three (3) typewritten pages**. Photographic exhibits, charts and figures, if included, will count towards the 3-page limit. The transmittal letter, which shall be limited to one page, shall not be used to circumvent or supplement the above limit. The transmittal letter will not be used in the evaluation. Lettering shall be no less than a font size of 11 points. **Failure to comply with the 3-page limit will result in rejection of the Expression of Interest.**
- 4.2 Consultants must complete and submit Appendix C and Appendix E with their submission. These forms will not count towards the page limit.
- 4.3 The following items will be made available for reference in Conference Room 2 of the Bureau of Engineering, Thomas B. Dorsey Building, 9250 Bendix Road, Columbia, Maryland 21045 by making an appointment with Theresa Logsdon, Administrative Assistant, telephone number (410) 313-6129, email tlogsdon@howardcountymd.gov:
- Existing Whiskey Bottom Road Water Pumping Station As-Built Plans
 - Howard County 200-scale Water & Sewer Maps
 - Howard County Master Plan for Water and Sewerage (2011 Amendment)

5 SF254 AND SF255:

- 5.1 Interested firms are requested to submit completed Standard Forms SF 254 and SF 255. If your firm does not have blank Standard Forms SF 254 or SF 255, the forms may be obtained from the Office of Purchasing website at www.howardcountymd.gov/purchasing under standard forms 254 and 255.
- 5.2 The Consultant shall submit a list of similar projects completed within the last five years as part of the SF 254 and SF 255 forms. The list shall include the scope and size of the projects and the names and telephone numbers of the responsible contact persons for whom the work was done.
- 5.3 SF 254: ITEM ELEVEN of the SF 254 shall include, if applicable, all Howard County Government contract work currently in progress or completed in the last five years, in addition to other contract work completed in the last five years. A maximum of ten projects shall be listed for Howard County contract work, and a maximum of ten projects for other contract work shall be listed.
- 5.4 SF 255: ITEM FOUR of the SF 255 shall indicate only the number of personnel by discipline the firm proposes to involve in the specific project. ITEM SIX of the SF 255 shall identify all sub-consultants, including Equal Business Opportunity (EBO) Enterprises, which will participate in this project. ITEM SEVEN of the SF 255 should only address the key personnel who will be specifically assigned to this project (including those of any joint ventures, Consultants, sub-consultants, EBO Enterprise, etc.) and shall include no more than ten resumes. Each individual resume shall be limited to no more than one standard page. ITEM EIGHT of the SF 255 shall list no more than ten individual projects and shall include the name and telephone number of a person representing the project who may be contacted for references for each listed project and shall indicate which of the key personnel listed in ITEM SEVEN were involved on the specific projects listed and in what capacity. If it is anticipated that the project will involve work for which

the Consultant does not have in-house expertise, the name of the sub-consultant shall be indicated as well as the firm's past experience and expertise. ITEM NINE of the SF 255 shall identify a maximum of 10 projects, with priority given to projects that are similar to the specific project for which services are being procured. The work effort may include work within Howard County and the surrounding jurisdictions. ITEM TEN of the SF 255 shall not address any topics or material presented in the three page limit described in paragraph 4 above and shall be limited to one page.

- 5.5 The Consultant shall provide a separate Project Organizational Chart showing the personnel listed in ITEM SEVEN of SF 255 and their specific involvement/responsibilities in this effort. Elaborate brochures or voluminous samples of irrelevant past experience are not required or desired. During the course of the project, the Consultant may not change the personnel who are listed in ITEM SEVEN of SF 255 without written authorization from the County.
- 5.6 The project manager for the prime Consultant shall be a registered Professional Engineer in the State of Maryland and shall have a minimum of ten years experience similar to that required for this project. Documentation of this experience shall be incorporated as part of the SF 254 & SF 255 forms. The list shall include the scope and size of the projects and the names and telephone numbers of the responsible contact persons for whom the work was done.

6 INSURANCE:

- 6.1 If a contract is awarded, the successful Consultant will be required to indemnify and hold the County and its agents and/or employees harmless from and against all liability and expenses, including attorney's fees, howsoever arising or incurred, alleging damage to property including environmental damage, or injury to, or death of any person arising or attributable to the Consultant or any if its sub-consultant's performance of the contract awarded.
- 6.2 The Consultant shall purchase and maintain during the term of the contract, including any renewals thereof, such policies of insurance acceptable to the County as will protect the Consultant and the County from claims or losses, regardless of whether such claims or losses result from the Consultant's actions or omissions or those of a sub-consultant or those of anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The following coverage is mandatory but may not be all inclusive, based on the parameters of the proposal:
 - 6.2.1 Workers' Compensation Insurance with limits of coverage as follows:
 - 6.2.1.1 Coverage A: Statutory, covering Maryland jurisdiction.
 - 6.2.1.2 Coverage B: \$100,000
 - 6.2.2 Automobile Liability Insurance with limits of liability of at least \$1,000,000 combined single limit per occurrence. Coverage for non-owned and hired vehicles shall be included. If hazardous materials are transported, insurance shall comply with applicable law relating to such transport.
 - 6.2.3 Commercial General Liability Insurance with combined single limits of \$1,000,000 per occurrence, naming Howard County, Maryland as an additional insured. Unless deemed unnecessary by the County, the policy shall contain, but not be limited to, the following coverage endorsements:

- 6.2.3.1 Contractual Liability, including Sub-Consultants
 - 6.2.3.2 Personal and Advertising Injury
 - 6.2.3.3 Products and Completed Operations
 - 6.2.3.4 Explosion, Collapse, and Underground Hazards (XCU) - required if such exposure exists due to the nature of the work to be performed.
- 6.2.4 Professional Liability/Errors and Omissions insurance to the Consultant's profession with policy limits of at least \$1,000,000 per claim. Consultant shall continue to maintain such insurance, covering incidents occurring or claims made, for a period of three years after substantial completion of the project.
- 6.3 If any of the insurance policies required to fulfill the requirements of the work are written on a claims-made basis, Consultant shall continue to maintain such insurance, covering incidents occurring or claims made, for a period of three years after substantial completion of the project.
- 6.4 All policies of insurance shall be underwritten by companies licensed to do business in the State of Maryland.
- 6.5 The Consultant shall assure that all sub-consultants performing services in accordance with this request for Expression of Interest carry identical insurance coverage required of the contract, either individually or as an Additional Insured on the policies of the Consultant. Exceptions may be made only with the approval of the County. Consultant shall indemnify the County for any uninsured losses relating to the contractual services involving sub-consultants, including workers' compensation claims.
- 6.6 The Consultant shall not commence work under the contract until evidence of all required coverage is received by the County. Further, the Consultant shall continue to provide the County with evidence of policy renewals until the completion of the contract and shall not reduce or cancel or change any of the required coverage without 60 days notice of such change to the County.
- 6.7 The Consultant will not hold the County liable for any injuries to the employees, servants, agents, sub-consultants or assignees of the contract arising out of or during the course of services relating to this agreement.
- 6.8 The providing of any insurance required herein does not relieve the Consultant of any of the responsibilities or obligations assumed by the Consultant in the contract awarded of for which the Consultant may be liable by law or otherwise.
- 6.9 Failure to provide and continue in force such insurance as required above shall be deemed as a material breach of the contract and shall operate as an immediate termination thereof.
- 7 SUBMISSION OF EXPRESSIONS OF INTEREST:
 - 7.1 All Expressions of Interest shall be submitted in sealed, clearly marked envelopes to the Office of Purchasing. A total of six **(6)** copies of the Expression of Interest package (one original and 5 copies) shall be submitted.
 - 7.2 All firms will be notified of the status of their Expression of Interest by mail. Please do not call the County.

- 7.3 The County will dispose of, in a secure manner, all Expressions of Interest upon completion of the selection process.

8 EVALUATION OF EXPRESSIONS OF INTEREST:

- 8.1 Evaluation of Expressions of Interest and subsequent award of the contract shall be made according to the conditions, stipulations, and provisions of the Howard County Code, the Howard County Purchasing Manual and the Qualifications Based Selection (QBS) process. The technical evaluations of the submittals will be made based on the criteria listed in Appendix A, rating the firm's experience, project management ability, approach to the project, understanding of the work effort and qualifications of personnel to be assigned to the project.
- 8.2 The County reserves the right to consider the firm's performance on previous Howard County projects and projects similar in nature for nearby jurisdictions in the evaluation.

9 SELECTION OF TOP-RANKED FIRM:

- 9.1 After evaluation of the Expressions of Interest, the firms will be ranked by a selection committee. A minimum of three top-ranked firms will be interviewed. The selection of the top ranked firm will be based on this interview.
- 9.2 Upon completion of the interview evaluation, the top ranked firm will be requested to submit a technical proposal. The County will then undertake negotiations with that firm. Should the County be unable to negotiate a satisfactory agreement with that firm, negotiations shall be formally terminated. The County shall then undertake negotiations with the second top-ranked firm, and so forth.
- 9.2.1 The County will utilize its standard QBS consulting services agreement, attached as Appendix B.
- 9.2.2 The County expects firms to utilize competitive overhead and labor rates. The Department of Public Works has instituted a ceiling multiplier of 2.8 times the hourly rate, inclusive of a maximum profit of 10%. This is not a proffered rate, but a ceiling, with Howard County committed to achieving cost-effective methods and services, At the time of the negotiations, the consulting firm shall submit a certified payroll and a current audited overhead rate.
- 9.3 The following stipulations apply:
- 9.4 The contact will be for a one-year period with a renewal option for four additional years, in one-year increments, exercisable at the sole discretion of the County. During each renewal period, all rates and salaries shall be limited to a maximum increase of 5% over the previous year's contract. All requests for rate and salary adjustments shall be accompanied by certified payrolls and/or audited overheads showing the actual salaries and expenses justifying the increase.
- 9.5 Requests for price adjustments shall be submitted to the Issuing Office, not the User Agency.

10 WAGE REQUIREMENTS:

- 10.1 A consultant that is defined as "Covered Employer" under Howard County Code Sec. 4.122A, copy attached as Appendix E, shall pay each employee an hourly rate sufficient to at least equal 125% of the federal poverty guidelines for a family of 4 individuals

calculated on the basis of a 40-hour work week for 52 weeks. For informational purposes only, the wage rate as of January 25, 2013 is \$14.15 and must be paid to employees (full-time or part-time) during the time the employees actually provide services to the County.

- 10.2 Consultants must complete the Wage Rate Requirements for Service Contracts form Parts 1 and 2, Appendix E, and submit them with their bids. The forms will serve as written notification to the County of your firm's intent to comply with the County's wage requirements during the initial term and any subsequent renewals.
- 10.3 If a Covered Employer commits in its bid or proposal to provide health insurance to an employee who provides services to the County, the Covered Employer may: (1) certify in its bid or proposal the per-employee hourly cost of the employer's share of the premium for that insurance, and (2) reduce the wage paid under the law to an employee covered by the insurance by all or part of the per-employee hourly cost of the employer's share of the premium.
- 10.4 All prices shall take the current wage rate, and subsequent increases, if any, in the wage rate, into account and there shall be no unit price adjustment for future wage rate increases during the initial term of this agreement and any subsequent renewals thereof. Future wage rate increases are hereby defined as any new rates approved by the County that take effect after and supersede the rate shown in this solicitation.
- 10.5 A Covered Employer shall not subdivide a contract; pay an employee through a third party; or treat an employee as a subcontractor or independent contractor to avoid the imposition of any requirement under this law.
- 10.6 Failure to comply with this requirement at any time during the initial term and any subsequent renewals may be sufficient cause for termination for default. A violation of this law is a Class A civil offense and, in addition to a fine, the County Purchasing Agent may suspend or debar the violator under Sec. 4.117.

IMPORTANT: Please note the page limit in paragraph 4, Technical Submittal. Failure to comply with page limit may result in rejection of your Expression of Interest.

