

**HOWARD COUNTY, MARYLAND
ENERGY PERFORMANCE CONTRACT
CONTRACT#**

THIS AGREEMENT ("Agreement"), is made this _____ day of _____ in the year 2009, by and between ENERGY SYSTEMS GROUP, LLC ("Contractor"), 4401 O'Donnell Street, Baltimore, MD 21224 ("the Contractor"), and HOWARD COUNTY, MARYLAND, ("the County" or "the Owner").

RECITALS

WHEREAS, this Agreement is being made for the Contractor to provide to project management, energy audit, engineering, construction, provision of certain equipment, and measurement & verification to the County in order to develop and implement comprehensive energy efficiency and guaranteed savings programs at County facilities; and.

WHEREAS, this Agreement will fulfill the provision that a formal contract should be executed by and between the Contractor and the County evidencing the terms of the award.

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties and payments by the County to the Contractor as agreed to below, the parties agree as follows:

AGREEMENTS

1. The Contract is subject to all the conditions, covenants, stipulations, terms and provisions contained in the Contract Documents as described in Paragraph 6 of this Agreement.
2. The Contractor covenants and agrees with the County that it will well and faithfully furnish all of the materials and perform all of the work and provide the guarantees and savings, and do everything required by the Contract Documents, all of which are made a part hereof and are referred to herein as the "Contract" at and for a sum equal to the aggregate cost of the work, labor, equipment, materials, and supplies done and furnished at the prices and rates respectively named in the Attachment A. The Contractor further covenants and agrees that it will well and faithfully comply with and perform each and every obligation imposed upon him by the Contract Documents, or the terms of the award.
3. The Contractor covenants and agrees that its obligations pursuant to the Contract Documents include but are not limited to the furnishing of all material, labor, equipment, supplies, plant, tools, and all other services, facilities and expenses necessary for the full operational performance and completion of the requirements of the Contract Documents.
4. The County agrees that it will pay the Contractor, when due and payable under the terms of said Contract Documents and of said award, the sums set forth in Attachment A, and the Contractor agrees that it will well and faithfully comply with and perform each and every obligation imposed upon it by this Agreement.
5. The Contractor (if a corporation) hereby certifies that it is a Maryland corporation in good standing or a foreign corporation registered to do business in Maryland with the Maryland State Department of Assessments and Taxation.
6. The Contractor and County agree that the following enumerated documents, collectively referred to as Contract Documents, are all essential documents of this Agreement and are incorporated herein and made a part hereof as if fully set forth:

- a. This Agreement
- b. State of Maryland's Indefinite Delivery Contract No. DGS-06-EPC-IDC-5.0 dated August 21, 2006 and documents identified therein as part of the Contract Documents.
- c. All engineering drawings and design documents in supporting the final proposal from both ESG and ESG's subcontractors.
- d. Proposal entitled "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" dated February 9, 2009.
- e. Performance Bond _____
- f. Payment Bond _____
- g. Guarantee Energy Savings Bond _____

In the event of a conflict between or among provisions of the Contract Documents, documents shall be controlling in the order in which they are listed in Section III – General Conditions of Indefinite Delivery Contract No. DGS-06-EPC-IDC-5.0, Paragraph 24, except that this Agreement shall be deemed to have the highest order of precedence.

The term "State" in Indefinite Delivery Contract No. GGS-06-EPC-IDC-5.0 shall be deemed to mean "County." The term "Contractor" or "ESCO" shall be deemed to mean the Contractor.

7. Time of Completion for Specified Tasks

- a. The tasks identified in Section III, "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" for Phase I Construction, shall be commenced upon issuance of a Purchase Order and written Notice to Proceed and shall be completed within 12 months of the issuance of the Notice to Proceed.
- b. If notified by the County by issuance of a Purchase Order and written Notice to Proceed to initiate the tasks identified in Section III, "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" for Phase II Construction, Contractor shall complete them within 12 months of the issuance of the Notice to Proceed (if issued by July 30, 2009). It is understood and agreed, that inclusion of Phase II tasks under this Agreement is subject to the authorization of the Howard County Council of the required funds in the FY2010 Capital budget.
- c. The Contractor shall provide other performances under this Agreement, for the period set forward in Section 8 d. 3).

