

ON-CALL AGREEMENT FOR

LANDSCAPE ARCHITECTURAL/CIVIL ENGINEERING SERVICES

THIS ON-CALL AGREEMENT FOR LANDSCAPE ARCHITECTURAL/CIVIL ENGINEERING SERVICES, (the “**Agreement**”), [] day of [], 20 (the “**Effective Date**”) by and between _____, a [Maryland] [] [corporation] [limited liability company] [partnership], its successors and assigns (collectively and severally, the “**Landscape Architect/Civil Engineer**”), and Baltimore County, Maryland, a body corporate and politic (the “**County**”).

WHEREAS, the Professional Services Selection Committee (the “**PSSC**”), in accordance with the Executive Order dated January 29, 2010 selected the Landscape Architect/Civil Engineer to perform various projects or tasks on an on-call basis, including, but not limited to, the preparation of park master plans, design development plans, construction drawings, and permit processing for various projects involving, but not limited to, athletic field construction, renovation and/or conversion (the “**Project**”); and

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

WHEREAS, upon the selection of the Landscape Architect/Civil Engineer, the County’s Department of Public Works and Transportation (“**DPWT**”) and the Landscape Architect/Civil Engineer negotiated the terms pursuant to which the Landscape Architect/Civil Engineer shall perform the Project.

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

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

subconsultants, or agents, or any other person in connection with or as a result of such prevention, restriction or delay.

ARTICLE 1 – SUBMISSIONS OF LANDSCAPE ARCHITECT/CIVIL ENGINEER

1.1 The Landscape Architect/Civil Engineer submitted various prequalification documents for review by the PSSC and DPWT, including but not limited to, DPWT Form 101A, Standard Form 254, and Standard Form 255, collectively the “**Prequalification Documents**” and the Landscape Architect/Civil Engineer’s organizational documents, all of which are incorporated herein as part of the Agreement, and the Landscape Architect/Civil Engineer’s organizational documents, incorporated herein as part of the Agreement. The Landscape Architect/Civil Engineer may also have submitted either (a) a copy of the Landscape Architect/Civil Engineer’s most recent fiscal year end audited financial statement prepared by a certified public accountant in accordance with Section 7.9 of this Agreement, which was performed no more than two (2) years prior to the Effective Date of the Agreement, or (b) written documentation of the Landscape Architect/Civil Engineer’s business operations/overhead and payroll burden historical cost data from a state or federal agency or private entity in a form acceptable to the County, in the County’s sole discretion, that evidences the Overhead and Payroll Burden rate of the Landscape Architect/Civil Engineer, the “**Rate Documentation**,” which Rate Documentation is hereby attached hereto and incorporated herein as part of the Agreement.

1.2 The Landscape Architect/Civil Engineer has submitted a written proposal to the County for the Project [REDACTED] and in accordance with terms negotiated with DPWT and attached hereto and incorporated herein, which includes (a) a detailed description of the goods to be provided and services to be performed by the Landscape Architect/Civil Engineer and/or its subconsultants or subcontractors approved in writing by the County for the Project and the costs associated therewith; (b) DPWT Form 105 Attachment Summary Format, to be attached throughout the Term of this Agreement for each Project task that may be assigned under this Agreement; (c) a breakdown of tasks and associated man hours for each phase of the Project including a schedule of personnel for the Landscape Architect/Civil Engineer and each subconsultant or subcontractor by legal name and/or identification number, classification, hourly rate of pay, and effective date of pay (“**Schedule of Personnel**”); (d) a salary roster including each individual listed on the Schedule of Personnel (“**Salary Roster**”); and (e) a detailed completion schedule showing the proposed order of work and indicating the time required for the completion of the work for the Project (the “**Completion Schedule**”) (subsections (a) through (e) are collectively, the “**Scope of Work**”). The Scope of Work is attached to this Agreement as **Exhibit A** and incorporated herein as part of the Agreement. Direct Labor costs, as used in the Scope of Work and herein, shall only be for be actual salaries paid for work on the Project to productive personnel directly engaged in the performance of the Scope of Work that are listed on the Schedule of Personnel

previously approved in writing by the County. Direct Labor costs are before tax and other deductions, and shall not include overhead expenses, administrative support time, payroll taxes, workmen's compensation, other insurances paid on behalf of any employee, allowances for vacation, holidays, sick leave, bonuses, and other incentives.

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

ARTICLE 2 – REPRESENTATIONS & WARRANTIES OF LANDSCAPE ARCHITECT/CIVIL ENGINEER

2.1 The Landscape Architect/Civil Engineer represents and warrants that the Landscape Architect/Civil Engineer is a [REDACTED], duly formed and validly existing under the laws of the State of [REDACTED] and is qualified to do business and is in good standing in the State of Maryland.

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

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

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

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

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

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

ARTICLE 3 – COUNTY RELIANCE UPON LANDSCAPE ARCHITECT/CIVIL ENGINEER’S SUBMISSIONS AND REPRESENTATIONS AND WARRANTIES

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

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

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

ARTICLE 4 – RESPONSIBILITIES OF THE LANDSCAPE ARCHITECT/CIVIL ENGINEER

4.1 The Landscape Architect/Civil Engineer shall timely, professionally, competently, and accurately perform all tasks for the Project as described in detail in the Scope of Work. The Landscape Architect/Civil Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all such tasks. The generalized tasks for the Project shall include, but not be limited to, various projects or tasks on an on-call basis, including, but not limited to, the preparation of park master plans, design development plans, construction drawings, and permit processing for various projects involving, but not limited to, athletic field construction, renovation and/or conversion. The Landscape Architect/Civil Engineer, through the Landscape Architect/Civil Engineer's structural engineer and/or geotechnical engineer, if and as applicable, shall be solely responsible for the performance of and the interpretation of the borings, determination of soil bearing values and soil conditions.

4.2 The Landscape Architect/Civil Engineer shall produce, as necessary, all designs, drawings, plans, specifications, incidental work reports, design calculations, computer programs, technical reports, operating manuals and other subject data and materials required to complete the Scope of Work and fulfill the Landscape Architect/Civil Engineer's obligations and responsibilities under this Agreement, including, but not limited to, professional engineer or architect sealed mylar plans and As-Built Drawings herein later defined (collectively, the **"Work Product"**).

4.3 The Landscape Architect/Civil Engineer shall perform such professional services, including, but not limited to, landscape architectural and civil engineering services, as may be necessary to prepare and provide the Work Product and complete the Scope of Work and fulfill the Landscape Architect/Civil Engineer's obligations and responsibilities required under this Agreement (collectively, the **"Services"**).

