

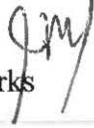


Howard County

Internal Memorandum

Subject: Testimony & Fiscal Impact Statement
Council Resolution 109-2019 - Authorizing the County Purchasing Agent to waive the formal competitive bidding requirements in Title 4, Subtitle 1 of the Howard County Code in order to enter into an agreement with 20006 Delaware Inc., to construct certain stormwater improvements along Davis Avenue.

To: Lonnie R. Robbins
Chief Administrative Officer

From: James M. Irvin, Director 
Department of Public Works

Date: June 24, 2019

The Department of Public Works has been designated as coordinator for the preparation of the subject testimony. The testimony will authorize the County Purchasing Agent to waive the formal competitive bidding requirements in Title 4, Subtitle 1 of the Howard County Code in order to enter into an agreement with 20006 Delaware Inc., to construct certain stormwater improvements along Davis Avenue and a bypass storm drainage system through the developer's property. The form of the agreement is attached.

Davis Avenue is a 50' private road with a 20' easement which is owned by Howard County for our water, sewer and drainage facilities. These easements continue through the future development along the proposed bypass storm drain system alignment. Prior to 1980, there was no stormwater management requirements and this area of the County encompassing Davis Avenue was prone to flooding at times. In 1997, Howard County created Capital Project D-1112 in which a hydraulic study was performed, and ultimately a Best Management Practice (BPM) was constructed in 1999 to reduce the peak storm discharges as much as possible by a pond with a forebay. During larger storm events, the pond overflows or floods onto Davis Avenue, the adjacent commercial properties, and the residential mobile park. The existing private 12' storm drain system is undersized and is often overwhelmed. The Davis Avenue pond was constructed with a 60' concrete pipe to be used for a future extension and connection to a public drainage system. The TOD development of North Laurel creates an opportunity to partner with the developer to extend a public storm drain system to bypass these flooded properties. The purpose of this Council Resolution is to allow the developer to be the sole source contractor to make the necessary stormwater and drainage bypass system improvements while mass grading the property for their development. Approval and construction will complete what was once started in 1997. Capital Project D-1112 Davis Avenue Area Drainage Improvements will be the funding source for the shared improvements predicated upon flow contributions by Howard County and the developer.

A representative of the department will be present at the hearing. If you require further information concerning this matter or have any additional questions, please do not hesitate to contact me at your convenience.

**DAVIS AVENUE STORMWATER MANAGEMENT POND DRAINAGE
IMPROVEMENTS
COST SHARING AGREEMENT**

THIS DAVIS AVENUE STORMWATER MANAGEMENT POND DRAINAGE IMPROVEMENTS COST SHARING AGREEMENT (this “Agreement”) is made this _____ day of _____, 2019, by and between **20006 DELAWARE INC., a Delaware corporation, successor in interest to TSG Developments (Maryland) LLC, a Delaware limited liability company, formerly known as MI Developments (Maryland) Inc.**, a corporation in accordance with the laws of the State of Delaware and registered with and in good standing with the Maryland State Department of Assessments and Taxation (the “Developer”), and **HOWARD COUNTY, MARYLAND**, a body corporate and politic (the “County”).

WHEREAS, the Developer is the owner of certain real property located in Laurel, Howard County, Maryland described in the confirmatory deed recorded among the Land Records of Howard County, Maryland (“Land Records”) at Liber 14104, Folio 118 on June 25, 2012 confirming the acquisition from Laurel Racing Association Limited Partnership recorded among the Land Records at Liber 10518, Folio 157 on February 9, 2007 (the “Property”).

WHEREAS, the Developer intends to develop the Property as depicted in a final plat of subdivision entitled “Laurel Park Station, Phase 1, Buildable Bulk Parcels A, B, & C, Open Space Lots D, E, F, G, H, & I, and Parcels J, K, & L, A subdivision of TM 50, Parcels 384 & 441” final plan number F-16-013, recorded among the Land Records as Plat Numbers 24740 - 24753 and pursuant to the “Howard County Subdivision and Land Development Regulations (the “Regulations”), the Developer is planning to construct improvements along Davis Avenue extended as well as the construction of American Pharaoh Lane and Laurel Park Boulevard along with other internal, private roads as shown on SDP 15-043 and associated stormwater management practices (“Developer Improvements”).

