

Introduced May 4, 2020
Public Hearing May 18, 2020
Council Action June 1, 2020
Executive Action June 2, 2020
Effective Date June 2, 2020

County Council of Howard County, Maryland

2020 Legislative Session

Legislative Day No. 6

Bill No. 16-2020

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a multiyear warranty, maintenance and service plan for five turbo aeration blowers used at the Little Patuxent Water Reclamation Plant; authorizing the Executive to make changes to the Agreement, under certain conditions; authorizing the County Executive to execute the Agreement; and generally relating to the Agreement.

Introduced and read first time May 4, 2020. Ordered posted and hearing scheduled.

By order Diane Schwartz Jones
Diane Schwartz Jones, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on May 18, 2020.

By order Diane Schwartz Jones
Diane Schwartz Jones, Administrator

This Bill was read the third time on June 1, 2020 and Passed , Passed with amendments _____, Failed _____.

By order Diane Schwartz Jones
Diane Schwartz Jones, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 2d day of June, 2020 at 11:30 a.m./p.m.

By order Diane Schwartz Jones
Diane Schwartz Jones, Administrator

Approved/Vetoed by the County Executive June 2, 2020

Calvin Ball
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, since 2012, the County has used five turbo (30,000 rpm) aeration blowers at
2 the Little Patuxent Water Reclamation Plant; and

3
4 **WHEREAS**, the blowers have saved the County significantly in its use of electricity and,
5 accordingly, has resulted in energy cost savings to the County; and

6
7 **WHEREAS**, the blowers are over 7 years old and some of the major components have
8 either failed or are expected to fail relatively soon; and

9
10 **WHEREAS**, the blowers came with a five-year extended warranty that ended in the
11 summer of 2017; and

12
13 **WHEREAS**, since the warranty expired, replacing equipment and servicing the blowers
14 has cost approximately \$100,000 and complete replacement of the blowers is cost prohibitive; and

15
16 **WHEREAS**, the County wishes to enter into a multi-year sole source agreement with
17 APG-Neuros for a warranty, maintenance and service plan for a term of ten years, with optional
18 renewals thereafter subject to section 4.110(d) of the Howard County Code, pursuant to an Asset
19 Management and Maintenance Service Plan, substantially in the form attached as Exhibit A; and

20
21 **WHEREAS**, in accordance with Section 4.110 of the Howard County Code, the agreement
22 is sole source because the supplies or services are only available through one source, APG-Neuros;
23 and

24
25 **WHEREAS**, the Agreement requires the payment by the County of funds from an
26 appropriation in a later fiscal year and therefore requires County Council approval as a multi-year
27 agreement pursuant to Section 612 of the Howard County Charter.

28
29 **NOW, THEREFORE,**
30

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland that in accordance
2 with Section 612 of the Howard County Charter, it approves the Asset Management and
3 Maintenance Service Plan, substantially in the form of Exhibit A, between Howard County and
4 APG-Neuros for a warranty, maintenance and service plan for the blowers used at the Little
5 Patuxent Water Reclamation Plant for a term of ten years with optional renewals thereafter subject
6 to section 4.110(d) of the Howard County Code.
7

8 **Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland that
9 the County Executive is hereby authorized to execute the Asset Management and Maintenance
10 Service Plan in the name of and on behalf of the County.
11

12 **Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland that
13 the County Executive, prior to execution and delivery of the Asset Management and Maintenance
14 Service Plan, may make such changes or modifications to the Agreement as he deems appropriate
15 in order to accomplish the purpose of the transactions authorized by this Act, provided that such
16 changes or modifications shall be within the scope of the transactions authorized by this Act; and
17 the execution of the Agreement by the County Executive shall be conclusive evidence of the
18 approval by the County Executive of all changes or modifications to the Agreement, and the
19 Agreement shall thereupon become binding upon the County in accordance with its terms.
20

21 **Section 4. And Be It Further Enacted** by the County Council of Howard County, Maryland that
22 this Act shall be effective immediately upon its enactment.