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

4.5 The Landscape Architect/Civil Engineer shall perform the Services and provide the

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

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

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

4.8 The Landscape Architect/Civil Engineer shall timely complete the Scope of Work. The Completion Schedule provided by the Landscape Architect/Civil Engineer (within the Scope of Work) shall be used by the County to monitor the progress of the Landscape Architect/Civil Engineer's work. Not later than thirty (30) calendar days from the end of each [month] [quarter] [_____] of the Project, the Landscape Architect/Civil Engineer shall submit [monthly] [quarterly] [_____] progress schedules to the County, in form and substance approved by the County, indicating the Landscape Architect/Civil Engineer's progress on the Project and the Scope of Work in relation to the Completion Schedule (each a "Progress Schedule" and collectively, the "Progress Schedules"). If the Landscape Architect/Civil Engineer fails to timely submit the Progress Schedules, the Landscape Architect/Civil Engineer understands and agrees that the County may exercise any rights and remedies available under this Agreement, including but not limited to, withholding of the County's approval of the Landscape Architect/Civil Engineer's invoices until such time as the Landscape Architect/Civil Engineer submits the required Progress Schedules to the County. Further, if, in the reasonable opinion of the County, the Landscape Architect/Civil Engineer fails to adhere to the Completion Schedule, the Landscape Architect/Civil Engineer shall take any and all steps necessary to improve its progress, all without additional cost and expense to the County. The County reserves the right to terminate this Agreement pursuant to Section 9.2 of this Agreement if the Landscape Architect/Civil Engineer fails to adhere to the Completion Schedule and fails to take any reasonable steps to improve its progress, as determined in the County's sole discretion.

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

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

When an alleged error and/or omission is discovered, the Chief of Design for the County’s DPWT

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

ARTICLE 5 - TERM

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

ARTICLE 6 - CHANGES

6.1 The County may, at any time, by written order, make changes to the Scope of Work to be performed by the Landscape Architect/Civil Engineer, including but not limited to, the Services and Work Product to be provided by the Landscape Architect/Civil Engineer hereunder. The Landscape Architect/Civil Engineer may, at any time, request changes to the Scope of Work to be performed by the Landscape Architect/Civil Engineer and such request shall be in writing and include, but not be limited to, the Landscape Architect/Civil Engineer’s written proposal, a revised DPWT Form 105, and Subcontractors, in a form satisfactory to the County, in its sole discretion (which shall be attached to and incorporated into **Exhibit A** of this Agreement, as applicable). Any such written request must indicate whether the proposed change will cause an increase or decrease in the Landscape Architect/Civil Engineer's cost of or time required for the Landscape Architect/Civil Engineer’s performance of any

Services or Work Product under this Agreement, or changes to the Completion Schedule.

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

ARTICLE 7 – PAYMENT

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

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

7.2 The Landscape Architect/Civil Engineer shall submit to the County one (1) signed original of each certified invoice along with three (3) copies of each such certified invoice and one (1) complete set of supporting documentation and affidavits therefor, which supporting documentation shall be attached to the signed original certified invoice. On all invoices, the Landscape Architect/Civil

Engineer shall clearly indicate (a) Project name; (b) contract number as assigned by the County; (c) task number, if applicable; (d) purchase order number; and (e) the name of the County Project Manager and shall indicate "Invoice" on the bottom left corner of any mailing or delivery envelope to the County. All certified invoices, copies of invoices, and supporting documentation shall be sent to [REDACTED] by [REDACTED].

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

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

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

Where the As-Built Drawings need to be certified, as required by any applicable regulatory agencies or any applicable authorities having jurisdiction, the appropriate design professional of the

Landscape Architect/Civil Engineer who certifies the As-Built Drawings shall visit the Project worksite during the construction and provide on-going inspection of the relevant portions of the Project, and shall provide and certify signed and sealed As-Built Drawings showing surveyed as-built field conditions.

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

7.7 IN NO EVENT SHALL THE COUNTY PERMIT PAYMENT OF INTEREST TO THE LANDSCAPE ARCHITECT/CIVIL ENGINEER AND THE LANDSCAPE ARCHITECT/CIVIL ENGINEER HEREBY WAIVES ANY CLAIM FOR INTEREST IN CONNECTION WITH THIS AGREEMENT.

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

7.9 Audits.

a. The Landscape Architect/Civil Engineer is required to submit an independent audit to the County. The Landscape Architect/Civil Engineer may submit (a) an audit from the Maryland State Highway Administration or (b) an audit performed by an independent certified public accountant ("ICPA") in accordance with auditing standards generally accepted in the United States, as established by the American Institute of Certified Public Accountants and the standards applicable to financial audits contained in the Government Auditing Standards issued by the Comptroller General of the United States (the "ICPA Standards"), to satisfy this Section 7.9(b). The ICPA Standards require an ICPA to plan and perform the audit to obtain reasonable assurance about whether the direct labor, fringe benefits, and general overhead schedules are free of material misstatement. An audit by a ICPA

pursuant to the ICPA Standards shall include, but is not limited to, consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Landscape Architect/Civil Engineer's internal control over schedule reporting, and examining, on a test basis, evidence supporting the amounts and disclosures in the schedule of direct labor, fringe benefits, and general overhead, assessing the accounting principles used and the significant estimates made by the Landscape Architect/Civil Engineer's management, as well as evaluating the overall schedule presentation. The schedules to be audited by an ICPA pursuant to the ICPA Standards for direct labor, fringe benefits, and general overhead should be prepared on the basis of accounting practices prescribed in the Code of Federal Regulations, Title 48, Chapter 99, Subparts 9904.401, 402, 405 and 406, as amended, and Subchapter E-Part 31 of the Federal Acquisition Regulations, as amended, and do not need to be presented in conformity with generally accepted accounting principles.

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

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

7.10 During the Term of this Agreement, the Landscape Architect/Civil Engineer will bill for reimbursement of Indirect Costs, comprised of Overhead and Payroll Burden. The Overhead and Payroll Burden rate may only be increased or decreased during the Term of this Agreement by mutual agreement, upon the County's receipt of documentation from the Landscape Architect/Civil Engineer, in form and content satisfactory to the County. Any such increase or decrease in the Overhead and Payroll Burden rate shall not change any other terms and conditions of this Agreement, shall not increase the Total Price IN ANY AND ALL INSTANCES, THE PARTIES AGREE THERE SHALL BE NO INCREASE IN THE TOTAL PRICE UNDER THIS AGREEMENT EXCEPT PURSUANT TO A PROPERLY APPROVED AND EXECUTED WRITTEN AMENDMENT TO THIS AGREEMENT.

