

**Wicomico County Purchasing Department  
125 N. Division Street, Room B-3  
Salisbury, Maryland 21801**



**INVITATION FOR BID**

**PROJECT:** Pemberton Farm Land Lease

**DEPARTMENT:** Recreation, Parks and Tourism

**VENDOR:**

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

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

**BID OPENING:**

**DATE:** Friday, October 21, 2016

**TIME:** 2:00 PM

**TABLE OF CONTENTS**

**SECTION I: INTRODUCTION**.....3  
A. **PURPOSE** .....3  
B. **CLARIFICATION OF TERMS**.....3  
C. **QUESTIONS AND INQUIRES** .....3  
D. **FILLING OUT BID DOCUMENTS**.....3  
E. **SUBMISSION OF BID DOCUMENTS**.....3  
F. **OPENING OF BIDS**.....4  
G. **ACCEPTANCE OR REJECTION OF BIDS** .....4  
H. **QUALIFICATIONS**.....5  
I. **DESCRIPTIVE LITERATURE** .....5  
J. **NOTICE TO VENDORS** .....6  
K. **PIGGYBACKING**.....6  
**SECTION II: GENERAL INFORMATION**.....7  
A. **ECONOMY OF BID** .....7  
B. **PUBLIC INFORMATION ACT (PIA)** .....7  
C. **CONTRACT AWARD**.....7  
D. **AUDIT** .....7  
E. **NONPERFORMANCE**.....7  
F. **MODIFICATION OR WITHDRAWL OF BID** .....7  
G. **DEFAULT**.....8  
H. **COLLUSION/FINANCIAL BENEFIT** .....8  
I. **TAX EXEMPTION** .....8  
J. **CONTRACT CHANGES**.....8  
K. **ADDENDUM** .....9  
L. **EXCEPTIONS/ SUBSTITUTIONS** .....9  
M. **APPROVED EQUALS** .....9  
N. **DELIVERY** .....10  
O. **INSURANCE** .....10  
P. **BID EVALUATION**.....10  
**SECTION III: BID SPECIFICATIONS** .....11  
A. **SCOPE**.....11  
B. **GENERAL REQUIREMENTS**.....11  
C. **CONTRACT PERIOD**.....11  
D. **QUESTIONS**.....11  
E. **AWARD** .....11  
**FORM OF BID** .....12  
**EXHIBIT A – LEASE AGREEMENT** .....13  
**EXHIBIT B – STANDARD TERMS AND CONDITIONS** .....16  
**EXHIBIT C – PERMBERTON FARM LAND MAP**.....21

## **SECTION I: INTRODUCTION**

### **A. PURPOSE**

1. The purpose of this Invitation for Bid Document is for Wicomico County (“County”) to lease approximately forty-five (45) acres in size of farmland property owned by Wicomico County, Maryland, and part of the Pemberton Historic Park in conformity with the requirements contained herein (“Bid Document(s”).

### **B. CLARIFICATION OF TERMS**

1. Professional firms or individuals that submit a bid for award of a contract (“Contract”) are referred to as vendors (“Vendors”) in this document. The Vendor that is awarded the Contract is herein referred to as the (“Successful Vendor”).

### **C. QUESTIONS AND INQUIRES**

1. Questions must be addressed in writing to Wicomico County Purchasing at [purchasing@wicomiconcounty.org](mailto:purchasing@wicomiconcounty.org).
2. The last date to submit questions for clarification will be noon on Tuesday, October 11, 2016.
3. Addenda are posted on the County website at [www.wicomiconcounty.org](http://www.wicomiconcounty.org) under Government: Departments: Purchasing: at [www.wicomiconcounty.org/bids.aspx](http://www.wicomiconcounty.org/bids.aspx) at least five (5) calendar days before bid opening.
4. It is the Vendors responsibly to make sure all addenda are acknowledged in their bid. Failure to do so could result in the bid being disqualified.