8. Special Provisions

- a. Acknowledgment of Election of Owner Financing. By executing this Contract, Contractor acknowledges that the Owner has elected to finance the energy improvements through an Owner's Energy Performance Master Lease Purchase Agreement. Contractor further acknowledges that the Owner's election of tax exempt financing places limitations on the private business use of such funds and the property financed with such funds.
- b. Management Services. "Management Services" are all monitoring and verification of energy savings (as defined in Section IV, Measurement and Verification, of the Contractor's "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" proposal);; service, and training (as defined in Sections IV & V, of Contractor's "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" Proposal), and the securing of a

Guarantee Energy Savings Bond, defined more particularly below. Payment for Management Services, consisting of an annual fee invoiced and payable monthly, shall be based upon the cash flow analysis on pages 1 & 2 of Section II, Financials, of the Contractor's "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" and will include M&V, and Guarantee Energy Savings Bond. The County will self-perform maintenance services.

- c. Severability of Management Services and Guarantee. The parties agree that the Owner may terminate the Management Services (and resultant fee) at any time, without violating the terms of the Guarantee, by providing reasonable notice, in writing, to the Contractor.
- d. Agreement on Guarantee of Annual Savings.
 - 1) Contractor warrants and guarantees that Owner will realize guaranteed energy savings of \$8,212,800 (\$6,402,574 for Phase I construction & \$1,810,226 for Phase II construction) and overall savings of \$8,308,483 (\$6,498,257 for Phase I construction & \$1,810,226 for Phase II construction), as set forth in Contractor's Final Phase II Proposal, Table – Cash Flow Analysis on pages 1 & 2 of Section II Financials, and the other contract documents.
 - 2) The price for Contractor's guarantee that Owner will realize the savings set forth in the Guaranteed Savings Summary section of Contractor's Phase II Proposal is \$82,128.00 and is included in the price set forth in Attachment A (\$64,026.00 for Phase I Construction & \$18,102 for the Phase II construction). The surety for the Guarantee Energy Savings Bond will be provided from a financial institution approved by the State Treasurer's Office and the Owner. This amount is shown as apportioned annually within the Contractor's Final Phase II Proposal, Section II – Cash Flow Analysis and will be invoiced and payable monthly as part of the Management Services. The Guarantee Energy Savings Bond shall be provided within 10 days of execution of the contract and prior to issuance of the purchase order.
 - 3) Unless otherwise terminated sooner in accordance with the terms of the Contract Documents, this Contract shall remain in force and effect for the period described in the Contractor's "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County", provided that this Contract shall automatically terminate on the date which is fifteen (15) years from the first date on which Owner obtains tax-exempt financing to finance the capital portion (design and construction) of this Contract.
 - 4) Owner acknowledges that the Payment and Performance Bonds required hereunder shall expire upon final acceptance of all Energy Conservation Measures required under this Contract, including any applicable two year warranty period, and shall not secure any energy savings, measurement and verification obligations or maintenance/service obligations, which may be guaranteed by ESG under this Contract. This surety will be provided by an insurance company, which is licensed in the State of Maryland by the Maryland Insurance Commission. The bonds shall be provided prior to issuance of the purchase order.
 - 5) The following clarifications to Section V of the Indefinite Delivery Contract are incorporated herein:
 - a) Guaranteed Savings Reconciliation Report. Contractor will provide Owner

with a Guaranteed Savings Reconciliation Report after the one-year anniversary of the end of the Construction Period and after the end of each subsequent annual Guaranty Period within 120 days after the year's end. The County shall provide the with access to, relevant records relating to such Energy and Operations and Maintenance Costs. The County shall permit access to any energy billing information, maintenance records, drawings, or other data reasonably necessary to generate the said report. Data and calculations utilized by Contractor in the preparation of its Guaranteed Savings Reconciliation report will be made available to Owner, along with such explanations and clarifications as Owner may reasonably request.