7.11 The maximum hourly salary rates for direct labor for all engineers and architects, including those who are also principals of the Engineer, shall be the salary rate negotiated and reflected in the Scope of Work. The maximum hourly salary rates may only be increased or decreased during the

Term of this Agreement in the sole discretion of the County upon the County's receipt of documentation from the Engineer, in form and content satisfactory to the County. Any such increase or decrease in the maximum hourly salary rates shall not change any other terms and conditions of this Agreement, shall not increase the Total Price, and shall not require an amendment to this Agreement, but rather, shall be formally documented by written notification by the Engineer signed to the Director or Bureau Chief, IN ANY AND ALL INSTANCES, THE PARTIES AGREE THERE SHALL BE NO INCREASE IN THE TOTAL PRICE UNDER THIS AGREEMENT EXCEPT PURSUANT TO A PROPERLY APPROVED AND EXECUTED WRITTEN AMENDMENT TO THIS AGREEMENT.

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

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

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

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

ARTICLE 8 – DISPUTES

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

8.2 As used herein, "dispute" means a written demand by one of the parties seeking, as a

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

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

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

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

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

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

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

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

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

8.9 The parties understand and agree that any and all suits in connection with this Agreement

shall be filed in Baltimore County Circuit Court in Baltimore County, Maryland or the United States District Court for the Northern District of Maryland.

ARTICLE 9 – TERMINATION AND DEFAULT

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

In the event of termination, without cause, the County shall advise the Landscape Architect/Civil Engineer in writing of the termination date and of the Scope of Work to be performed during the final days prior to Agreement termination. Provided that the Landscape Architect/Civil Engineer is not in violation of or in breach of any portion of this Agreement and provided the termination for convenience is not due to the County's non-appropriation as described in Article 29 of this Agreement, then in the event the Project, or any portion thereof, is terminated for convenience by the County prior to completion of the Scope of Work or the Project, the County shall pay the Landscape Architect/Civil Engineer, in the County's reasonable discretion, the portion of the Total Price earned by the Landscape Architect/Civil Engineer for Work Product provided to the satisfaction of the County and Services performed to the satisfaction of the County up to the date of the termination for convenience. No amount of the Total Price shall be allowed or paid for Work Product not yet provided or not provided to the satisfaction of the County or for services not yet performed or not performed to the satisfaction of the County, including but not limited to anticipated profit. IN NO EVENT SHALL THE COUNTY BE LIABLE FOR ANY OTHER LOSSES, COSTS, EXPENSES, OR DAMAGES OF ANY NATURE, KIND, OR AMOUNT.

9.2 **Default.** The term "**Default**" as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

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

b. **Compliance with Conditions and Fulfillment of Responsibilities.** If the

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

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

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

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

93 **Remedies for Default.**

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

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

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

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

limited to, calling upon any security, letter of credit, or bond and any other action authorized or permitted by this Agreement, applicable laws, regulation, code, or in equity.

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

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

ARTICLE 10 - PROJECT DESIGN

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

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

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

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

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

10.2 In the performance of the Project, Work Product, Services, and Scope of Work required under this Agreement, the Landscape Architect/Civil Engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment, which are readily available through competitive procurement, or through standard, proven, or industry accepted production techniques, methods and processes.

10.3 The Landscape Architect/Civil Engineer shall not, in the performance of the Project, Work Product, Services, and Scope of Work called for by this Agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the Landscape Architect/Civil Engineer to be

available only from a sole source, unless such use has been adequately justified in writing by the Landscape Architect/Civil Engineer as necessary for the minimum needs of the Project and approved in writing by the County.

ARTICLE 11 - ACCESS TO RECORDS

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

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

ARTICLE 12 - PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

12.1 If the County determines that any line item, cost, or price in the Scope of Work, including but not limited to Profit, provided by the Landscape Architect/Civil Engineer, negotiated in connection with this Agreement, or any cost reimbursable under this Agreement was overstated, misstated, or inflated by any material sum or amount (in the reasonable discretion of the County) because the Landscape Architect/Civil Engineer, or any of its subcontractors, consultants, subconsultants, agents, or outside associates, furnished incomplete or inaccurate line item, cost, or pricing data or data not current as represented in the Scope of Work, then such line item, price, or cost in the Scope of Work, including but not limited to Profit, shall be reduced accordingly and this Agreement shall be promptly amended in writing to reflect such reduction in accordance with Article 22 of this Agreement.

12.2 Failure of the parties hereto to agree on a reduction to the applicable line item of the

Scope of Work and the resulting decrease to the Total Price shall be subject to Article 8 of this Agreement.

ARTICLE 13 - SUBCONTRACTS

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

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

ARTICLE 14 - EQUAL EMPLOYMENT OPPORTUNITY

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

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

b. Limit, recruit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, marital status, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

14.2 All solicitations or advertisements for employees shall state that the Landscape

Architect/Civil Engineer is an equal opportunity employer.

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

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

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

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

ARTICLE 15 - NO CONTINGENT FEES

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

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

warranted. In no event shall requalification of the Landscape Architect/Civil Engineer occur sooner than three (3) years from the date of the removal of Landscape Architect/Civil Engineer from the County's prequalified and/or eligible landscape architectural/civil engineering consultant list. The remedies provided herein are not exclusive but rather are in addition to all other remedies available to the County under this Agreement.

ARTICLE 16 - RIGHTS IN DATA

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

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

ARTICLE 17 - NOTICES

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

Landscape Architect/

Civil Engineer's Name

Address



Baltimore County:

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

ARTICLE 18- JURISDICTION

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

ARTICLE 19 –PROFESSIONAL LANDSCAPE ARCHITECTURAL/CIVIL ENGINEERING SERVICES

19.1 The provisions of this Article 19 are required for all new building Projects in the County. Any and all acceptable deviations from this Article 19 are specified in **Exhibit A** of this Agreement. The Landscape Architect/Civil Engineer shall provide professional services, including, but not limited to, landscape architectural and civil engineering services, in accordance with requirements conveyed to the Landscape Architect/Civil Engineer by the County in any pre-proposal meeting for the Project and this Agreement, and agreed upon by the parties, and as defined in the Scope of Work.

