



Committee: Directly to Council
Committee Review: N/A
Staff: Keith Levchenko, Senior Legislative Analyst
Purpose: To introduce agenda item – no vote expected
Keywords: #Stormdrains

AGENDA ITEM #3I
June 15, 2021
Introduction

SUBJECT

Amendment to the FY21-26 Capital Improvements Program: Conservation of Natural Resources: Facility Planning: Storm Drains (CIP No. 508180), \$81,622 (Federal aid)

EXPECTED ATTENDEES

None

DESCRIPTION/ISSUE

- On June 8, 2021, the County Council received and FY21 supplementals/FY21-26 CIP amendment from the County Executive for the Facility Planning: Storm Drains project for \$81,622 for the study of the River Falls neighborhood storm drain system. The study will be funded with Federal aid via a grant received from the Maryland Department of Natural Resources.
- As noted in the attached transmittal, the study will identify potential solutions to address current flood hazards as well as future hazards exacerbated by the impacts of climate change. Potential solutions will include green infrastructure practices that would promote infiltration, reduce runoff, and provide water quality benefits. This work will be used as a model for the County (and potentially other Counties as well) of how to address flood hazards while also achieving water quality and climate resilience co-benefits.
- Public hearing/Action for this supplemental/amendment has been scheduled for June 29, 2021 at 1:30 PM.

This report contains:

Draft Resolution
County Executive Transmittal Package dated June 8, 2021

Page #

©1-2
©3-42

Alternative format requests for people with disabilities. If you need assistance accessing this report you may [submit alternative format requests](#) to the ADA Compliance Manager. The ADA Compliance Manager can also be reached at 240-777-6197 (TTY 240-777-6196) or at adacompliance@montgomerycountymd.gov

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive

SUBJECT: Amendment to the FY21-26 Capital Improvement Program and Supplemental Appropriation #24-S21-CMCG-12 to the FY21 Capital Budget
Montgomery County Government
Department of Transportation
Facility Planning: Storm Drains (CIP No. 508180), \$81,622

Background

1. Section 307 of the Montgomery County Charter provides that any supplemental appropriation shall be recommended by the County Executive who shall specify the source of funds to finance it. The Council shall hold a public hearing on each proposed supplemental appropriation after at least one week's notice. A supplemental appropriation that would comply with, avail the County of, or put into effect a grant or a Federal, State or County law or regulation, or one that is approved after January 1 of any fiscal year, requires an affirmative vote of five Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of six Councilmembers. The Council may, in a single action, approve more than one supplemental appropriation. The Executive may disapprove or reduce a supplemental appropriation, and the Council may reapprove the appropriation, as if it were an item in the annual budget.
2. Section 302 of the Montgomery County Charter provides that the Council may amend an approved Capital Improvements Program (CIP) at any time by an affirmative vote of no fewer than six members of the Council.
3. The County Executive recommends the following capital project appropriation increases:

<u>Project Name</u>	<u>Project No.</u>	<u>Cost Element</u>	<u>Amount</u>	<u>Source of Funds</u>
Facility Planning:	508180	PDS	<u>\$81,622</u>	Federal Aid
Storm Drains		Total	<u>\$81,622</u>	

4. The increase is needed due to the receipt of a Maryland Department of Natural Resources grant. The grant is for a study of the River Falls neighborhood and storm drain system.

The project will help the neighborhood become more resilient to precipitation induced flooding hazards. Potential solutions will be identified and will include green infrastructure practices that promote infiltration, reduce runoff, and provide water quality benefits. This project will be used as a model for the County to address flood hazards while also achieving water quality and climate resilience co-benefits.

- 5. The County Executive recommends an amendment to the FY21-26 Capital Improvement Program and a supplemental appropriation to FY21 budget in the amount of \$81,622.00 and specifies the source of funds as Federal Aid.
- 6. Notice of public hearing was given and a public hearing was held.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

The FY21-26 Capital Improvements Program of the Montgomery County Government is amended as reflected on the attached project description form and a supplemental appropriation is approved as follows:

<u>Project Name</u>	<u>Project No.</u>	<u>Cost Element</u>	<u>Amount</u>	<u>Source of Funds</u>
Facility Planning:	508180	PDS	<u>\$81,622</u>	Federal Aid
Storm Drains		Total	<u>\$81,622</u>	

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

June 8, 2021

TO: Tom Hucker, President, County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Amendment to the FY21-26 Capital Improvement Program and Supplemental Appropriation #24-S21-CMCG-12 to the FY21 Capital Budget
Montgomery County Government
Department of Transportation
Facility Planning: Storm Drains (CIP No. 508180), \$81,622

I am recommending a supplemental appropriation to the FY21 Capital Budget and amendment to the FY21-26 Capital Improvement Program (CIP) in the amount of \$81,622 for the Facility Planning: Storm Drains (CIP No. 508180). This amendment will permit work to begin on the River Falls storm drain assessment without delay.

The increase is needed due to the receipt of a Maryland Department of Natural Resources grant. The grant is for a study of the River Falls neighborhood and storm drains system. The project will help the neighborhood become more resilient to precipitation induced flooding hazards. Potential solutions will be identified and will include green infrastructure practices that promote infiltration, reduce runoff, and provide water quality benefits. This project will be used as a model for the County to address flood hazards while also achieving water quality and climate resilience co-benefits. The recommended amendment is consistent with the criteria for amending the CIP because it leverages non-tax supported funds.

I recommend that the County Council approve this supplemental appropriation amendment to the FY21-26 Capital Improvements Program in the amount of \$81,622 and specify the source of funds as Federal Aid.

Attached, please find memo from the Director of the Office of Racial Equity and Social Justice (RESJ) explaining the impact of this supplemental in racial equity in the County, as required by Bill 44-20, Section 2-64A.

I appreciate your prompt consideration of this action.

ME:ds

Enclosures: •Amendment to the FY21-26 Capital Improvement Program and Supplemental Appropriation #24-S21-CMCG-12
•RESJ Impact

c: Christopher R. Conklin, Director, Department of Transportation
Jennifer Bryant, Director, Office of Management and Budget

Resolution: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

Subject: Amendment to the FY21-26 Capital Improvement Program and Supplemental
Appropriation #24-S21-CMCG-12 to the FY21 Capital Budget
Montgomery County Government
Department of Transportation
Facility Planning: Storm Drains (CIP No. 508180), \$81,622

Background

1. Section 307 of the Montgomery County Charter provides that any supplemental appropriation shall be recommended by the County Executive who shall specify the source of funds to finance it. The Council shall hold a public hearing on each proposed supplemental appropriation after at least one week's notice. A supplemental appropriation that would comply with, avail the County of, or put into effect a grant or a Federal, State or County law or regulation, or one that is approved after January 1 of any fiscal year, requires an affirmative vote of five Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of six Councilmembers. The Council may, in a single action, approve more than one supplemental appropriation. The Executive may disapprove or reduce a supplemental appropriation, and the Council may reapprove the appropriation, as if it were an item in the annual budget.
2. Section 302 of the Montgomery County Charter provides that the Council may amend an approved Capital Improvements Program (CIP) at any time by an affirmative vote of no fewer than six members of the Council.
3. The County Executive recommends the following capital project appropriation increases:

<u>Project Name</u>	<u>Project No.</u>	<u>Cost Element</u>	<u>Amount</u>	<u>Source of Funds</u>
Facility Planning:	508180	PDS	<u>\$81,622</u>	Federal Aid
Storm Drains		Total	<u>\$81,622</u>	

4. The increase is needed due to the receipt of a Maryland Department of Natural Resources grant. The grant is for a study of the River Falls neighborhood and storm drain system. The project will help the neighborhood become more resilient to precipitation induced flooding hazards. Potential solutions will be identified and will include green infrastructure practices that promote infiltration, reduce runoff, and provide water quality benefits. This project will be used as a model for the County to address flood hazards while also achieving water quality and climate resilience co-benefits.