WHEREAS, pursuant to the Regulations, the Developer and the County entered into the Developer Agreement dated August 8, 2018 (SDP-15-043 W/S Contract No. 24-4712-1) for the construction of the Developer Improvements and Developer posted the required Performance Bond and Payment Bond to ensure the construction of the Developer Improvements in accordance with the Approved Plans and Specifications, as defined therein (the “Developer Agreement”).

WHEREAS, the County is the owner of the stormwater management pond located at 9384 Davis Avenue, Laurel, Howard County, Maryland constructed under Capital Project Number D-1112 Davis Avenue Area Drainage Improvements (the “County Pond”) and which capital project requires the construction of a stormwater drainage pipe from the County Pond through the Property.

WHEREAS, the Developer designed and is willing to install a bypass storm drain system through the Property to convey stormwater flow from the County Pond and the

improvements serving the Property (the "Bypass") as shown on the drawing entitled "ByPass - Layout and Utility Plan (Phase I) Laurel Park Station" prepared by Robert H. Vogel Engineering, Inc. dated June 2019 attached here to as Exhibit A and a part hereof. The Bypass is included in the Approved Plans and Specifications described in the Developer Agreement.

WHEREAS, the construction of the Bypass and other improvements to the County Pond will meet the County's goal of improving the existing storm drainage function of the County Pond.

WHEREAS, the Director of the Department of Public Works has determined the most cost effective and efficient way to complete the storm drain system is to enter into a cost sharing agreement with the Developer to construct the Bypass. The developer owns the property needed for the construction of the Bypass and shall dedicate the required easements to the County.

WHEREAS, the Developer has proposed a cost sharing agreement between the County and the Developer to pay for constructing a portion of the Bypass based upon the proportional amount of runoff in the storm drain system that is from the County Pond based upon the "Laurel Park Station/Howard County Davis Avenue Pond Howard County Contribution based on Flow Assignment" prepared by Robert H. Vogel Engineering, Inc. + Timmons Group attached here to as Exhibit B and a part hereof. Accordingly, the County's estimated portion of the cost to construct the Bypass shall not exceed Six Hundred Four Thousand Five Hundred Ninety-Seven Dollars and Fifteen Cents (\$604,597.15).

WHEREAS, the County Council of Howard County, Maryland adopted Council Resolution Number ____-2019 which authorizes the County to waive the formal competitive bidding requirements and to enter into this Agreement with the Developer for the construction of the Bypass.

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals which are a material part of this Agreement and are hereby incorporated herein, the mutual promises of the Developer and the County set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the County agree as follows:

SECTION 1. Design and Construction of the Storm Drain Bypass.

a) The Developer shall select the contractor(s) for the construction of the Bypass as shown on the SDP 15-043 construction plans (the Bypass Construction Plans are a part of the Approved Plans and Specifications) through a solicitation of bids, obtaining at least three (3) independent bids. The County shall have the right to review and approve the bids received by the Developer. The Developer shall not accept a bid for the construction of the Bypass that has not been approved by the County.

b) The County shall regulate and inspect the construction of the Bypass in accordance with the terms of the Developer Agreement, Design Manual, Regulations, and Howard County Code. Any changes to the Approved Plans and Specifications affecting the Bypass shall be submitted to the County in writing for the County to consider prior to the construction of such changes.

c) The Developer covenants to indemnify and hold the County harmless from and against any and all claims, actions, damages, liability and expenses of any nature, including reasonable attorney's fees and the County's costs of defense, in connection with loss of life, personal injury and/or damage to, or loss of property that arises from any work or activity related to the construction of the Developer's or its employees, contractors, or agents' activities in performing this Agreement. The foregoing indemnification applies except to the extent that the losses are solely attributable to and proximately caused by the sole negligence or the willful, malicious, or wanton misconduct of the County or its officials, agents, employees, or contractors. This indemnification shall terminate upon the completion of the construction of the Bypass.