19.2 **Project Cost Estimates.** The Landscape Architect/Civil Engineer may be required to provide cost estimates for pre-design, programming, feasibility, and/or study phases; schematic design; design development; and construction documents, as well as for any other design alternatives or special Project circumstances as the County deems necessary (collectively, the **“Cost Estimates”**). The Cost Estimates shall include all construction costs and may include other Project costs, as deemed necessary by the County.

19.3 **Schematic Design - Construction Cost Estimates.**

a. The County shall establish a preliminary construction budget or total Project budget, and inform the Landscape Architect/Civil Engineer of the amount thereof at the predesign

conference with the County before commencement of the schematic design phase of the Project.

b. The Landscape Architect/Civil Engineer shall engage a professional estimator of construction costs who shall work under the Landscape Architect/Civil Engineer's supervision at the sole cost and expense of the Landscape Architect/Civil Engineer. It is intended that the Landscape Architect/Civil Engineer's cost estimator provide to the Landscape Architect/Civil Engineer and the County on a continuing basis throughout the schematic design phase advice concerning anticipated construction costs based upon the documents prepared by the Landscape Architect/Civil Engineer during said phase of the Project.

c. A statement of probable construction cost to be included as part of the schematic design phase documentation shall be submitted to the County for approval. The County shall advise the Landscape Architect/Civil Engineer of acceptance of said statement and, in the event said statement exceeds the preliminary construction budget that an appropriate corresponding revision has been made in the County's construction budget for the Project. In the event the County does not accept the statement of probable construction cost submitted at the end of the schematic design phase, the documents which have been submitted for that phase shall be revised by the Landscape Architect/Civil Engineer until the documents and the revised statement of probable construction cost based thereon are all acceptable to the County in its sole discretion. The amount of said revised statement of probable construction cost shall become the County's revised construction budget for the Project.

d. The statement of probable construction cost prepared by the Landscape Architect/Civil Engineer's cost estimator and under the supervision of the Landscape Architect/Civil Engineer shall represent their best judgment as design professionals familiar with current costs within the construction industry prevailing in the area where the construction Project is to be located. It is recognized, however, that neither the Landscape Architect/Civil Engineer nor the County has any control over the cost of labor, materials or equipment, over the applicable contractors' methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Landscape Architect/Civil Engineer cannot guarantee that bids will not vary from any statement of probable construction cost prepared by the Landscape Architect/Civil Engineer's cost estimator. This however, does not discharge the Landscape Architect/Civil Engineer from any obligations imposed by Section 19.3(b) or otherwise.

19.4 Design Development - Construction Cost Estimates.

a. The Landscape Architect/Civil Engineer shall engage a professional estimator of construction costs who shall work under the Landscape Architect/Civil Engineer's supervision and at sole cost and expense of the Landscape Architect/Civil Engineer. The Landscape Architect/Civil Engineer's cost estimator shall provide to the Landscape Architect/Civil Engineer and the County on a

continuing basis throughout the design development phase of the Project advice concerning anticipated construction costs based upon the documents prepared by the Landscape Architect/Civil Engineer during said phase of the Project.

b. A statement of probable construction cost to be included as part of the design development phase documentation shall be submitted to the County for approval.

c. The County shall advise the Landscape Architect/Civil Engineer of acceptance of said statement in Section 19.4(b) and, in the event said statement exceeds the preliminary construction budget that an appropriate corresponding revision has been made in the County's construction budget for the Project. In the event the County does not accept the statement of probable construction cost submitted at the end of the design development phase, the documents which have been submitted for that phase shall be revised by the Landscape Architect/Civil Engineer until the documents and the revised statement of probable construction cost based thereon are all acceptable to the County in its sole discretion. The amount of said revised statement shall become the County's revised construction budget for the Project.

d. The statement of probable construction cost prepared by the Landscape Architect/Civil Engineer's cost estimator and under the supervision of the Landscape Architect/Civil Engineer shall represent their best judgment as design professionals familiar with current costs within the construction industry prevailing in the area where the construction project is to be located. It is recognized, however, that neither the Landscape Architect/Civil Engineer nor the County has any control over the cost of labor, materials, or equipment, over the applicable contractors' methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Landscape Architect/Civil Engineer cannot guarantee that bids will not vary from any statement of probable construction cost prepared by the Landscape Architect/Civil Engineer's cost estimator. This however, does not discharge the Landscape Architect/Civil Engineer from any obligation imposed by Section 19.4(a) or otherwise.

19.5 Construction Documents Phase – Construction Cost Estimates.

a. The Landscape Architect/Civil Engineer shall engage a professional estimator of construction costs who shall work under the Landscape Architect/Civil Engineer's supervision and at sole cost and expense of the Landscape Architect/Civil Engineer. The Landscape Architect/Civil Engineer's cost estimator shall provide to the Landscape Architect/Civil Engineer and the County on a continuing basis throughout the construction documents phase advice concerning anticipated construction costs based upon the documents prepared by the Landscape Architect/Civil Engineer during said phase of the Project.

b. The Landscape Architect/Civil Engineer's cost estimator shall prepare a statement

of probable construction cost based upon a detailed labor and material takeoff for the Project, which the Landscape Architect/Civil Engineer shall make from the construction documents, applying unit costs currently prevailing in the area in which the construction Project is to be located. Said statement shall be submitted by the Landscape Architect/Civil Engineer to the County for approval.

c. If the statement of probable construction cost based upon the construction documents approved by the County does not exceed by more than ten percent (10%) the County's construction budget based upon design development documents, the amount of said statement based upon the construction documents shall become the County's final construction budget for the Project; otherwise, the Landscape Architect/Civil Engineer shall revise the documents until the documents and the revised statement based thereon are all acceptable to the County in its sole discretion. The amount of said revised statement shall become the County's final construction budget for the Project.

d. The statements of probable construction cost prepared by the Landscape Architect/Civil Engineer's cost estimator and under the supervision of the Landscape Architect/Civil Engineer shall represent their best judgment as design professionals familiar with current costs within the construction industry prevailing in the area where the construction project is to be located. It is recognized, however, that neither the Landscape Architect/Civil Engineer nor the County has any control over the cost of labor, materials or equipment, over the applicable contractors' methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Landscape Architect/Civil Engineer cannot guarantee that bids will not vary from any statement of probable construction cost prepared by the Landscape Architect/Civil Engineer's cost estimator. This however, does not discharge the Landscape Architect/Civil Engineer from any obligations imposed by Section 19.5(a) or otherwise.

