

**Wicomico County Purchasing Department  
125 N. Division Street, Room 205  
Salisbury, Maryland 21801**



**(X) REQUEST FOR PROPOSAL**

**PROJECT:** Eastern Shore Drive Corridor Study  
**DEPARTMENT:** Planning Zoning & Community Development

**VENDOR:**

**NAME:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**PROPOSAL OPENING:**

**DATE:** March 28, 2014  
**TIME:** 2:00 PM EST

## **PROPOSAL INSTRUCTIONS**

1. **Submission of Proposals:** *Two* full copies of the Proposal must be submitted on the Proposal form provided in the solicitation. The Proposal form shall be signed and submitted in a sealed envelope clearly identified on the outside of all envelopes with the name of the Proposal/project and date and time of the scheduled Proposal opening as indicated in the advertisement. Electronically mailed Proposals are **not** considered sealed Proposals and will **not** be accepted.
  
2. **Addendums:** Proposals are subject to change in the form of addendums. Questions can be addressed in writing to the Purchasing Agent at [rkonrad@wicomocounty.org](mailto:rkonrad@wicomocounty.org) . Addendums are posted on the County website at [www.wicomocounty.org](http://www.wicomocounty.org) under Departments: Purchasing Department: the Current Sealed Bids link at least 5 days before Proposal opening. It is the Proposors responsibly to make sure all addendums are included in their Proposal. Failure to do so could result in the Proposal being disqualified.
  
3. **Delivery of Proposals:** Proposals should be mailed or hand carried to **Wicomico County Purchasing Department, 125 N. Division Street, Government Office Building, Room 205, Salisbury, MD 21801**, in order to be received in the office of the Purchasing Agent prior to the announced Proposal opening. *Proposals received after said time will be returned to the Proposer unopened.* It is fully the responsibility of the Proposer to insure that the Proposal is received on time. The County will not speculate as to reasonableness of the postmark, nor comment on the apparent failure of a public carrier to have made prompt delivery of the Proposal.
  
4. **Qualifications:** The Bidder must be in compliance with the laws regarding conducting business in the State of Maryland. Bidder shall provide a copy Certificate of Status from the Maryland Department of Assessments and Taxation, along with their bid, evidencing the Bidder is in good standing with the State of Maryland. Wicomico County reserves the right, at its sole discretion, to extend the date this documentation must be provided. The Bidder's inability to provide this documentation will result in the bid being rejected.
  
5. **Descriptive Literature:** Descriptive literature fully describing the product Proposal (where such literature exists) shall be included with the Proposal to assist the Purchasing Department in evaluating the submission. Failure to do so may be cause for rejection of the Proposal. ***Any items, systems or devices supplied in this Proposal that are proprietary in nature relative to maintenance, repair, servicing or updating must be disclosed on the Proposal form.***

6. **Exceptions:** Any exceptions to the specifications requested should be listed on a separate sheet of paper attached to the Proposal. An exception to the specifications may not necessarily disqualify the Proposal. The County will determine if the exception is an essential deviation or a minor item. In the case of a minor deviation, the County maintains the option to award to that Proposer if it determines the performance is not adversely affected by the exception.
7. **Proposal Evaluation:** Some proposals are based on more than low price and they shall be scored according to the Proposal document's Proposal Specifications section. If some characteristic of the Proposal requires that the Proposal must be reviewed by the County Council, the award can be expected within 30 days.

Proposal tabulations (when applicable) will be posted on the County website at [www.wicomicounty.org](http://www.wicomicounty.org) under the Purchasing Department webpage link to current Sealed Proposals then link to Proposal Archive. This will typically be done within 24 hours of the Proposal opening. Please use this resource rather than calling the Purchasing Office.

Proposal evaluations typically take 1-2 weeks.

8. **Award of Proposal/Proposal:** The Purchasing Agent shall award a Proposal to the best, responsive and responsible Proposer complying with the provisions of the Invitation for Proposal. All Proposal awards are contingent upon available funding.

The Purchasing Agent reserves the right to award a Proposal by individual items, in aggregate, or in combination thereof as deemed necessary to fulfill the anticipated requirements of the County.

All awards over \$1000.00 require a Purchase Order to be executed before any work can be started. Some awards will require a County contract. A sample is attached if this is applicable.