APPENDIX A

CONSULTANT SELECTION PROCEDURE

1. Experience: Background experience of consultant firm within the specialty under review. Evaluation should reflect the amount of work consultant firm has done, the complexity of such work, and relevance of the work to the project tasks under review.
 10. Superior
 8. Excellent
 6. Good
 4. Average
 2. Below Average

2. Diversity: Ability of consultant to provide the disciplines related to the specific work effort.
 5. All
 4. 75%
 3. 50%
 2. 25%
 1. Specialty Only

3. Consultant's approach to the project, including innovativeness:
 10. Superior
 8. Excellent
 6. Average
 4. Below Average
 2. Poor

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

5. Qualifications of personnel to be assigned to the project:
 10. Very qualified - has worked on many similar projects
 8. Qualified - has worked on similar projects
 6. Qualified - has worked within discipline
 4. Qualifications vague - may be able to complete work
 2. Qualifications questionable

APPENDIX B

CONSULTING SERVICES

AGREEMENT # _____

**CONSULTANT SERVICES FOR:
CAPITAL PROJECT No. W-8320
WHISKEY BOTTOM ROAD WATER PUMPING STATION REPLACEMENT**

**BY AND BETWEEN
HOWARD COUNTY, MARYLAND
AND**

(Name of Firm)

ARTICLE 1. PARTIES

This Agreement is made and entered into by and between Howard County, Maryland, a body corporate and politic, hereinafter referred to as the "County," and the firm of _____, hereinafter referred to as "Consultant".

ARTICLE 2. DOCUMENTS

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

- A: Scope of Work attached hereto as Exhibit A.
- B: Schedule of Prices attached hereto as Exhibit B.
- C: EBO Participation, Insurance, etc. attached as Exhibit C.
- D: Request for Expression of Interest No. XX-XXXX as Exhibit D.

ARTICLE 3. WORK EFFORT

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

ARTICLE 4. SCHEDULE

- A. Consultant shall commence work within seven (7) days upon receipt of written notice to proceed and a Purchase Order from the County, such notice being contingent upon the execution of this Agreement by the County and Consultant. The work shall be completed in an expeditious manner and in such sequence as agreed upon between the Consultant and the County and as set forth in the Project Schedule. Time is of the essence of this and all other obligations of Consultant under the Agreement.
- B. If the County determines that Consultant is behind schedule, Consultant shall expedite and accelerate its efforts, including providing additional staff and/or overtime, to maintain the Project Schedule, all at no additional cost to the County. In the event that such acceleration is necessary, Consultant shall provide to the County any such verification the County requires in order to allow the County to determine that such accelerated effort is in fact being performed.

- C. Except when circumstances beyond the control of Consultant and concurred in writing by the County shall warrant alteration, adjustment or deviation from the Schedule, the following circumstances shall constitute a sufficient basis for the issuance of a Termination Notice in accordance with Article 10 of this Agreement:

1. Failure to meet or maintain the Project Schedule;
2. Failure to maintain the scheduled level of effort as proposed and prescribed; and/or
3. Deviation from the Project Schedule without prior approval of the County.

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

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

ARTICLE 5. PERSONNEL AND SUB-CONSULTANTS

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

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

ARTICLE 6. DEVIATIONS FROM THE DESIGN MANUAL

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

ARTICLE 7. COST ESTIMATES AND DESIGN REVISIONS

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

ARTICLE 8. CLAIMS AND DISPUTES

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

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

Prior to the institution of any litigation by Consultant, and as an express condition precedent thereto, the parties shall attempt to resolve the dispute by agreement between Consultant and the County and any dispute which is not so disposed of by Agreement shall be decided by the Director of the Department of Public Works, or his/her designee who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to Consultant. At the sole option of the County, the Appeal to the Director may be designated in writing to the Consultant as a final arbitration proceeding or otherwise as a proceeding under Md. Code Article 25A, §1A "Determination by County Officer Subject to Court Review". In this event, a formal hearing shall be held before the Director or his designee and the Consultant shall have the right to call witnesses and submit documents or other evidence as well as such other rights as are provided in the Howard County Administrative Procedure Act. Either party may appeal the decision of the Director of the Department of Public Works to the appropriate Howard County Court as designated herein. No such appeal or litigation shall be instituted later than 30 days after the date of receipt of the Director's decision. Failure to institute such proceedings within such 30 day period shall result in the Director's decision becoming final and binding upon Consultant and the County.

Any controversy, dispute or claim arising out of, touching upon, or related to this Agreement or the breach thereof shall be

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

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

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

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

ARTICLE 9. NOTICES

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

As to the County: _____

As to the Consultant: _____

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

ARTICLE 10. TERMINATION

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

A. For Default:

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

B. For Convenience:

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

C. If after termination of this Agreement or any part thereof for default under "A" above it is determined that Consultant was not in default pursuant to "A," or that Consultant's failure to perform satisfactorily is due to causes beyond the control and without fault or negligence on the part of Consultant, the Notice of Termination shall be deemed to have been issued under "B" above, and the rights and obligations of the parties shall be governed and resolved accordingly.

D. Upon receipt of a Notice of Termination and except as otherwise directed by the County, Consultant shall: (1) stop work under the Agreement on the date and to the extent specified in the Notice of Termination; (2) take all necessary or appropriate steps to limit disbursements and minimize costs; and (3) furnish a report, as of the date or receipt of notice of suspension or termination, of the status of all activities conducted under the terms of this Agreement, including the work effort, funds, results accomplished, conclusions resulting therefrom and such other matters as the County may require.

E. In the event of termination under this Article, Consultant consents to the County's selection of another Consultant of the County's choice to assist the County in any way in completing the Project. Consultant further agrees to cooperate and provide any information requested by the County in connection with the completion of the Project including assignment of any contract rights the County may require. Consultant consents to and authorizes the making of any reasonable changes to the design of the Project by the County and such other Consultant as the County may desire. Except for the status report required in (D) above, any services provided by Consultant which are requested by the County after termination shall be fairly compensated by the County in accordance with the Rate Schedule set forth in the Contract Documents ("Rate Schedule").

F. Notwithstanding the provisions of this Article, Consultant shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of this Contract by Consultant and the County may withhold any payments to Consultant for the purpose of set-off until such time as the exact amount of damages due to the County from Consultant

is determined.