e. If the lowest bona fide bid exceeds by more than ten percent (10%) the County's final construction budget for the Project, the Landscape Architect/Civil Engineer, without additional charge, shall revise the construction and contract documents as necessary to reduce the cost of the construction Project and the resulting lowest bona fide bid to within a range of one hundred percent (100%) to one hundred ten percent (110%) of the amount of the County's final construction budget for the Project. If the lowest bona fide bid exceeds by ten percent (10%) or less the County's final construction budget for the Project, the County shall compensate the Landscape Architect/Civil Engineer for making said revisions to the construction and contract documents. If the lowest bona fide bid exceeds in excess of ten percent (10%) the County's final construction budget for the Project, the County shall not compensate the Landscape Architect/Civil Engineer for changes made.

f. The County shall not approve the Landscape Architect/Civil Engineer's completion of the construction document phase of the Project until the Landscape Architect/Civil

Engineer obtains full and final written approval of its site plans for the Project, including, but not limited to, grading, sediment control, and stormwater management, from the County Department of Environmental Protection and Sustainability and the County Soil Conservation District.

ARTICLE 20 - WAIVER

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

ARTICLE 21 - VOIDABLE PROVISIONS

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

ARTICLE 22 - INTEGRATION

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

ARTICLE 23 - INSURANCE

The Landscape Architect/Civil Engineer shall provide verification of insurance to the County in accordance with the insurance verification form attached hereto as **Exhibit C** and incorporated herein

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

ARTICLE 24 – NO PAYMENT

In no event shall the Landscape Architect/Civil Engineer be paid in excess of the Total Price under this Agreement for this Project as described in Section 7.14 of this Agreement. The Landscape Architect/Civil Engineer understands that the Landscape Architect/Civil Engineer is solely responsible for monitoring its billings against the progress of the Project and that the Landscape Architect/Civil Engineer shall complete the Scope of Work, perform all of the Services, and provide all Work Product required under this Agreement in accordance with this Agreement.

ARTICLE 25 – CONFIDENTIAL INFORMATION

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

said materials by the County's applicable departments and boards to review said materials and this Agreement. The Landscape Architect/Civil Engineer understands and agrees this reproduction is necessary to allow the County's applicable departments, executive branch and legislative branch to review those materials provided to the County by the Landscape Architect/Civil Engineer and this Agreement.

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

253 Upon the termination of this Agreement in its entirety or as otherwise instructed by the County, the Landscape Architect/Civil Engineer shall return all confidential information previously received from the County, including, to the extent reasonable and practical, all copies of confidential information in any form, including copies maintained in digital, electronic, magnetic, optical or other mediums. The Landscape Architect/Civil Engineer shall execute a data inspection and perform a data scrub of the electronic files containing confidential information provided by the County, so that upon completion of a data scrub of such confidential information, all such confidential information in all live electronic files owned or operated by the Landscape Architect/Civil Engineer and its employees, officers, directors, subcontractors, outside associates, consultants, subconsultants, agents and assigns will be deleted. To the extent confidential information of a disclosing party cannot be returned, such confidential information shall be destroyed. The Landscape Architect/Civil Engineer shall certify to the County in an affidavit executed under oath and by a legally authorized representative of the Landscape Architect/Civil Engineer that all confidential information disclosed to the Landscape Architect/Civil Engineer, its employees, officers, directors, subcontractors, outside associates, consultants, subconsultants, agents, and assigns, has been returned to the County or destroyed, as applicable under this Agreement.

254 The Landscape Architect/Civil Engineer shall carefully restrict access to the confidential information to those employees, officers, directors, subcontractors, outside associates, consultants, subconsultants, agents and assigns who clearly need such access in order to perform their obligations under this Agreement. The Landscape Architect/Civil Engineer warrants and represents that it will advise each of the persons to whom it provides access to the County's confidential information, in

conformance with the terms of this Agreement, that such persons are strictly prohibited from making any use of, publishing, or otherwise disclosing to others, or permitting others to use, any such confidential information.

25.5 Each party may disclose to the others hereto, and their respective officials, officers, employees, assigns, subcontractors, outside associates, consultants, subconsultants, or agents, confidential information of such party to the extent permitted by state and federal privacy laws. Except as otherwise provided in this Article 25 or as required by law, each recipient of confidential information shall hold the confidential information in confidence and shall not, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed or otherwise transfer such confidential information to any third party or utilize such confidential information for any purpose whatsoever other than as expressly contemplated by this Agreement. This obligation shall continue throughout the Term of this Agreement, and beyond the expiration or earlier termination or non-renewal of this Agreement for a period of not less than five (5) years thereafter, and for as long as the recipient of the confidential information maintains such confidential information, and thereafter such confidential information shall be destroyed (or if in electronic format shall be deleted) in accordance with the terms and conditions of this Agreement. Each party understands and acknowledges that any disclosure or misappropriation of any of the confidential information in violation of this Agreement may cause the disclosing party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the disclosing party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the disclosing party shall deem appropriate. With regard to this Section 25.5, such right of the disclosing party is to be in addition to the remedies otherwise available to the disclosing party at law or in equity.

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

25.7 **Exceptions.** These confidentiality obligations shall not apply to confidential information, including but not limited to proprietary information or intellectual property, if and to the extent it is established that the information communicated: (a) is already known to recipient, without obligation to keep such information confidential, at the time of recipient's receipt of the proprietary information or intellectual property, as evidenced by documents in possession of the recipient prepared or received prior to such communication; (b) was received by recipient in good faith from an unrelated

third party lawfully in possession thereof and having no obligation to keep such information confidential; (c) was publicly known at the time of recipient's receipt thereof or has become publicly known other than by a breach of this Agreement; (d) prior to recipient's disclosure of such information, such disclosure was consented to in writing by the disclosing party; (e) is independently developed by the receiving party; (f) is required for the review, approval, execution, delivery or performance of this Agreement by the County, or (g) is required by subpoena, court order, law, statute, or regulation, or other compulsion of law.

ARTICLE 26 – NO ASSIGNMENT

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

ARTICLE 27 – CONFLICT OF INTEREST

27.1 The Landscape Architect/Civil Engineer represents and warrants to the best of the Landscape Architect/Civil Engineer's knowledge, information, and belief, that there exists no actual or potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the Term of this Agreement, or any extension thereof, the Landscape Architect/Civil Engineer shall immediately advise the County in writing thereof.