- b) Upon receipt of the Reconciliation Report, Owner shall have forty-five (45) days to review the Guaranteed Savings Reconciliation Report and provide written notice to Contractor of rejection of the Guaranteed Savings Reconciliation Report for that Guaranty Year. Such written notice shall explain the with reasonable particularity the reasons why the Owner does not accept the report. If the Owner fails to provide written notice of rejection within forty-five (45) days of the receipt of the Guaranteed Savings Reconciliation Report, it shall be deemed accepted..
 - c) Whenever either party shall be prevented from or delayed in carrying out any obligation of such party hereunder (other than for the payment of money) by reason of any riot, strike, work stoppage, embargo, quarantine, accident, fire, flood or other similar or dissimilar cause beyond the reasonable control of such party, the performance of such obligation by such party shall be excused to the extent of such prevention or delay, provided that such party immediately begins to take in good faith whatever reasonable steps are available to ameliorate, cure, and mitigate the impact of the difficulties created by the cause beyond the party's control."
- 6) Upon receiving a written request (the "Written Request") from the Contractor, the County agrees that it will consider the allocation (the "Allocation") of the energy efficient tax deduction allowable under Section 179D of the Internal Revenue Code, as it may be amended, and any regulations or notices promulgated thereunder (the "Code") allowable to a Designer (as such term is defined in the Code). After receipt of the Written Request, the County may require the Contractor to provide any data, analysis, or other information that may assist the County in evaluation the Written Request. The provision of such data, analysis, or other information shall be at the Contractor's sole cost and expense.

The County's decision as to the execution of the Allocation shall be in its sole discretion and may be withheld for any reason whatsoever or may be conditioned as the County determines in its sole discretion. Nothing in this Agreement shall be construed or interpreted to create any obligation whatsoever upon the County to execute the Allocation pursuant to the Code and should the County decide not to execute the Allocation, the Contractor shall not have any rights, remedies, or recourse against the Contractor for such determination."

- e. Liquidated Damages. The amount of liquidated damages for this contract shall be \$1,000.00 per calendar day if the Time of Completion requirements, stipulated in Section 7. a. above, are not met.

9. Ownership of Goods.

All finished or unfinished work, reports, or goods that are the subject of this Agreement; including any licenses or consents acquired by the Contractor for performance hereunder, shall be and shall remain the property of the County.

10. Ethics.

10.1 The Contractor certifies that the officer of the corporation who is executing this Agreement has read and understands Attachment A, entitled Howard County Charter and Code References to Ethics, which contains the provisions of Section 901(a) of the Howard County Charter dealing with conflicts of interest and Section 22.204 of the Howard County Code dealing with conflicts of interest.

10.2 The Contractor certifies that he/she has (1) not been a party to an agreement to bid a fixed or uniform price; (2) not offered nor will offer any gratuity to any county official or employee; and (3) not violated any of the fair employment provisions of Code Sec. 4.119 Ethics and Fair Employment Practices detailed in Attachment A.

This Agreement is made and entered into in Maryland and is to be construed under the laws of Maryland. As to the Contractor, this Agreement is intended to be a contract under seal and a specialty.

11. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate Federal or State court located within the State of Maryland.

12. Termination:

12.1 Termination for Convenience: The County may terminate this Agreement, in whole or in part, whenever the County determines that such termination is in the best interest of the County, without showing cause, upon giving at least 30 days written notice to the Contractor. The County shall pay all reasonable costs incurred by the Contractor up to the date of termination. However, in no event shall the Contractor be paid an amount which exceeds the price bid for the work performed. The Contractor shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

12.2 Termination for Default: When the Contractor has not performed or has unsatisfactorily performed one or more material terms of the Agreement, the County may terminate the Agreement for default. Upon termination for default, payment may be withheld at the discretion of the County. Failure on the part of a Contractor to fulfill the contractual obligations shall be considered just cause for termination of the Agreement. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder. The Contractor will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the County in reprocurring and completing the work.

13 Notice: Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered to the following address and individual or at such other address and/or such other individual a party may identify in writing to the other party:

FOR THE COUNTY:
Helen Ashley, CPPB, Buyer
Howard County, Maryland
Office of Purchasing
6751 Columbia Gateway Drive

Columbia, MD 21046
Telephone: (410) 313-6378
Fax: (410) 313-6388
Email: hashley@howardcountymd.gov

FOR THE CONTRACTOR:
Karen Galindo-White, Account Executive
ENERGY SYSTEMS GROUP, LLC
4401 O'Donnell Street
Baltimore, MD 21224
(410) 522-5656
(812) 492-8323

14 Indemnification.

14.1 The Contractor shall indemnify and hold harmless the County, its employees, agents and officials from any and all claims, suits, or demands including reasonable attorney fees which may be made against the County, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Agreement by the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of negligence or willful misconduct committed by the County, its employees, agents and officials.