ARTICLE 11. RECORDS AND AUDIT

- A. Consultant and its sub-consultants or subcontractors shall maintain books, records, documents and other evidence directly pertinent to costs, estimates and performance under this Agreement and any Federal, State or local rule or regulation, in accordance with accepted professional practice, appropriate accounting procedures and practices. The County, or any of its duly authorized representatives, shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. Consultant will provide proper facilities for such access and inspection.
- B. Audits conducted pursuant to this Article shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the American Institute of Certified Public Accountants. Consultant agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraph (A) above. Where the audit concerns Consultant, the auditing agency shall afford Consultant an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the pertinent written comments, if any, of the audited parties.
- C. Records under paragraph (A) above shall be maintained and made available during performance under this Agreement and until three (3) years from the date of final completion of the Project. In addition, those records that relate to any dispute or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date of resolution of such dispute, litigation, claim or exception.
- D. The Consultant shall include the provisions of this Article in every sub-consultant contract or subcontract for the Work.
- E. If Consultant or his subcontractors or sub-consultants fail to retain for the period of time required by this Article the documents referenced herein, Consultant herein shall be entitled to no damages, compensation or equitable adjustments (including time extensions) for any claims based on information available from, or which may be verified by, documents that have not been retained.

ARTICLE 12. DEFECTIVE WORK

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

ARTICLE 13. CHANGES OR ADDITIONAL SERVICES

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

ARTICLE 14. WAIVERS

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

ARTICLE 15. COUNTY FURNISHED DATA

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

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

ARTICLE 16. MEETINGS

Throughout all phases of the Project, Consultant and its sub-consultants must meet periodically with the County Project Manager when reasonably requested. Attendees shall be as determined by the County Project Manager. When requested by the County Project Manager or the Director, selected Consultant personnel shall attend meetings, conferences and presentations with County staff, public agencies, private organizations and others concerned with this project. Consultant shall take and transcribe minutes of all project meetings and provide them to the County within 10 days of such meeting(s).

ARTICLE 17. PAYMENT

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

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

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

OPTION A:

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

OPTION B:

In no event shall the compensation paid to the Contractor exceed the budget appropriation during the term of this Agreement, including renewals thereof.

All labor rates shall be fixed for a period of two (2) years from the date of this Agreement, or six (6) months beyond the applicable completion date set forth in the Project Schedule, whichever is later. Where the Project is extended beyond such date, Consultant shall be entitled to an increase in fee. The increase shall be calculated by comparing Consultant's expenses and payroll rates in effect at the specified completion date for the Project and those expenses incurred and payroll rates in effect as of a date at least six months beyond the completion date shown on the Project Schedule. Consultant shall be allowed the appropriate percentage of increase in payroll and expenses providing such increases actually reflect increases in payroll and expenses occurring since the completion date in the original Project Schedule. Such increases shall be verified by submitting such documentation as the County may require reflecting any cost increases claimed. Such increases shall be limited to direct costs and expenses only and shall not include overhead or profit or any increase in any multiplier.

ARTICLE 18. COVENANT AGAINST CONTINGENT FEES

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

ARTICLE 19. METHOD OF PAYMENT

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

ARTICLE 20. EQUAL EMPLOYMENT

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

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

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

ARTICLE 21. CONFLICT OF INTEREST

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

ARTICLE 22. INDEMNIFICATION AND INSURANCE

A. Indemnification

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

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

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

B. Insurance Requirements

1. Insurance Coverage Required

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

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

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

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

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

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

Contractual Liability, including sub-consultants
 Personal Injury
 Advertising Injury
 Products and Completed Operations
 Broad Form Property Coverage
 Fire Legal Liability
 Explosion, Collapse, and Underground Hazards (XCU) - required if such exposure exists due to the nature of the construction site.

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

- e. IF ANY ARCHITECTURAL, ENGINEERING, DESIGN, INSPECTION OR PLANNING

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

2. General Insurance Provisions:

- a. All policies of insurance shall be underwritten by companies licensed to do business in the State of Maryland.
- b. The Consultant shall assure that all sub-consultants carry identical coverage as shown above, either individually or as an additional insured on the policies of the Consultant. Exceptions may be made only with the approval of the County.
- c. The Consultant and all sub-consultants not named on the policies of the Consultant shall purchase commercial insurance for the coverages listed above. Approval for deductibles higher than \$100,000 for the liability policies must be obtained from the County.
- d. The purchase of insurance does not relieve the Consultant of any obligations assumed under this Agreement.
- e. Monies to become due the Consultant under this Agreement may be retained by the County as may be considered necessary until all suits or claims for damages have been settled or until Consultant furnishes to the County satisfactory evidence of insurance coverage with respect to such suits or claims.
- f. The Consultant shall not commence work under the Agreement until satisfactory evidence of all required coverage is received by the County. Further, the Consultant shall not reduce or cancel or change any of the required coverages without 60 days notice of such change to the County. Failure to maintain required insurance shall be viewed as a material breach of the Agreement by the Consultant. Upon notification by the County that required coverage has lapsed for the Consultant or any of its sub-consultants, the County shall have the right to purchase such insurance and the Consultant shall be responsible for the payment of any applicable insurance premiums.

ARTICLE 23. SUBCONTRACTING OR ASSIGNMENT

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

ARTICLE 24. DELAYS AND EXTENSIONS OF TIME

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 26. AVAILABILITY OF DATA

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

ARTICLE 27. OWNERSHIP OF DOCUMENTS AND RELEASE OF DATA

Consultant agrees that all data including but not limited to reports, drawings, studies, specifications, estimates, maps, photographs and computations prepared by or for him under the terms of this Agreement shall at any time during the performance of the services, or upon termination, be made available to the County upon request by the County and shall become and remain the property of the County upon termination or completion of the services. The County shall have the right to use same without restriction or limitation and without compensation to Consultant other than that provided in the Agreement.