27.2 Employment of Federal, State, City or County Personnel.

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

b. The intent of Article 27.2(a) is to preclude a governmental employee involved with the Project from also being simultaneously employed by the Landscape Architect/Civil Engineer to work on the Project. It is not the intent of the Article to prevent or preclude such a governmental employee from being recruited, interviewed or hired by the Landscape Architect/Civil Engineer.

ARTICLE 28 – INDEMNIFICATION

28.1 **COMMERCIAL GENERAL LIABILITY INDEMNIFICATION: OTHER THAN ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES, THE LANDSCAPE ARCHITECT/CIVIL ENGINEER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COUNTY, ITS EMPLOYEES, AGENTS AND OFFICIALS FROM ANY AND ALL LOSSES,**

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

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

283 THE LANDSCAPE ARCHITECT/CIVIL ENGINEER SHALL ALSO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY, ITS EMPLOYEES, AGENTS, AND

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

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

285 THE LANDSCAPE ARCHITECT/CIVIL ENGINEER SHALL PROVIDE DEFENSE FOR THE COUNTY, ITS EMPLOYEES, AGENTS AND OFFICIALS IN ACCORDANCE WITH THIS ARTICLE 28 AND IN DOING SO THE LANDSCAPE ARCHITECT/CIVIL ENGINEER SHALL ALLOW THE COUNTY TO PARTICIPATE IN SAID DEFENSE OF THE COUNTY, ITS EMPLOYEES, AGENTS AND OFFICIALS, TO THE EXTENT AND AS MAY BE REQUIRED BY THE COUNTY, AND THE LANDSCAPE ARCHITECT/CIVIL ENGINEER SHALL COOPERATE WITH THE COUNTY IN ALL ASPECTS IN CONNECTION THEREWITH.

ARTICLE 29 – FUNDING

29.1 The parties hereto agree that the failure of the County to appropriate sufficient funds in any fiscal year to provide funds for this Agreement shall entitle the County to immediately terminate this Agreement without prior notice to the Landscape Architect/Civil Engineer and without further liability, of any kind or amount, under this Agreement, at law, or in equity. THE LANDSCAPE ARCHITECT/CIVIL ENGINEER UNDERSTANDS AND AGREES THAT TERMINATION

RESULTING FROM NON-APPROPRIATION FOR THIS PROJECT DOES NOT ENTITLE THE LANDSCAPE ARCHITECT/CIVIL ENGINEER TO PAYMENT BEYOND THE COUNTY'S THEN-APPROPRIATED FUNDS FOR THE PROJECT AND MAY RESULT IN THE LANDSCAPE ARCHITECT/CIVIL ENGINEER NOT BEING COMPENSATED FOR THE SCOPE OF WORK PROVIDED TO THE COUNTY.

292 THE LANDSCAPE ARCHITECT/CIVIL ENGINEER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT THE DISBURSEMENT AND/OR DISBURSEMENTS, IF AND AS APPLICABLE, OF FUNDS UNDER THIS AGREEMENT ARE SUBJECT TO THE CONTINUING AVAILABILITY OF THE COUNTY'S FUNDS FOR SUCH PURPOSE, THE COUNTY'S FISCAL POSITION, AND/OR THE COUNTY'S COMPLIANCE WITH THE COUNTY CHARTER AND ANY AND ALL APPLICABLE LAWS AND REGULATIONS. ACCORDINGLY, THE COUNTY MAY, AT ANY TIME, ASSESS OR REASSESS THE COUNTY'S FISCAL POSITION AND FINANCIAL RESOURCES AND THE COUNTY MAY REDUCE, ELIMINATE OR RESTRICT THE AMOUNT OF THE UNDISBURSED FUNDS UNDER THIS AGREEMENT IN ITS SOLE AND ABSOLUTE DISCRETION PURSUANT TO THIS ARTICLE 29. THE LANDSCAPE ARCHITECT/CIVIL ENGINEER UNDERSTANDS AND AGREES THAT, IN SUCH INSTANCE, THE COUNTY SHALL NOT BE FINANCIALLY OBLIGATED OR LIABLE, DIRECTLY OR INDIRECTLY, IN ANY AMOUNT, MANNER OR EXTENT, FOR ANY LOSSES, COSTS, EXPENSES, DAMAGES AND/OR CLAIMS CAUSED TO OR SUFFERED BY THE LANDSCAPE ARCHITECT/CIVIL ENGINEER OR ANY OTHER PERSON IN CONNECTION WITH OR AS A RESULT OF SUCH REDUCTION, ELIMINATION, OR RESTRICTION PURSUANT TO THIS ARTICLE 29. THE LANDSCAPE ARCHITECT/CIVIL ENGINEER, IN ENTERING INTO THIS AGREEMENT AND ALL DOCUMENTS ASSOCIATED WITH THIS AGREEMENT, UNDERSTANDS AND ACKNOWLEDGES THE POSSIBILITY OF AND ASSUMES FULL AND SOLE RESPONSIBILITY FOR ANY AND ALL RISK, LOSS, COST, EXPENSE, DAMAGE AND/OR CLAIM ASSOCIATED WITH THE COUNTY'S REDUCTION, ELIMINATION OR RESTRICTION OF THE AMOUNT OF UNDISBURSED FUNDS UNDER THIS AGREEMENT, PURSUANT TO THIS ARTICLE 29. FURTHER, THE LANDSCAPE ARCHITECT/CIVIL ENGINEER HEREBY RELEASES THE COUNTY AND FOREVER WAIVES ITS RIGHT TO INITIATE, MAKE OR FILE ANY CLAIM, CAUSE OF ACTION, OR LEGAL PROCEEDING, AND ITS RIGHT TO ANY AND ALL OTHER REMEDY OR RECOURSE AGAINST THE COUNTY FOR ANY AND ALL RESULTING LOSS, COST, EXPENSE, DAMAGE AND/OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THE COUNTY'S REDUCTION, ELIMINATION OR RESTRICTION OF THE AMOUNT OF THE UNDISBURSED FUNDS UNDER

THIS AGREEMENT, PURSUANT TO THIS ARTICLE 29. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO CREATE ANY PERSONAL OR INDIVIDUAL LIABILITY UPON ANY EMPLOYEE, OFFICER OR ELECTED OFFICIAL OF THE COUNTY, NOR SHALL THIS AGREEMENT BE CONSTRUED TO CREATE ANY RIGHTS HEREUNDER IN ANY PERSON OR ENTITY OTHER THAN THE PARTIES OF THIS AGREEMENT.