SECTION 2. Reimbursement by the County. The Developer shall bear all of the costs for construction associated with constructing the Bypass as detailed in the Construction Plans and shall request reimbursement from the County for the material and construction cost attributable to the Bypass based upon the actual construction costs and materials used in accordance with the Cost Summary; however, in no event shall the County's share exceed Six Hundred Four Thousand Five Hundred Ninety-Seven Dollars and Fifteen Cents (\$604,597.15). Periodically, but no more frequently than monthly, the Developer shall submit to the County a properly documented invoice (including affidavits from all subcontractors regarding payment in full for work completed) for such portion of the Bypass construction constructed since the last invoice. The County shall inspect the work relating to such invoice within thirty (30) days from the date Developer submits the invoice. Within that thirty (30) day inspection period, the County shall either (i) consider the partially completed work reasonably acceptable and the County shall process the invoice for payment of ninety percent (90%) of the invoiced amount within thirty (30) days from the date of acceptance or (ii) give the Developer a detailed explanation of what portion of the work is not reasonably acceptable to the County, and allow the Developer to cure any such deficiencies. An amount equal to ten percent (10%) of the invoiced amount shall be withheld by the County until such time that (i) the Developer has substantially completed the Bypass, (ii) County has reasonably accepted the work, and (iii) the Developer has provided signed and sealed as-built construction plans for the Bypass project to the County.

SECTION 3. Appropriation of Funds. In addition to all other conditions and contingencies set forth in this Agreement, the County's obligations under this Agreement to reimburse funds to the Developer from Capital Project D1112 shall be contingent upon the County Council's approval of the annual appropriation of funds to the County's budget. Notwithstanding the foregoing, the Department of Public Works of the County will use reasonable efforts to obtain and subsequently maintain the funds necessary to reimburse funds to the Developer pursuant to this Agreement.

SECTION 4. Notice. All correspondence regarding this Agreement and the work to be performed hereunder shall be mailed or personally delivered in the case of the Developer to:

20006 Delaware Inc.
Attn: Mark Thompson and Angelo Eguizabal
198 Laurel Race Track Road
Laurel, Maryland 20724
Emails: mark.thompson@stronachgroup.com
angelo.eguizabal@stronachgroup.com

The name and telephone number of the Developer's contact person for this Agreement is Mark Thompson, (301)470-5494.

All correspondence regarding this Agreement and the work to be performed hereunder shall be mailed or personally delivered in the case of the County to:

Director of Public Works
George Howard Building
3430 Court House Drive
Ellicott City, Maryland 21043

The name and telephone number of the County's contact person for this Agreement is James M. Irvin, (410) 313-4401.

Either party to this Agreement may change its address by written notice to the other party.

SECTION 5. Assignment; Binding Effect. This Agreement may not be assigned without the express prior written consent of the County. In the event the Developer intends to sell or assign its interest in the portion of the Property where the Bypass is located, the Developer and the new owner shall request the County to consent to the completion of the obligations herein by the new owner and this Agreement shall be amended to reflect such assignment. For clarity, the sale of any building pads or land for residential or commercial uses that do not directly affect the Bypass are not considered sales or assignments for the purposes of this Section 5. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Developer and the County. References to the Developer or the County shall be deemed to refer to each person hereinabove named and their respective designees, successors, and assigns.

SECTION 6. Amendment. Any amendment to this Agreement shall be written and signed by the County and the Developer. Each writing or plat referred to in this Agreement is hereby made a part of this Agreement

SECTION 7. Conflict of Interest. Developer certifies that he/she has read and understands the provisions of Section 901(a) of the Howard County Charter and Section

22.204 of the Howard County Code relating to conflicts of interest and attached hereto as **Exhibit C**.

IN WITNESS WHEREOF, the duly authorized officers of the Developer and the County hereto have set their hand and seals to this instrument on the day and year first above written.

[Signature pages follow.]

WITNESS/ATTEST:

20006 Delaware Inc.

By: _____(SEAL)

Name: _____

Title: Authorized Signatory

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2019, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared _____, an Authorized Signatory of **20006 Delaware Inc.**, a Delaware corporation, who acknowledged to me that he executed the foregoing Agreement on behalf of said corporation for the purposes therein contained.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

[Signatures continue of the following page.]

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

By: _____(SEAL)
Calvin Ball
County Executive
Date: _____

APPROVED: Department of
Public Works

APPROVED for Sufficiency of Funds:

James M. Irvin, Director
Department of Public Works

Janet R. Irvin, Director
Department of Finance

APPROVED for Form and Legal Sufficiency:
this _____ day of _____ 2019.