ASSET MANAGEMENT AND MAINTENANCE SERVICE PLAN (AMMSP)

SERVICE CONTRACT

Contract Number: HC-2019-12-R3

Contract Period

Initial Period

Start Date: April 6th, 2020

Expiry Date: April 5th, 2030

NX Turbo blower models covered:

Model	Quantity	Serial Numbers
NX350-C070	3	P11-NX350-0001 P11-NX350-0002 P11-NX350-0003
NX400-C070	2	P11-NX400-0002 P11-NX400-0003

Customer & End User: Little Patuxent Water Reclamation Plant
8900 Greenwood Place
Savage, MD 20763

Signatory: Joshua Gliptis, P.E.
Engineer, Project Manager
Howard County DPW - Utilities

Operating Contractor:

Designated Representative:

APGN Inc.

1270, Michèle-Bohec, Blainville, Québec J7C 5S4

Tel.: 450 939-0799 Fax: 450 939-2115 Web site: www.apg-neuros.com

1. Introduction

The Asset Management and Maintenance Service Plan (AMMSP) applies to APG-Neuros supplied products carrying the APG-Neuros logo and APG-Neuros Nameplate. The Asset Management and Maintenance Service Plan (AMMSP) protects customers' investments by providing warranty, maintenance, upgrade services and technical support.

APG-Neuros Asset Management and Maintenance Service Plan (AMMSP) will take effect on the effective date and remains in effect through the expiration date. The Asset Management and Maintenance Service Plan (AMMSP) purchased by the customer or directly by the End User shall apply to the APG-Neuros products sold to the End User as clearly identified in this Agreement.

2. Asset Management and Maintenance Service Plan (AMMSP)

The Asset Management and Maintenance Service Plan (AMMSP) offers the following coverage in items

- I. Cost of repairing or replacing major component parts described below.
 - Blower core including:
 - High efficiency impeller,
 - Permanent magnet synchronous motor,
 - Bump-foil air bearings,
 - Diffuser fan,
 - Motor casing,
 - Variable speed drive/inverter,
 - Input line reactor,
 - Sine-wave (sinus) filter,
 - Blower local control panel and Programmable Logic Controller (PLC) components,
 - HMI touch-screen components,
 - Internal vibration and absorption mounts,
 - Vibration sensors and monitoring,
 - Discharge expander (discharge cone),
 - Blow off by-pass valve and solenoid parts,
 - Blow off silencer,
 - Sound attenuating enclosure,
 - Check valve seals and discs,
 - Stop valve body seals and discs,
 - External expansion joint.
- II. On-site routine maintenance and technical assistance:
 - One (1) on-site inspection, refresher training, and cost of replaced parts where applicable.

- On-site inspection covers:
 - Customized classroom and hands-on training to your staff's needs.
 - Inspect and clean or replace air intake filters (inside the turbo blower).
 - Inspect and clean dirt as well as debris in enclosure - seal as required.
 - Perform visual inspection of core.
 - Measure core shaft torque and assess condition.
 - Perform bump start alignment of the core bearings.
 - Audible and visual inspection of unit to determine health of connections, valves and gaskets.
 - Ensure PLC and HMI software is operational and suitable for the blower control.
 - Verification of blower protection from surge or adverse operating conditions.
 - Review and analyze PLC errors history and provide recommendations.
 - Verify the PLC and HMI software version including the new protection or optimization, and update to latest standard, if applicable.
 - Inspect for loose electrical and mechanical connections and tighten them as required.
 - Inspection of all electrical wiring for signs of overheating or wear.
 - Verify sensors functionality and replace them as required.
 - Inspect blower operation following factory specifications and adjust control parameters to adapt to the operating environment.
 - Inspect paint and fasteners and apply touch-up or replace fasteners as required. Touch-up does not apply to areas larger than a quarter Dollar coin size.
 - Check the level of coolant and top up as required
 - Perform coolant flush (every 3 years), customer to dispose the old fluid.
 - Field service report including a comprehensive check list for each blower
- III. Additional services.
 - Reporting on operation and diagnostics of operating units, when available for remote monitoring,
 - Upgrades with mandatory or recommended product improvements,
 - Priority on requested service call (response time within 1 business hour),
 - Priority on requested onsite service call within 48 hours,
 - Priority on remote technical support (up to 150 hours of technical support),
 - Priority on replacement of major components,
 - Priority access to rental and/or exchange program.
- IV. The Consumables and Life Limited Parts listed below are excluded from the Asset Management and Maintenance Service Plan (AMMSP) coverage.
 - Air filter elements,
 - BOV Orifice diaphragm,
 - Butterfly replaceable internal seals,
 - Check valve replaceable internal seals and springs,
 - Coolant fluids,
 - Fuses,