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

ARTICLE 28. DISSEMINATION OF INFORMATION - CONFIDENTIALITY

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

ARTICLE 29. SANCTIONS UPON IMPROPER ACTS

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

ARTICLE 30. REPRESENTATIONS AND RESPONSIBILITY OF CONSULTANT

- A. Consultant shall perform the services with that standard of care, skill, and diligence normally provided by a Consultant, Architect or Engineer in the performance of service similar to the services hereunder.
- B. Consultant represents and agrees that it is an experienced firm having the appropriately licensed personnel in sufficient numbers with the ability and skill necessary to perform all of the services required under this Agreement in connection with the design and/or construction and/or supervision of a project having the scope and complexity of the project contemplated herein; that it has the capacities and resources necessary to perform its obligations hereunder; and that it is fully familiar with all laws, rules, ordinances and regulations, state, federal or county which are applicable to all work required by or which may be ordered under the Contract Documents. This includes appropriate local ordinances, building codes of city, county, state and federal authorities applicable to the project, local sanitary laws and the rules and regulations and appropriate orders and interpretations by governing public authority of such requirements, laws, rules and regulations in effect at the time of commencement of services on the Project, and that all drawings, specifications and other documents prepared by Consultant shall be prepared in accordance with and shall accurately reflect and incorporate appropriate laws, rules and regulations.

- C. Consultant represents and agrees that drawings, specifications, reports and other documents prepared by it pursuant to this Agreement shall be complete and functional for the purposes intended and, except as to any deficiencies which are due to causes beyond the control of Consultant, Consultant further agrees that if any construction project is built in accordance with any such document it shall be structurally sound and complete and a properly functioning facility suitable for the purpose for which it is intended.
- D. Notwithstanding any review, approval, acceptance or payment by the County for Consultant's services, Consultant shall be and remain responsible for professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by Consultant under this Agreement.
- E. If Consultant fails to perform the services, or any part of the services, in conformance with the standard set forth in Paragraph A above, and such failure is made known to Consultant within two years after expiration of this Agreement, it shall, if required by the County perform at its own expense and without additional cost to the County, those services necessary for the correction of any deficiencies or damage resulting, in whole or in part, from Consultant's failure. This obligation is in addition to and not in substitution for any other remedy available to the County.
- F. Consultant shall be required to furnish, upon request by the County, proof that it has the financial capacity to provide the services and that it is financially able -- through its own resources or through a qualified surety -- to protect the County from errors and omissions that might arise from direct performance of the services or the performance of the services by third parties relying on the completed design or work product.

ARTICLE 31. CHOICE OF LAW

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

ARTICLE 32. GOVERNING LAW

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

ARTICLE 33. COMPLIANCE WITH LAWS

Consultant hereby represents and warrants:

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

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

ARTICLE 34. COORDINATION WITH THE COUNTY

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

ARTICLE 35. PRECEDENCE OF DOCUMENTS

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

ARTICLE 36. NOTICES AND WAIVER OF LEGAL RIGHTS

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

ARTICLE 37. ETHICS

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

ARTICLE 38. MISCELLANEOUS

- A. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the County or Consultant.
- B. With the County's prior written approval, Consultant shall have the right to include representations of the project, including photographs, among Consultant's promotional and professional materials. Consultant's material shall not include the County's confidential or proprietary information if the County has previously advised Consultant in writing, of the specific information considered by the County to be confidential or proprietary. Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Project are released for public information, advertisement or publicity, appropriate and proper credit shall be given to the County and Consultant.
- C. This Agreement represents the entire and integrated Agreement between the County and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instruments signed by appropriate County personnel and Consultant. The County and Consultant, respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- D. This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. This Agreement shall be construed to bind the parties hereto in accordance with the Constitution and laws of the State of Maryland.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on _____
by affixing hereon their respective seals and that he/she has authority to execute this Agreement on behalf of Consultant.

ATTEST:

APPROVED AND AGREED TO:

(CONSULTANT)

By: _____ (SEAL)

Title

ATTEST:

APPROVED:
HOWARD COUNTY, MARYLAND

Lonnie R. Robbins (Date)
Chief Administrative Officer

By: _____ (Date)
Ken Ulman
County Executive

RECOMMEND FOR APPROVAL:

James M. Irvin (Date)
Department of Public Works

APPROVED FOR SUFFICIENCY OF FUNDS:

Stanley J. Milesky (Date)
Director of Finance

APPROVED FOR LEGAL SUFFICIENCY:

Margaret Ann Nolan (Date)
County Solicitor

ATTACHMENT A

HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

Charter Section 901. Conflict of Interest.

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

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

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

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

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

Code Section 4.119. Ethics and Fair Employment Practices.

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

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

- (1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.
- (2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.
- (3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms and conditions of a bid submitted by a competitor.

(c) **Fair Employment Practices**

(1) Bidders, vendors and purchases may not engage in unlawful employment practices as set forth in Subtitle 2 "human Rights" of Title 12 of the Howard County Code Section 24 of Article 49B of the Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engage in such unlawful employment practices, they shall be subject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

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

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

be declared to be a responsible bidder by the county purchasing agent.

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

Code Section 22.204. Prohibited Conduct and Interests.

(a) **Participation Prohibitions:** County official and employees subject to this subtitle shall not:

(1) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate on behalf of the county in any matter which would, to their knowledge, have a direct financial impact as distinguished from the public generally, on them, their spouse, parent, child, sibling or upon any business interest with which they are affiliated;

(2) Except as exempted by the county council pursuant to Section 901(b) of the Howard County Charter, hold or acquire an interest in a business entity that has or is negotiating a contract with the county or is regulated by the official or employee;

(3) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate in any matter involving a business entity with which they, their spouse, parent, child or sibling are negotiating or have an arrangement concerning prospective employment.

(b) **Employment Prohibitions:** Except as exempted by the county council pursuant to section 901(b) of the Howard County Charter or when the employment or interest does not create an actual or apparent conflict of interest, officials and employees shall not:

(1) Be employed by:

(i) Any entity subject to their official authority;

(ii) Any entity subject to the authority of the Howard County agency, board or commission with which they are affiliated;

(iii) Any entity which is negotiating or has entered into a contract with the Howard County agency, board or commission with which they are affiliated.