9. **Approved Equals:** In all specifications where a material or article is defined by describing a proprietary product or by using the name of a vendor or manufacturer, it can be assumed that an approved equal can be substituted. The use of a named product is an attempt to set a particular standard of quality and type that is familiar to the County.

Such references are not intended to be restrictive. However, the County shall decide if a product does in fact meet or exceed the quality of the specifications listed in the solicitation. It shall be the responsibility of the vendor that claims his product is an equal to provide documentation to support such a claim.

8. **Sales Tax:** Wicomico County is exempt from being directly charged Federal excise and Maryland sales tax. A copy of an exemption certificate shall be furnished upon request. According to the Office of the Comptroller of Maryland, the Contractor is responsible for paying sales tax on his/her purchases relating to this project and should incorporate it into his Proposal.
9. **Delivery:** All items shall be delivered F.O.B. destination and delivery costs and charges included in the Proposal unless otherwise stated in the specifications or proposal.
10. **Insurance:** If required by the Special Conditions of the Invitation for Proposal, the Proposer shall provide the County with Certificates of Insurance within ten (10) days of Proposal award notification evidencing the required coverage. Proposer must provide Certificates of Insurance before commencing work in connection with the contract.
11. **Right to Reject:** The Wicomico County Council reserves the right to reject any and/or all Proposals or to waive any technicality it deems in the best interest of the County.
12. **Piggybacking:** Wicomico County may authorize, upon request, any governmental entity (hereafter Authorized User) within the County to purchase items under the contract awarded pursuant to this Proposal solicitation. All purchase orders issued against the contract by an authorized User shall be honored by the Contractor in accordance with all terms and conditions of this contract. The issuance of a purchase order by an Authorized User pursuant to this provision shall constitute an express assumption of all contractual obligations, covenants, conditions and terms of the contract. A breach of the contract by any particular Authorized User shall neither constitute nor be deemed a breach of the contract as a whole which shall remain in full force and effect, and shall not affect the validity of the contract nor the obligations of the Contractor thereunder respecting the County. The County specifically and expressly disclaims any and all liability for any breach by an authorized User other than the County and each such Authorized User and Contractor guarantee to save the County, its officers, agents and employees harmless from any liability that may be or is imposed by the Authorized User's failure to perform in accordance with its obligations under the contract.

# **SALISBURY/WICOMICO METROPOLITAN PLANNING ORGANIZATION**

## **REQUEST FOR PROPOSALS EASTERN SHORE DRIVE CORRIDOR STUDY**

**February 28, 2014**

### **I. INTRODUCTION**

The Salisbury-Wicomico Metropolitan Planning Organization (S/WMPO) is seeking proposals from qualified vendors to prepare the Eastern Shore Drive Corridor Study. A map depicting the area of interest is included as attachment #1 of this Request for Proposals.

This three-phase Study will analyze current conditions for motorized and non-motorized forms of travel; project future conditions and needs; prepare design concepts for major recommendations; develop short, mid, and long-term recommendations based upon realistic assumptions including, but not limited to budget limitations, maintaining efficient level of service, and current and future demand. In addition, this Study will analyze pedestrian & cyclist needs and identify improvements to address safety concerns and identify opportunities to improve non-motorized connectivity.

Additionally, this Plan will contain planning-level cost estimates for the recommended improvements.

### **II. BACKGROUND**

The S/WMPO was officially established in the fall of 2003, with its primary mission to perform transportation planning and coordinate those efforts within the region. Member jurisdictions contained within the Urbanized Area include the City of Salisbury, City of Fruitland, Town of Delmar (De. and Md.), Town of Hebron, Town of Laurel (De.), Town of Seaford (De.) and portions of the unincorporated areas of Wicomico and Somerset counties and Sussex County (De.).

### **III. PURPOSE**

The Eastern Shore Drive Corridor Study is a continuation of the East Side Corridor Study completed in 2008. A primary goal of this Study is to assess and analyze current and future conditions and provide recommended improvements to address anticipated needs. This Study will take into account the existing and future land uses and traffic conditions, development activity, as well as pedestrian & cyclist improvements to safety and connectivity.