- Gaskets,
- Hardware such as fasteners, nuts and bolts and paint when exposed to undeclared corrosive environment,
- Power supplies LCP-PLC,
- Pressure Transducer Discharge,
- Pressure Transducer Inlet,
- RTD sensors, connectors,
- Solenoid valve assembly,
- Thermocouple and thermocouple connectors and transmitter,
- Transformer 560/480 – 110/220 V,
- Existing rusted areas on enclosure are not covered under the warranty.

Asset Management and Maintenance Service Plan (AMMSP) Agreement

1. DEFINITIONS

Unless otherwise defined herein, capitalized terms shall have the same meaning as set forth in the License Agreement.

- a. **“End User”** means a recipient of Warranty Services.
- b. **“End User Site”** means those End User Sites for which End User intends to utilize the Warranty Services.
- c. **“Error”** means a malfunction in the APG-Neuros product that degrades the use of the APG-Neuros product.
- d. **“Fix”** means the repair or replacement of components of the APG-Neuros product to remedy an error, or correct a malfunction.
- e. **“Modified”** shall refer to modifications to the APG-Neuros Product that have not been authorized by APG-Neuros through a valid agreement with APG-Neuros.
- f. **“Priority A”** means an Error that (1) renders the APG-Neuros Product inoperative or (2) causes the APG-Neuros Product to be inoperable.
- g. **“Priority B”** means an Error that affects performance of the APG-Neuros Product, but does not prohibit use of the APG-Neuros Product.
- h. **“Priority C”** means an Error that causes only minor impact on the use of the APG-Neuros Product or Errors that are neither Priority A nor Priority B.
- i. **“APG-Neuros Products”** shall refer to the singular or the plural, as the case may be, and to the specific product or service release together with all documentation, materials, updates and add-on components or modules.
- j. **“Workaround”** means a change in procedures followed or data supplied to avoid an Error without significantly impairing the APG-Neuros Product.
- k. **“Consumables”** means the parts that are subject to wear and tear during operation.

- l. **“Life Limited Parts”** means the parts that have expiry life expressed in number of calendar time, operating hours or cycles.
- m. **“Mandatory Upgrades”** are Upgrades or Inspections, as defined in the Mandatory Service Bulletin, when complied with, will permit continued product operation in accordance with the existing or revised limitations as defined in the Mandatory Service Bulletins.
- n. **“Recommended Upgrades”** are Upgrades or Inspections, as defined in the Recommended Service Bulletin, when complied with, the changes, modifications, improvements or inspections will benefit the End User/Operator. Although highly recommended, Recommended Upgrades are not considered mandatory at the time of issuance.
- o. **“Optional Upgrades”** are Optional Upgrades or Inspections, as defined in The Optional Service Bulletins. Compliance with the Optional Upgrades, changes, modifications, improvements or inspections is at the End User/Operator's discretion.