(2) Represent any party for a fee, commission or other compensation before any county body;

(3) Within one (1) year following termination of county service, act as a compensated representative of another in connection with any specific matter in which they participated substantially as a county official or employee.

The employment provisions listed above do not apply to:

(1) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to its jurisdiction be represented in appointments to it;

(2) Subject to other provisions of law, a member of a board or commission who publicly disclosed a financial interest or employment to the appointing authority at the time of appointment;

(3) Employees or officials whose duties are ministerial, provided that the private employment or financial interest does not create a conflict of interest or the appearance of such a conflict.

(c) **Solicitation/Acceptance of Gifts or Compensation:** No employee or official shall solicit any gifts. No employee or official shall accept any gift or compensation, directly or indirectly from any person that he/she knows or has reason to know, has financial interests, distinguishable from the interest of the public, that would be affected by the actions of the employee or official.

(d) **Use of Prestige of Office:** No county officials or employees subject to this subtitle shall intentionally use the prestige of their office for their own gain or that of another. The performance of usual and customary constituent services without additional compensation does not constitute the use of prestige of office for an official or employee's private gain or that of another.

(e) **Disclosure of Confidential Information:** Other than in the discharge of official duties, officials or employees may not disclose or use, for their own gain or that of another, confidential information acquired by reason of public position and which is not available to the public.

**APPENDIX C
TECHNICAL SUBMITTAL SIGNATURE COVER PAGE**

**CONSULTANT SERVICES FOR:
CAPITAL PROJECT No. W-8320
WHISKEY BOTTOM ROAD WATER PUMPING STATION REPLACEMENT**

TO: HOWARD COUNTY OFFICE OF PURCHASING
6751 Columbia Gateway Drive, Suite 501
Columbia, MD 21046

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

COMPANY NAME: _____

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

ADDRESS: _____

(City) (State) (Zip Code)

TELEPHONE _____ FAX: _____

E-MAIL ADDRESS _____

REPRESENTATIVE'S NAME: _____

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

NAME OF COMPANY SIGNATORY (Printed): _____

TITLE OF COMPANY SIGNATORY (Printed): _____

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

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

If yes, indicate the type of minority ownership:

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

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

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

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

Does your company have a written non-discrimination policy which includes race, creed, religion, handicap, color, sex, national origin, age, occupation, marital status, political opinion, sexual orientation, gender identity and expression, personal appearance, familial status or source of income? ☐ YES ☐ NO

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

Does your company have a written non-discrimination policy which includes race, creed, religion, handicap, color, sex, national origin, age, occupation, marital status, political opinion, sexual orientation, gender identity and expression, personal appearance, familial status or source of income? ☐ YES ☐ NO

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

SIGNATURE _____ DATE: _____

PRINTED NAME _____ TITLE: _____

APPENDIX D

EQUAL BUSINESS OPPORTUNITY PARTICIPATION

NOTICE TO PRIME CONTRACTORS

10% SUBCONTRACTING GOAL ON CONTRACTS

VALUED AT \$50,000 OR MORE

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

If a total contract award is \$50,000 or more, the Prime Contractor shall make a genuine good faith effort to comply with the Howard County Equal Business Opportunity (EBO) program's 10% subcontracting goal. The Prime Contractor shall make a good faith effort to obtain minority subcontractor participation even if the Prime Contractor has the capability to complete the work with its own workforce. This good faith effort is also applicable to Prime Contractors who are themselves minority-owned firms. The percentage requirement may vary if the contract is funded by a federal or state agency.

The attached *Equal Business Opportunity Schedule of Participation* form is not required to be submitted with the response to the Request for Expression of Interest. The *Equal Business Opportunity Schedule of Participation* form will be required upon notification of award. The form is included in the Request for Expression of Interest so that Contractors know what will be required if awarded a contract. The County acknowledges that sometimes Contractors may need to change their subcontractor(s). Changes in subcontractors may be made by providing written notification to the Office of Purchasing EBO Coordinator, of the change. For Expressions of Interest, the form shall be submitted upon notification of award.

Possible areas of obtaining subcontracting participation include, but are not limited to, flagging services, hauling, copying and printing, and the purchase of materials used in performing the contract. Contractors may use minority, women or disabled business enterprises certified by Howard County, Maryland; the Maryland Department of Transportation; the City of Baltimore, Maryland; or another certifying entity in order to satisfy the 10% subcontracting goal. The website addresses for lists of minority businesses are:

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

PRIME CONTRACTOR INVOICING REQUIREMENTS

Prime Contractors shall use the following County standard *Invoice* that will record EBO participation. If there is no EBO participation in a particular billing cycle due to the nature of the goods or services provided, that must be noted on the invoices as well. Even though Prime Contractors may have their own invoice forms, the County's form must be used, either in place of or in addition to the Contractor's invoice form, so that County can track compliance of EBO participation in a standard and consistent manner. The form is available for download on the Office of Purchasing web site at www.howardcountymd.gov/purchasing.

Prime Contractors failing to achieve the EBO program goal following a good faith effort to obtain participation must complete the *Equal Business Opportunity Program Request for Subcontracting Waiver* (available from the Office of Purchasing) and provide documentation of its good faith attempts to obtain EBO participation. The County will determine if the efforts made satisfy a good faith attempt. A waiver will only be considered in rare contracts after a determination that the Prime Contractor has made a good faith effort and thoroughly documented the efforts.

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

SUBCONTRACTOR REPORTING REQUIREMENTS

Successful Prime Contractors shall provide their subcontractors with the following *Subcontractor Monthly Payment Report*. This report must be submitted by the 10th of each month by the subcontractor for the preceding billing cycle to the Office of Purchasing unless otherwise specified. The form is available for download on the Office of Purchasing web site at www.howardcountymd.gov/purchasing.