### **IV. SCOPE OF WORK**

Specific roadway and intersections to be studied include the following:

1. *Eastern Shore Drive extending from E. College Avenue to E. Carroll Street;*
  - a. Intersection at Eastern Shore Drive and E. Carroll Street;
  - b. Intersection at Eastern Shore Drive and E. Vine Street;

- c. Intersection at Eastern Shore Drive and South Boulevard;
- d. Intersection of Eastern Shore Drive / Carrolton Avenue / South Division Street;
- e. Intersection at Eastern Shore Drive and E. College Avenue;
- 2. *South Tower Drive extending from E. College Avenue to South Boulevard;*
  - a. Intersection at South Tower Drive and South Boulevard;
  - b. Intersection at South Tower Drive and W. College Drive;
- 3. *South Division Street extending from E. College Avenue to Avery Street;* and
  - a. Intersection at South Division Street and Avery Street.

Phase I (Motorized travel):

1. Prepare intersection condition diagrams.
2. Conduct intersection turning movement counts for the aforementioned signalized and unsignalized intersections on a weekday during the school year (7:00 AM to 9:00 AM and 2:00 PM to 6:00 PM).
3. Conduct 24-hour machine counts for one week at two key segments along Eastern Shore Drive.
4. Conduct intersection capacity analysis and Level of Service (LOS) conditions, average daily, and average peak hour traffic volumes for the target years (2014, 2024, and 2034) for existing lane configurations.
5. Develop short, mid, and long term recommendations for the study area to include, but limited to signal and timing considerations, striping, access management, and geometric improvements.
6. Provide approximate cost estimates (planning level, not engineering grade cost proposals) to implement recommendations contained within the final draft of the Plan.
7. Analyze roadway to determine feasibility of implementing a road diet for Eastern Shore Drive based on current and future conditions and demand.
8. Prepare design illustratives / renderings (Adobe Creative Suites, Sketch-Up, etc) for a minimum of two major recommended improvements to the existing roadway network (road diet and TBD).

Phase II (Non-Motorized travel):

***Contingent upon available funding.***

1. Collect pedestrian and cyclist traffic counts during AM and PM peak hours on a weekday during the school year at the following intersections:
  - a. Eastern Shore Drive / E. College Avenue;
  - b. Eastern Shore Drive / Carrolton Avenue / South Division Street;
  - c. Eastern Shore Drive @ South Boulevard;
  - d. Eastern Shore Drive @ Vine Street;
  - e. Eastern Shore Drive @ E. Carroll Street;
2. Develop specific short, mid, and long-term recommendations for sidewalks, signage, curb ramps, crosswalks, refuge islands, stop bars, and pedestrian signals and lighting along the study area roadways and intersections designed to improve pedestrian and cyclist safety and connectivity goals. Where applicable, recommendations shall be ADA Compliant;

3. Prepare design illustratives / renderings (Adobe Creative Suites, Sketch-Up, etc) for a minimum of two major recommended improvements; and
4. Provide approximate cost estimates (planning level, not engineering grade cost proposals) to implement recommendations contained within the final draft of the Plan.

Phase III (Study):

***Contingent upon available funding.***

1. Prepare draft Study consistent with the purpose and scope of work for this RFP;
2. Present draft Study to the S/WMPO's Technical Advisory Committee and Council;
3. Revise draft Plan based on comments provided by the S/WMPO; and
4. Submit final Study and accompanying files including, but not limited to resource data, simulations and modeling, renderings / illustrative, tables, and graphics (in native format and PDF) to the Organization.

## **V. DELIVERABLES**

The final Plan should be a concise document with text and graphics which can also be reproduced and provided to the general public. The final version shall be on 8 1/2" x 11" sheets; graphics may use 11" x 17" sheets where necessary. One reproducible (photo ready) draft copy and 10 additional final copies shall be submitted. The consultant must also supply the documents on CD in a format compatible with Microsoft Office Suite.

All mapped data by the consultant must also be provided to the S/WMPO in a format that can be utilized in an ArcMap Geographic Information System.

## **VI. AVAILABLE INFORMATION**

The S/WMPO will cooperate fully to provide any information it has available. However, the consultant shall be responsible for all data acquisition necessary to complete any analysis and reports required for this Study.