2. CONTRACT PERIOD

2.1 Contract Service Period and Renewal. End User acknowledges and agrees to purchase the Asset Management and Maintenance Service Plan (AMMSP) for, at the period specified in the "Contract Service Period". Ninety (90) days before the end of the current Contract Service Period and for each subsequent Service Period APG-Neuros will provide a new contract proposal with updated prices and terms and conditions. The End User must notify APG-Neuros in writing no less than Sixty (60) days prior to the end of the then current service period of its decision to renew the Asset Management and Maintenance Service Plan (AMMSP).

2.2 Additional Warranty and Services Prices. Any additional options must be covered by the Warranty and Services. In the event that End User purchases additional APG-Neuros Product or APG-Neuros Product Component during the Asset Management and Maintenance Service Plan (AMMSP) period, APG-Neuros will provide an updated invoice reflecting the revised configuration and/or additional components and the additional Warranty Fee, pro-rated for the remainder of the Warranty Period, which End User agrees to pay, subject to appropriations by the Howard County Council. Annual prices, unless otherwise stated, do not include costs of any recommended hardware, shipping charges, travel expenses, taxes, or other expenses incurred by APG-Neuros at End User's request and upon End User's prior approval in connection with the duties performed by APG-Neuros under this Warranty and Services Plan. APG-Neuros requires End User to issue Purchase Order for additional products and services and payment of invoices within thirty (30) days of invoices for charges or expenses. Notwithstanding the above, APG-Neuros acknowledges that End User is a governmental entity, exempt from all Federal, State and local taxes. In the event such exemption is denied, End User agrees to pay all non-exempt taxes.

2.3 Should End User allow its Asset Management and Maintenance Service Plan (AMMSP) with APG-Neuros to lapse for any period, End User acknowledges that APG-Neuros will require End User to pay reinstatement charges equal to APG-Neuros' then current Warranty prices for the lapsed period.

3. SCOPE OF SERVICES

The following services (“Warranty and Services”) will be provided in accordance with the priority level specified in Section 5 below:

- 3.1 Email and Telephone Support.** The support provided to End User shall be commercially reasonable effort in solving problems related to the APG-Neuros Products that arise in connection with End User’s proper and authorized use of the APG-Neuros Products. End User shall provide to APG-Neuros’ technical representatives reasonably detailed documentation and explanation, together with underlying data, to substantiate any such problem and to assist APG-Neuros in its efforts to diagnose and correct the problem. Such support should not be used in lieu of training or consulting services that are available through an Authorized APG-Neuros agent or provided by APG-Neuros.
- 3.2 Updates and Upgrades.** Updates and Upgrades shall be provided to the APG-Neuros Product at no additional cost as during the annual inspection or during site visits when APG-Neuros determines them to be critical for the continued operation. Updates and Upgrades do not include any trade-ups to different products, but special trade-up pricing may be available to End User within APG-Neuros’ sole discretion.
- 3.3 Current Product Warranty.** Warranty and Services are available for the current configuration of the APG-Neuros Products and the previous configuration provided that all Updates have been installed. APG-Neuros personnel are available to answer questions related to the APG-Neuros Products and the performance of the APG-Neuros Products.
- 3.4 OBSOLESCENCE.** Should current components of the Turbo Blower become obsolete while the customer is under the Asset Management and Maintenance Service Plan (AMMSP), the change to a different brand may become mandatory and will be incorporated at no additional cost for the customer. The new brand replacements will be selected by APG-Neuros at its own discretion to provide the same functionality as component being replaced. Should the End User wish to upgrade to a different brand, the cost difference will be discussed and agreed to in writing with the End User prior to incorporation.