Gary W. Kuc, County Solicitor

Lisa S. O'Brien,
Senior Assistant County Solicitor

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2019, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Calvin Ball, County Executive for HOWARD COUNTY, MARYLAND, who acknowledged to me that he executed the foregoing Agreement for the purposes therein contained, and he further acknowledged the same to be the act of Howard County, Maryland.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

ByPass - Layout and Utility Plan (Phase I) Laurel Park Station
prepared by Robert H. Vogel Engineering, Inc. dated June 2019

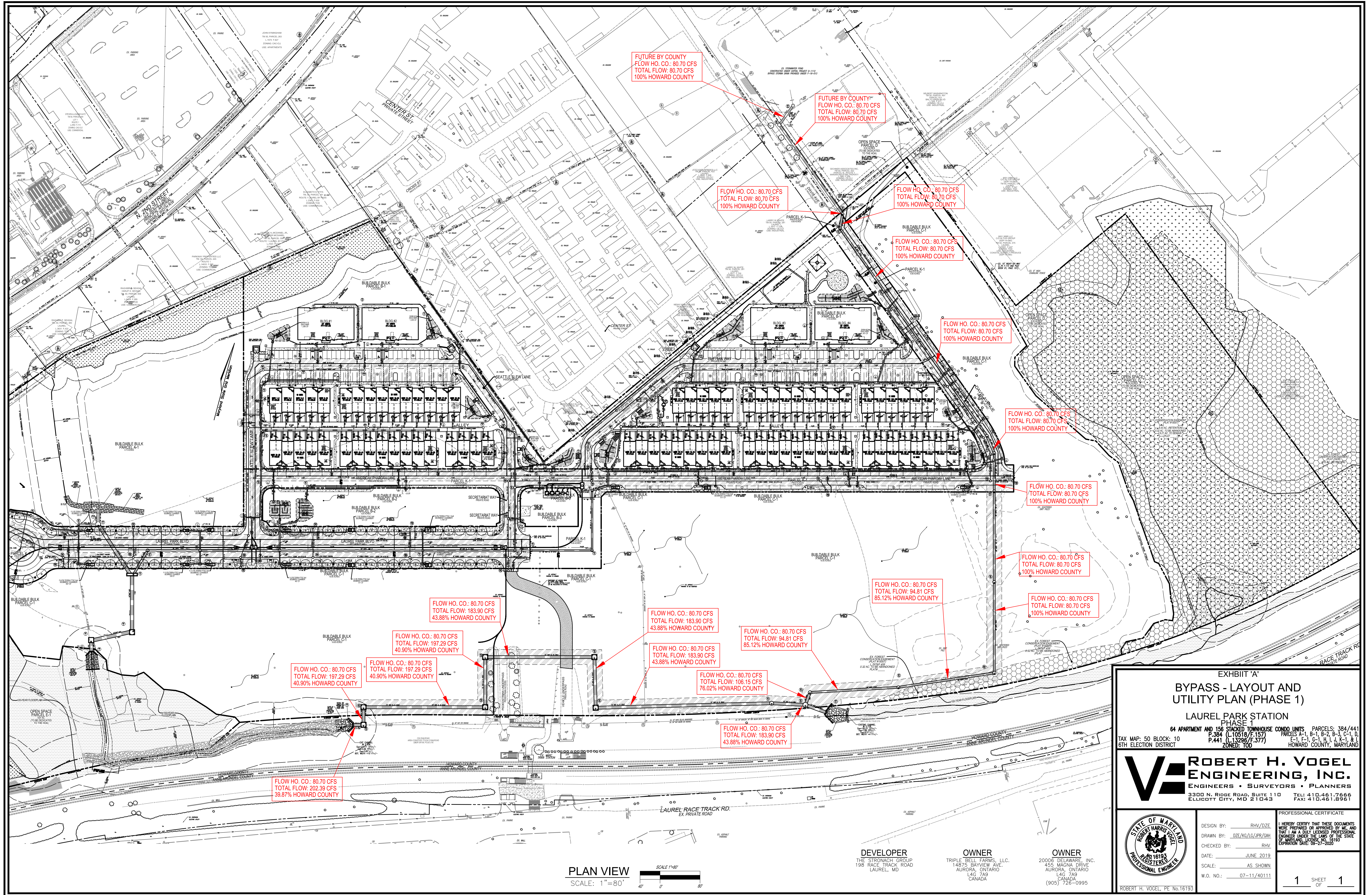


EXHIBIT B

Laurel Park Station/Howard County Davis Avenue Pond
Howard County Contribution based on Flow Assignment
prepared by Robert H. Vogel Engineering, Inc. + Timmons Group