APPENDIX D
HOWARD COUNTY, MARYLAND
EQUAL BUSINESS OPPORTUNITY (EBO)
SCHEDULE OF PARTICIPATION

COUNTY USE ONLY			
CONTRACT NAME: <u>Whiskey Bottom Road Water Pumping Station Replacement (W-32-2013)</u>			
Project#: <u>EOI-35-2013</u>	PO#: <u>XXXXXXXXXX</u>	Contract Renewal #: _____	
Contract Amount: _____		Contract Term: <u>XX/XX/XX – XX/XX/XX</u> EBO APPROVAL: _____	
PRIME CONTRACTOR			
CONTRACTOR NAME: _____			
Address: _____			
Contact Representative: _____		Phone: _____	
Email: _____		EBO Status (Y/N): _____ EBO TYPE*: _____	
Certifying Agency: _____		Certification #: _____ Contract Amount: \$ _____	
COUNTY USE ONLY Amount: _____ Date: _____			
EBO SUBCONTRACTOR			
CONTRACTOR NAME: _____			
Address: _____			
Contact Representative: _____		Phone: _____	
Email: _____		EBO Status (Y/N): _____ EBO TYPE*: _____	
Certifying Agency: _____		Certification #: _____ % Participation: _____	
Services to be performed: _____			
COUNTY USE ONLY Amount: _____ Date: _____			
EBO SUBCONTRACTOR			
CONTRACTOR NAME: _____			
Address: _____			
Contact Representative: _____		Phone: _____	
Email: _____		EBO Status (Y/N): _____ EBO TYPE*: _____	
Certifying Agency: _____		Certification #: _____ % Participation: _____	
Services to be performed: _____			
COUNTY USE ONLY Amount: _____ Date: _____			

Signature (Vendor Official)_____
Date_____
Title

*EBO TYPES:

AA = African American
ESK = Eskimo/Aleutian
NA = Native American

ASA = Asian American
FEM = Female

DIS = Disabled
HIS = Hispanic

EHB

APPENDIX E
HOWARD COUNTY CODE, SEC. 4.122A
WAGE REQUIREMENTS

Section 4.122A. Wage Requirements.

(a) **"Covered Employer"** defined. in this section, "Covered Employer" means a Contractor or subcontractor that is subject to this section.

(b) **Scope.**

(1) A County contract for procurement of contractual services shall require the Contractor and any subcontractor to comply with the wage requirements of this section.

(2) This section does not apply to:

- (i) A Contractor who:
 - (1) Employs fewer than 5 employees when the Contractor submits a bid or proposal, and
 - (2) Does not employ 5 or more employees at any time the contract is in effect as a result of performing the contract;
- (ii) A Contractor who, at the time a contract is signed:
 - (1) Has received less than \$100,000 from the County in the most recent 12-month period; and
 - (2) Will be entitled to receive less than \$100,000 from the County under that contract in the next 12-month period;
- (iii) A County contract with a governmental entity;
- (iv) A County contract with a nonprofit organization that has qualified for an exemption from Federal income taxes under section 501(c)(3) of the internal revenue code;
- (v) A County contract awarded under §§ 4.110, 4.111, or 4.112 of this subtitle;
- (vi) A County contract for electricity, telephone, cable television, water, sewer, or similar service delivered by a regulated public utility;
- (vii) An employer to the extent that the employer is expressly precluded from complying with this section by the terms of any federal or state law, contract, or grant; and
- (viii) A County contract entered into under cooperative procurement with another government or organization of governments.

(c) **Solicitation Requirements.**

(1) Each bid or proposal to provide contractual services shall specify how the covered employer will comply with the wage requirements of this section.

(2) To avoid the imposition of any requirement under this section, a covered employer shall not:

- (i) Subdivide a contract;
- (ii) Pay an employee through a third party; or
- (iii) Treat an employee as a subcontractor or independent Contractor.

(d) **Health Insurance.** If a covered employer commits in its bid or proposal to provide health insurance to an employee who provides services to the County, the covered employer may:

- (1) Certify in its bid or proposal the per-employee hourly cost of the employer's share of the premium for that insurance, and
- (2) Reduce the wage paid under subsection (e) to an employee covered by the insurance by all or part of the per-employee hourly cost of the employer's share of the premium.

(e) **Wage Requirement.**

(1) A covered employer shall pay to each employee an hourly rate sufficient to at least equal 125% of the Federal Poverty Guidelines for a family of 4 individuals calculated on the basis of a 40-hour work week for 52 weeks.

(2) For purposes of this subsection, the Federal Poverty Guidelines are the most recent of those that are updated periodically in the Federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(3) The hourly rate shall be rounded to the nearest multiple of 5 cents.

(4) The wage rate calculated under this subsection shall be paid to an employee during the time the employee actually provides services to the County.

(f) **Exceptions to Wage Requirement.** The wage requirements of this section do not apply to an employee:

- (1) Who performs no measurable work related to any contract with the County;
- (2) Who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this section;
- (3) Who participates for not longer than 120 days in a calendar year in a Government-Operated or Government-Sponsored Summer Youth Employment Program;
- (4) For whom a different wage rate is expressly set in a collective bargaining agreement; or
- (5) For whom a higher wage rate is required by a Federal, State, or County law.

(g) **Enforcement.**

- (1) The County purchasing agent shall require each covered employer to:
 - (i) Certify that the employer and any subcontractor will comply with this section;
 - (ii) Keep the records necessary to show compliance;
 - (iii) Submit the records to the purchasing agent on request of the purchasing agent; and
 - (iv) Publicize the requirements of this section to any employees who may be covered by this section.
- (2) The County purchasing agent shall enforce this section and investigate any complaint of a violation.
- (3) An employer shall not discharge or otherwise retaliate against an employee for asserting a right under this section or for filing a complaint of violation. Any retaliation is a violation of this section punishable under § 4.121 of this subtitle.
- (4) Each contract subject to this section:
 - (i) May specify that liquidated damages for noncompliance with this section include the amount of unpaid wages, with interest, and that the Contractor is jointly and severally liable for noncompliance by a subcontractor
 - (ii) Shall specify that an aggrieved employee, as a third-party beneficiary, may bring a civil action to:
 - (1) Enforce the payment of wages due under this section;
 - (2) Recover wages due under this section with interest; and
 - (3) Recover reasonable attorney's fees.