### **D. FILLING OUT BID DOCUMENTS**

1. Use only forms supplied by the County.
2. One (1) original and two (2) copies of the bid form and any required attachments must be submitted in the solicitation and can be submitted in the same envelope unless otherwise instructed.
3. Bid Documents should be compiled as follows: (1) Cover letter, (2) Form of Bid, (3) References, (4) Exceptions Document and Signed addenda, if necessary (5) Individual Principal Document, (6) Vendor’s Affidavit of Qualification to Bid, and (7) Non-Collusive Affidavit
4. Where so indicated by the make-up of the Bid Documents, sums will be expressed in both words and figures, and in the case of a discrepancy between the two, the amount written in words will govern. In the event there is a discrepancy between the unit price and the extended totals, the unit prices will govern.
5. Any interlineation, alteration, or erasure will be initialed by the signer of the Bid Documents.
6. Each copy of the Bid Documents will be signed by the person(s) legally authorized to bind the Vendor to a contract, using the legal name of the signer. Bid Documents submitted by an agent will have a current Power of Attorney attached certifying the agent’s authority to bind the Vendor.
7. Vendor will supply all information and submittals required by the Bid Documents to constitute a proper and responsible completed Bid Document package.
8. Any ambiguity in the Bid Documents as a result of omission, error, lack of clarity or non-compliance by the Vendor with specifications, instructions, and/or all conditions of bidding will be construed in the light most favorable to the County.

### **E. SUBMISSION OF BID DOCUMENTS**

1. All copies of the Bid Documents and any other documents required to be submitted with the Bid Documents will be enclosed in a sealed envelope. The envelope will be addressed to the Wicomico County Purchasing Department and will be identified with the project name: **PEMBERTON FARM LAND LEASE** and the Vendor's name and address. If the Bid Documents are sent by mail, the sealed envelope will be enclosed in a separate mailing envelope with the notation "SEALED BID DOCUMENTS ENCLOSED" on the face thereof.
2. Bids must be mailed or hand carried to Wicomico County Purchasing Department, 125 N. Division Street, Government Office Building, Room B-3, Salisbury, MD 21801, in order to be received in the office of the Purchasing Agent **prior** to the announced bid deadline. *Bids received after said time or delivered to the wrong location will be returned to the Vendor unopened.*
3. **Bids are due and will be opened at 2:00 p.m. on Friday, October 21, 2016.**
4. If you are delivering a bid in person please keep in mind to allow time to sign-in at the security station in the lobby. It is fully the responsibility of the Vendor to insure that the bid is received on time.
5. 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 bid.
6. Vendors, or their authorized agents, are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting Bid Documents; failure to do so will be at the Vendor's own risk.
7. A fully executed Affidavit of Qualification to Bid will be attached to each Bid Document.
8. **MINORITY VENDORS ARE ENCOURAGED TO PARTICIPATE.**
9. All Vendor submitted Bid Documents will be valid for a minimum of sixty (60) days from the date of Bid Document opening.
10. Electronically mailed bids are **not** considered sealed bids and will **not** be accepted.

**F. OPENING OF BIDS**

1. Bid Documents received on time will be opened publicly and Vendor's names and total costs will be read aloud for the record.
2. The Contract will be awarded or all Bid Documents will be rejected within sixty (60) days from the date of the Bid Document opening.

**G. ACCEPTANCE OR REJECTION OF BIDS**

1. Unless otherwise specified, the Contract will be awarded to the most RESPONSIBLE and RESPONSIVE Vendor complying with the provisions of the Bid Documents, provided the Bid price is reasonable, does not exceed the funds available, and it is in the best interest of the County to accept it. The County reserves the right to reject the Bid Documents of any Vendor who has previously failed to perform properly in any way or complete on time contracts of a similar nature; or a Bid Document from a Vendor who, investigation shows, is not in a position to perform the Contract; or Bid Documents from any person, firm, or corporation which is in arrears or in default to the County for any debt or contract.
2. Completed Bid Documents from Vendors debarred from doing business with the State of Maryland or the Federal Government will not be accepted.
3. In determining a Vendor's RESPONSIBILITY, the County may consider the following qualifications, in addition to price:

- a. Ability, capacity, and skill to provide the commodities or services required within the specified time, including future maintenance and service, and including current financial statement or other evidence of pecuniary resources and necessary facilities.
  - b. Character, integrity, reputation, experience and efficiency.
  - c. Quality of past performance on previous or existing contracts, including a list of current and past contracts and other evidence of performance ability.
  - d. Previous and existing compliance with laws and ordinances relating to contracts with the County and to the Vendor's employment practices.
  - e. Evidence of adequate insurance to comply with Contract terms and conditions.
  - f. Statement of current work load and capacity to perform/provide the Goods and/or Services.
  - g. Explanation of methods to be used in fulfilling the Contract.
  - h. The Vendor, if requested, will be prepared to supply evidence of its qualifications, listed above, and its capacity to provide/perform the Goods and/or Services; such evidence to be supplied within a specified time and to the satisfaction of the County.
4. In determining a Vendor's RESPONSIVENESS, the County will consider whether the Bid Document conforms in all material respects to the Bid Documents. The County reserves the right to waive any irregularities that may be in its best interest to do so.
  5. The County will have the right to reject any and all Bid Documents, where applicable to accept in whole or in part, to add or delete quantities, to waive any informalities or irregularities in the Bid Document received, to reject a Bid Document not accompanied by required Bid security or other data required by the Bid Documents, and to accept or reject any Bid Document which deviates from specifications when in the best interest of the County. Irrespective of any of the foregoing, the County will have the right to award the Contract in its own best interests.

#### **H. QUALIFICATIONS**

1. The Vendor must be in compliance with the laws regarding conducting business in the State of Maryland.  
All Vendors shall provide a copy Certificate of Status from the Maryland Department of Assessments and Taxation, evidencing the Vendor is in good standing with the State of Maryland. See [https://sdatcert1.resiusa.org/certificate\\_net/](https://sdatcert1.resiusa.org/certificate_net/) for information on obtaining the Certificate of Status. *Certificates of status are not available for trade names, name reservations, government agencies, sole proprietorships, and some other accounts as these are not legal entities and thus are not required for these categories of Vendors.* For more information on the Certificate of Status please see <http://www.dat.state.md.us/sdatweb/COSinfo.html> .
2. Wicomico County reserves the right, at its sole discretion, to extend the date this documentation must be provided. The Vendor's inability to provide this documentation could result in the bid being rejected.
3. All Vendors who wish to bid on County projects and contracts need to register as a bidder at [www.wicomicocounty.org/list.aspx?Mode=Subscribe#bids](http://www.wicomicocounty.org/list.aspx?Mode=Subscribe#bids) by checking off the categories for which you wish to be informed of future bids.

#### **I. DESCRIPTIVE LITERATURE**

1. The proposed descriptive literature fully describing the product bid is what is intended to be included as the price. Failure to do so may be cause for rejection of the bid.

2. Any items, systems or devices supplied in this bid that are proprietary in nature relative to maintenance, repair, servicing or updating must be disclosed on the bid form.

**J. NOTICE TO VENDORS**

1. Before a Vendor submits the Bid Documents it will need to become fully informed as to the extent and character of the Goods and/or Services required and are expected to completely familiarize themselves with the requirements of this Bid Document's specifications. Failure to do so will not relieve the Vendor of the responsibility to fully perform in accordance therewith. No consideration will be granted for any alleged misunderstanding of the material to be furnished or the Services to be performed, it being understood that the submission of a Bid Document is an agreement with all of the items and conditions referred to herein.

**K. PIGGYBACKING**

1. 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 bid solicitation.
2. 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.
3. 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.
4. 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.

**END OF SECTION**

## **SECTION II: GENERAL INFORMATION**

### **A. ECONOMY OF BID**

1. Bid Documents will be prepared simply and economically, providing straightforward and concise description of the Vendor's capabilities to satisfy the requirements of the Bid Documents. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective Bid Document are neither required nor desired.

### **B. PUBLIC INFORMATION ACT (PIA)**

1. Wicomico County is subject to the Maryland Public Information Act and may be required to release bid submissions in accordance with the Act.
2. Any materials the Vendor deems to be proprietary or copyrighted must be marked as such; however, the material may still be subject to analysis under the Maryland Public Information Act.

### **C. CONTRACT AWARD**

1. A written award by the County to the Successful Vendor in the form of a Purchase Order or other contract document will result in a binding Contract without further action by either party. If the Successful Vendor fails or refuses to sign and deliver the Contract and the required insurance documentation, the County will have the right to award to the next responsible and responsive Vendor. Contract will be executed by the Successful Vendor within fifteen (14) calendar days of receipt of the Contract.
2. Bid Documents and Contracts issued by the County will bind the Vendor to applicable conditions and requirements herein set forth, unless otherwise specified in the Bid Documents, and are subject to all federal, state, and municipal laws, rules, regulations, and limitations.
3. County personal property taxes ("Taxes") must be on a current basis; if any such Taxes are delinquent, they must be paid before award of Contract. Failure to pay will result in the award of Contract to another Vendor.
4. The County reserves the right to engage in individual discussions and interviews with those Vendors deemed fully qualified, responsible, suitable and professionally competent to provide the required Goods and/or Services should the project size warrant it. Vendors will be encouraged to elaborate on their qualifications, performance data, and staff expertise.

### **D. AUDIT**

1. The Successful Vendor agrees to retain all books, records, and other documents relative to the awarded Contract for five (5) years after final payment, or until audited. The County, its authorized agents, and/or State auditors will have full access to and the right to examine any of said materials during said period.

### **E. NONPERFORMANCE**

1. The County reserves the right to inspect all operations and to withhold payment for any goods not performed or not performed in accordance with the specifications in this Bid Document. Errors, omissions or mistakes in performance will be corrected at no cost to the County. Failure to do so will be cause for withholding of payment for that Goods and/or Services. In addition, if deficiencies are not corrected in a timely manner, the County may characterize the Successful Vendor as uncooperative, which may jeopardize future project order solicitations.

### **F. MODIFICATION OR WITHDRAWAL OF BID**

1. A Bid Document may not be modified, withdrawn, or cancelled by the Vendor during the stipulated time period following the time and date designated for the receipt of Bid Documents, and each Vendor so agrees in submitting Bid Documents.

#### **G. DEFAULT**

1. The Contract may be cancelled or annulled by the County in whole or in part by written notice of default to the Successful Vendor upon non-performance, violation of Contract terms, delivery failure, bankruptcy or insolvency, any violation of state or local laws, or the making of an assignment for the benefit of creditors. An award may then be made to the next most highly rated Vendor, or when time is of the essence, similar commodities and/or service may be purchased on the open market. In either event, the defaulting Vendor (or his surety) will be liable to the County for cost to the County in excess of the defaulted Contract price.
2. If a representative or warranty of either Party to the Contract is false or misleading in any material respect, or if either Party breaches a material provision of the Contract (“Cause”), the non-breaching Party will give the other Party written notice of such cause. If such Cause is not remedied within seven (7) days after receipt of such notice, (unless, with respect to those Causes which cannot be reasonably corrected or remedied within such seven (7) day period, the breaching Party will have commenced to correct or remedy the same within such seven (7) day period and thereafter will proceed with all due diligence to correct or remedy the same), the Party giving notice will have the right to terminate this Contract upon the expiration of such seven (7) day period.

#### **H. COLLUSION/FINANCIAL BENEFIT**

1. The Vendor certifies that his/her Bid is made without any previous understanding, agreement, or connection with any person, firm, or corporation making a Bid Document for the same project; without prior knowledge of competitive prices; and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action.
2. Upon signing the Bid Document, Vendor certifies that no member of the governing body of the County, or members of his/her immediate family, including spouse, parents or children, or any other officer or employee of the County, or any member or employee of a Commission, Board, or Corporation controlled or appointed by the Executive or Council has received or has been promised, directly or indirectly, any financial benefit, related to this Bid Document and subsequent Contract.

#### **I. TAX EXEMPTION**

1. In buying products directly from a Vendor 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.
2. According to the Office of the Comptroller of Maryland, a *Contractor is responsible for paying sales tax* on his/her purchases relating to any projects or services and should incorporate it into their bid.
3. Contractors cannot use the County tax exemption to buy materials or products used on County projects.

#### **J. CONTRACT CHANGES**

1. NO CLAIMS may be made by anyone that the scope of the project or that the Vendor’s Goods and/or Services have been changed (requiring changes to the amount of compensation to the Vendor or other adjustments to the Contract) UNLESS such changes or adjustments have been



made by an approved WRITTEN AMENDMENT (Change Order) to the Contract signed by the Purchasing Agent (and the County Council, if required), prior to additional Goods and/or Services being initiated. Extra Goods and/or Services performed without prior, approved, written authority will be considered as unauthorized and at the expense of the Vendor. Payment will not be made by the County.

2. NO ORAL conversations, agreements, discussions, or suggestions, which involve changes to the scope of the Contract, made by anyone including any County employee, will be honored or valid. No written agreements or changes to the scope of the Contract made by anyone other than the Purchasing Agent (with County Council approval, if required) will be honored or valid.
3. If any Change Order in the Goods and/or Services results in a reduction in the Goods and/or Services, the Vendor will neither have, nor assert any claim for, nor be entitled to any additional compensation for damages or for loss of anticipated profits on Goods and/or Services that are eliminated.

**K. ADDENDUM**

1. No oral statements of any person will modify or otherwise affect or interpret the meaning of the Contract specifications, or the terms, conditions, or other portions of the Contract. All modifications and every request for any interpretation must be addressed to the Wicomico County's Purchasing Agent and to be given consideration, must be received at least seven (7) days prior to the date fixed for the opening of Bid Documents.
2. Any and all interpretations, corrections, revisions, and amendments will be issued by the Purchasing Agent to all holders of Bid Documents in the form of written addenda. Vendors are cautioned that any oral statements made by any County employee that materially change any portion of the Bid Documents will not be relied upon unless subsequently ratified by a formal written amendment to the Bid Document.
3. All addenda will be issued so as to be received at least five (5) days prior to the time set for receipt of Bid Documents, and will become part of the Contract and will be acknowledged in the Bid Document form. Failure of any Vendor to receive any such addenda will not relieve said Vendor from any obligation under the Bid Document as submitted.
4. Vendors are cautioned to refrain from including in their Bid Document any substitutions which are not confirmed by written addenda. To find out whether the County intends to issue an amendment reflecting an oral statement made by any employee, contact the Wicomico County's Purchasing Agent during normal business hours.
5. The Wicomico County Purchasing Agent reserves the right to postpone the Bid Document opening for any major changes occurring in the 5-day interim which would otherwise necessitate an Addendum.

**L. EXCEPTIONS/ SUBSTITUTIONS**

1. Any exceptions or substitutions to the specifications requested should be marked on the bid form and listed on a separate sheet of paper attached to the bid.
2. An exception to the specifications may not necessarily disqualify the bid. The County will determine if the exception is an essential deviation or a minor item.
3. In the case of a minor deviation, the County maintains the option to award to that Vendor if it determines the performance is not adversely affected by the exception.

**M. APPROVED EQUALS**

1. 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.
2. 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.
3. 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.

**N. DELIVERY**

1. All items shall be delivered F.O.B. destination and delivery costs and charges included in the bid unless otherwise stated in the specifications or bid form.

**O. INSURANCE**

1. If required by the General Conditions or Terms and Conditions, the Successful Vendor shall provide the County with Certificates of Insurance within ten (14) calendar days of bid award notification evidencing the required coverage.
2. Successful Vendor must provide Certificates of Insurance before commencing work in connection with the Contract.

**P. BID EVALUATION**

1. If some characteristic of the bid requires that the bid must be reviewed by the County Council, the award can be expected within 30 calendar days.
2. Bid tabulations will be posted on the County website at [www.wicomicounty.org/bids.aspx](http://www.wicomicounty.org/bids.aspx) and click on the box Show Closed/Awarded/Cancelled Bids and find the bid tabulation for the bid you are interested in. The tabulations will typically be posted within 24 hours of the bid opening.
3. Bid evaluations typically take 1-2 weeks.

**END OF SECTION**

### **SECTION III: BID SPECIFICATIONS**

#### **A. SCOPE**

1. The County is seeking bids to lease approximately forty-five (45) acres in size of farmland property owned by Wicomico County, Maryland, and part of the Pemberton Historic Park in accordance with the terms and conditions and specifications set forth in this solicitation.
2. The property is located on Pemberton Drive in Salisbury, Maryland.

#### **B. GENERAL REQUIREMENTS**

1. The use of the premises is solely for agricultural purposes.
2. Complete and return with your bid the attached, EXHIBIT A - LEASE AGREEMENT FOR FARM LAND PEMBERTON HISTORICAL PARK.

#### **C. CONTRACT PERIOD**

1. The term of this Lease shall be for one (1) year commencing on January 1, 2017 and terminating on December 31, 2017.
2. The Contract may be renewed for two (2) additional one-year terms, if agreeable to both parties, with the rent for any renewal term to be increased by the Consumer Price Index increase for the current year.

#### **D. QUESTIONS**

1. The last day for questions will be noon on Tuesday, October 11, 2016.

#### **E. AWARD**

1. The County intends to award to the highest Responsive and Responsible Vendor meeting the specifications.

**END OF SECTION**

**THIS AND PREVIOUS SECTIONS, OTHER THAN THE COVER PAGE, DO NOT NEED TO BE RETURNED WITH SUBMITTAL**

## FORM OF BID

To whom it may concern:

We hereby submit our Bid Documents for "PEMBERTON FARM LAND LEASE" as indicated in the Bid Documents. Having carefully examined the Bid Documents and having received clarification on all items of conflict or upon which any doubt arose, the undersigned hereby requests consideration of our Vendor for award of the referenced Bid.

The Vendor agrees that the bid will be good for at least sixty (60) days unless otherwise indicated in the bid specifications.

**NOTE: THIS BID FORM MUST BE SIGNED BY AN OFFICER OF YOUR COMPANY OR AN AUTHORIZED AGENT FOR THIS BID TO BE CONSIDERED VALID BY THE COUNTY.**

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

NAME: (PRINT) \_\_\_\_\_

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

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

\_\_\_\_\_

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

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

E-MAIL: \_\_\_\_\_

## EXHIBIT A

### LEASE AGREEMENT FOR FARM LAND PEMBERTON HISTORICAL PARK

THIS FARM LEASE, made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2016, by and between Wicomico County, Maryland, a body politic and corporate, acting by and through the Department of Recreation and Parks (hereinafter referred to as "Lessor"), and \_\_\_\_\_ hereinafter referred to as "Lessee"):

#### WITNESSETH

1. *Premises:* Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor all that tract or parcel of land, situate in the Salisbury Election District of Wicomico County, State of Maryland, containing 45 acres of land, more or less, as shown on a Pemberton Historical Park Facility Plat of the property, and being fully contained within the boundaries of the property acquired by Wicomico County, Maryland, as part of the Pemberton Park property. In the event that there should be any disagreement between the parties as to the lines of the property herein intended to be licensed, the decision of the Lessor as to the actual designation of the line or lines shall be final.

2. *Term:* The term of this Lease shall be for one (1) year commencing on January 1, 2017 and terminating on December 31, 2017. The contract may be renewed for two (2) additional one-year terms, if agreeable to both parties, with the rent for any renewal term to be increased by the Consumer Price Index increase for the current year. The total of one (1) year terms shall not exceed three (3) years. At the end of three (3) years, the contract will be re-bid for the 2020 lease year.

3. *Rent:* The Lessee shall pay the Lessor during the one (1) year term of this Lease a rental payment of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per acre for a total of \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$\_\_\_\_\_). The rental shall be paid in full by the Lessee to the Lessor at the time this agreement is executed and no later than December 31<sup>st</sup> of the prior year for any one-year renewal terms. If Lessee shall fail to pay the rent on or before December 31<sup>st</sup> of the prior year, then Lessee shall pay a late charge of Five percent (5%) of the amount of delinquent rent due as additional rent.

4. *Use:* Lessee shall maintain the demised premises solely for the planting, growing and harvesting of crops, as specified and permitted in a Nutrient Management Plan. The Lessee covenants and agrees that he shall occupy and use the demised premises solely for agricultural and related purposes and shall farm, cultivate and manage the whole of the premises in a good and husbandlike manner and shall keep the whole in good condition and not allow any part of the land to become impoverished and to have the arable land at all times clean and free from weeds and invasive plants.

5. *Assignment and Subletting:* The Parties further covenant and agree that the premises may not be assigned, sublet or any portion thereof without the prior written consent of the Lessor.

6. *Waste:* Lessee covenants and agrees that the Lessee will not commit waste on or damage to the farm and will use due care to prevent others from doing so.

7. *Indemnification:* The Lessee hereby agrees to indemnify the Lessor against and hold the Lessor harmless from any and all claims or demands for loss of or damage to property or for injury or death to any person from any cause whatsoever, upon or about the leased premises or adjacent roads or walkways, occasioned wholly or in part by any act or omission of the Lessee, its agents, licensees, contractors, customers, or employees during the term of this Lease. Lessee hereby releases Lessor, its agents, servants and employees from any and all present or future claims, causes, actions, or damages arising out of or in any manner connected with the condition of the property as it exists now or in the future. Lessee hereby acknowledges that it agrees to accept the Property in such condition "AS IS" existing WITH ANY AND ALL FAULTS at the time of the execution hereof or afterward. The Lessee shall also pay all costs, expenses and attorneys' fees that may be incurred or paid by the Lessor in enforcing the terms and conditions of this Lease, whether incurred as a result of litigation or otherwise.

8. *Insurance:* The Lessee agrees to keep in force at all times during the term hereof, at its own expense, general liability insurance against claims for personal injury or property damage in an amount of at least one million dollars (\$1,000,000.00). Such policy and policies shall name the Lessor and the Lessee as the insured; said policy shall be issued by an insurance company satisfactory to the Lessor. Within ten (10) days after the date hereof, the Lessee shall deliver to the Lessor certificates of insurance certifying that such insurance is in full force and effect.

9. *Surrender of Premises:* If, during the term of this Lease, it is determined by the Lessor that any part or portion of the leased premises is needed for park improvement or operation, then the Lessor shall give the Lessee notice of the Lessor's intention to use the necessary part or portion of the leased premises at any time prior to the end of the calendar year, in which event this Lease shall be terminated as to the property so designated by the Lessor commencing at the end of the lease year. In the event that the County elects to use any part of the property as aforesaid, the rent for the remaining property will be apportioned at the hereinbefore stated charge per acre, pro-rated for the remaining property to be used by the Lessee.

10. *Guidelines and Crop Restrictions:* This Lease is subject to the following guidelines and crop restrictions:

The Lessor reserves the right to prevent the production of any crop on any or all of the land where the production of such crop would clearly damage the land due to excessive erosion or other causes.

The Lessee will use fertilization practices which will prevent depletion of the essential plant food elements in the soil.

The Lessee will provide sufficient quantities of lime to keep the land at proper pH for crop production.

The Lessee will not bring any livestock or poultry on the land and will not use any buildings without the express approval of the Lessor.

No fertilizers or manures may be stored on the property hereby leased. All manure shall be spread and tilled utilizing commonly accepted farming practices unless other storage permission is granted.

11. *Rules and Regulations:* The Lessee hereby agrees to abide by all rules and regulations as set forth by the Lessor. The Lessee hereby agrees that it will not store equipment on the leased premises unless specifically approved by the Lessor. The Lessee shall make no alterations, installations, additions, or improvements to the leased premises without the Lessor's written consent, and then only in a manner and

by such persons as may be approved by the Lessor. The cost of all such alterations, installations, additions, or improvements shall be borne by the Lessee. The Lessee shall disclose any and all MDE investigations, fines, or reports made against the Lessee within the last five (5) years and during the lease period.

12. *Entry and Inspection:* The Lessee shall permit the Lessor and/or its agents or representatives to enter the herein leased premises at all reasonable times to inspect the same and the improvements thereon and to determine whether the herein leased premises are being properly maintained.

13. *Default and Remedies:* If Lessee shall fail to timely pay the rent or not comply with any of the terms, covenants and conditions of this Lease, then Lessee shall be in default. In the event of such default, upon notice from Lessor to Lessee, Lessor shall have the option to terminate the Lease, and shall be entitled to immediate possession. If Lessor is required to take legal action for non-payment of rent or eviction of Lessee, then Lessee shall pay all reasonable expenses, including attorneys' fees and court costs, as additional rent.

14. *Relationship Between Parties:* This Lease shall not create or be construed as creating a partnership, joint venture or employment relationship between Lessor and Lessee. Neither Lessor nor Lessee shall be liable, except as otherwise provided in this Lease, for any obligations or liability incurred by the other party.

15. *Complete Agreement:* This Lease contains the final and entire agreement between the parties hereto, and neither they nor their agent shall be bound by any other terms, conditions, representations, or warranties not written herein, and this Lease cannot be changed or modified except by written instruments subsequently executed by the parties hereto.

16. *Binding Effect:* This Lease shall inure to the benefit of and be binding upon the Lessor and the Lessee, and their personal representatives, successors and assigns, provided that no right shall inure to any personal representative, successor or assign of Lessee, unless approved by Lessor. If Lessee shall consist of more than one person or entity, they shall be bound jointly and severally for performance of the obligation of the Lessee hereunder.

17. *Applicable Law:* This Lease shall be governed and controlled by the laws of the State of Maryland.

WITNESS, the hands and seals of the parties hereto on the day and year first above written.

ATTEST:

\_\_\_\_\_

\_\_\_\_\_(SEAL)

Lessee

WITNESS:

WICOMICO COUNTY, MARYLAND

\_\_\_\_\_

\_\_\_\_\_(SEAL)

Bob Culver, County Executive

## EXHIBIT B

### WICOMICO COUNTY, MARYLAND STANDARD TERMS AND CONDITIONS

This document sets out provisions generally applicable to all Wicomico County (“County”) contracts. These provisions 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 any special conditions. This document and the Contract are intended to be complementary and shall be construed accordingly. Should there be a direct contradiction between these terms and conditions and the Contract, then the Contract shall govern and control those contradictory terms and conditions. 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.

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 notice of such filing, 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.

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.

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.

Counterparts and Signature. 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. Unless otherwise specified by the County, this Contract may be signed in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. An electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.



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.

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.

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.

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.

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 obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with the County to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name County, its employees, and agents as ADDITIONAL INSURED.

- C. 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.
- D. All insurance policies shall have a minimum 30 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.
- E. When insurance coverage is renewed Contractor shall provide new certificates of insurance prior to expiration of current policies.

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, sexual orientation, 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.

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 be 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 or 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.

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 six percent (6%) per annum.

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.

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 of 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.

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.

Subcontracting or Assignment. The benefits and obligations of this Contract shall inure to and be binding upon the parties and neither this Contract nor the services to be performed 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.

Substance Abuse and Drug Testing. Contractors and contract employees are subject to the provisions of the County's policy on substance abuse and drug testing regarding the use, possession, or sale of drugs or alcohol while performing County business or while in a County facility. Violation of these provisions or refusal to cooperate with implementation of the County's policy on substance abuse and drug testing can result in the barring of contract personnel from County facilities or from participating in County operations.

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

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.

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

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.

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.

EXHIBIT C