VOGEL ENGINEERING + TIMMONS GROUP

3300 North Ridge Road, Suite 110, Ellicott City, MD 21043
P 410.461.7666 F 410.461.8961 www.timmons.com

Laurel Park Station / Howard County Davis Avenue Pond Howard County Contribution Based on Flow Assignment

Exhibit "B"

Where	Items	QTY	UNIT	Q ₁₀ Flow Rate (cfs) *	Co. Respon	SEH Unit Cost	SEH Total Cost
62-61	48" HDPE Pipe	29	LF	80.70	100.00%	\$111.12	\$3,222.48
61-60	48" HDPE Pipe	275	LF	80.70	100.00%	\$111.12	\$30,558.00
60-59	48" HDPE Pipe	234	LF	80.70	100.00%	\$111.12	\$26,002.08
59-58	48" HDPE Pipe	38	LF	80.70	100.00%	\$111.12	\$4,222.56
58-57	48" HDPE Pipe	77	LF	80.70	100.00%	\$111.12	\$8,556.24
57-56	48" HDPE Pipe	181	LF	80.70	100.00%	\$111.12	\$20,112.72
56-55	48" HDPE Pipe	182	LF	80.70	100.00%	\$111.12	\$20,223.84
55-54	48" HDPE Pipe	194	LF	94.81	85.12%	\$111.12	\$18,349.56
54-53	48" HDPE Pipe	177	LF	94.81	85.12%	\$111.12	\$16,741.61
53-52	48" HDPE Pipe	26	LF	106.15	76.02%	\$111.12	\$2,196.31
52-51	72" RCCP CL V	68	LF	183.90	43.88%	\$364.20	\$10,867.15
51-50	72" RCCP CL V	352	LF	183.90	43.88%	\$364.20	\$56,253.46
50-49	72" RCCP CL V	101	LF	183.90	43.88%	\$364.20	\$16,140.91
49-48	72" RCCP CL V	218	LF	183.90	43.88%	\$364.20	\$34,838.79
48-47	72" RCCP CL V	100	LF	197.29	40.90%	\$364.20	\$14,895.78
47-46	72" RCCP CL V	243	LF	197.29	40.90%	\$364.20	\$36,196.75
46-45	72" RCCP CL V	35	LF	197.29	40.90%	\$364.20	\$5,213.52
45-HW	72" RCCP CL V	22	LF	202.39	39.87%	\$364.20	\$3,194.54
62	72" Dia Manhole	1	EA	80.70	100.00%	\$5,999.65	\$5,999.65
61	72" Dia Manhole	1	EA	80.70	100.00%	\$5,999.65	\$5,999.65
60	72" Dia Manhole	1	EA	80.70	100.00%	\$5,999.65	\$5,999.65
59	72" Dia Manhole	1	EA	80.70	100.00%	\$5,999.65	\$5,999.65
58	72" Dia Manhole	1	EA	80.70	100.00%	\$5,999.65	\$5,999.65
57	72" Dia Manhole	1	EA	80.70	100.00%	\$5,999.65	\$5,999.65
56	72" Dia Manhole	1	EA	80.70	100.00%	\$5,999.65	\$5,999.65
55	72" Dia Manhole	1	EA	94.81	85.12%	\$5,999.65	\$5,106.90
54	72" Dia Manhole	1	EA	94.81	85.12%	\$5,999.65	\$5,106.90
53	72" Dia Manhole	1	EA	106.15	76.02%	\$5,999.65	\$4,560.93
52	96" Dia Manhole	1	EA	183.90	43.88%	\$25,243.70	\$11,076.94
51	96" Dia Manhole	1	EA	183.90	43.88%	\$25,243.70	\$11,076.94
50	96" Dia Manhole	1	EA	183.90	43.88%	\$25,243.70	\$11,076.94
49	96" Dia Manhole	1	EA	183.90	43.88%	\$25,243.70	\$11,076.94
48	96" Dia Manhole	1	EA	197.29	40.90%	\$25,243.70	\$10,324.67
47	96" Dia Manhole	1	EA	197.29	40.90%	\$25,243.70	\$10,324.67
46	96" Dia Manhole	1	EA	197.29	40.90%	\$25,243.70	\$10,324.67
45	96" Dia Manhole	1	EA	202.39	39.87%	\$25,243.70	\$10,064.66
HW 3	MSHA B-72 End Wall	1	EA	202.39	39.87%	\$18,704.73	\$7,457.58
Class 3	Rip Rap Outfall	179	TON	202.39	39.87%	\$86.05	\$6,141.16
Class 2	Rip Rap Outfall	2038	TON	202.39	39.87%	\$80.42	\$65,345.32
	Regrade Channel	757	SY	202.39	39.87%	\$2.60	\$784.72

