

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

THIS MEMORANDUM OF UNDERSTANDING is entered into this 13th day of  
January, 2023, 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

Mayor and Council of Rockville  
111 Maryland Avenue  
Rockville, MD 20850  
Federal Tax ID: 52-6001573  
Unique Entity Identifier (UEI) #: XZGJXFPKJ9E7  
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:

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## **ARTICLE I - SCOPE OF WORK**

The Contractor shall: Conduct the City of Rockville current condition's analysis and development of the 2D flood prediction model, which 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 Seventy Five Thousand Dollars and Zero Cents (\$ 75,000.00). 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 January 1, 2023 through December 31, 2023. 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 G 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: Ari Engelberg  
Maryland Department of Natural Resources  
Chesapeake and Coastal Service  
580 Taylor Ave, E-2  
Annapolis, MD 21401  
(and/ or his designee)  
Phone: 410.260.8734  
Email: ari.engelberg@maryland.gov

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Contractor: Meredith Neely  
Principle Environmental Engineer  
City of Rockville  
111 Maryland Avenue  
Rockville, MD 20850  
Phone: (240) 314-8875  
Email: [mneely@rockvillemd.gov](mailto:mneely@rockvillemd.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:

Heather Gewandter  
Stormwater Manager  
City of Rockville  
Phone: (240) 314-8873  
Email: [hgewandter@rockvillemd.gov](mailto:hgewandter@rockvillemd.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.

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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


Sara Taylor-Ferrell  
 Print Name: \_\_\_\_\_  
 Sara Taylor  
 Ferrell

By   
 Robert DiSpirito  
 City Manager  
 Date: 12/13/2022

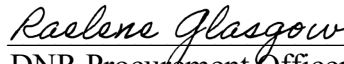
WITNESS

STATE OF MARYLAND  
DEPARTMENT OF NATURAL  
RESOURCES

Stanley Pratt  
 Print Name: Stanley Pratt

By   
 Christine Conn, Acting Unit Director  
 Chesapeake and Coastal Service  
 Date: 12/15/2022

Stanley Pratt  
 Print Name: Stanley Pratt

By   
 DNR Procurement Officer  
 Date: 01.13.2023

Approved as to form and legal sufficiency

this 13th day of January, 20 23

  
 Assistant Attorney General

Reviewed for Legal Sufficiency by  
 the Office of the City Attorney

Nicholas Dumais

Nicholas  
 Dumais  
 Senior  
 Assistant  
 City Attorney

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### **Exhibit A**

## **Scope of Work, Reporting and Documentation Requirements and Award Conditions**

### **A1: Scope of Work**

**Project Title:** City of Rockville Flood Resiliency Master Plan Current Conditions Analyses and 2D Model Preparation

**Name of Grant:** FFY22 Chesapeake Bay Implementation Grant Section 117

<b>Funding:</b>	Federal	\$ 75,000.00
	Non-Federal	<u>\$325,000.00</u>
	Total	\$400,000.00

**Funding Period:** January 1, 2023 to December 31, 2023

**Funding Recipient:** City of Rockville

**Project Area:** City of Rockville, Maryland

<b>Objective #5</b>	<b>City of Rockville Flood Resiliency Master plan</b>
<b>Budget Summary for this Objective:</b>	<p>EPA Share: \$75,000.00</p> <p>Non-Federal Share: \$325,000.00</p> <p>TOTAL: \$400,000.00</p>
<b>Narrative Summary of Outputs for this Objective:</b>	<p>On September 1, 2021, Tropical Storm Ida hovered over Rockville, recording 2.56” of rainfall during the peak 30-minute period, with a total of 2.97” rainfall in only 45 minutes. This resulted in unprecedented flash flooding in parts of Rockville. Using linear interpolation between the NOAA 200-year and 500-year storms for that duration puts Ida at a 327-year, 30-minute duration storm event. The storm impacted scores of properties, including rendering uninhabitable the bottom floors of two high-rise apartment buildings. Tragically, this storm also resulted in one fatality. While Rockville has seen an increasing number of larger intensity and shorter duration storm events that elicit a myriad of property owner questions and complaints about nuisance flooding, nothing in City history has compared to this</p>

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	<p>event. The aftermath of Ida has made it clear that Rockville has potentially fatal issues with its current stormwater management and conveyance infrastructure.</p> <p>The City of Rockville Flood Resiliency Master Plan will evaluate current stormwater management system capacity and flood impacts; identify current flood hazard areas; forecast potential impacts due to a range of climate change projections; develop a stakeholder informed project prioritization tool based on risk tolerance; develop feasibility level designs to help mitigate current and projected flood impacts; and implement high priority projects. A critical component of this Master Plan effort is to also ensure that flood resiliency projects are identified and implemented in an equitable manner, by completing a holistic and comprehensive evaluation of the entire City's stormwater system and potential flood risk areas. This subaward will help offset the cost of the current condition's analysis and development of the 2D flood prediction model, which should be completed by 12/31/2023. The entire Flood Resiliency Master Plan will be completed by 12/31/2024.</p>
<b>Description of Objective:</b>	<p>1) What is the ultimate goal of the project?</p> <ul style="list-style-type: none"> <li>• Develop an accurate and updateable hydrologic and hydraulic (H&amp;H) model for the entire City of Rockville.</li> <li>• Identify areas of flood vulnerability and assess impacts for existing conditions and a range of future climate scenarios.</li> <li>• Gain community buy-in on project prioritization criteria and risk tolerance levels across the varying model scenarios.</li> <li>• Identify systematic changes needed to effectively implement flood resiliency goals (ordinance changes, staff resources, etc.).</li> <li>• Identify priority projects that equitably improve flood resiliency in the City and meet other project prioritization goals.</li> <li>• Develop Flood Resiliency action framework and begin to fund/implement framework, including prioritized flood mitigation projects and other systematic City changes.</li> </ul> <p>2) What will be accomplished during the current grant cycle?</p> <ul style="list-style-type: none"> <li>• During this grant cycle the project will develop an accurate and updateable H&amp;H model, and identify corresponding areas of flood vulnerability. This will include an assessment of impacts for existing conditions and a range of future climate scenarios.</li> </ul>
<b>Tasks Under this Objective:</b>	<p>1) Develop Current Conditions hydrologic and hydraulic (H&amp;H) model. Subtasks include: (1) Desktop data collection including GIS data, record drawings, previous flood studies, historical rainfall and flood data, etc.; (2)</p>

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	<p>Conduct field survey to collect vertical/horizontal data for selected storm drain structures; and (3) Develop Current Conditions H&amp;H model including selected storm drain structures and stormwater facilities. Task to largely be completed by City contractor in close coordination with City staff. Task to be completed by Fall 2023.</p> <p>2) Identify and incorporate climate precipitation projection scenarios into the Current Conditions model (four scenarios). City staff to identify climate scenarios and City contractor to incorporate into Current Conditions model. Task to be completed by Fall 2023.</p> <p>3) Analyze model results to develop list of current/predicted flood impacted areas and preliminary assessment of impacts. Outputs from the model will look at both hydrologic (e.g. surface ponding/flooding) and hydraulic (e.g. storm drain and/or open channel capacity) issues. This task to be completed by City contractor in close coordination with City staff. Task to be completed by December 2023.</p>
<b>Specific Outputs for this Objective</b>	<p><u>Programmatic</u></p> <ul style="list-style-type: none"> <li>● One Current Conditions model completed using current rainfall scenarios, to be completed by Fall 2023.</li> <li>● Four climate precipitation projection scenarios included in the model, to be completed by Fall 2023.</li> <li>● One list of current/predicted flood impacted areas and preliminary assessment of impacts, including hydrologic (ponding/flooding) and hydraulic (storm drain/channel capacity) issues. To be completed by December 2023.</li> </ul> <p><u>Administrative</u></p> <ul style="list-style-type: none"> <li>● Progress reports submitted to the CBIG Manager by April 15, 2023, July 15, 2023, October 15, 2023, and December 31, 2023.</li> </ul>
<b>Outcomes for this Objective:</b>	<p><u>2014 Chesapeake Bay Watershed Agreement Goals and Outcomes:</u></p> <p>Water Quality Goal Watershed Implementation Plan (WIP) Outcomes Climate Resiliency Goal Adaptation Outcome Stewardship Goal</p>
<b>DEIJ Outcomes for this Objective:</b>	<p>A critical objective of this project is to ensure that flood mitigation projects are implemented in an equitable, transparent, and consistent manner. By extending this Master Plan study effort throughout the entire City limits, this project will allow Rockville to comprehensively identify potential stormwater-related flooding issues and their severity. This will allow all potential projects to be identified and assessed on equal footing. Using a complete analysis and transparent prioritization process</p>

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	<p>will help support the equitable implementation of flood resilience projects throughout the city instead of focusing only on the areas with the loudest complaints.</p> <p>The Master Plan will also include a stakeholder informed, dynamic project prioritization tool to help rank different project implementation scenarios. Great care will be taken to engage residents and property owners in neighborhoods throughout the City to help identify and rank project prioritization criteria. The outreach process in this project also provides an excellent opportunity for continued public education and engagement on other flood and stormwater related topics.</p>
<b>Climate Change Outcomes for this Objective:</b>	<p>The Flood Resiliency Master Plan is the means to plan for and respond to flood impacts caused by climate change. The Master Plan will identify the issues caused by these increasing number of larger intensity and shorter duration storm events, develop feasibility-level potential solutions to help mitigate the impacts, and provide an in-depth stakeholder process to 1) identify appropriate project prioritization criteria and 2) identify the risk tolerance level to initiate City action. It will also result in the identification of flood impacted areas and a project implementation plan to improve flood resilience in the city.</p>
<b>Link to Jurisdiction's WIP Commitment(s)</b>	N/A
<b>Link to Priority Practices and/or Priority Watersheds</b>	<p><u>Please include the following, as applicable:</u></p> <p>Priority Practice(s) This project will not implement any practices but may recommend green infrastructure options that could help to address flood hazards and increase climate resiliency.</p> <p>1) Which priority practice(s) will be implemented in this objective? Implementing the practices identified via this planning process will contribute to Montgomery County's Phase II WIP, of which Rockville is a part, and help meet City MS4 permit requirements.</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. The practices growing out of this plan will be a priority because they will help to address both water quality and quantity issues.</p> <p>3) Which priority strategy(s) will be implemented in this objective? Implementing the strategies identified via this planning process will contribute to Montgomery County's Phase II WIP, of which Rockville is a part, and help meet City MS4 permit requirements.</p> <p>Priority Watershed 1) Which priority watershed will be addressed by this objective?</p>

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	<p>Portions of the Watts Branch, Cabin John and Rock Creek Watersheds will be studied via this plan.</p> <p>2) Watershed considered priority by (please check one):</p> <p><input type="checkbox"/> CBP Priority Agricultural Watersheds Map  <a href="https://www.chesapeakebay.net/what/maps/keyword/agriculture">https://www.chesapeakebay.net/what/maps/keyword/agriculture</a></p> <p><input type="checkbox"/> USDA Core 4</p> <p><input checked="" type="checkbox"/> Other (please include a short justification as to why this watershed is considered a priority)</p> <p>This project was selected based on its potential climate resiliency impact.</p> <p>3) Which priority strategy(s) will be implemented in this objective?          Implementing the strategies identified via this planning process will contribute to Montgomery County's Phase II WIP, of which Rockville is a part, and help meet City MS4 permit requirements.</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 Ari Engelberg through the CCS federal funding grants management portal ([https://webportalapp.com/sp/home/md\\_dnr\\_federal\\_funding](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>
January 1, 2023 – March 31, 2023	April 15, 2023
January 1, 2023 – June 30, 2023 (semi-annual*)	July 15, 2023
July 1, 2023 – September 30, 2023	October 15, 2023
July 1, 2023 – December 31, 2023 (final*)	December 31, 2023

\*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 Ari Engelberg 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.). The final report is due on December 31, 2023.

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.

5. All grantees, including subrecipients, with an outreach component identified in their work plan, should provide documentation of the outreach (e.g. link of a news release and/or media coverage) in the progress report. Further, it should be clear how the outputs relate to the tasks within each objective.

**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 66.964 – Chesapeake Bay Program Implementation, Regulatory/Accountability and Monitoring Grants) through an award action dated August 4, 2022. 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 C296389001 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, Ari Engelberg, within 30 calendar days of discovery. All conflict of interest disclosures must be made in writing and preferably via email to [ari.engelberg@maryland.gov](mailto:ari.engelberg@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

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	<p>Disadvantaged Business Enterprise Regulation, 40 CFR Part 33</p> <p>Suspension and Debarment Regulation, 2 CFR Part 180, and 2 CFR Part 1532</p> <p>Intergovernmental Review Regulation, 40 CFR Part 29</p>
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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 support “research and development” per the definition established at 2 CFR §200.1.

7. The contractor agrees to comply and shall require all sub recipients/contractors to comply with the provisions of the 2022 U.S. EPA Chesapeake Bay Program Grant and Cooperative Agreement Guidance and all of its addendums and attachments: <https://www.epa.gov/restoration-chesapeake-bay/chesapeake-bay-program-grant-guidance>.

8. The contractor shall comply with and shall require all subrecipients/contractors to comply with the attached EPA award conditions (Exhibit D) and Lobbying Certification (Exhibit F), 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 45 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 surface water 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](https://www.chesapeakebay.net/what/programs/chesapeake_bay_quality_assurance_program/quality_assurance_split_sample_and_blind_audit_programs) for additional information.

11. The contractor shall comply with the requirements in Section B.(b)(1) of the EPA Programmatic Conditions (Exhibit D2) if its network or information system is connected to

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the EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange.

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**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 the Contractor of all tasks described under this agreement.

**Project Title:** City of Rockville Flood Resiliency Master Plan Current Conditions Analyses and 2D Model Preparation

**Funding Recipient:** City of Rockville (Fed Tax ID: 52-6001573; UEI: XZGJXFPKJ9E7)

**Funding Period:** January 1, 2023 to December 31, 2023

<b>Category</b>	<b>Federal</b>	<b>Non-Federal</b>	<b>Total</b>
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	\$75,000.00 <sup>1</sup>	\$325,000.00 <sup>2</sup>	\$400,000.00
Other	\$0.00	\$0.00	\$0.00
Indirect Charges	\$0.00	\$0.00	\$0.00
<b>Total</b>	<b>\$75,000.00</b>	<b>\$325,000.00</b>	<b>\$400,000.00</b>

**Federal**<sup>1</sup>Contractual

Rockville will solicit bids for a contractor to conduct the analysis via a competitive bidding process that evaluates past performance, staff qualifications and project costs. The \$75,000 dollars of Federal funds will be used to augment the cost to field survey storm drain structures. Structure type, location, elevation and condition will be gathered. This data will augment existing as-built information as inputs into the model.

**Non-Federal**<sup>2</sup>Contractual

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The \$325,000 City contribution will be used to fund all the other items outlined in the scope above. Rockville will solicit bids for a contractor to conduct the analysis via a competitive bidding process that evaluates past performance, staff qualifications and project costs

***City of Rockville procurement guidelines will be followed.***

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## **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

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(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/system/files/documents/2022-04/attachment-8\\_guidance-for-data-info-and-doc-deliverable-submission\\_nov-2021.pdf](https://www.epa.gov/system/files/documents/2022-04/attachment-8_guidance-for-data-info-and-doc-deliverable-submission_nov-2021.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 email, 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.

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## **Exhibit D**

### **EPA Administrative and Programmatic Conditions**

*The following are the Administrative and Programmatic Conditions that the EPA placed on DNR's Chesapeake Bay Implementation Grant (CBIG) award. DNR includes these conditions in all funding agreements supported by CBIG funds in accordance with 2 CFR §200.332(a)(2).*

#### **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-1-2021-or-later>.

These terms and conditions are in addition to 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: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

##### **A. 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](mailto:RTPFC-Grants@epa.gov) with copy to grant specialist of record.
- MBE/WBE reports (EPA Form 5700-52A): [R3\\_MBE-WBE\\_Reports@epa.gov](mailto: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): [RTPFC-Grants@epa.gov](mailto:RTPFC-Grants@epa.gov).
- Quality Assurance documents, work plan revisions, equipment lists, programmatic reports and deliverables: project officer of record.

##### **B. Contingent Funding**

EPA is funding this agreement incrementally. There is no guarantee of funding beyond the first year. The *Total Approved Assistance Amount* identified on Line 12 of the budget table of this award is contingent upon the availability of appropriated funds, EPA funding priorities, and satisfactory progress in carrying out the activities described in the scope of work. If EPA informs the recipient that the amount on Line 12 will be reduced, the recipient agrees to provide an updated workplan and budget information, as needed, to amend the agreement.

##### **C. Pre-Award Costs**

In accordance with 2 CFR 1500.8, the grantee may charge otherwise allowable pre-award costs (both Federal and non-Federal matching shares) incurred from July 1, 2022 to the actual award

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date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

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**D2: Programmatic Conditions****A. PERFORMANCE REPORTING AND FINAL PERFORMANCE REPORT****Performance Reports – Content**

In accordance with 2 CFR 200.329, 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 why established outputs/outcomes were not met; and 3) Additional pertinent information, including, when appropriate, analysis and explanation of cost overruns or high-unit costs.

Additionally, the recipient agrees to inform EPA as soon as problems, delays, or adverse conditions which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan are known.

**For State Categorical Program Grants Only:** Interim performance and final progress reports must prominently display the three Essential Elements for state work plans: 1) Strategic Plan Goal; (2) Strategic Plan Objective; and (3) Workplan Commitments plus time frame. (See Grants Policy Issuance 11-03 State Grant Workplans and Progress Reports for more information)

**Performance Reports – Frequency**

The recipient agrees to submit semi-annual performance reports electronically to the EPA Project Officer within 30 days after the reporting period (every six-month period). The recipient must submit the final performance report no later than 120 calendar days after the end date of the period of performance.

**Subaward Performance Reporting** The recipient must report on its subaward monitoring activities under 2 CFR 200.332(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.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.208 and the 2 CFR Part 200.339 Remedies for Noncompliance.

**B. Cybersecurity Condition**

(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.

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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.

(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 200.332(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.

### **C. Competency of Organizations Generating Environmental Measurement Data**

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 <https://www.epa.gov/sites/production/files/2015-03/documents/competency-policy-aaia-new.pdf> or a copy may also be requested by contacting the EPA Project Officer for this award.

### **D. In-Kind Assistance**

This action awards federal funds in the amount of \$3,526,362. \$9,400 is being awarded as in-kind assistance. EPA will direct the in-kind funding to Maryland DNR.

### **E. 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 <https://www.fgdc.gov/>

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**F. 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: <https://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, the employees, or program participants from continued enrollment in the program.

**G. QUALITY ASSURANCE****Quality Assurance System****Scope:**

Quality assurance (QA) applies to all agreements that involve environmental data operations, including environmental or scientific data and information collection, production or use. Environmental data operations include the acquisition, generation, compilation or use of environmental data and technology. These terms and conditions apply to all environmental programs included in the agreement's workplan that contain environmental data operations.

Sub-awards will include appropriate quality requirements for the work conducted through sub-agreements with other organizations. The prime recipient is accountable for all work performed on the project or program award including any portion of the external agreement work that the recipient awards to a sub-recipient.

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Definitions applicable to these terms and conditions are in the following locations: EPA QA/R-2: EPA Requirements for Quality Management Plans and EPA QA R-5: EPA Requirements for Quality Assurance Project Plans, Appendix A.

Examples are included in the definitions of Environmental Data, Environmental Programs, and Environmental Technology and on the internet at: Quality Specifications for non-EPA Organizations to do business with EPA in the Example Activities Section.

Authorities, in accordance with:

1. 2 CFR 1500.12;
2. 40 CFR 35;
3. Policy and Program Requirements for the Mandatory Agency-wide Quality System, May 2000 CIO 2105.0;
4. EPA Quality Manual for Environmental Programs, May 2000 CIO 2105-P-01-0;
5. EPA QA/R-2: EPA Requirements for Quality Management Plans;
6. EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans; and
7. as described by the Office of Grants and Debarment Quality Assurance Requirements

### **Communications:**

The EPA Project Officer will provide the recipient with the EPA QA contact upon EPA's award issuance or upon request by recipient for presubmittal questions and other communications regarding QA system document(s). A list of QA managers is posted on EPA's Quality Program website.

The recipient agrees to include the EPA Project Officer on all written communications with the EPA QA contact.

## **QUALITY MANAGEMENT PLAN**

### **Quality Management Plan**

The recipient shall continue to implement and adhere to the Quality Management Plan (QMP), based on the EPA QA/R-2: EPA Requirements for Quality Management Plans, submitted to EPA.

Approval Date: 3/2/2022

Version: QMP-DNR approved through 3/2/2027

In accordance with EPA QA/R-2 Section 2.7: Recipient must review its QMP at least annually to reconfirm the suitability and effectiveness of the approved quality management practices. QMP review results and/or revisions made must be submitted to EPA Project Officer and QA contact at least annually but may be submitted when the changes occur.

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Significant changes made to the quality system that affect the performance of work for the Agency requiring the revision of an approved QMP are listed in EPA QA/R-2 Section 2.6.

## **QUALITY ASSURANCE PROJECT PLAN**

### **Quality Assurance Project Plan**

The recipient shall continue to implement and adhere to the approved Quality Assurance Project Plan (QAPP) based on the EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans, submitted to EPA. This plan can be found here:

[https://www.chesapeakebay.net/documents/MD\\_Verification\\_Protocols\\_Master\\_Doc\\_\(2\).pdf](https://www.chesapeakebay.net/documents/MD_Verification_Protocols_Master_Doc_(2).pdf)

Approval Date: 4/7/2017

Version: BMP Protocols

Recipient must review its QAPP at least annually to reconfirm its suitability and effectiveness. QAPP review results and/or revisions made must be submitted to EPA Project Officer and QA contact at least annually but may be submitted when the changes occur.

In accordance with EPA QA/R-5 Section 2.7: When substantive change is warranted, the recipient must modify the QAPP and submit the revision for EPA approval. Only after the revision has been received and approved shall the change be implemented.

### **H. Program Guidance**

The recipient agrees to comply with the provisions of the US EPA Chesapeake Bay Program Office Grant and Cooperative Agreement Guidance (2022). Any future versions of the Guidance will be applicable while the assistance agreement is still active.

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**Exhibit E**  
**MBE/WBE Procurement Reporting Form**

**CBIG Contract Number:**

**Project Title:**

**Invoice Reporting Period:**

The EPA defines procurements as “expenditures under the supplies, equipment, construction, services or ‘other’ categories, and include funds expended for procurement under subawards or loans.” 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 <sup>1</sup>	Certification Confirmed <sup>2</sup>	Business Enterprise Type <sup>3</sup>		Date of Procurement <sup>4</sup>	Value of Procurement <sup>5</sup>	Type of Product or Services <sup>6</sup>
		Minority	Women			

**If procurements were made, but no MBE/WBE procurements are being reported, check the applicable box(es) for the reason(s) why no MBE/WBE procurements were made:**

No MBE/WBE(s) applied

No MBE/WBE(s) were qualified

Other:

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<sup>1</sup>Enter 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

<sup>2</sup>Check 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

<sup>3</sup>Check 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.

<sup>4</sup>Enter 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.

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

<sup>6</sup>Use 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 Subpart A 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.”

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## **Exhibit F** **Lobbying Certification Form**

### **CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\* APPLICANT'S ORGANIZATION

\*PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Prefix:

\*First Name:

Middle Name:

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*Last Name:	Suffix:
*Title:	
*SIGNATURE	*DATE

**Exhibit G**  
**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

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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.

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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,

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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 and defend 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, either by the Contractor or any subcontractor, or their employees, agents, or representatives. 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

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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

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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