5. The County Executive recommends an amendment to the FY21-26 Capital Improvement Program and a supplemental appropriation to FY21 budget in the amount of \$81,622.00 and specifies the source of funds as Federal Aid.
6. Notice of public hearing was given and a public hearing was held.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

The FY21-26 Capital Improvements Program of the Montgomery County Government is amended as reflected on the attached project description form and a supplemental appropriation is approved as follows:

<u>Project Name</u>	<u>Project No.</u>	<u>Cost Element</u>	<u>Amount</u>	<u>Source of Funds</u>
Facility Planning:	508180	PDS	<u>\$81,622</u>	Federal Aid
Storm Drains		Total	<u>\$81,622</u>	

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council



Facility Planning: Storm Drains

(P508180)

Category	Conservation of Natural Resources	Date Last Modified	03/25/20
SubCategory	Storm Drains	Administering Agency	Transportation
Planning Area	Countywide	Status	Ongoing

Total	Thru FY19	Est FY20	Total 6 Years	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	Beyond 6 Years
-------	-----------	----------	---------------	-------	-------	-------	-------	-------	-------	----------------

EXPENDITURE SCHEDULE (\$000s)

	Total	Thru FY19	Est FY20	Total 6 Years	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	Beyond 6 Years
Planning, Design and Supervision	8,179	5,788	389	2,002	402	320	320	320	320	320	-
Land	142	142	-	-	-	-	-	-	-	-	-
Construction	40	40	-	-	-	-	-	-	-	-	-
Other	5	5	-	-	-	-	-	-	-	-	-
TOTAL EXPENDITURES	8,366	5,975	389	2,002	402	320	320	320	320	320	-

FUNDING SCHEDULE (\$000s)

	Total	Thru FY19	Est FY20	Total 6 Years	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	Beyond 6 Years
Current Revenue: General	4,103	4,103	-	-	-	-	-	-	-	-	-
Current Revenue: Water Quality Protection	4,080	1,771	389	1,920	320	320	320	320	320	320	-
Federal Aid	82	-	-	82	82	-	-	-	-	-	-
G.O. Bonds	101	101	-	-	-	-	-	-	-	-	-
TOTAL FUNDING SOURCES	8,366	5,975	389	2,002	402	320	320	320	320	320	-

APPROPRIATION AND EXPENDITURE DATA (\$000s)

Appropriation FY 21 Request	320	Year First Appropriation	FY81
Appropriation FY 22 Request	320	Last FY's Cost Estimate	7,524
Supplemental Appropriation Request	82		
Cumulative Appropriation	6,364		
Expenditure / Encumbrances	6,035		
Unencumbered Balance	329		

PROJECT DESCRIPTION

This project provides for the investigation and analysis of various storm drainage assistance requests initiated by private citizens and public agencies. These requests are related to the design, construction, and operation of public drainage facilities where flooding and erosion occur. This project includes expenditures for the preliminary and final design and land acquisition for storm drain projects prior to inclusion in the Storm Drain General project, or as a stand-alone project in the Capital Improvements Program (CIP). Prior to its inclusion in the CIP, the Department of Transportation (DOT) will conduct a feasibility study to determine the general and specific features required for the project. Candidate projects currently are evaluated from the Drainage Assistance Request list. As part of the facility planning process, DOT considers citizen and public agency requests and undertakes a comprehensive analysis of storm drainage issues and problems being experienced in the County. This analysis is used to select areas where a comprehensive long-term plan for the remediation of a problem may be required. No construction activities are performed in this project. When a design is 35 percent complete, an evaluation is performed to determine if right-of-way is needed. Based on the need for right-of-way, the project may proceed to final design and the preparation of right-of-way plats under this project. The cost of right-of-way acquisition will be charged to the Advanced Land Acquisition Revolving Fund (ALARF). When designs are complete, projects with a construction cost under \$500,000 will be constructed in the Storm Drain General project. Projects with a construction cost over \$500,000 will be constructed in stand-alone projects.

CAPACITY

Projects will be designed to accommodate the ten year storm frequency interval.

COST CHANGE

Increase due to the addition of FY25 & FY26 to this on-going level of effort project. Increase of \$30,000 annually to expedite the readiness of projects into construction. FY21 Federal award for \$81,622 pass through the Maryland State Department of Natural Resources.

PROJECT JUSTIFICATION

Evaluation, justification, and cost-benefit analysis are completed by DOT as necessary. In the case of participation projects, drainage studies and preliminary plans will be prepared by the requestor's engineer and reviewed by DOT. Traffic signals, streetlights, crosswalks, bus stops, ADA ramps, bikeways and other pertinent issues are being considered in the design of the project to ensure pedestrian safety.

OTHER

Before being added as a sub-project, concept studies are evaluated based on the following factors: public safety; damage to private property; frequency of event; damage to public right-of-way; environmental factors such as erosion, general public benefit, availability of right-of-way; and 5:1 cost benefit damage prevented ratio. In the case of public safety or severe damage to private property, the 5:1 cost benefit damage prevented ratio can be waived. Drainage assistance requests are evaluated on a continuing basis in response to public requests. DOT maintains a database of complaints. Recent construction projects completed include: Crown Street,

Grafton Street, Lanier Drive, Ogden Court, Ashburton Lane, Mintwood Street, Woodland Drive, Stable Lane and Charred Oak Drive. Candidate Projects for FY21 and FY22: Tranford Road, Windmill Lane, and Conway Drive.

FISCAL NOTE

FY21 supplemental in Federal Aid for the amount of \$81,622.

DISCLOSURES

A pedestrian impact analysis has been completed for this project. Expenditures will continue indefinitely.

COORDINATION

Montgomery County Department of Environmental Protection, Maryland-National Capital Park and Planning Commission, Maryland Department of the Environment, United States Army Corps of Engineers, Montgomery County Department of Permitting Services, Utility Companies, and Sidewalk Program - Minor Projects (CIP No. 506747).

**DEPARTMENT OF NATURAL RESOURCES
MEMORANDUM OF UNDERSTANDING
REV. 12/2011
[For Contracts Exempt from Procurement]**

THIS MEMORANDUM OF UNDERSTANDING is entered into this _____ day of _____, 20_____, by and between the

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CHESAPEAKE AND COASTAL SERVICE
TAWES STATE OFFICE BUILDING, E-2
580 TAYLOR AVENUE
ANNAPOLIS, MD 21401

hereinafter (“Department”),

and

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF TRANSPORTATION
100 EDISON PARK DRIVE, 4TH FLOOR
GAITHERSBURG, MD 20878

hereinafter (“Contractor”).

WHEREAS, the Department is an agency of the State of Maryland;

WHEREAS, the Contractor is an agency of the State of Maryland, or a political subdivision of the State, or another government as defined in State Finance and Procurement Article, §11-203 of the Annotated Code of Maryland;

WHEREAS, the Contractor has agreed to perform work for the Department in accordance with this Memorandum of Understanding (“Memorandum” or “MOU”);

NOW, THEREFORE, the Department and the Contractor agree as follows:

ARTICLE I - SCOPE OF WORK

The Contractor shall: conduct the River Falls Drainage Assessment Project as described in Exhibit A.

This work is more particularly described in the attached Scope of Work identified as Exhibit A.

ARTICLE II - COMPENSATION AND METHOD OF PAYMENT

The services set forth above shall be performed for a total payment not to exceed Eighty-One Thousand, Six Hundred and Twenty-Two Dollars (\$81,622.00). The Contractor shall submit billings for all costs expended in the performance of this Memorandum in accordance with a payment schedule set forth in the attached Scope of Work. In the absence of a payment schedule, billing shall be monthly. If the Scope of Work contains a schedule for completion of various components of the work, each monthly billing shall identify the progress made in relation to the schedule and the payment being requested. The Contractor shall follow cost accounting practices acceptable to the Department. Billings shall be due and payable within 30 days of receipt by the Department.

ARTICLE III - TERM

The term of this Memorandum shall be from February 8, 2021 through January 31, 2022. No work may be initiated under this Memorandum until it has been fully executed by all parties and the Contractor has been instructed to proceed by the Department.

ARTICLE IV - GENERAL CONDITIONS

Exhibit A through Exhibit F are attached to and made part of this Memorandum.

ARTICLE V - CONTRACT REPRESENTATIVES

The following individuals are designated as contract representatives for their respective parties [name and address]:

Department: Megan Granato
Maryland Department of Natural Resources
Chesapeake and Coastal Service
580 Taylor Ave, E-2
Annapolis, MD 21401
(and/ or her designee)
Phone: 410.260.8799
Email: megan.granato@maryland.gov

Contractor: Daniel Sheridan
Montgomery County Department of Transportation
Division of Transportation Engineering
100 Edison Park Drive, 4th Floor
Gaithersburg, MD 20878
Phone: 240.777.7283
Email: daniel.sheridan@montgomerycountmd.gov

The scope of authority of the designated Contract Representatives to act for their respective parties is set forth in the attached General Conditions.

ARTICLE VI - KEY PERSONNEL

The Contractor agrees that the following named individuals are considered to be essential to the work being performed hereunder, and are designated as Key Personnel who shall be made available to the full extent required to carry out the work under this Memorandum:

Ms. Sogand Seirafi
Phone: 240-777-7260
Email: Sogand.seirafi@montgomerycountymd.gov

Should any of these individuals become unavailable during the term of this Memorandum, personnel of equivalent capability shall be assigned to the project. Any such substitutions shall require prior written approval by the Department, which approval may be denied by the Department at its sole discretion. Should the Contractor be unable to provide substitutes acceptable to the Department, the Department may terminate this Contract, or, at its option, negotiate with the contractor for an equitable adjustment under the Contract relative to the loss of such Key Personnel.

ARTICLE VII - MERGER

This Memorandum embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations regarding the parties' agreement other than those contained herein or incorporated herein by reference.

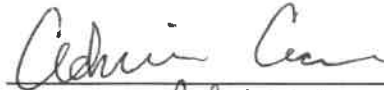
ARTICLE VIII – CONTRACTOR’S MONETARY OBLIGATIONS

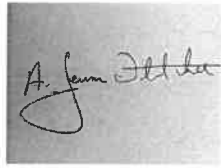
The Contractor’s obligations under this Memorandum are subject to, limited by, and contingent upon the appropriation and availability of funds.

IN WITNESS WHEREOF, the parties have executed this Memorandum by causing the same to be signed on the day and year first above written. This document may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures, including notary signatures, provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail, or via an electronic signature program, shall be deemed to be original signatures.

WITNESS

CONTRACTOR



Print Name: Adrienne Craver

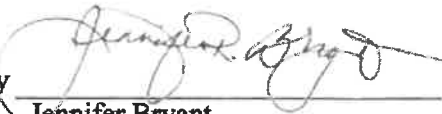

By _____
Jerome Fletcher
Assistant Chief Administrative Officer
Offices of the County Executive
Date: 6/8/21

Approved as to form and legal
sufficiency for the County:

Reviewed and Recommended for Approval:

Neal Anker 1/15/2021
Neal Anker
Associate County Attorney

By 
Chris Conklin
Director, Department of Transportation
Date: 6/8/2021

By 
Jennifer Bryant
Director, Office of Management and Budget
Date: 6-8-21

WITNESS

STATE OF MARYLAND
DEPARTMENT OF NATURAL
RESOURCES

Print Name: _____

By _____
Matthew J. Fleming, Director
Chesapeake and Coastal Service
Date: _____

Print Name: _____

By _____
DNR Procurement Officer
Date: _____

Approved as to form and legal sufficiency
this _____ day of _____, 20 _____

Assistant Attorney General

Exhibit A

Scope of Work, Reporting and Documentation Requirements and Award Conditions

A1: Scope of Work

Project Title: River Falls Drainage Assessment Project

Name of Grant: FFY20 Chesapeake Bay Implementation Grant Section 117

Funding:

Federal	\$ 81,622.00
Non-Federal	<u>\$ 81,622.00</u>
Total	\$163,244.00

Funding Period: February 8, 2021 – January 31, 2022

Funding Recipient: Montgomery County, Maryland

Project Area: Montgomery County

<p>Objective 5 (subaward)</p>	<p><i>River Falls Drainage Assessment Project</i></p>	<p>Budget for this Objective:</p>	<p><i>Total: \$163,244.00 EPA Share: \$81,622.00 Non Federal Share: \$81,622.00</i></p>
<p>Narrative Summary of Outputs for this Objective:</p>	<p>This project will help the neighborhood of River Falls become more resilient to precipitation-induced flooding hazards. Two portions of the neighborhood’s storm drain system have a history of being overwhelmed during large, intense precipitation events, causing resident concern and property damage. The funding provided through this MOU will support the County in hiring a contractor to study the problem areas and identify potential solutions that will not only address the current flood hazards, but also consider how that hazard may be further exacerbated in the future by the impacts of climate change. Potential solutions will be identified and will include green infrastructure practices that would promote infiltration, reduce runoff, and provide water quality benefits. This work will be used as a model for the County (and potentially other Counties as well) of how to address flood hazards while also achieving water quality and climate resilience co-benefits.</p>		
<p>Description of Objective:</p>	<p>This project will address two significant drainage issues that have been identified within the River Falls neighborhood, which is located in Potomac, Maryland. Intense, heavy precipitation events overwhelm the existing storm drain system, causing significant flooding. Residents have contacted Montgomery County Department of Transportation (DOT) and Montgomery County Department of Environmental Protection (DEP) as part of the Drainage Assistance Request Program to address the drainage issues and through 311 service requests. The purpose of the grant will be to analyze the current flooding problem as well as potential future flooding and identify methods to alleviate this hazard.</p>		

The two systems to be addressed are described as follows. Both of these systems were constructed in approximately 1969.

- The River Falls North storm drain system: This system consists of a 10,875 linear feet (LF) of storm drain pipe with a 188-acre drainage area. It terminates at an outfall near Brickyard Road and flows into Rock Run, extending through the neighborhood running perpendicular to Horseshoe Ln, Coach St, River Falls Dr, and Hackamore Dr before running along Rock Run Dr, Kingsgate Rd, and Brickyard Rd. Where the pipe runs perpendicular to the roadways, it crosses through several rights-of-way between houses with sidewalks. The rights-of-way and storm drain pipes are located at low points in the road with the perpendicular streets rising in elevation on both sides, creating a hydrologic valley above the storm drain system. During storm events that exceed the design capacity of the storm drain system, water will flow across the surface, flooding the low points of the streets until rising high enough to flow over the sidewalks within the rights-of-way. This leads to flooding of houses located at the low points of these streets and adjacent to the rights-of-way. Seven complaints were received directly by the Drainage Assistance Request program with additional complaints received through the 311 request system. In total, it is estimated that 15 houses experienced property damage as did the River Falls Community Center and Pool.
- The River Falls South storm drain system: This system consists of a 6,900 LF of storm drain pipe with a 134-acre drainage area. It terminates at an outfall near MacArthur Blvd and receives water from a stream on private property upstream of Stable Ln. This stream is located on private property owned by Lorax Forest LLC and receives water from overland flow and six outfalls throughout the River Falls Neighborhood. Frequent flooding has been experienced where the stream enters the storm drain near Stable Ln and some repair work to attempt to improve the issue has already been undertaken. Five houses have experienced some level of flooding due to debris from the woodland causing clogging of the system and storms exceeding design capacity between Stable Ln and MacArthur Blvd. Additional drainage complaints have been received from Hackamore Dr, Masters Dr, and Masters Ter during severe storm events.

The primary goal of the project is to reduce flooding in the River Falls community by addressing these two drainage systems. A hydrologic study will be performed to determine system capacity and potential bottlenecks. The evaluation of system capacity will consider both current conditions as well as how capacity needs may change in the future based on the impacts of climate change. A neighborhood-wide assessment will then be performed to identify the most cost-effective and environmentally sound methods to both convey additional water and to reduce the amount of runoff reaching the storm drain systems. The initial assessment of the area indicates that this would be best accomplished through improvements to storm drain infrastructure and through utilizing green infrastructure. The use of green

	<p>infrastructure should be able to help address localized flooding, lessen downstream flooding by reducing runoff volumes, and provide water quality co-benefits. The results of the hydrologic study and subsequent assessment will be detailed in a River Falls Drainage Assessment Project report. The final report will also present conceptual plans for proposed improvements.</p> <p>Montgomery County declared a “climate emergency” in December 2017 and is pursuing many climate-related goals. This project will help River Falls adapt to climate change impacts and will be a model for other similar adaptation efforts that could be pursued in other portions of this County as well as state-wide. This project will help make progress towards two of the goals and objectives of the County’s 2018 Hazard Mitigation Plan:</p> <ul style="list-style-type: none"> • Ensure that infrastructure is adequate and properly maintained to provide continued functionality of all critical services necessary to protect residents and property. • Enhance the capabilities of local jurisdictions to identify and mitigate natural hazards. <p>The project will also directly implement the following Flooding Hazard Mitigation Actions:</p> <ul style="list-style-type: none"> • 5.3.1 Explore mitigation projects in areas that frequently flood, including stormwater management improvements (medium priority) • 5.3.2 Coordinate with DOT to continue to clear and maintain storm drains (high priority) <p>DOT works closely with the DEP on storm drain projects that involve green infrastructure. DEP is responsible for the maintenance of the County’s green infrastructure and the Rainscapes program for private property. Also, the two departments share information related to storm drain outfalls into streams and collaborate to determine solutions for frequent flooding areas.</p>
<p>Tasks Under this Objective:</p>	<ol style="list-style-type: none"> 1. <i>Public Outreach</i> (2/8/21 – 9/30/21): Upon initiation of the project, DOT/DEP and the design consultant will perform public outreach to residents and stakeholders to notify them about the project and to provide an opportunity for initial input. The design consultant will prepare the necessary information to assist the county with public outreach efforts. 2. <i>Site Assessment</i> (2/8/21 – 4/30/21): A field assessment will be performed to evaluate the following parameters: County assets (storm drain, curb and gutter, road code, right of way, etc.), drainage patterns, drainage areas from County right of way, construction access, vegetative community, roadside trees, bank and channel erosion, floodplains, utility easements, potential for utility conflicts, occurrence of existing wetlands, presence of MNCPPC park land, locations of upstream and downstream tie-in locations, and project limits. 3. <i>Field Survey</i> (2/8/21 – 4/30/21): A survey will be conducted to collect elevation data, distances and slope lengths of the existing storm drain outfalls, the existing drainage conveyances and the receiving waterways. Base

	<p>topographic mapping will be supplemented with the data collected during the field run survey to assess the storm drain system. Field investigations will also be conducted to identify and qualitatively map the location of wetlands and waterways within and adjacent to the project area.</p> <p>4. <i>Drainage and Potential Improvement Assessment (5/1/21 – 10/31/21)</i>: The results of the site assessment and field survey will be used to develop a thorough drainage assessment. Conceptual plans of storm drain improvements will be developed and will include potential green infrastructure BMPs. These may include bioretention, bioswales, rain gardens, regenerative stormwater conveyance and other practices that may be used in conjunction with underground storage and infiltration opportunities. Improvements will be evaluated for their potential to address both current drainage issues as well as potential future issues that may be exacerbated by climate change.</p> <p>5. <i>Final Report (11/1/21 – 1/30/22)</i>: A final report will be developed and will describe existing conditions, project goals, and proposed designs including storm drain sizing, hydrologic and hydraulic computations, cost estimates, alternatives considered, factors affecting implementation and project benefits. The nature of short term or long term impacts that may be created by the project will also be described. The final report will not include the sizing of potential green infrastructure BMPs, which will occur in later stages of this project (outside of the term and scope of this MOU) once definitive locations have been established and concurred upon through public outreach efforts. An electronic version of this final report will be sharable, along with a summary of lessons learned that will be generated.</p>
<p>Specific Outputs for this Objective:</p>	<p><u>Programmatic</u></p> <ul style="list-style-type: none"> • One initial public meeting • One site assessment conducted • One field survey completed • 10 to 20 storm drain improvements identified, including green infrastructure • One final River Falls Drainage Assessment Project report issued <p><u>Administrative</u></p> <ul style="list-style-type: none"> • Progress reports submitted to the CBIG manager on April 15, 2021; July 15, 2021; October 15, 2021; January 15, 2022; and January 31, 2022
<p>Outcomes for this Objective:</p>	<p><u>2014 Chesapeake Bay Watershed Agreement Goals and Outcomes:</u></p> <p>Water Quality Goal 2025 WIP Outcome</p> <p>Climate Resiliency Goal Adaptation Outcome</p>
<p>Link to EPA’s Strategic Plan</p>	<p>2018 – 2022 Strategic Plan https://www.epa.gov/planandbudget/strategicplan</p> <p>Goal 1 – A Clean, Healthier Environment Objective 1.2: Provide for Clean and Safe Water</p>

<p>Link to Jurisdiction’s WIP Commitment(s)</p>	<p>Montgomery County’s WIP is available at https://mde.maryland.gov/programs/Water/TMDL/TMDLImplementation/Documents/DRAFT_PhaseII_Report_Docs/County_Docs/Montgomery_DraftPhIIWIP.pdf. The County is pursuing Environmental Site Design (ESD) retrofits on both public and private lands as part of its WIP Strategy (see Appendix A, page A-1). The green infrastructure practices to be identified through the River Falls Drainage Assessment would help contribute to the County’s progress towards implementing ESD.</p>
<p>Link to Priority Practices and/or Priority Watersheds</p>	<p>Priority Practice(s)</p> <p>1.) Which priority practice(s) will be implemented in this objective? This funding will be used to identify projects that can help increase the resilience of the River Falls neighborhood to flooding hazards, and will include nature-based management solutions.</p> <p>2.) Please provide a short justification as to why the practice(s) is a priority for the location it is to be implemented. Natural and nature-based infrastructure, as opposed to hard or gray infrastructure, have the dual benefit of addressing water quality as well as water quantity.</p> <p>3.) Which priority strategy(s) will be implemented in this objective? The practices to be identified would contribute to the stormwater strategies.</p> <p>Priority Watershed</p> <p>1.) Which priority watershed will be addressed by this objective? The River Falls neighborhood is located in watershed 02140202 (Potomac River Montgomery County)</p> <p>2.) Watershed considered priority by (please check one): <input type="checkbox"/> CBP Priority Agricultural Watersheds Map https://www.chesapeakebay.net/what/maps/keyword/agriculture <input type="checkbox"/> USDA Core 4 <input checked="" type="checkbox"/> Other (please include a short justification as to why this watershed is considered a priority) – This watershed is considered a priority based on the significant flooding events that have occurred.</p> <p>3.) Which priority strategy(s) will be implemented in this objective? The practices to be identified would contribute to the stormwater strategies.</p>
<p>Progress for this Objective</p>	<p><i>This section will be left blank in the work plan but will be completed for the progress reports.</i></p>

A2: Reporting and Documentation Requirements

1. Progress reports shall be submitted to CBIG Grant Manager Megan Granato through the CCS federal funding grants management portal (https://webportalapp.com/sp/home/md_dnr_federal_funding). Each report must document progress toward the achievement of the above stated goals, objectives, and milestones during each quarter and semi-annual time frame. A succinct description of activities shall be reported for each objective listed above. These reports shall also describe difficulties encountered for each activity, any changes in expected deliverable dates, budget changes, or changes in staffing. Each report shall also include an upload of all written deliverables developed during the reporting period.

<u>Period</u>	<u>Date</u>
February 8, 2021 – March 31, 2021	April 15, 2021
February 8, 2021 – June 30, 2021 (semi-annual*)	July 15, 2021
July 1, 2021 – September 30, 2021	October 15, 2021
July 1, 2021 – December 31, 2021 (semi-annual*)	January 15, 2022
January 1, 2022 – January 31, 2022 (final*)	January 31, 2022

*These reports shall “build” on the information provided during the previous report terms. Please ensure that these reports capture information for the time frame indicated.

2. The funding recipient will submit the final report/work product to Megan Granato through the CCS federal funding grants management portal. The final report shall cover activities conducted over the entire project period. For ongoing projects, the final report shall also include a summary or table of what has been accomplished in previous years (for example – number of acres restored, number of BMPs installed, etc.). In addition to the final report/work product, a one-page abstract suitable for distribution in newsletters, online, etc. must be submitted. The final report and abstract are due on January 31, 2022.
3. Invoices shall be submitted for periods ending 12/31, 3/31, 6/30 and 9/30. If non-Federal match is required, it is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be approved based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over the life of the contract. Non-Federal match documentation and back-up information shall be provided with each invoice. The final invoice and match with appropriate back-up information shall be provided within 30 days of the end of the contract.
4. Due to EPA MBE/WBE reporting requirements, the contractor needs to fill out, along with each invoice ending 12/31, 3/31, 6/30, and 9/30, a list of MBEs and WBEs utilized for procuring Services and Supplies using the attached reporting form (Exhibit E). Only procurements with certified Maryland MBE/WBEs should be listed.

A3: Award Conditions

1. The funding for this Memorandum is from the Chesapeake Bay Implementation Grant that the Maryland Department of Natural Resources received from the U.S. Environmental Protection Agency (CFDA Number 66.466 – Chesapeake Bay Program) through an award action dated August 7, 2019. All activities (direct funds or match) must occur within the Chesapeake Bay Watershed. Cost share funds must be expended for activities such as staff working on Bay related projects or other projects in direct support of the Chesapeake Bay Agreement.
2. All data and information generated through grant funding, whether EPA funds or Cost Share, is considered public information and shall be made available to the public unless there is a grant/cooperative agreement condition that specifies otherwise.
3. The contractor agrees that any reports, documents, publications or other materials developed for the public distribution supported by this assistance agreement shall contain the following statement: ‘This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement CB96358501 to the Maryland Department of Natural Resources. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.’
4. The EPA has developed a Final Financial Assistance Conflict of Interest Policy in accordance with CFR section 200.112: <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. Per this policy, the contractor must disclose conflicts of interest to the department contract representative, Megan Granato, within 30 calendar days of discovery. All conflict of interest disclosures must be made in writing and preferably via email to megan.granato@maryland.gov.
5. The contractor shall require that all subcontractors comply with all award conditions and documentation requirements.
6. For each kind of organization there are Federal principles for administrative and audit requirements and for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs.

IF THIS TYPE OF ORGANIZATION RECEIVES FUNDS THROUGH THIS AGREEMENT	THEN THESE REQUIREMENTS APPLY
Non-Profit Organization Educational Institutions State, Local, and Indian Tribal Governments	Uniform Grants Guidance, Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 1500 and 2 CFR Part 200

	Disadvantaged Business Enterprise Regulation, 40 CFR Part 33 Suspension and Debarment Regulation, 2 CFR Part 180, and 2 CFR Part 1532 Intergovernmental Review Regulation, 40 CFR Part 29
--	---

The contractor and any subrecipients must comply with and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, Office of Management and Budget (OMB) Circulars (<https://www.whitehouse.gov/omb/information-for-agencies/circulars/>), terms and conditions and approved applications. The funding for this Memorandum will not support “research and development” per the definition established at 2 CFR §200.87.

7. The contractor agrees to comply and shall require all sub recipients/contractors to comply with the provisions of the 2020 U.S. EPA Chesapeake Bay Program Grant and Cooperative Agreement Guidance:
<https://www.epa.gov/restoration-chesapeake-bay/chesapeake-bay-program-grant-guidance>.
8. The contractor shall comply with the attached EPA award conditions (Exhibit D), which are expressly incorporated and made part of this Contract herein.
9. If a contract involves environmental data collection, such as direct measurements, data collection from other sources, or data compilation from computerized databases and information systems, a Quality Assurance Project Plan (QAPP) must be submitted 30 days PRIOR to any data collection or data compilation activity. The QAPP must include information on how the contractor will adhere to EPA’s Locational Data Policy. QAPPs must be submitted electronically. QAPPs must be prepared in accordance with EPA QA/R-5: EPA Requirements for QAPP’s <http://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>.
10. All agencies, academic institutions, and/or consulting firms responsible for field sample collection and/or laboratory analysis of environmental samples collected using CBP funds or match funds will participate in CBP’s Coordinated Split Sample Program and/or interlaboratory sample comparison program. See https://www.chesapeakebay.net/what/programs/chesapeake_bay_quality_assurance_program/quality_assurance_split_sample_and_blind_audit_programs for additional information.

Exhibit B
Budget Detail and Guidelines for Proper Invoicing

B1: Budget Detail

After the contractor has been paid an amount equal to ninety (90%) of the funds initially allocated and approved for this contract, the Maryland Department of Natural Resources Chesapeake & Coastal Service may withhold from payment an amount of not more than ten percent (10%) of the total contract price, until satisfactory completion and submission by Montgomery County of all tasks described under this agreement.

Project Title: River Falls Drainage Assessment Project

Funding Recipient: Montgomery County, Maryland (DUNS: 062014378)

Funding Period: February 8, 2021 – January 31, 2022

Category	Federal	Non-Federal	Total
Personnel	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Contractual	\$81,622.00 ¹	\$0.00	\$81,622.00
Other	\$0.00	\$81,622.00 ²	\$81,622.00
Indirect Charges	\$0.00	\$0.00	\$0.00
Total	\$81,622.00	\$81,622.00	\$163,244.00

Federal

¹Contractual – One of the County’s prequalified contractors will be selected to conduct this work. An estimated budget breakdown is provided as follows:

Personnel		
Sr. Manager – 100 hours at \$236.49 per hour		\$23,649.00
Project Manager – 80 hours at \$184.67 per hour		\$14,774.00
Project Engineer – 148 hours at \$106.69 per hour		\$15,790.00
Environmental Scientist – 20 hours at \$95.85 per hour		\$1,917.00
GIS Specialist – 60 hours at 101.78 per hour		\$6,107.00
CAD Technician – 39 hours at \$106.72 per hour		\$4,162.00
Licensed Surveyor – 12 hours at \$156.75 per hour		\$1,881.00
Party Chief – 72 hours at \$103.99 per hour		\$7,487.00
Instrument Technician – 72 hours at \$76.22 per hour		\$5,488.00
<i>Subtotal</i>		<i>\$81,255.00</i>

Travel - Approximately 551 miles at \$0.575 per mile	\$317.00
Supplies	<u>\$50.00</u>
<i>TOTAL</i>	<i>\$81,622.00</i>

Non-Federal

²Other – Matching funds will be provided from the Chesapeake and Atlantic Coastal Bays Trust Fund

Montgomery County procurement guidelines will be followed

B2: Guidelines for Proper Invoicing

Contractors shall submit, generally on a quarterly basis, all invoices and match to the Chesapeake & Coastal Service. The format of the invoice shall mirror the format of the budget in this scope of work to the greatest extent possible. Each invoice shall include a summary sheet that breaks down federal and non-federal expenditures by budget category. The summary sheet should include a salary and fringe breakdown to include grade/step, position, and number of hours worked multiplied by the appropriate hourly pay rate. Also, include all necessary backup documentation that will serve as verification for all expenditures listed on the summary sheet. The contract number will be noted on all invoices.

Each invoice or match documentation provided must include a certification statement in accordance with OMB Circular 2 CFR Part 200.415 – Required Certifications – “By signing this report, I certify to the best of my knowledge and belief that this report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.”

Examples of acceptable documentation for federal and non-federal expenditures are listed below.

<u>Category</u>	<u>Backup Documentation Needed</u>
Salaries	Copies of signed time sheets with project hours noted with proof of payment. Please refer to OMB Circular 2 CFR part 200.430 – Compensation – Personal Services for standards for documentation of personnel expenses.
Communication (telephone bills, postage)	Copies of phone bills and proof of payment. Documentation for telephone bills and postage will include copies of itemized receipts.
Travel	Copies of approved expense reports and signed FS18 are adequate. Also, all copies of validated bills, invoices, and itemized receipts that are related to your travel must be provided. Providing a signed credit card slip without itemized receipts is not adequate documentation.
Supplies/Equipment	Copies of cancelled checks or check numbers with banking statements, receiving reports showing that merchandise was received, and itemized receipts. For corporate card purchases, each cardholder shall provide the standard DNR “Activity Log” bank memo statement and receipts for recording each transaction (purchase and/or credit) made with each corporate purchasing card which must include the following:

transaction date, merchant name, description of item purchased (including quantity), account (PCA code) to be charged if different from that assigned to the card, and amount of purchase.

Contractual Services Copies of bills or invoices with receipts. Also, copies of canceled checks or check numbers with banking statements.

Match Match, if applicable, shall be labeled as match and shall be documented in the same format as direct charges. Match shall be paid out at the same general rate as the federal share. Match information shall be provided with each invoice submission for direct charges.

Note: Time period on invoice shall coincide with time period on backup documentation for both invoices and match information.

To modify the budget, scope of work, or schedule, please follow these guidelines.

1. The contractor may shift up to ten percent (10%) of their total project funds from one existing line item (e.g. supplies, travel, etc.) to another, as long as it doesn't substantively modify the project's goals, objectives, milestones, or deliverables.
2. Prior approval from the department contract representative is necessary if
 - a) You need to modify your budget by more than ten percent (10%); OR
 - b) You need to add a new line-item to the existing budget (e.g., add equipment or subcontractor to budget); OR
 - c) You need a no-cost extension; OR
 - d) The modification will result in substantive changes to the project's goals, objectives, milestones, or deliverables.

Exhibit C
GIS Data Guidelines

1. Data, databases, and products associated with electronic Geographic Information Systems (GIS), which have been collected, manipulated, or purchased using funds administered by Chesapeake and Coastal Service (CCS), and/or Match funds, will be transferred to CCS according to the following terms:
 - a. Data and products directly purchased shall become property of CCS.
 - b. All other data and products shall be transferred to CCS for internal use only. Any other use of such data shall occur only after CCS has consulted with the contractor on the limitations of such data. In the case of certain sensitive information, limitations on transfer of data shall be determined by mutual agreement between the contractor and CCS. The contractor shall in no case be responsible for CCS's use of such data.
2. For any CBIG award that is providing federal funds for collection or production of geospatial data (e.g., GIS data layers), the contractor will comply to the maximum extent practicable with Executive Order 12906, "Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure" Federal Register, Vol. 59, Number 71, pp. 17671-17674, the contractor shall document all new geospatial data it collects or produces using the standard developed by the Federal Geographic Data Committee (FGDC), and make that standardized documentation electronically accessible to EPA. The standard can be found at https://www.epa.gov/sites/production/files/2016-01/documents/attachment8cimsgrant_guidance.pdf
3. Any electronic data to be transferred to CCS in conjunction with a GIS shall be transferred in ESRI ArcGIS or TNTmips compatible format, or other mutually acceptable format. Non-spatial text or database data to be transferred to CCS shall be delivered in Microsoft Word, Microsoft Excel, dBase (.dbf), comma-separated values (.csv) or ASCII compatible formats. Acceptable media for delivery includes CD, DVD and USB external hard drive. All delivery requirements shall be coordinated directly through the department contract representative, who will determine media specifications on a case-by-case basis in coordination with the technical staff of CCS and technical staff of the contractor.
4. All deliverables will be submitted directly to the department contract representative. Status reports will be submitted in paper copy and electronic format. Final deliverable work products, including the Final Report, any geographic or mapping related efforts, and those items listed in the Scope of Work as expected work products must be submitted as follows: one (1) copy in electronic format on compact disc.

Exhibit D
EPA Administrative and Programmatic Conditions

D1: Administrative Conditions

GENERAL TERMS AND CONDITIONS

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2019-or-later>. These terms and conditions are binding for disbursements and are in addition to or modify the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

A. Pre-Award Costs

In accordance with 2 CFR 1500.8, the grantee may charge pre-award costs (both Federal and non-Federal matching shares) incurred from JULY 01, 2018 to the actual award date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

B. Indirect Costs

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan and in accordance with 2 CFR 200.416 "Cost allocation plans and indirect cost proposals."

If EPA is the cognizant federal agency, the state recipient must send its indirect cost rate proposal within six (6) months after the close of the governmental unit's fiscal year to:

Regular Mail

Financial Analysis and Rate Negotiation Service Center
Office of Acquisition Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3802R
Washington, DC 20460

Mail Courier (e.g. FedEx, UPS, etc.)

Financial Analysis and Rate Negotiation Service Center
Office of Acquisition Management
US Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 6th floor

Bid and Proposal Room Number 61107
Washington, DC 20004
Electronic Submission (e.g. PDF)

OGD IndirectCost@EPA.GOV

Recipients are entitled to reimbursement of indirect costs, if they have a current rate agreement, or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate. Recipients with differences between their provisional rates and final rates are not entitled to more than the award amount, without EPA approval.

Recipients must comply with the audit requirements prescribed in 2 CFR 200.501(a).

C. Annual Federal Financial Report

Pursuant to 2 CFR 200.327 and 200.343, the recipient agrees to submit to EPA an annual Federal Financial Report (FFR) (SF-425) when the budget period is longer than one year. Interim reports shall be submitted no later than 90 days after the end of each reporting period.

The form is available on the internet at <https://www.epa.gov/grants/epa-grantee-forms>. **All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email LVFC-grants@epa.gov.**

D. Contingent Funding

In the event that additional Federal funds are not made available, the recipient agrees that each of the object class amounts in the approved budget shall be prorated by the ratio of the amount of total Federal funds awarded to the amount of total Federal funds contingently approved. If proration of the budget is not acceptable, the recipient must submit an amendment request for a budget revision. This request must be submitted to the Grants Management Officer (3PM70), at least 60 days before the expiration of the budget period. Pending approval of the revised budget submission, the grant will be amended to reflect the budget at actual funding level.

E. Disadvantaged Business Enterprise (DBEs)

UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33 except as described below based upon the associated class deviation.

EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B

A class exemption to the following provisions of Subpart B of 40 CFR Part 33 has been issued suspending the EPA MBE/WBE certification program: §33.204(a)(3) providing that an entity

may apply to EPA MBE or WBE certification after unsuccessfully attempting to obtain certification as otherwise described in §33.204; and §33.205 through and including §33.211. The class exemption was authorized pursuant to the authority in 2 CFR 1500.3(b).

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302(a)-(d) and (i).

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow,

competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A class exemption to the entire Subpart D of 40 CFR Part 33 has been authorized pursuant to the authority in 2 CFR 1500.3(b). Notwithstanding Subpart D of 40 CFR Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

MBE/WBE REPORTING – SPECIFIC CHANGES PURSUANT TO CLASS DEVIATION, 40 CFR, Part 33, Subpart E

When required, the recipient agrees to complete and submit a “MBE/WBE Utilization Under Federal Grants and Cooperative Agreements” report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at <https://www.epa.gov/grants/epa-grantee-forms>.

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category) with a cumulative total that exceed the threshold amount of \$250,000, including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just that portion which exceeds \$250,000.

Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502.

F. Federal Employee Costs

The recipient understands that the funds for this project (including funds contributed by the recipient as their cost share) may not be used to pay for the travel of Federal employees, or for other costs associated with Federal participation in this project unless the Federal agency is performing special technical assistance to the recipient as allowed under the provisions of the Intergovernmental Cooperation Act.

G. Extension of Project/Budget Period Expiration Date

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308 (d)(2). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. The written request must include: a written justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the administrative and programmatic terms and conditions of this assistance agreement, the recipient

must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

H. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): RTPFC-Grants@epa.gov with copy to grant specialist of record.
- MBE/WBE reports (EPA Form 5700-52A): R3_MBE-WBE_Reports@epa.gov.
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, requests for extensions of the budget and project period, amendment requests, requests for other prior approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Grant specialist and project officer of record.
- Payment requests (if applicable): Grant specialist and project officer of record.
- Quality Assurance documents, work plan revisions, equipment lists, programmatic reports and deliverables: project officer of record.

D2: Programmatic Conditions

A. Competency Policy

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, Recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA project officer for this award.

B. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

C. Cybersecurity

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition. If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project

Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

D. Performance Reports

In accordance with 2 CFR 200.328, the recipient agrees to submit performance reports that include brief information on each of the following areas; 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 2 CFR 200.328, the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

E. Performance Reports - Submission Frequency E

The recipient agrees to submit **semi-annual** performance reports to the EPA Project Officer. The reports are due 30 days after the reporting period. Final performance reports are due 90 days after the end of the budget period.

F. Program Guidance

The recipient agrees to comply with the provisions of the US EPA CBP Grant Guidance (2018). Any future versions of the Guidance will be applicable while the assistance agreement is still active.

G. Quality Assurance Management Plan

In accordance with 2 CFR 1500.11, the recipient shall continue to implement and adhere to the Quality Management Plan (QMP) submitted to EPA. The QMP should be updated annually or as necessary based on the EPA QA/R-2: EPA Requirements for Quality Management Plans. This quality assurance requirement applies to all grants, cooperative agreements, contracts and interagency agreements that involve the use of environmental data.

H. Quality Assurance Project Plan

In accordance with 2 CFR 1500.11, the recipient must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance/quality control requirements and technical activities that must be implemented to ensure that project objectives are met. The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for

Quality Assurance Project Plans. The QAPP must be submitted to the EPA Project Officer at least 30 days prior to the initiation of data collection or data compilation.

Prior to environmental data collection or data compilation, the QAPP must be approved by the EPA Project Officer. When the recipient is delegating the responsibility for an environmental data collection or data compilation activity to another organization, the EPA Regional Quality Assurance Manager may allow the recipient to review and approve that organization's QAPP.

I. Subaward Policy

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are: 1) Summaries of results of reviews of financial and programmatic reports; 2) Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance; 3) Environmental results the subrecipient achieved; 4) Summaries of audit findings and related pass-through entity management decisions; and 5) Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

J. EPASS Security

In accordance with Homeland Security Presidential Directive-12 (HSPD-12), "Policy for a Common Identification Standard of Federal Employees and Contractors;" Executive Order 13467, "Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information;" and Executive Order 13488, "Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust," the recipient agrees to follow instructions from the EPA project officer to ensure compliance with the EPA Personnel Access and Security System (EPASS).

Prior to beginning work at an EPA facility, the recipient, or its employees or program participants, must complete either:

- A. A favorable fingerprint check for recipients (and their employees or program participants) who require six (6) months or less of unescorted physical access to EPA facilities; or
- B. A favorable background investigation and fingerprint check for recipients (and their employees or program participants) who require more than six (6) months of unescorted physical access to EPA facilities.

Recipients, their employees, or program participants may not be permitted access to EPA facilities until meeting these requirements.

Recipients may initiate the appropriate check through the following link: <http://cdx.epa.gov>.

Failure of a recipient, their employees, or program participants to receive a favorable fingerprint or background check, whichever is applicable, shall result in the termination of the recipient, their employees, or program participants from continued enrollment in the program.

Exhibit E
MBE/WBE Procurement Reporting Form

MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD

CBIG Contract Number: _____
Project Title: _____
Invoice Reporting Period: _____

The EPA defines procurements as “all expenditures through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete Federal assistance programs.” If funds were subawarded, any procurements made by those subrecipients (and their subrecipients, continuing through all tiers of subawards) must also be reported.

Total Procurements Made During Reporting Period: _____
 (Federal Funds and Match, including MBE/WBE Procurements)

MBE/WBE Procurements Made During Reporting Period: _____
 (Federal Funds and Match)

MBE/WBE Procurement Detail Table (Federal Funds and Match)

Name, Address and Phone Number of MBE/WBE Contractor or Vendor ¹	Certification Confirmed ²	Business Enterprise Type ³		Date of Procurement ⁴	Value of Procurement ⁵	Type of Product or Services ⁶
		Minority	Women			

¹Enter the name, address and phone number of the MBE/WBE contractor or vendor exactly as it is listed in the [MDOT Directory of Certified MBE, DBE, SBE, and ACDBE Firms](#)

²Check this box to confirm that that the firm is listed in the [MDOT Directory of Certified MBE, DBE, SBE, and ACDBE Firms](#) and is thereby certified by the State of Maryland

³Check whether the firm is a minority or woman owned, as indicated in the [MDOT Directory of Certified MBE, DBE, SBE, and ACDBE Firms](#). If it is both, check both boxes.

⁴Enter the date of procurement, shown as month, day, and year. The date of procurement is defined as the date the contract or procurement was awarded, not the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. If direct purchasing is the procurement method, the date of procurement is the date the purchase was made.

⁵Enter the dollar value of the procurement. If the procurement was a contract or award, list the entire value of that contract or award here.

⁶Use the following codes to identify the type of product or service acquired through this procurement: (1) construction, (2) supplies, (3) services, or (4) equipment. Equipment is defined by [2 CFR §200.33](#) as “tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.”

Exhibit F
DNR General Conditions for Memoranda of Understanding

DEPARTMENT OF NATURAL RESOURCES
GENERAL CONDITIONS FOR
MEMORANDA OF UNDERSTANDING
REV. 5/12
[For Contracts Exempt from Procurement]

ARTICLE I - TERMS AND APPLICABILITY

These General Conditions apply to contracts exempt from the requirements of State Finance and Procurement Article, §11-101 *et seq.* of the Annotated Code of Maryland. The General Conditions do not constitute a complete agreement but are part of a Memorandum of Understanding (“Memorandum” or “MOU”) executed by all parties, which identifies the specific work to be performed, compensation, term, and special conditions, if any. The General Conditions and the MOU are intended to be complementary and shall be construed together. In the event of a direct conflict between them, the terms of the Memorandum shall govern and control.

Specific terms used in this document have the following meaning:

- A. “Contract” means the agreement between the Department and the Contractor for performance of services, including the MOU, Scope of Work and these General Conditions.
- B. "Scope of Work" or "Work" refers to the specific contractual obligation of the Contractor as identified in the MOU or other work statement incorporated into the Contract.
- C. "Contractor" means the State agency, political subdivision or government obligated to perform services for the Department under this Contract.
- D. "Department" means the Maryland Department of Natural Resources.

ARTICLE II - THE PARTIES

A. Independent Contractor - The Contractor is not an employee of the Department but is an independent contractor. The Contractor shall be responsible for providing all supplies and materials necessary for performance of all work under the Contract, and for withholding any taxes and social security payments due in relation to the Contract. The Contractor is not an agent of the Department and cannot commit the Department to any expenditure of funds or enter into any contractual obligation on behalf of the Department.

B. Notices - Service of any notice required by the Contract shall be complete upon mailing of such notice, postage prepaid, to the appropriate contract representative at the address indicated in the MOU. If no contract representative is named, then the person executing the MOU for a

party shall be the contract representative for purposes of notice.

ARTICLE III - PERFORMANCE

A. Standard of Performance - The Contractor is responsible for the supervision and inspection of, and the technical accuracy and coordination of all data and work pursuant to this Contract, and shall provide services and products meeting professional standards of quality and methodology.

B. Prosecution of the Work - The Contractor agrees to prosecute all work under this Contract continuously and diligently and to meet all milestones contained in the Contract. The Contractor further agrees that no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

C. Subletting or Assignment - The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, provided the personnel of any such successor, whether such successor be an individual, a partnership or a corporation, is acceptable to the Department. The Contractor shall not hire consultants, sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without prior written consent of the Department.

In the case of any subcontract, the Contractor agrees to bind the subcontractor and every subcontractor agrees to be bound by all terms of this Contract unless particular provisions are expressly waived in writing by the Department.

D. Changes - The Department, by written direction to the Contractor, may at any time make any change in the work within the general scope of the Contract. Within fifteen (15) days of receipt of a Notice of Change, the Contractor shall advise the Department of the effect, if any, such changes would have on budgeting, cost, delivery schedules, milestones or any other Contract provisions. If such effects are acceptable to the Department, the Department shall issue a Notice to Proceed With Changes, upon receipt of which the Contractor shall immediately institute all such requested changes. Such directed additions or changes to the Scope of Work shall become part of the contractual obligation. Each contract modification or change order that affects contract price is subject to the prior written approval of the Department.

E. Suspension of Work - The Department unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time the Department determines to be appropriate.

F. Disputes - If the Contractor intends to assert a claim against the Department, the Contractor shall do so within 30 days of the date the Contractor knows, or should know, of the basis of the claim. Failure to file a claim within the 30-day period is a complete bar to the claim. The claim shall consist of a written statement to the Department setting forth the nature and monetary extent of the claim, and the facts on which the claim is based. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract.

ARTICLE IV - PROPERTY

The Contractor shall notify the Department in advance of public disclosure of any information related to this Contract, unless such disclosure is compelled by legislative or judicial process. The Contractor shall in all cases submit to the Department three (3) copies of any scientific or technical paper, abstract, report or other vehicle pertaining in whole or in part to this Contract which the Contractor desires to publish, submit for publication, distribute or otherwise publicly disseminate. Such submission shall be made by the Contractor to the Department at least thirty (30) days prior to its planned initial public dissemination, disclosure, or submission for publication. The Contractor shall include in any such documents or vehicles of public disclosure a statement which acknowledges the Department, the specific programs therein, and the financial support provided by this Contract. Furthermore, upon receipt of a written request from the Department, the Contractor shall also provide a disclaimer stating that the contents of the aforesaid document or vehicle of public disclosure do not in any way reflect the views, opinions, or policies of the Department.

B. Patents and Copyrights - The Contractor may retain the entire right, title, and interest throughout the world to each subject invention associated with or reduced to practice in the course of performance under this Contract. With respect to any subject invention in which the Contractor retains title, the Department, and in those cases where federal money is involved, the federal government, shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the subject invention throughout the world.

The Contractor shall have the duty to disclose to the Department any invention associated with or reduced to practice in the course of performance under this Contract. Furthermore, the Contractor agrees that, if at any time during the course of performance of this Contract, it should become aware of a potential conflict between the rights of the Department under this Contract, and those of any other party or entity, as to ownership of any patent or copyright interests developing in relation to said performance, then the Department shall be immediately notified of such conflict. In such a case, it is agreed and understood that the terms of this Contract may be adjusted to provide for an equitable relationship between monies expended hereunder in pursuit of such patent or copyright interests and benefits to be obtained therefrom by the Department.

The Contractor assumes the risk that any materials, equipment, process, or other items required under the Contract or furnished by the Contractor are subject to any patent, copyright,

trademark, trade secret or other property right of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by the Department. The Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property right of another and shall save the Department harmless from loss or expense on account thereof.

C. Equipment - Unless otherwise provided in the MOU, all non-expendable equipment, including major equipment as defined in this Article, procured with funds from this Contract, shall be Department property and shall be used primarily for work under this Contract. Prior written approval of the Department shall be required for use of the equipment, on a non-interference basis, for other work of the Contractor. The Contractor shall use all effort to care for and maintain the equipment. Upon termination of this Contract, the Department shall determine what disposition shall be made of the equipment and shall so notify the Contractor within thirty (30) days. The Contractor shall report its acquisition of non-expendable equipment covered by this Contract to the Department annually. Non-expendable equipment is that which: 1) has a probable useful life in excess of one year beyond the date of acquisition, and 2) costs at least \$500, either as an individual piece or as a group of pieces intended to be used together.

All items of Major Equipment to be procured with funds from this Contract shall be itemized in the budget of this Contract to the extent possible. "Major Equipment" shall be defined as any item of equipment costing Two Thousand Dollars (\$2,000.00) or more. Unless itemized in the budget approved by the Department, purchase of each item of Major Equipment shall require prior written approval of the Department.

ARTICLE V - INDEMNIFICATION

A. Department Saved Harmless - Recognizing that the Contractor is a government agency and, as such, is subject to limitations on the indemnity that it can legally provide, the Contractor agrees, to the fullest extent permitted by law, to indemnify and save harmless the Department and all of its representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this Contract, occasioned by any negligent act or omission of the Contractor or any subcontractor, or their employees, agents, or representatives. The indemnification given by the Contractor is subject to, limited by and contingent upon the appropriation and availability of funds, and the notice requirements and damage limitations set forth in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (the "LGTCA") and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-5A-02 (collectively, the "County Indemnification Statutes"), all as amended. This indemnification is in no way intended to create any rights or causes of action in any third parties, or to increase the Contractor's liability above the caps provided in the County Indemnification Statutes, as applicable. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the Department.

B. Insurance - If specified in the MOU, the Contractor shall provide insurance protecting the Department from bodily injury and property damage. Certificates of such insurance acknowledging the foregoing "Department Saved Harmless" clause shall be filed with the

Department.

ARTICLE VI - WARRANTIES AND DISCLOSURES

A. Nondiscrimination in Employment - The Contractor agrees: (1) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (2) to include a provision similar to that contained in subsection (1), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (3) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

B. Compliance with Laws - The Contractor hereby represents and warrants that:

1. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;

and

2. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

ARTICLE VII - ACCOUNTING

A. Retention of Records - Audit - The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the Department hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Department, including the procurement officer or designee, at all reasonable times. The Department shall have the right, during usual business hours, to examine and audit pertinent records of the Contractor to verify invoices submitted pursuant to this Contract.

B. Payment of State Obligations - Payments to the Contractor shall be made in accordance with the terms of the MOU. Charges for late payment are prohibited.

ARTICLE VIII - DURATION

A. Effective Date - It is understood and agreed by the parties hereto that this Contract and any modification thereof shall not become effective or enforceable until executed by the Department.

B. Termination for Convenience - The performance of work under this contract may be terminated by the Department in accordance with this clause in whole, or from time to time in part, whenever the Department shall determine that such termination is in the best interest of the Department. The Department will pay all reasonable costs associated with this contract that the

Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

C. Termination for Default - If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the Contract, the Department may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the Department's option, become the Department's property. The Department shall pay the contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the Department can affirmatively collect damages.

D. Multi-Year Restriction - If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available. The Contractor may not recover anticipatory profits or costs incurred after termination.

ARTICLE IX - LEGAL

A. Severability - If any of these provisions shall contravene, or be invalid under, the laws of the particular state, county or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement, but the Contract shall be construed as if not containing the particular provision or provisions held to be invalid in the particular state, county, or jurisdiction, and the rights and obligations of the parties shall be construed and enforced accordingly.

B. Law Applicable - Unless otherwise authorized by the Board of Public Works, this Contract shall be governed by the laws of the State of Maryland, and the parties hereby expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any question arising hereunder.

APPROVED as to form and legal sufficiency
Office of the Attorney General
Department of Natural Resources
May 2012