ARTICLE 30 – SURVIVAL

Those articles and sections in this Agreement which by their nature are intended to survive, including but not limited to Article 2 (Representations & Warranties of Landscape Architect/Civil Engineer), Article 3 (County Reliance Upon Landscape Architect/Civil Engineer’s Submissions), Article 4 (Responsibilities of the Landscape Architect/Civil Engineer), Section 7.10 (Indirect Costs), Article 8 (Disputes), Section 9.3 (Remedies for Default), Article 11 (Access to Records), Article 12 (Price Reduction for Defective Cost or Pricing Data), Article 16 (Rights in Data), Article 18 (Jurisdiction), Article 25 (Confidential Information), Article 28 (Indemnification), Article 30 (Funding), and Article 35 (Consent Decree Projects), shall survive the expiration or earlier termination of this Agreement.

ARTICLE 31 – RECITALS

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

ARTICLE 32 - TRUTH-IN-NEGOTIATION CERTIFICATE

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

ARTICLE 33 – POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

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

ARTICLE 34 - MBE/WBE REPORTING REQUIREMENTS AND PROMPT PAYMENT

The Landscape Architect/Civil Engineer is expected to and shall comply with the County’s Executive Order dated December 6, 2022, as amended, in connection with this Agreement throughout the Term of the Agreement and/or in connection with the Project, the Scope of Work, and each Work Product and Service thereunder, if and as applicable. The Landscape Architect/Civil Engineer

understands and agrees that a MBE/WBE participation requirement, if and as applicable, shall be determined and issued by the County pursuant to and under this Agreement, and any and all forms provided to the Landscape Architect/Civil Engineer by the County, attached to and incorporated herein as **Exhibit E**, if and as applicable, and thereafter the Landscape Architect/Civil Engineer shall accordingly fulfill any and all such MBE/WBE participation requirements, if and as applicable.

Prompt Payment

The Landscape Architect/Civil Engineer agrees to pay each subcontractor under this Agreement for satisfactory performance of its responsibilities under the applicable subcontract within 30 days of the subcontractor's satisfactory completion of the work as accepted by Baltimore County, Maryland. The Landscape Architect/Civil Engineer agrees further to retain retainage payments to each subcontractor within 30 days after the subcontractor's satisfactory completion of the work. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Baltimore County, Maryland. This clause applies to both MBE/WBE and non-MBE/WBE subcontracts.

- The Landscape Architect/Civil Engineer shall report the subcontractor's mobilization cost as the initial payment in the PRiSM Compliance Portal found under Compliance Reporting for Prime and Sub-Contractors and www.baltimorecountymd.gov/go/MBE/WBE.
- The Landscape Architect/Civil Engineer must include in its subcontractor's language providing that the Landscape Architect/Civil Engineer and the subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- The Landscape Architect/Civil Engineer will not be reimbursed for work performed by subcontractors unless and until the Landscape Architect/Civil Engineer ensures that the subcontractors are promptly paid for the work they have performed.
- Landscape Architect/Civil Engineers may be subject to liquidated damages pursuant to Maryland and/or Baltimore County law, to ensure that MBE/WBEs and other contractors are fully and promptly paid.

All Landscape Architects/Civil Engineers and MBE/WBE and/or DBE subcontractors are required to report monthly to the County through the online Compliance Portal (PRiSM). The portal

can be found under *Compliance Reporting for Prime and Sub-Contractors* at www.baltimorecountymd.gov/go/MBE.WBE. Landscape Architects/Civil Engineers must provide a contact person and contact information for the MBE/WBE compliance reporting. If the Landscape Architects/Civil Engineer cannot submit its report on time, it must notify the County MBE/WBE Office and request additional time to submit the report. Failure to report in a timely manner may result in a fining of noncompliance, and may result in a fining of default under the terms of the Agreement. The County, in its sole discretion, may require additional reports regarding MBE/WBE. Questions regarding the use of this system can be directed to the MBE/WBE Office at mwbe@baltimorecountymd.gov or call 410-557-3407.

ARTICLE 35 - CONSENT DECREE PROJECTS

35.1 Should the Project being performed by the Landscape Architect/Civil Engineer under this Agreement be subject to or mentioned in the Consent Decree entered on September 20, 2005, in the U.S. District Court for the District of Maryland, by and among the United States of America, the State of Maryland and the County (“**Consent Decree**”), the parties acknowledge and agree that it is possible that the County may incur significant and substantial stipulated penalties if the Project is not completed in accordance with the Completion Schedule established by the County and the Landscape Architect/Civil Engineer for each Project assignment, including the Scope of Work and any Work Product, under this Agreement and within the time period required by the Consent Decree. The Landscape Architect/Civil Engineer understands that all Project work, including the Scope of Work and any Work Product, assigned with the Consent Decree must be diligently completed pursuant to the Completion Schedule, this Agreement, and the Consent Decree required time period. In accordance with Article 28 of this Agreement, the Landscape Architect/Civil Engineer shall be liable for all losses, costs, expenses, damages, expenses, liability claims, suits, and/or demands incurred by or made against the County, its employees, agents, and/or officials, if resulting from any negligent act or omission by the Landscape Architect/Civil Engineer, or its subcontractors, outside associates, consultants, subconsultants, or agents, including, but not limited to, a Default of this Agreement. Therefore, in the event the Landscape Architect/Civil Engineer fails to meet and achieve the Completion Schedule for the Project and/or comply with all terms and conditions of this Agreement, and such failure and/or Default causes the County to incur stipulated penalties under the Consent Decree, the Landscape Architect/Civil Engineer understands the stipulated penalties shall be actual damages to the County and pursuant to the Consent Decree are per calendar day as follows:

[There are no Consent Decree liquidated damages for this Agreement and THE LANDSCAPE ARCHITECT/CIVIL ENGINEER UNDERSTANDS AND AGREES THE LANDSCAPE ARCHITECT/CIVIL ENGINEER IS RESPONSIBLE FOR ALL ACTUAL DAMAGES INCURRED

AND/OR ASSERTED AGAINST THE COUNTY IN CONNECTION WITH THIS AGREEMENT AND THE SCOPE OF WORK PERFORMED OR TO BE PERFORMED BY THE LANDSCAPE ARCHITECT/CIVIL ENGINEER.] OR [DPWT SELECT CONSENT DECREE STIPULATED PENALTIES, AS APPROPRIATE, FOR THIS PROJECT.]