4. LIMITATIONS/EXCLUSIONS

- 4.1 Support Obligations.** APG-Neuros shall have no obligation to support:
 - a. Altered, damaged or Modified APG-Neuros Products;
 - b. Errors caused by End User’s negligence, hardware misuse or other causes beyond the reasonable control of APG-Neuros;
 - c. APG-Neuros Products installed or operated in an environment not supported by APG-Neuros Operation and Maintenance Manuals;
- 4.2 Custom Applications.** Assistance in the development of custom components for and/or from APG-Neuros Products is not included in the Warranty and Services.
- 4.3 Designated Employees.** End User’s County Executives or designated employees of End User and designated employees of its operating company may contact APG-Neuros for the provision of the Warranty Services. End User shall designate one (1) employee at each of its End User Sites to act as the point of contact for the execution of the contractual agreements. The End User shall designate up to three (3) employees from the site operating company to handle technical support issues on behalf of that End User Site. Access to technical support is limited to the Designated Representatives. Exceptions may be made in the case of an emergency. Changes to designated representatives must be made in writing to APG-Neuros.

4.4 End User Equipment. End User is responsible for the provision and Warranty of all End User equipment, communications or technology interfaces needed to operate the APG-Neuros Products and to communicate with APG-Neuros to provide the Warranty and Services. All claims for defective products, parts or service must be made in writing immediately upon discovery.

5. PRIORITY LEVEL OF ERRORS

APG-Neuros will use commercially reasonable efforts to correct and/or provide a Workaround for any Error reported by End User in accordance with the priority level reasonably assigned to such Error by APG-Neuros and the associated response obligations set forth below:

- Within 24 hrs. APG-Neuros acknowledges the customer claim, contacts customer for preliminary troubleshooting and assesses the urgency. APG-Neuros promptly initiates the following procedures: (1) assigns APG-Neuros specialist(s) to correct the Error; (2) provides ongoing communication on the status of the correction; and (3) immediately begins to provide a Workaround or a Fix.
- Within 48 hrs. APG-Neuros proposes a course of action to customer to put the unit back in operation.
- Within 72 hrs. Customer agrees in writing to the proposed course of action prior to its implementation.

Customer is entitled to comments and may suggest adjustments to the proposed course of action. APG-Neuros then reiterates the course of action within 24 hours.

6. PRICE

Ten years of coverage on all five turbo blowers: US \$57,300 per year for ten years.

7. PAYMENTS

The invoices for annual fees will be issued on April 6th, each year and payment will be due during thirty (30) days from the date of the issue of the invoice.

8. TERMS AND CONDITIONS

These Terms and Conditions shall apply to the Warranty.

Services provided to End User by APG-Neuros, as hereinafter defined. BY ACCEPTING WARRANTY SERVICES END USER AGREES TO BE BOUND SOLELY AND EXCLUSIVELY BY THESE TERMS AND CONDITIONS, NOTWITHSTANDING ANY ADDITIONAL OR CONFLICTING TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER WRITTEN DOCUMENTATION ISSUED BY END USER.

- a. Limited Warranties, Disclaimers and Limitations. APG-Neuros warrants that the Warranty Services will be provided in a good and workmanlike manner and by qualified individuals with suitable training, education and experience to perform the Warranty Services. NOTWITHSTANDING THE FOREGOING.

APG-NEUROS MAKES NO WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE WARRANTY SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, THEIR QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT FOR INJURIES OR DEATH TO THIRD PARTIES AND/OR DAMAGES TO END USER'S PROPERTY CAUSED BY APG-NEUROS, ITS EMPLOYEES, AGENTS, CONTRACTORS AND/OR SUBCONTRACTORS, IN NO EVENT WILL APG-NEUROS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS, PROFITS, BUSINESS INTERRUPTION, AND/OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OR THE INABILITY TO USE THE PRODUCTS OR SERVICES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL APG-NEUROS' LIABILITY EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THE WARRANTY PLAN DURING THE TWELVE (12) MONTHS PRIOR TO AN EVENT PURSUANT TO WHICH LIABILITY IS ALLEGED, OR THE LOWEST AMOUNT UNDER APPLICABLE LAW, WHICHEVER IS LESS. Some jurisdictions, states or provinces do not allow limitations on implied warranties, so the above limitations may not apply to particular customers.

- b. Dispute Resolution and Governing Law. If a dispute, controversy, or claim arises out of or relates to this Agreement, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in good faith by non-binding mediation with an independent mediator selected by mutual agreement of the Parties. If the matter has not been resolved pursuant to non-binding mediation within thirty (30) days of the commencement of such mediation, then any unresolved dispute, controversy, or claim arising out of or relating to this Agreement, its termination or non-renewal, or the breach thereof, shall be by a court of competent jurisdiction. Venue shall be the State of Maryland.
- c. Governing Law. This Agreement shall be governed in all respects by the laws of Maryland, without regard to conflict of laws principles. The District Court for the State of Maryland, or if federal jurisdiction does not exist, then the appropriate courts of the State of Maryland shall have sole and exclusive jurisdiction and venue over any dispute arising out of or in connection with this Agreement, and the parties hereby submit themselves to the jurisdiction of said courts.
- d. Assignment. APG-Neuros may subcontract or assign its obligations under this Agreement in whole or in part, or any rights or duties hereunder, without the prior written consent of Licensee, provided such assignee is an affiliate or subsidiary of APG-Neuros, and can fully satisfy APG-Neuros' obligations hereunder. Licensee may assign the Program in whole, but not in part, upon prior written notice to APG-Neuros solely in the event of a merger, sale or other disposition of all or substantially all of the assets of Licensee.
- e. Termination. APG-Neuros may in its discretion discontinue or modify the Warranty Services available to End User; provided, however, that if APG-Neuros materially modifies the Warranty and Services in a manner adverse to End User, End User may elect to terminate the contract and receive a prorated refund of prices paid.

Designated Representative

APGN Inc.

1270, Michèle-Bohec, Blainville, Québec J7C 5S4

Tel.: 450 939-0799 Fax: 450 939-2115 Web site: www.apg-neuros.com



End User

Name:
E-Mail:
Telephone:

End User Signature:

See Signature Page

Name

Date

APG-Neuros

Name: Omar Hammoud, President and CEO
E-Mail: ohammoud@apg-neuros.com
Telephone: 1-866-592-9482

End User Signature:

See Signature Page

Name

Date

EXHIBIT I

HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

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.

Code Section 4.119. Ethics and Fair Employment Practices.

(a) **Conflict of Interest.** Bidders, vendors, purchasers and county employees involved in the purchasing process shall be governed by the provisions of the Howard County Charter and Howard County law regarding conflict of interest. No vendor shall offer a gratuity to an official or employee of the county. No official or employee shall accept or solicit a gratuity.

(b) **Discouragement of Uniform Bidding.**

(1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.

(2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.

(3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms and conditions of a bid submitted by a competitor.

(c) **Fair Employment Practices**

(1) Bidders, vendors and purchases may not engage in unlawful employment practices as set forth in Subtitle 2 "Human Rights" of Title 12 of the Howard County Code, Subtitle 6 of Title 20 of the State Government Article, Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engage in such unlawful employment practices, they shall be subject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

(2) The Howard County Office of Human Rights shall notify the county purchasing agent when any bidder is found, by a court of competent jurisdiction, to have engaged in any high unlawful employment practices.

(3) If any bidder has been declared to be an irresponsible bidder for having engaged in an unlawful employment practice and has been debarred from bidding pursuant to this subtitle, the Howard County Office of Human Rights shall review the employment practices of such bidder after the period of debarment has expired to determine if violations have been corrected and shall, within 30 days, file a report with the county purchasing agent informing the agent of such corrections before such bidder can be declared to be a responsible bidder by the County Purchasing agent.

(4) Payment of subcontractors. All contractors shall certify in writing that timely payments have been made to all subcontractors supplying labor and materials in accordance with the contractual arrangements made between the contractor and the subcontractors. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented to the county purchasing agent.

Section 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.

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on June 2, 2020.

Diane Schwartz Jones
Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council