## **VII. SUBMISSION REQUIREMENTS**

Interested respondents shall submit a sealed envelop containing four copies of their proposal for the Eastern Shore Drive Corridor Study with separate pricing provided for each phase of the study area as described within this Request For Proposals to:

Wicomico County Purchasing Department  
ATTN: k M  
Government Office Building  
Room 205  
125 N. Division Street  
Salisbury, MD. 2180

**The deadline for receipt of proposals is March 28, 2014, at 2:00 P.M. At which time, RFP responses will be opened and read in Room 205 of the Government Office Building.**

**VIII. FORM of PROPOSALS**

- Vendor's proposal shall be submitted in a sealed envelope and contain four (4) copies of the following information as a minimum:
- Name, address, phone number, and e-mail address of the Vendor submitting a response to this RFP.
- Background of the Vendor's company and subcontractors on the project team and type of services undertaken to clearly demonstrate the ability to fulfill the project's scope or closely related tasks. List of a minimum of three (3) related projects where similar work was performed.
- Proposal narrative identifying the approach to fulfill scope of work.
- Names, qualifications, and affiliations of key personnel and overall organizational chart with staff assigned to this project.
- List of references (names, addresses, phone numbers and e-mail addresses).
- List of price breakdown for each phase and the entirety of the project.

**IX. REVIEW OF PROPOSALS**

An RFP evaluation committee with representatives from the Salisbury-Wicomico Metropolitan Planning Organization's (S/WMPO) Technical Advisory Committee shall review all proposals and select the proposal best meeting the criteria and needs of the Organization for this Study. The selection criteria for the proposal will include:

- a. Price and billable rates of the proposed project team;
- b. Expertise, experience, and qualifications of the Vendor and project team including proposed subcontractors relative to achieving the expectations outlined in the scope of work;
- c. Experience working with Metropolitan Planning Organizations with emphasis on projects with the S/WMPO and its member jurisdictions;
- d. Approach to the project;
- e. Participation of a certified minority, women, or disadvantaged owned business enterprise on the project team (vendors or subcontractors); and
- f. Geographic location of the Vendor relative to the S/WMPO Urbanized Area.

Proposals will be evaluated using the following criteria:

PROPOSAL CRITERION EVALUATED	WEIGHTED VALUE
Price and billable rates.	40 %
Expertise, experience, and qualifications of the Vendor and the proposed project team including subcontractors relative to achieving the expectations outlined in the scope of work	25 %
Approach to the project.	15 %
Experience working with MPOs with emphasis on projects with the S/WMPO and its member jurisdictions.	10 %
Participation of a certified minority, women, or disadvantaged owned business enterprise on the project team (vendors or subcontractors).	5 %
Geographic location of the Vendor relative to the S/WMPO Urbanized Area.	5 %

Each criterion will be rated on the following scoring system: 0 – Unacceptable; 1- Poor; 2- Fair; 3- Good; and 4- Excellent. A Vendor’s final score will be the sum of each criterion’s rating multiplied by the aforementioned weighting factor.



**PROPOSAL FORM**

TO: Wicomico County Purchasing Department  
Government Office Building  
125 North Division Street, Room 205  
Salisbury, MD 21801

Date: \_\_\_\_\_

PROPOSAL – 13 Eastern Shore Drive Corridor Study 2014

**Total** \$ \_\_\_\_\_

Two copies of Proposal provided?      Yes\_\_\_\_      No\_\_\_\_

Projected start date: #\_\_\_\_\_ Days from Notice to Proceed

Addendums Acknowledged (if applicable) - YES \_\_\_\_      #(s) \_\_\_\_\_      NO \_\_\_\_

Exceptions to the Proposal specifications - YES\_\_\_\_ Attached\_\_\_\_\_      NO\_\_\_\_

I have read, understood, and agreed to the terms and conditions of all contents of this PROPOSAL. The undersigned agrees to furnish the commodity or service stipulated in this PROPOSAL as stated above.

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

# **Exhibit A**

## **WICOMICO COUNTY, MARYLAND STANDARD TERMS AND CONDITIONS**

This document sets out provisions generally applicable to all Wicomico County ("County") contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and special conditions, if any. This document and the Contract are intended to be complementary and shall be construed accordingly. However, should there be a direct contradiction between the terms and conditions contained herein and the Contract, then the Contract shall govern and control those contradictory terms and conditions. As used herein, the term "Department" includes the County, its various departments, unit, agencies, employees or agents as may be appropriate. The term "Contract" shall include a document entitled "agreement" or any other title on a document that is denoting a contract. The Wicomico County Executive is the person authorized to enter into contracts for Wicomico County.

Amendment. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.

Subcontracting or Assignment. The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the County. The County has the right to withhold such consent for any reason the County deems appropriate.

### Insurance Requirements.

A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with the County prior to the time this Contract is executed, providing coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.

B. Contractor shall provide the County with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required by Maryland law in effect for each year of this Contract.

C. All insurance policies shall have a minimum 60 days notice of cancellation. Immediate written notice to the County shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.

D. When insurance coverage is renewed Contractor shall provide new certificates of insurance prior to expiration of current policies.

Payments. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the County's receipt of a proper invoice from the Contractor. If an invoice remains unpaid 45 days after the invoice was received, interest shall be charged at a rate of nine percent (9%) per annum, in accordance with state law.

### Remedies.

A. Corrections of errors, defect and omissions. Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to the County. The acceptance of the work set forth herein by the County shall not relieve the Contractor of the responsibility of subsequent corrections of such errors.

B. Set Off. The County may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by the County, its agents, employees or recipients of its services, by virtue of any breach of this Contract by

the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.

C. Cumulative. All rights and remedies of County and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County by law.

Responsibility of Contractor.

A. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar the services hereunder.

B. Notwithstanding any review, approval, acceptance or payment for the services by the County, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.

C. If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in subparagraph A above it shall, if required by the County, perform at its own expense and without additional cost to the County, those services necessary for the correction of any deficiencies of damages resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to the County under the "Remedies" paragraph, or otherwise available by law.

Nondiscrimination. A contractor who is the recipient of County funds, or who proposes to perform any work or furnish any goods under this Contract shall not discriminate against any worker, employee or applicant because of religion, race, sex, age, physical or mental disability, or perceived disability. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.

Contingent Fee Prohibition. The Contractor, architect or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.

Termination. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, the County 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 County's option, become the County's property. The County 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 the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the County can affirmatively collect damages.

Termination of Contract for Convenience. The performance of work under this Contract may be terminated by the County, in whole or in part, upon written notice to the Contractor, when the County determines such termination is in the best interest of the County. The termination for convenience is effective on the date specified in the County's written notice. The County will pay all for reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

Termination of Multi-year Contract. If the County 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 cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the County's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the County from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The County shall notify the Contractor as

soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

Compliance with Law. The Contractor hereby represents and warrants that:

- A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with the professional standards;
- C. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- D. It is not in arrears in the payment of any obligations due and owing to the County or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- E. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;
- F. 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. Bankruptcy. Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify the County immediately. Upon learning of the actions herein identified, the County reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights the County may have as provided in this County or by law.

Ownership of Documents and Materials.

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services made available to the County upon request by the County and shall become and remain the exclusive property of the County upon termination or completion of the services. The County shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. The County shall be the owner for the purposes of copyright, patent or trademark registration.
- B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to the County of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with the County.
- C. The Contractor shall indemnify and save harmless the County from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless the County, its officers, agents, and employees with respect to any claim. Action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

Records. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that the County and its duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three years, except as required longer by law, following final payment and termination of this Contract, or until the

conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later. All subcontracts shall also comply with these provisions.

Independent Contractor.

A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although the County reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, the County cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by the County relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is responsible for determining the appropriate means and manner of performing the work.

B. Contractor represents and warrants that Contractor is not an employee of the County, is not currently employed by the Federal Government, and is not an officer, employee or agent of the County.

C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

D. Contractor agrees to immediately provide the County notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without the County's written consent, any obligation of the County to indemnify Contractor for any actions under this Contract.

Indemnification. The Contractor shall protect, hold free and harmless, defend and indemnify the County including its officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including Attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract. This obligation of indemnification shall apply to any acts or omissions, negligent conduct, whether active or passive, including acts or omissions of Contractor's agents or employees; except that it shall not be applicable to injury, death or damage to the property arising from the sole negligence of Wicomico County, its officers, agents and employees.

Use of County Facilities. Contractor and its employees or agents shall have the right to use only those facilities of the County that are necessary to perform the services under this Contract and shall have no right of access to any facility of the County without prior approval of County Administration. County shall have no responsibility for the loss, theft, mysterious disappearance of or damage to equipment, tools, materials, supplies, and other personal property of Contractor or its employees, subcontractors or agents which may be stored on County premises.

Force Majeure. Neither the County nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, County declaration of emergency, or war where such cause was beyond, respectively, the County's or Contractor's reasonable control. The County and Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

Third Party Beneficiaries. The County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

Survival. The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

Time is of the essence. Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.

Severability/Waiver. The County and Contractor agree that, if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract.

Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Maryland and Wicomico County without regard to principles of conflicts of law.

Whole Contract. This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.

Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.