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

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

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

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

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

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

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

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

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

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

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

- \$250.00 per calendar day for each mile of pipe not inspected
- \$50.00 per calendar day for each manhole or other appurtenance or Force Main not

inspected.]

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

- Day 1 through Day 30 - \$200.00 per calendar day
- Day 31 through Day 60 - \$500.00 per calendar day
- Day 61 and thereafter - \$1,000.00 per calendar day.]

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

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

[For Rainfall and Flow Monitoring (failure to comply with requirements) pursuant to Article XI, Paragraph 38(E)(ii) of the above Consent Decree, the amount of \$2,000.00 for each failure to comply with the requirements of the County's Rainfall and Flow Monitoring Plan.]

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

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

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

- Day 1 through Day 30 - \$1,000.00 per calendar day
- Day 31 through Day 60 - \$3,000.00 per calendar day
- Day 61 and thereafter - \$6,000.00 per calendar day.]

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

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

- Day 1 through Day 30 - \$1,000.00 per calendar day
- Day 31 through Day 60 - \$2,500.00 per calendar day
- Day 61 and thereafter - \$5,000.00 per calendar day.]

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

- Day 1 through Day 30 - \$250.00 per calendar day
- Day 31 through Day 60 - \$500.00 per calendar day

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Day 1 through Day 60 - \$750.00 per calendar day

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

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

Day 1 through Day 60 - \$750.00 per calendar day

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

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

[For Supplemental Environmental Projects (failure to satisfactorily complete but with good faith effort) pursuant to Article XI, Paragraph 38(P)(ii) of the above Consent Decree, the amount of the

difference between the amount required to be spent for the SEP and the Eligible SEP Costs actually expended by the County on the SEP.]

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

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

Day 1 through Day 30 - \$150.00 per calendar day

Day 31 through Day 60 - \$300.00 per calendar day

Day 61 and thereafter - \$600.00 per calendar day.]

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

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

35.2 “**Force Majeure**” means an event arising from causes beyond the control of the Landscape Architect/Civil Engineer and/or the County which delays or prevents the performance of any obligation under this Agreement. Unanticipated or increased costs or expenses associated with the Landscape Architect/Civil Engineer’s implementation of this Agreement and changed financial or staffing circumstances of the Landscape Architect/Civil Engineer shall not, in any event, be considered Force Majeure events. The Landscape Architect/Civil Engineer shall adopt all reasonable measures to

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

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

THESE ARTICLE 35 PROVISIONS ARE ONLY APPLICABLE IN THE EVENT THIS PROJECT IS SUBJECT TO OR MENTIONED IN THE CONSENT DECREE.

ARTICLE 36 - EXHIBITS

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

- EXHIBIT A Scope of Work: Detailed Description of Goods to be Provided/Services to be Performed
- EXHIBIT B Procurement Affidavit
- EXHIBIT C Insurance Verification
- EXHIBIT D Truth-In-Negotiation Certificate
- EXHIBIT E MBE/WBE (if and as applicable)

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

NAME OF LANDSCAPE

ARCHITECT/CIVIL ENGINEER

Federal ID # _____

By: _____ (SEAL)

Name: [P.E.] [R.L.A.]

Title:
(A legally authorized representative of the Landscape Architect/Civil Engineer)

By: _____ (SEAL)

Name: _____ L.A.

Title:
(A Maryland licensed Landscape Architect)

By: _____ (SEAL)

Name: _____, P.E.

Title:
(A Maryland licensed Professional Engineer)

BALTIMORE COUNTY, MARYLAND

By: _____

Stacy L. Rodgers,
Administrative Officer

Recommended For Approval:

By: _____

D'Andrea L. Walker, Director Date
Department of Public Works and Transportation

FUNDS AVAILABLE AND ENCUMBERED

By: _____

Office of Budget and Finance Date

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

BALTIMORE COUNTY COUNCIL

By: _____

Chairman Date

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

EXHIBIT A
SCOPE OF WORK

Detailed Description of Goods to be Provided/Services to be Performed,

To be attached for each project:

Detailed description of goods, Form 105 Rate Documentation, Schedule of Personnel, Salary Roster, Completion Schedule

SAMPLE

EXHIBIT B
PROCUREMENT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), or (4) above;
- (6) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (7) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s)]

involved and their current positions and responsibilities with the Landscape Architect/Civil Engineer, and the status of any debarment]:

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The Landscape Architect/Civil Engineer was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Section 16-01, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

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

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

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

H. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

I. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name: _____

Address: _____

(2) Except as validly contested, the Landscape Architect/Civil Engineer has paid, or has arranged for payment of, all taxes due the State of Maryland and Baltimore County, and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. NONDISCRIMINATION EMPLOYMENT STATEMENT

I FURTHER AFFIRM THAT:

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

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

Architect/Civil Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. Such action shall include, but not be limited to the following: employment, promotion, upgrading, demotion or transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Landscape Architect/Civil Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth provisions of this nondiscrimination clause.

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

(3) The Landscape Architect/Civil Engineer shall send to each labor union or representative of workers with which the Landscape Architect/Civil Engineer has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the owner, advising the said labor union or workers' representative of these commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

L. FOREIGN CONTRACTS

I FURTHER AFFIRM THAT:

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

M. ACKNOWLEDGEMENT

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

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

Date: _____

By: _____

Name:

Title:

**EXHIBIT C
INSURANCE VERIFICATION**

SAMPLE

EXHIBIT D
TRUTH-IN-NEGOTIATION CERTIFICATE

Project Name _____

Job Order No. _____

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

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

- a) the wage rates and other factual unit costs supporting the Landscape Architect/Civil Engineer's compensation, as set forth in the Agreement and the Exhibits attached thereto, are accurate, complete and current as of the time of the execution of the Agreement;
- b) it is my understanding and the understanding of the Landscape Architect/Civil Engineer that I here represent that if any of the items of compensation under the Agreement were increased due to the furnishing of inaccurate, incomplete or non-current wage rates or other units of costs, the County is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. It is also my understanding and that of the Landscape Architect/Civil Engineer I here represent that the County's right of adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor, outside associate, consultant, subconsultant, and/or agent;
- c) it is my understanding and the understanding of the Landscape Architect/Civil Engineer I represent that if additions are made to the original price of the Agreement, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or non-current wage rates and other factual costs.

(Date)

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20____(seal)

Notary Public
My commission expires: