

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

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

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

hereinafter ("Department"),

and

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

hereinafter ("Contractor").

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

WHEREAS, the Contractor is a non-profit conservation organization and is exempt from State Finance and Procurement law pursuant to Article, §11-203(a)(1)(xviii) of the Annotated Code of Maryland;

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

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

ARTICLE I - SCOPE OF WORK

The Contractor shall: xxxxxxxxx as described in Exhibit A.

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

ARTICLE II - COMPENSATION AND METHOD OF PAYMENT

The services set forth above shall be performed for a total payment not to exceed XXXXXXXXXX Dollars (\$ 00.00). The Contractor shall submit billings for all costs expended in the performance of this Memorandum in accordance with a payment schedule set forth in the attached Scope of Work. In the absence of a payment schedule, billing shall be monthly. If the Scope of Work contains a schedule for completion of various components of the work, each monthly billing shall identify the progress made in relation to the schedule and the payment being requested. The Contractor shall follow cost accounting practices acceptable to the Department. Billings shall be due and payable within 30 days of receipt by the Department.

ARTICLE III - TERM

The term of this Memorandum shall be from XX, 2016 through XX, 20XX. No work may be initiated under this Memorandum until it has been fully executed by all parties and the Contractor has been instructed to proceed by the Department.

ARTICLE IV - GENERAL CONDITIONS

The Department of Natural Resources General Conditions for Memoranda of Understanding (REV. 12/2011) are attached and made a part of this Memorandum.

ARTICLE V - CONTRACT REPRESENTATIVES

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

Department: Department Representative
Chesapeake and Coastal Service
(and/ or her designee)
Phone: 410.260.87XX
Email: name.name@maryland.gov

Contractor: XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
Phone: XXXXXX
Email: XXXXXX

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

ARTICLE VI - KEY PERSONNEL

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

XXXXXXXXXX
Phone: XXXXXXXXX
Email: XXXXXXXXX

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

ARTICLE VII - MERGER

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

IN WITNESS WHEREOF, the parties have executed this Memorandum by causing the same to be signed on the day and year first above written.

WITNESS

CONTRACTOR

Print Name:

By _____

XXXXXXXXXX
XXXXXXXXXX

Date:

WITNESS

STATE OF MARYLAND
DEPARTMENT OF NATURAL
RESOURCES

Print Name:

By _____

Matthew J. Fleming, Director
Chesapeake and Coastal Service

Date:

Print Name:

By _____

DNR Procurement Officer

Date:

Approved as to form and legal sufficiency

this ____ day of _____, 20 ____

Assistant Attorney General

Exhibit A

Scope of Work

Project Title:

Name of Grant: FFY16 Chesapeake Bay Implementation Grant Section 117

Funding: Federal \$ 00.00
 Non-Federal \$ 00.00
 Total: \$ 00.00

Funding Period:

Funding Recipient:

Project Area:

Objective X		Budget for this Objective:	<i>Total: \$00.00 EPA Share: \$00.00 Non Federal Share: \$00.00</i>
Narrative Summary of Outputs for this Objective:			
Description of Objective:			
Tasks Under this Objective:			
Specific Outputs for this Objective:	<u>Programmatic</u> <u>Administrative</u>		

<p>Outcomes for this Objective:</p>	<p><u>2014 Chesapeake Bay Watershed Agreement Goals and Outcomes:</u></p>
<p>Link to EPA's Strategic Plan:</p>	<p><u>EPA Strategic Plan Goal</u> <u>EPA Strategic Plan Objective</u></p>
<p>Link to Jurisdiction's WIP Commitment(s):</p>	
<p>Link to Priority Practices and/or Priority Watersheds</p>	<p>Priority Practices</p> <p>(1) Which priority practices will be implemented in this objective?</p> <p>(2) Please provide a short justification as to why the practice is a priority for the location that it will be implemented.</p> <p>(3) Which priority strategies will be implemented in this objective?</p> <p>Priority Watershed</p> <p>(1) Which priority watershed will be addressed by this objective?</p> <p>(2) Watershed considered priority by (please check one): <input type="checkbox"/> COAST http://chesapeake.usgs.gov/coast/index.html <input type="checkbox"/> SPARROW http://www.chesapeakebay.net/recoveryinvest.aspx?menuitem=34712 <input type="checkbox"/> USDA Core 4 <input type="checkbox"/> Other (please include a short justification as to why this watershed is considered a priority)</p> <p>(3) Which priority strategy(s) will be implemented in this objective?</p>

Progress for this Objective	<i>(to be completed and submitted to the PO with each progress report)</i>
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Reporting/Documentation Requirements and Award Conditions:

1. One electronic copy of each **status report** shall be submitted to the **CBIG Grant Manager**. The reports must document progress toward the achievement of the above stated goals, objectives, and milestones during each quarter and semi-annual time frame. A succinct description of activities shall be reported for each objective listed above. These reports shall also describe difficulties encountered for each activity, any changes in expected deliverable dates, any budget changes, or changes in staffing. Each report shall also include a list of deliverables developed during the reporting period and the format in which they were developed. Submit **one (1) copy in MS Word format via email to name at email**. Reports are due as follow:

<u>Period</u>	<u>Date</u>
July 1, 2016 – September 30, 2016	October 15, 2016
July 1, 2016 – December 31, 2016 (semi-annual)*	January 1, 2017
January 1, 2017 - March 31, 2017	April 15, 2017
January 1, 2017 – June 30, 2017 (final)*	June 30, 2017

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

2. The contractor will send **one (1)** electronic copy of the **final report/work product** to **name**. The final report shall cover activities conducted over the entire project period. For ongoing projects, the final report shall also include a summary or table of what has been accomplished in previous years (for example – number of acres restored, number of BMPs installed, etc.) In addition to the final report/work product, a **one-page abstract** suitable for distribution in newsletters, on-line, etc. must be submitted. The final report and abstract are due on **XXX**.

Invoices shall be submitted for periods ending 12/31, 3/31, 6/30 and 9/30. If non-Federal match is required; it is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be approved based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over the life of the contract. Non-Federal match documentation and back-up information shall be provided with each invoice. The final invoice and match with appropriate back-up information shall be provided within 30 days of the end of the contract.

Due to EPA MBE/WBE reporting requirements, recipients need to fill out along with each invoice ending 12/31, 3/31, 6/30 and 9/30 a list of MBEs and WBEs utilized for procuring Services and Supplies using the attached reporting form (Exhibit D). Only procurements with certified Maryland MBE/WBEs should be listed.

3. All data and information generated though grant funding, whether EPA funds or Cost Share is considered public information and shall be made available to the public unless there is a grant/cooperative agreement condition that specifies otherwise. All activities (direct funds or match) must occur within the Chesapeake Bay Watershed. Cost share funds must be expended for activities such as staff working on Bay related projects or other projects in direct support of the Chesapeake Bay Agreement.

All data and information generated through grant funding, whether EPA funds or Cost Share is considered public information and shall be made available to the public unless there is a grant/cooperative agreement condition that specifies otherwise. All activities (direct funds or match) must occur within the Chesapeake Bay Watershed. Cost share funds must be expended for activities such as staff working on Bay related projects or other projects in direct support of the Chesapeake Bay Agreement.

4. The funding recipient agrees to comply and shall require all sub recipients/contractors to comply with the provisions of the 2015 U.S. EPA Chesapeake Bay Program Grant and Cooperative Agreement Guidance:
http://www.epa.gov/region3/chesapeake/grants/2015Guidance/2015-CBPO-GG_030315.pdf
5. If a contract involves environmental data collection, such as direct measurements, data collection from other sources, or data compilation from computerized databases and information systems - a Quality Assurance Project Plan (QAPP) must be submitted 30 days PRIOR to any data collection or data compilation activity. The QAPP must include information on how the grantee will adhere to EPA's Locational Data Policy. QAPPs must be submitted electronically. QAPPs must be prepared in accordance with EPA QA/R-5: EPA Requirements for QAPP's http://www.epa.gov/quality1/qa_docs.html.
6. All agencies, academic institutions, and/or consulting firms responsible for field sample collection and/or laboratory analysis of environmental samples collected using CBP funds or match funds will participate in CBP's Coordinated Split Sample Program and/or interlaboratory sample comparison program. See <http://www.chesapeakebay.net/about/programs/qa> for additional information.
7. The contractor shall comply with the attached EPA award conditions (Appendix C), which are expressly incorporated and made part of this Contract herein.
8. The recipient shall require that all subcontractors comply with all award conditions and documentation requirements.
9. The recipient agrees that any reports, documents, publications or other materials developed for the public distribution supported by this assistance agreement shall contain the following statement: **'This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement CB96336601-1 to XXX through a grant from the Maryland Department of Natural Resources. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.'**
10. For each kind of organization there are Federal principles for administrative and audit requirements and for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs.

IF THIS TYPE OF ORGANIZATION RECEIVES FUNDS THROUGH THIS AGREEMENT	THEN THESE REQUIREMENTS APPLY
Non-Profit Organization Educational Institutions State, Local, or Indian Tribal Government	EPA Grant Regulation, 2 CFR Part 1500 OMB Circulars on Cost Principles, 2 CFR Part 200, Subpart E Disadvantaged Business Enterprise Regulation, 40 CFR Part 33 Suspension and Debarment Regulation, 2 CFR Part 180, and 2 CFR Part 1532 Intergovernmental Review Regulation, 40 CFR Part 29

The recipient and any subrecipients must comply with and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, Office of Management and Budget (OMB) Circulars (<http://www.whitehouse.gov/omb/circulars/>), terms and conditions and approved applications.

11. All restoration projects utilizing CBP funds must post a CBP education sign. Signs are available free of charge from the EPA Chesapeake Bay Program Office.

GIS/Data Guidelines

A. Data, databases, and products associated with electronic Geographic Information Systems (GIS), which have been collected, manipulated, or purchased using funds administered by Chesapeake and Coastal Service (CCS), and/or Match funds, will be transferred to CCS according to the following terms:

1. Data and products directly purchased shall become property of CCS.
2. All other data and products shall be transferred to CCS for internal use only. Any other use of such data shall occur only after CCS has consulted with the contractor on the limitations of such data. In the case of certain sensitive information, limitations on transfer of data shall be determined by mutual agreement between the Contractor and CCS. The contractor shall in no case be responsible for CCS’s use of such data.

B. For any CBIG award that is providing federal funds for collection or production of geospatial data (e.g., GIS data layers), the recipient will comply to the maximum extent practicable with Executive Order 12906, “Coordinating Geographic Data Acquisition and Access: The National

Spatial Data Infrastructure” Federal Register, Vol. 59, Number 71, pp. 17671-17674, the award recipient shall document all new geospatial data it collects or produces using the standard developed by the Federal Geographic Data Committee (FGDC), and make that standardized documentation electronically accessible to EPA. The standard can be found at http://www.epa.gov/region03/chesapeake/grants/2014Guidance/Attachment8_CIMS_GrantGuidance_BOLDfinal_12193.pdf

- C. Any electronic data to be transferred to CCS in conjunction with a GIS shall be transferred in ESRI ArcGIS or TNTmips compatible format, or other mutually acceptable format. Non-spatial text or database data to be transferred to CCS shall be delivered in Microsoft Word, Microsoft Excel, dBase (.dbf), comma-separated values (.csv) or ASCII compatible formats. Acceptable media for delivery includes CD, DVD and USB external hard drive. All delivery requirements shall be coordinated directly through the CBIG grant manager, with media specifications as determined on a case-by-case basis by the grant manager, in coordination with the technical staff of CCS and technical staff of the contractor.
- D. All deliverables will be submitted directly to the CBIG grant manager. Status reports will be submitted in paper copy and electronic format. Final deliverable work products, including the Final Report, any geographic or mapping related efforts, and those items listed in the Scope of Work as expected work products, must be submitted as follows: one (1) copy in electronic format on compact disc.

Budget Detail

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

FFY16 Budget Detail

Project Name:

Agency Organization:

Term:

Category	Federal	Non-Federal	Total
Personnel	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Indirect Charges (X%)	\$0.00	\$0.00	\$0.00
Total	\$0.00	\$0.00	\$0.00

Federal

Personnel and Fringe

Federally Funded Position(s)

Position Title:

Salary Amount: \$

Fringe:

Fringe rates are estimates. Actuals will be billed.

% for 12 months:

Fringe Amount: \$

Travel

Supplies

Contractual

Indirect Charge

Non Federal

Guidelines for Proper Invoicing

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

<u>Category</u>	<u>Backup Documentation Needed</u>
Salaries	Copies of signed time sheets with project hours noted with proof of payment.
Communication (telephone bills, postage)	Copies of phone bills. Documentation for postage should include copies of receipts.
Travel	Copies of approved expense reports and signed FS18 are adequate. Also, all copies of validated bills, invoices and receipts that are related to travel must be provided.
Supplies/Equipment	Copies of canceled checks or check numbers, receiving reports showing that merchandise was received, cash register receipts, or FS18 signed by a Fiscal Officer. For corporate card purchases, each cardholder shall provide the standard DNR "Activity Log," bank memo statement and receipts for recording each transaction (purchase and/or credit) made with each corporate purchasing card which must include the following: <i>transaction date, merchant name, description of item purchased (including quantity), account (PCA code) to be charged if different from that assigned to the card, and amount of purchase.</i>
Contractual Services	Copies of bills or invoices <u>with</u> receipts or FS18 signed by a Fiscal Officer. Also, copies of canceled checks or copies of check numbers.
Match	Match, if applicable, shall be labeled as match and shall be documented in the same format as direct charges. Match shall be paid out at the same general rate as the Federal share. Match

information shall be provided with each invoice submission for direct charges.

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

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

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

Appendix C

Administrative Conditions

1. General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: http://www.epa.gov/ogd/tc/general_tc_applicable_aa_recipients_dec_26_2014.pdf. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

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

2. State Grant Cybersecurity Condition

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

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

(b) (2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

3. Indirect Costs

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

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

Regular Mail

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

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

Financial Analysis and Rate Negotiation Service Center Office of Acquisition Management
US Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 6th floor Bid and Proposal Room Number 61107 Washington,
DC 20004

Electronic Submission (e.g. PDF)

OGD IndirectCost@EPA.GOV

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

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

4. Annual Federal Financial Report

Pursuant to 2 CFR 200.327 and 200.343, the recipient agrees to submit to EPA an annual Federal Financial Report (FFR) (SF-425) when the budget period is longer than one year. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31. Interim reports shall be submitted no later than 90 days after the end of each reporting period.

The form is available on the internet at <http://www.epa.gov/financial/forms>. **All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email LVFC-grants@epa.gov or fax at 702-798-2423.**

5. Contingent Funding

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

6. Utilization of Small, Minority, and Women's Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

MBE/WBE reporting is required in annual reports. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if recipient believes this award does not meet these conditions, it must provide the EPA Grant Specialist with a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 58 when completing the form.

MBE/WBE reports should be **signed and emailed to R3 MBE-WBE Reports@epa.gov as a pdf file, or if that is not possible, mailed to Cynthia Burrows, Diversity/EEO Manager (3DA10), U.S. EPA- Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 with a courtesy copy to the EPA Grant Specialist.** The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe_reporting .htm](http://www.epa.gov/osbp/dbe_reporting.htm);

This provision represents an approved deviation from the MBEI/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

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

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Current Fair Share Objective/Goal

The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The

Maryland Department of Natural Resources has negotiated the following, applicable MBEIWBE fair share objectives/goals with EPA as follows:

MBE: SUPPLIES 24.0; SERVICES 28.0
WBE: SUPPLIES 21.0; SERVICES 12.0

Negotiating Fair Share Objectives/Goals

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

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

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

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

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302

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

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

bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

7. Federal Employee Costs

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

Programmatic Conditions

1. Performance Reports

In accordance with 2 CFR 200.328, the recipient agrees to submit performance reports that include brief information on each of the following areas; a) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; b) the reasons for slippage if established outputs/outcomes were not met; and c) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs. In accordance with 2 CFR 200.328, the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

2. Performance Reports - Submission Frequency

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

3. Quality Assurance Management Plan

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

4. Quality Assurance Project Plan

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

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

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

5. Pre-Award Costs

Pre-Award Costs have been approved in accordance with the recipient's application dated 7/01/15.

6. Geospatial Data Standards

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

7. Competency Policy

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

8. Program Guidance

The recipient agrees to comply with the provisions of the US EPA CBP Grant Guidance (2015). Any future versions of the Guidance will be applicable while the assistance agreement is still active.

Exhibit D

MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD

Invoice Reporting Period: _____

CBIG Contract Number: _____

Project Title: _____

1. Business Enterprise		2. \$ Value of Procurement	3. Date of Procurement MM/DD/YY	4. Type of Product or Services (Enter Code)	5. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Minority	Women				

Product or Service Codes:

1 = Construction

2 = Supplies

3 = Services

4 = Equipment

For each MBE/WBE procurement during the reporting period, provide the following information:

1. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the “Value of the Procurement” reported in column #3.**
2. Dollar value of procurement.
3. Date of procurement, shown as month, day, and year. Date of procurement is defined as the date the contract or procurement was awarded, not the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of procurement is the date the purchase was made)**
4. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if construction, 2 if supplies, etc).
5. Name, address, and telephone number of MBE/WBE firm

**DEPARTMENT OF NATURAL RESOURCES
GENERAL CONDITIONS FOR
MEMORANDA OF UNDERSTANDING
REV. 12/2011
[For Contracts Exempt from Procurement]**

ARTICLE I - TERMS AND APPLICABILITY

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

Specific terms used in this document have the following meaning:

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

ARTICLE II - THE PARTIES

- A. Independent Contractor - The Contractor is not an employee of the Department but is an independent contractor. The Contractor shall be responsible for providing all supplies and materials necessary for performance of all work under the Contract, and for withholding any taxes and social security payments due in relation to the Contract. The Contractor is not an agent of the Department and cannot commit the Department to any expenditure of funds or enter into any contractual obligation on behalf of the Department.
- B. Notices - Service of any notice required by the Contract shall be complete upon mailing of such notice, postage prepaid, to the appropriate contract representative at the address indicated in the MOU. If no contract representative is named, then the person executing the MOU for a party shall be the contract representative for purposes of notice.

ARTICLE III - PERFORMANCE

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

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

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

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

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

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

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

F. Disputes - If the Contractor intends to assert a claim against the Department, the Contractor shall do so within 30 days of the date the Contractor knows, or should know, of the basis of the claim.

Failure to file a claim within the 30-day period is a complete bar to the claim. The claim shall consist of a written statement to the Department setting forth the nature and monetary extent of the claim, and the facts on which the claim is based. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract.

ARTICLE IV - PROPERTY

A. Rights in Data, Public Disclosure - Unless otherwise specified by addendum to this Contract, the Contractor agrees that all reports, drawings, studies, specifications, estimates, maps, and computations prepared by or for it under the terms of this Contract shall be delivered to and become and remain the property of the Department upon termination or completion of the work. The Department shall have the absolute right to duplicate and use, for any purpose whatsoever, all or any part of the technical data which are to be delivered under this Contract.

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

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

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

The Contractor assumes the risk that any materials, equipment, process, or other items required under the Contract or furnished by the Contractor are subject to any patent, copyright, trademark, trade secret or other property right of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by the Department. The Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property right of another and shall save the Department harmless from loss or expense on account thereof.

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

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

ARTICLE V - INDEMNIFICATION

A. Department Saved Harmless - The Contractor is, to the fullest extent permitted by law, responsible for all damage to life and property due to its activities, or those of its agents, employees, or subcontractors, in connection with its performance under this Contract, and is responsible for all work, both permanent and temporary, until all services under this Contract are declared accepted by the Department.

The Contractor shall, to the fullest extent permitted by law, indemnify and save harmless and defend the Department and all of its representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this Contract, either by the Contractor or any subcontractor, or their employees, agents, or representatives. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the Department.

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

ARTICLE VI - WARRANTIES AND DISCLOSURES

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

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

1. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
2. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

ARTICLE VII - ACCOUNTING

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

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

ARTICLE VIII - DURATION

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

B. Termination for Convenience - The performance of work under this contract may be terminated by the Department in accordance with this clause in whole, or from time to time in part, whenever the Department shall determine that such termination is in the best interest of the Department. The Department will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

C. Termination for Default - If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the Contract, the Department may terminate the

Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the Department's option, become the Department's property. The Department shall pay the contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the Department can affirmatively collect damages.

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

ARTICLE IX - LEGAL

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

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

APPROVED as to form and legal sufficiency
Office of the Attorney General
Department of Natural Resources
December, 2011