14.2 Any property or work to be provided by the Contractor under this Agreement will remain at the Contractor's risk until written acceptance by the County; and the Contractor will replace, at the Contractor's expense, all property or work damaged or destroyed by any cause whatsoever.

15 Reports/Information/Inspections/and Audits:

15.1 At any time during normal business hours and as often as the County may deem necessary, the Contractor shall make available to and permit inspection by the County, its employees or agents, all records, information and documentation of the Contractor related to the subject matter of this Agreement, including, but not limited to, all contracts, invoices, payroll, and financial audits.

This Agreement is made and entered into in Maryland and is construed under the laws of Maryland. As to Contractor, this Agreement is intended to be a contract under seal and a specialty.

ATTEST:

Secretary

Print Name

ATTEST:

Lonnie R. Robbins
Chief Administrative Officer

RECOMMENDED FOR APPROVAL:

James M. Irvin, Director
Director of Public Works

APPROVED FOR LEGAL SUFFICIENCY:

Margaret Ann Nolan
County Solicitor

APPROVED AND AGREED TO:
ENERGY SERVICES GROUP

By: _____ (SEAL)
Title: _____

APPROVED:
HOWARD COUNTY, MARYLAND

By: _____
Ken Ulman
County Executive

APPROVED FOR SUFFICIENCY OF FUNDS

Sharon F. Greisz, Director
Department of Finance

ATTACHMENT A

CONTRACT PRICE

The Owner shall pay the Contract as follows, subject to and in accordance with the Contract Documents. For Phase II Construction, payment is specifically made subject to appropriation by the Howard County Council of the required design/construction funds (\$1,095,277.00) in the FY2010 Capital Budget:

<u>Amount</u>	<u>Description</u>	<u>Terms of Payment</u>
<u>PHASE I CONSTRUCTION</u>		
\$4,400,000.00	<i>Design/Construction - Miscellaneous Work</i>	<i>Payable Monthly as progress is approved by the Owner</i>
\$ 177,928.00	<i>Total Management Service (Measurement & Verification, and Guarantee Energy Savings Bond)</i>	<i>Payable Monthly by Owner</i>
\$4,577,928.00	<i>Total Contract Amount (Construction and Management Services)</i>	
<u>PHASE II CONSTRUCTION</u>		
\$1,095,277.00	<i>Design/Construction - Miscellaneous work</i>	<i>Payable Monthly as progress is approved by the Owner</i>
\$ 50,686.00	<i>Total Management Services (Measurement & Verification, And Guarantee Energy Savings Bond)</i>	<i>Payable Monthly by Owner</i>
\$1,145,963.00	<i>Total Contract Amount (Construction and Management Services)</i>	

ATTACHMENT B

AFFIDAVIT

Contractor _____

Address _____

Telephone _____

I, _____, the undersigned, _____ of the above named Contractor
(Print Signer's Name) Print Office Held)

does declare and affirm this _____ day of _____, _____, that I hold the aforementioned office
(Month) (Year)
in the above named bidder and I affirm the following:

AFFIDAVIT I

The Contractor, his Agent, servants and/or employees, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein.

AFFIDAVIT II

No officer or employee of Howard County, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will receive subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the County, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the County received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the County in connection with this contract, job, work, or service for the County, excepting, however, the receipt of dividends on corporation stock.

AFFIDAVIT III

Neither I, nor the Contractor, nor any officer, director, or partners, or any of its employees who are directly involved in obtaining contracts with Howard County have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state, or of the federal government for acts of omissions committed after July 1, 1977.

AFFIDAVIT IV

Neither I, nor the Contractor, nor any of our agents, partners, or employees who are directly involved in obtaining contracts with Howard County have been convicted within the past 12 months of discrimination against any employee or applicant for employment, nor have we engaged in unlawful employment practices as set forth in Section 12.200 of the Howard County Code, or of Section 16 of Article 49B of the Annotated Code of Maryland or, of Sections 703 and 704 of Title VII of the Civil Rights Act of 1964.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavits are true and correct to the best of my knowledge, information and belief.

DATE

SIGNATURE

PRINTED NAME

TITLE

ATTACHMENT C
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 Section 24 of Article 49B of the 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.

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.