- (h) **Annual Report.** On or before September 1 of each year, the County purchasing agent shall report to the County Council and the County Executive on the operation of this section during the previous fiscal year.

APPENDIX E
HOWARD COUNTY, MARYLAND
WAGE RATE REQUIREMENTS FOR SERVICE CONTRACTS
EXEMPTION STATUS

Solicitation No: EOI 32-2013

Subtitle 1, Section 4.122A(b)(2)
(Must be completed, signed, and submitted with bid)

PART 1

Contract Title: W-8320 WHISKEY BOTTOM ROAD WATER PUMPING STATION REPLACEMENT

Please check all that apply. If none of the following statements apply to your company or the Subcontractor, please sign below and continue to Part 2.

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

NOTE: The wage requirements do not apply to an employee: (1) who performs no measurable work related to any contract with the County; (2) who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under the law; (3) who participates for not longer than 120 days in a calendar year in a government-operated or government-sponsored summer youth employment program; (4) for whom a different wage rate is expressly set in a collective bargaining agreement; or (5) for whom a higher wage is required by a federal, state, or County law.

Please check here if none of the above is applicable to your company or to the Subcontractor: ☐

Contractor Name: _____

Date: _____

Authorized Signature: _____

(Typed Name of Signatory)

APPENDIX E
HOWARD COUNTY, MARYLAND
WAGE RATE REQUIREMENTS FOR SERVICE CONTRACTS
CERTIFICATION
 Subtitle 1, Section 4.122A(b)(2)
 (Must be completed, signed, and submitted with bid)

PART 2

Contract Title: W-8320 WHISKEY BOTTOM ROAD WATER PUMPING STATION REPLACEMENT

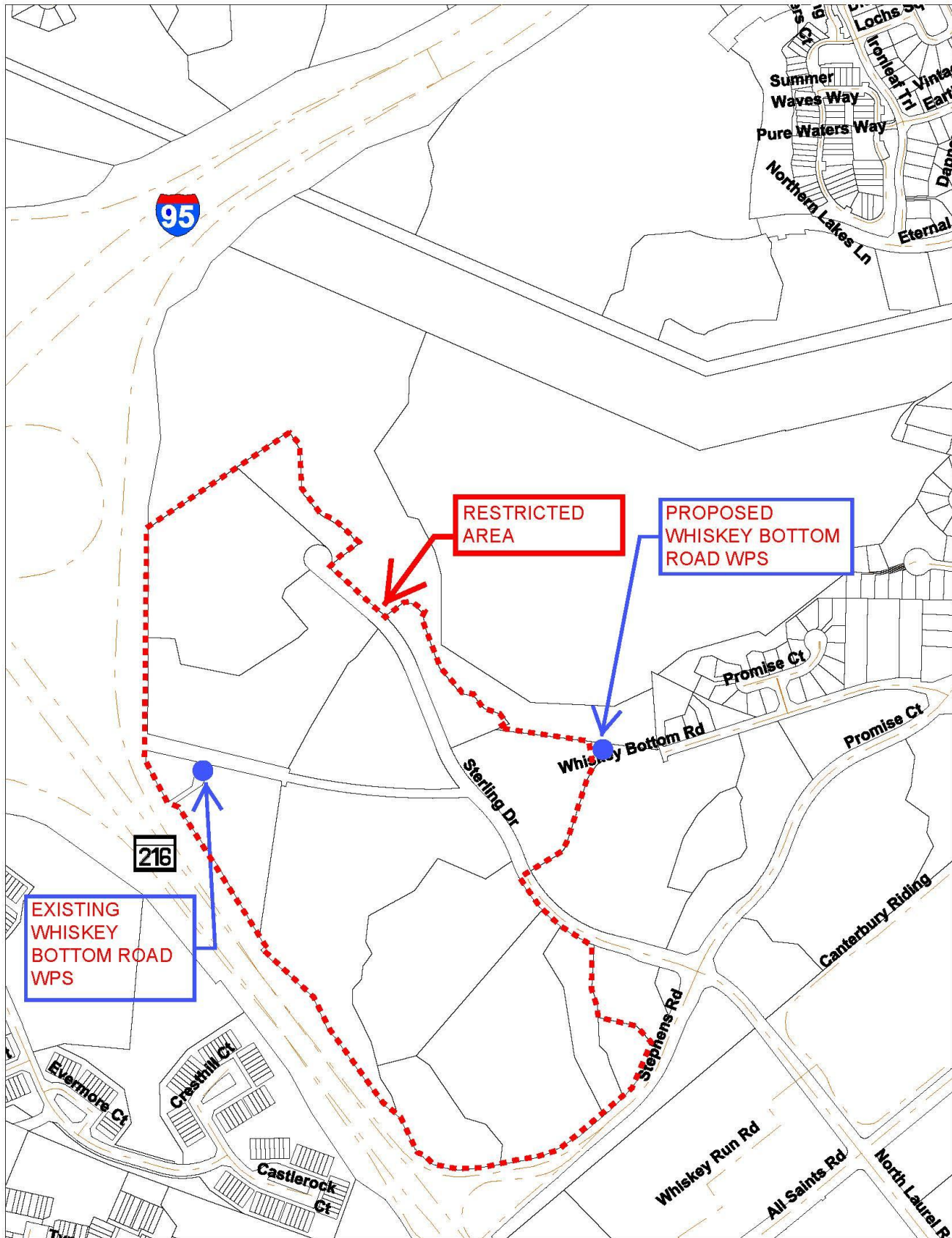
I do hereby certify that I have read and understand the provisions of Section 4.122A of the Howard County Code, am an authorized representative of the Contractor named below and:

Check all
that apply:

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

Contractor Name: _____		Vendor Identification No. _____	
Address: _____			
Telephone No: _____		Fax No.: _____	E-mail: _____
Authorized Representative: _____			
Signature	Typed Name of Signatory	Title	Date

Howard County, Maryland
 Office of Purchasing
 6751 Columbia Gateway Drive, Suite 501
 Columbia, MD 21046
 (410) 313-6370



LOCATION MAP
NOT TO SCALE