*Howard County's Contribution to total flow 80.70 cfs

Subtotal Cost	\$549,633.77
10% Contingency	\$54,963.38
Total Cost	\$604,597.15

EXHIBIT C
Howard County Charter
Section 901. Conflict of Interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Howard County Code
Section 22.204. Prohibited Conduct and Interests.

(a) **Participation Prohibitions:** County official and employees subject to this subtitle shall not:

(1) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate on behalf of the county in any matter which would, to their knowledge, have a direct financial impact as distinguished from the public generally, on them, their spouse, parent, child, sibling or upon any business interest with which they are affiliated;

(2) Except as exempted by the county council pursuant to Section 901(b) of the Howard County Charter, hold or acquire an interest in a business entity that has or is negotiating a contract with the county or is regulated by the official or employee;

(3) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate in any matter involving a business entity with which they, their spouse, parent, child or sibling are negotiating or have an arrangement concerning prospective employment.

(b) **Employment Prohibitions:** Except as exempted by the county council pursuant to section 901(b) of the Howard County Charter or when the employment or interest does not create an actual or apparent conflict of interest, officials and employees shall not:

(1) Be employed by:

(i) Any entity subject to their official authority;

(ii) Any entity subject to the authority of the Howard County agency, board or commission with which they are affiliated;

(iii) Any entity which is negotiating or has entered into a contract with the Howard County agency, board or commission with which they are affiliated.

(2) Represent any party for a fee, commission or other compensation before any county body;

(3) Within one (1) year following termination of county service, act as a compensated representative of another in connection with any specific matter in which they participated substantially as a county official or employee.

The employment provisions listed above do not apply to:

(1) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to its jurisdiction be represented in appointments to it;

(2) Subject to other provisions of law, a member of a board or commission who publicly disclosed a financial interest or employment to the appointing authority at the time of appointment;

(3) Employees or officials whose duties are ministerial, provided that the private employment or financial interest does not create a conflict of interest or the appearance of such a conflict.

(c) **Solicitation/Acceptance of Gifts or Compensation**: No employee or official shall solicit any gifts. No employee or official shall accept any gift or compensation, directly or indirectly from any person that he/she knows or has reason to know, has financial interests, distinguishable from the interest of the public, that would be affected by the actions of the employee or official.

(d) **Use of Prestige of Office**: No county officials or employees subject to this subtitle shall intentionally use the prestige of their office for their own gain or that of another. The performance of usual and customary constituent services without additional compensation does not constitute the use of prestige of office for an official or employee's private gain or that of another.

(e) **Disclosure of Confidential Information**: Other than in the discharge of official duties, officials or employees may not disclose or use, for their own gain or that of another, confidential information acquired by reason of public position and which is not available to the public.

Sec. 22.204. - Prohibited conduct and interests.

(a) **Participation Prohibitions**.

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;

d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

e. An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

f. A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph 1. of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1. of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) Employment and Financial Interest Restrictions.

(1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or

b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) Post-Employment Limitations and Restrictions.

(1) A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) For a year after the former member leaves office, a former member of the County Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(d) Contingent Compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the County.

(e) Use of Prestige of Office.

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(f) Solicitation and Acceptance of Gifts.

- (1) An official or employee may not solicit any gift.
- (2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.
- (3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:
 - (i) Is doing business with or seeking to do business with the County office, agency, board or commission with which the official or employee is affiliated;
 - (ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;
 - (iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or
 - (iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.
- (4)
 - (i) Subsection (4)(ii) does not apply to a gift:
 - a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;
 - b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or
 - c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.
 - (ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:
 - a. Meals and beverages consumed in the presence of the donor or sponsoring entity;
 - b. Ceremonial gifts or awards that have insignificant monetary value;
 - c. Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;

d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

e. Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the County and that the gift is purely personal and private in nature;

g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related, in any way, to the official's or employee's official position.

(g) Disclosure of Confidential Information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(h) Participation in Procurement.

(1) An individual or a person that employs an individual who assists a County, agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.