

Resolution No. R-19-2023
Adopted: November 20, 2023

A Resolution of the Mayor and Council of the Town of Kensington Authorizing a Contract Agreement with Brudis & Associates, Inc., to conduct a Downstream Storm Drain Study and provide Engineering Support Services to recommend improvements within the C-line storm drain network, specific to inlets C4-A and C10-A.

WHEREAS, pursuant to Chapter II, "Government and Administration", Article 4, "Purchasing and Contracts", Section 2-405, "Professional Services Contracts", the Council may decide by an extra-majority vote (defined as one more than a majority of those present and voting) to authorize the Town Manager to enter into negotiated procurement for professional services rather than advertise; and

WHEREAS, the Town requested a proposal from Brudis & Associates, Inc., to conduct a storm drain analysis and provide Engineering Support Services with regards to inlets C4-A and C10-A within the C-line storm drain network; and

WHEREAS, Brudis & Associates provided a Contract proposal (EXHIBIT A) to the Town for Engineering Services (ATTACHMENT A) and provide recommendations following a CCTV inspection (ATTACHMENT B) of the downstream study; and


WHEREAS, the Mayor and Council have determined that it is in the public interest to authorize the Town Manager to accept the proposal from Brudis & Associates, Inc., with a contract price of \$23,524.13, on the terms and conditions as set out in the Consultant Agreement and EXHIBIT A.

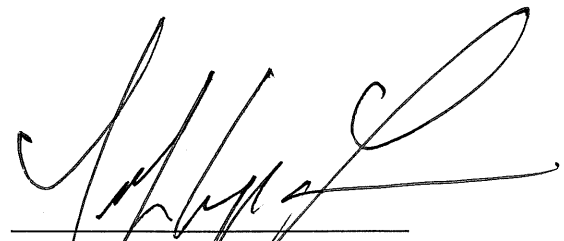
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Kensington, Maryland, that the Town Manager be and is hereby authorized to enter into a Contract Agreement in substantially the form attached, with a contract price not to exceed \$25,000.00, with Brudis & Associates, Inc.

Adopted by the Town Council this 20th day of November, 2023.

Effective this 20th day of November, 2023.

ATTEST: TOWN OF KENSINGTON, MARYLAND

By: 
Susan C. Engels, Clerk – Treasurer


Tracey C. Furman, Mayor



November 11, 2023

Town of Kensington
ATTN: Matt Hoffman, Town Manager
Department of Public Works
3710 Mitchell Street
Kensington, MD 20895

RE: Proposal for Storm Drain System Support Services

Dear Mr. Hoffman:

Pursuant to your request, Brudis & Associates, Inc. (BAI) is pleased to submit our proposal to provide engineering services for Storm Drain Downstream Study Support Services.

The purpose of this study is to identify the conditions of the existing pipes downstream of the existing storm drain inlets (C4-A and C10-A), conduct the downstream pipe capacity check for 10-yr storm event and provide recommendations based on the CCTV inspection and the downstream study results.

The attached scope of services (Attachment A) details the specific tasks to be performed for this project, and man-hour and design fee are presented in (Attachment B). Our subconsultant, AB Consultants, will provide their services to conduct the CCTV inspection. A separate proposal from AB Consultants is included for your review. The total proposed fee to perform these services is \$23,524.13, with \$14,375.00 of the totals allocated to BAI, and \$9,149.13 allocated to our sub-consultant.

BAI offers the necessary experience and resources to complete this assignment. Should you have any questions or require any additional information, please do not hesitate to contact me at 443-946-6806 or mbastakoti@brudis.com. We look forward to working with the Town of Kensington on this project.

Very Truly Yours,
BRUDIS & ASSOCIATES, INC.

**Mahendra
Bastakoti**

Digitally signed by Mahendra Bastakoti
DN: cn=Mahendra Bastakoti, o=Brudis
and Associates, Inc, ou=Water Resources,
email=mbastakoti@brudis.com, c=US
Date: 2023.11.11 13:40:38 -05'00'

Mahendra Raj Bastakoti, P.E.
Deputy Director, Water resources

EXHIBIT A

11000 Broken Land Pwky; Suite 450 • Columbia, Maryland 21044 • 410-884-3607 • Fax 410-884-3609
<http://www.brudis.com>

ATTACHMENT A
Scope of Work

Project Background

The Town of Kensington had requested services for Storm Drain System Support on June 16, 2023. The project site is located near the intersection of Washington Street and Kensington Parkway in Kensington, Maryland. An existing storm drain outfall with flap gate discharges runoff from residential properties in the Town into a stream. It is our understanding that this flap gate was designed to prevent surcharges from the stream from backing up into the storm drain system. However, during recent heavy rain events, this has resulted in runoff ponding in several residential properties. The yard inlet located at the SW corner of the lot at 10301 Armory Ave was flooded during the recent extreme storm event and another yard inlet located back of the house located at 10100 Hadley Place also had some significant ponding. A preliminary study was conducted for which BAI provided the engineering services. The preliminary study of the existing storm drain system resulted in BAI recommending the CCTV inspection of the storm drain inlets those have the ponding issues. BAI also recommended conducting a downstream study of the existing storm drain system to make sure that the existing pipes are adequately sized to convey the design storm. A stormwater detention pond was also recommended as a permanent solution to the flooding issue which will allow the town to temporarily store runoff during higher storm events and slowly release the water to the nearby stream when the flood has receded. Since it was a preliminary study no actual drainage area delineation and pond design calculations were conducted.

Project goals and Understanding

The Town would like to further explore the CCTV inspection and the downstream study of the existing storm drainpipe. The town has also been in coordination with the MNCPPC for the feasibility study of the SWM pond in the Kensington Cabin Local Park. A preliminary coordination has revealed that the MNCPPC is not open to the idea of the SWM pond in a public park and hence would like to explore an alternative approach for mitigating the flooding situation. A greater detail of coordination on that subject remains to be done.

Based on the "Request for the Price Proposals", and subsequent coordination with the Town of Kensington, this scope assumes the following conditions:

Task 1 – Storm Drain Downstream Study:

BAI will perform the following task for Task 1:

- a) BAI will coordinate with Sub consultant AB Consultants on scheduling and coordinating the CCTV inspection of the existing storm drain system as outlined in the proposal by AB Consultants.
- b) BAI will review the results of the CCTV inspection and will provide summary of the existing condition of the pipes and recommendation if needed.
- c) BAI will download available GIS topographic information including the Town's available storm drain information and prepare a drainage area map for the existing storm drain system within the study limits.
- d) BAI will perform a site visit to verify the drainage area delineation of the existing storm drain system.
- e) BAI will conduct a study of the existing storm drain system utilizing the drainage area map and the available data and check the capacity of the existing storm drainpipe downstream of the existing inlets (C4-A and C10-A) for design period of 10-year storm event.

- f) BAI will develop a drainage report of the downstream study outlining the methodology, results of the study, storm drain calculations and the recommendation if the existing storm drain system is not found adequate to convey the flow.
- g) BAI will review the recommendations from the downstream study with the Town to determine best option. Upon concurrence of design approach, BAI will prepare a proposal for full design of the selected design alternative including any additional ancillary H&H services as requested. Two (2) virtual meetings are anticipated with the Town.

Assumptions and Exclusion

- It is assumed required survey of the existing storm drain system for downstream study will be provided by the Town of Kensington.
- No floodplain analysis and HEC-RAS analysis will be required.
- No storm drains detail design and permitting will be required.
- No spread computation of the existing inlets will be required. The study will be limited to existing pipe capacity check.
- Any items not specifically mentioned in the scope of work.

Project Schedule

BAI anticipates completing task 1 in 90 days after award. BAI anticipates providing initial recommendations memo within 45 days after NTP.

MANHOOR ESTIMATE

TOWN OF KENSINGTON
DEPARTMENT OF PUBLIC WORKS
 ESTIMATE OF HOURS
 DESCRIPTION OF WORK ACTIONS
 TASK NAME:

CONTRACT NO.
 TASK NO.

KENSINGTON STORM DRAIN DOWNSTREAM STUDY SUPPORT

	Task	Class 1 Principle / Associate	Class 2 Project Manager	Class 3 Highway Engineer	Class 4 Structural Engineer	H&H Engineer	Class 5 Technician	Total
1	Task 1 – Storm Drain Retrofit Recommendations							
	CCTV coordination		4					4
	CCTV inspection report review and recommendation		2			8		10
	Prepare basemap and driange area map of storm drain system					8	40	48
	Existing storm drain system downstream study and computation					32		32
	Prepare drainage report					30		30
	Coordination and meetings		4					4
	Item 1 Hours	0	10	0	0	78	40	128
	Rate		\$ 162.50	\$ 112.50	\$ 112.50	\$ 125.00	\$ 75.00	
	Item 1 Cost	\$ -	\$ 1,625.00	\$ -	\$ -	\$ 9,750.00	\$ 3,000.00	\$ 14,375.00
2	Total							
	Total Hours	0	10	0	0	78	40	128
	Total Bid Price		\$ 1,625.00	\$ -	\$ -	\$ 9,750.00	\$ 3,000.00	\$ 14,375.00



October 23, 2023

EXHIBIT B

Mr. Arun Gurung, P.E.
Brudis & Associates, Inc.
11000 Broken Land Parkway, Suite 450
Columbia, Maryland 21044

Ref: CCTV Inspection Services
Town Of Kensington
AB Proposal No. 2023378-01

Dear Mr. Gurung:

AB Consultants, Inc. (AB) is pleased to submit our scope and task list to provide CCTV Pipe Inspection Services for the above referenced project. The purpose of this task is to determine the condition of storm drain inlets in the Town of Kensington, Montgomery County, Maryland. The storm inlet locations are shown on the attached aerial map. The Town of Kensington and/or Brudis & Associates will coordinate with property owners to obtain permission to access the yard inlets. The CCTV inspection work will be performed between 7:00 a.m. and 4:00 p.m. Monday through Friday. A total footage of 250 linear feet is estimated to be inspected. Our scope of services is as follows:

1. **Project Management**
Coordinate with Client on schedule, reporting, and inspection results.
2. **Site Visit**
Perform a site visit to assess the site conditions and planning of the field operations.
3. **Perform CCTV Inspections and Reports**
Perform CCTV inspections and conditional assessment. Prepare Assessment Report along with Video Recording as per NASSCO guidelines. MOT services for this task will not be required.
4. **Deliverables**
We will provide a link to download of the inspections using NASSCO procedures, supporting documentation on which video corresponds to which pipe.

Exclusion:

- I. Maintenance of Traffic Control Plan.
- II. Maintenance of Traffic Control during field operation.
- III. Any Permits.
- IV. Cleaning, removal and/or disposal of debris

Please note that the above-mentioned work is based on the following conditions.

- The services will be performed during normal working hours, Monday -Friday, 7:00 AM – 4:00 PM.
- Overtime is time for work on Saturday, Sunday, or national holidays; time in excess of 8 hours per day; or time between the hours of 4:00 PM and 7:00 AM. Any services performed during this time will be charged extra.
- Any downtime due to circumstances outside of our control will be billed extra at a minimum charge of four (4) hours per trip for all field services including portal-to-portal travel time.

Our **lump sum** fee for the above-mentioned professional services is **\$9,149.13 (Nine Thousand One Hundred Forty-Nine Dollars and Thirteen Cents)**. Please do not hesitate to contact me if

Mr. Arun Gurung, P.E.
Town of Kensington CCTV Inspections
October 23, 2023
AB No. 2023378-01
Page 2

AB CONSULTANTS, INC.

there are any questions. I may be reached at 443-729-2705 or by email at steve.foster@abconsultantsinc.com.

Very truly yours,
AB CONSULTANTS, INC.



Steven D. Foster
Senior Vice President

Attachment: Exhibit "A" CCTV Estimate
Aerial Map

M:\EOI\2023\2023378-01 CCTV Storm Drain Inspection\4-Proposal\2023378-01 CCTV Fee Proposal.docx

ENGINEERS

PLANNERS

SURVEYORS

SUPPORT SERVICES



AB CONSULTANTS, INC.
9450 Annapolis Road
Lanham, Maryland 20706

Ph: (301) 306-3091
Fax: (301) 306-3092
www.abconsultantsinc.com

PROPOSAL ESTIMATE

Company: Brudis & Associate, Inc.
Attn: Arun Gurung, P.E.

Date: 10/03/23

Re: Town of Kensington
Project: CCTV Pipe Inspection

Description of Services	Quantity	Unit	Unit Price	Est. Cost
Direct Labor (Engineering & Reporting)				
Site Visit, Coordination, Management, Reports, QA/QC	1	EA	\$ 3,000.00	\$ 3,000.00
Subtotal Direct Labor				\$ 3,000.00
Field CCTV Inspection				
CCTV Truck Daily Rate (8 hrs)	1	EA	\$ 2,500.00	\$ 2,500.00
Access / Setup / Standby	0	HR	\$ 150.00	\$ -
Maintenance of Traffic (MOT) (Shoulder or one-lane closure)	0	DAY	\$ 1,200.00	\$ -
Maintenance of Traffic (MOT) with TMA	0	DAY	\$ 1,800.00	\$ -
CCTV Inspection	300	LF	\$ 12.00	\$ 3,600.00
Subtotal CCTV Services				\$ 6,100.00
Mileage	75	MI	\$ 0.655	\$ 49.13
CCTV Total				\$ 6,149.13
OVERALL TOTAL				\$ 9,149.13

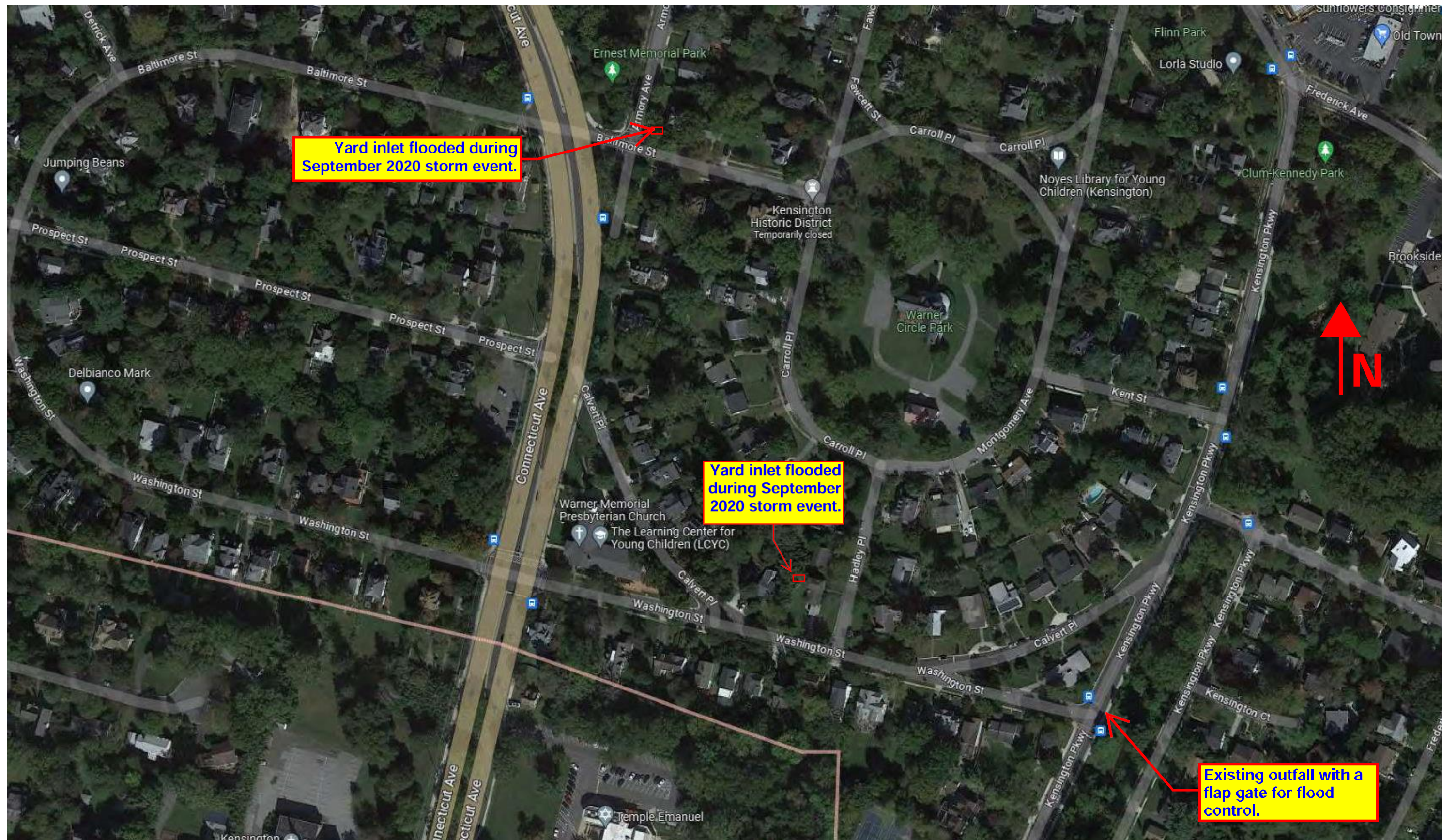
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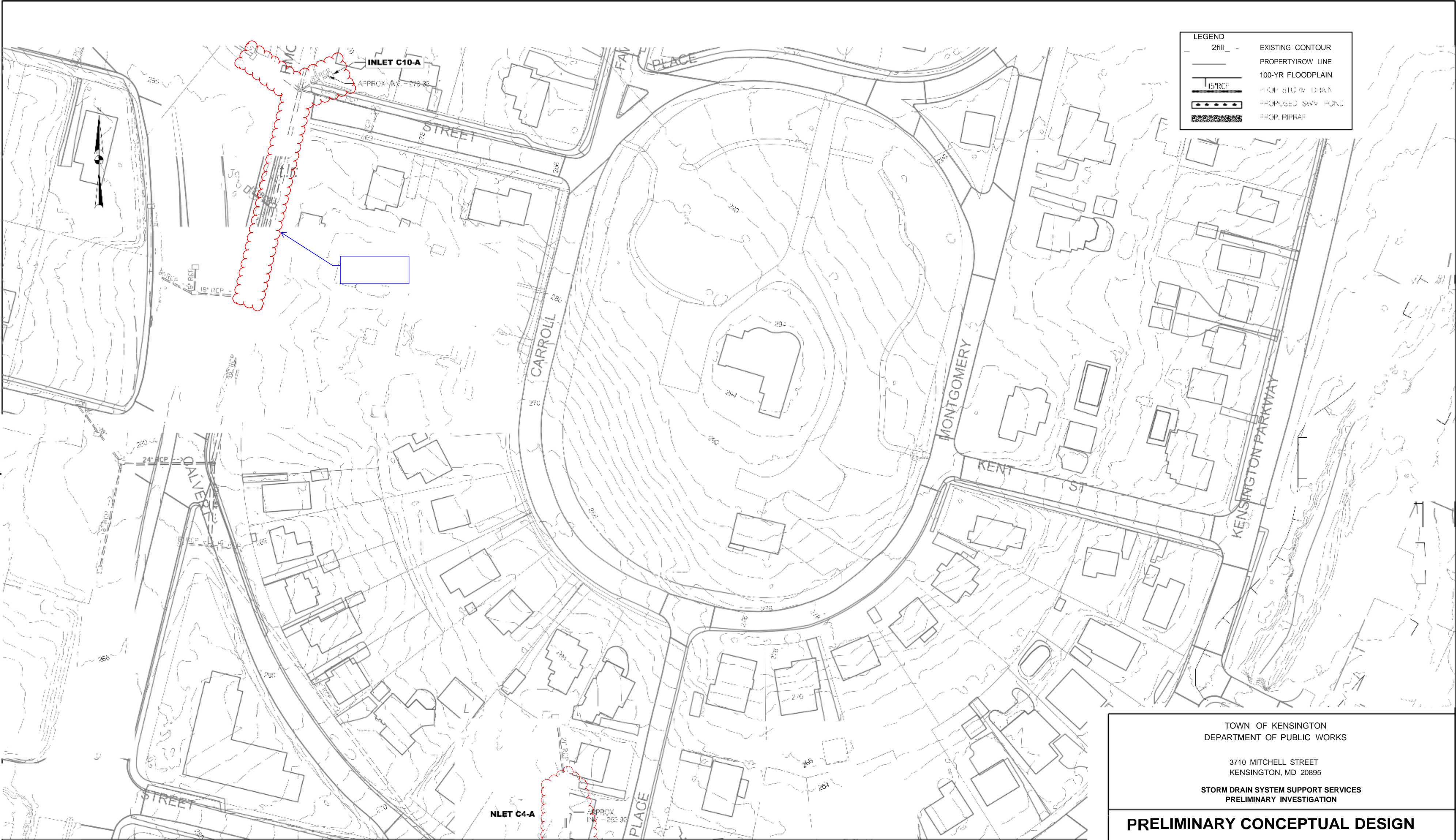
1. Price above may vary if any changes to this original quotation is requested
2. Work is subject to weather conditions and current workload. Rain and near-freezing temperatures will affect the schedule
3. Daily Rates based upon and 8 hour Day portal to portal
4. The full daily rate will be charged for partial days.

Price Includes:
Personal Safety equipment

Price Excludes
MOT Service and Permits
Pipe Bypass

Please call us for site specific estimates.
Prices are subject to change without prior notice.





LEGEND

2'fill

EXISTING CONTOUR

PROPERTY/ROW LINE

100-YR FLOODPLAIN

PROPOSED SWM DRAIN

PROPOSED SWM POND

PROPOSED PIPE

BAI

BRUDIS & ASSOCIATES, INC.

Consulting Engineers

11000 Broken Land Parkway Suite 450
Columbia, Maryland 21044

Phone 410-884-3607
www.brudis.com

FOR REVIEW ONLY. NOT FOR CONSTRUCTION

TOWN OF KENSINGTON
DEPARTMENT OF PUBLIC WORKS

3710 MITCHELL STREET
KENSINGTON, MD 20895

STORM DRAIN SYSTEM SUPPORT SERVICES
PRELIMINARY INVESTIGATION

PRELIMINARY CONCEPTUAL DESIGN

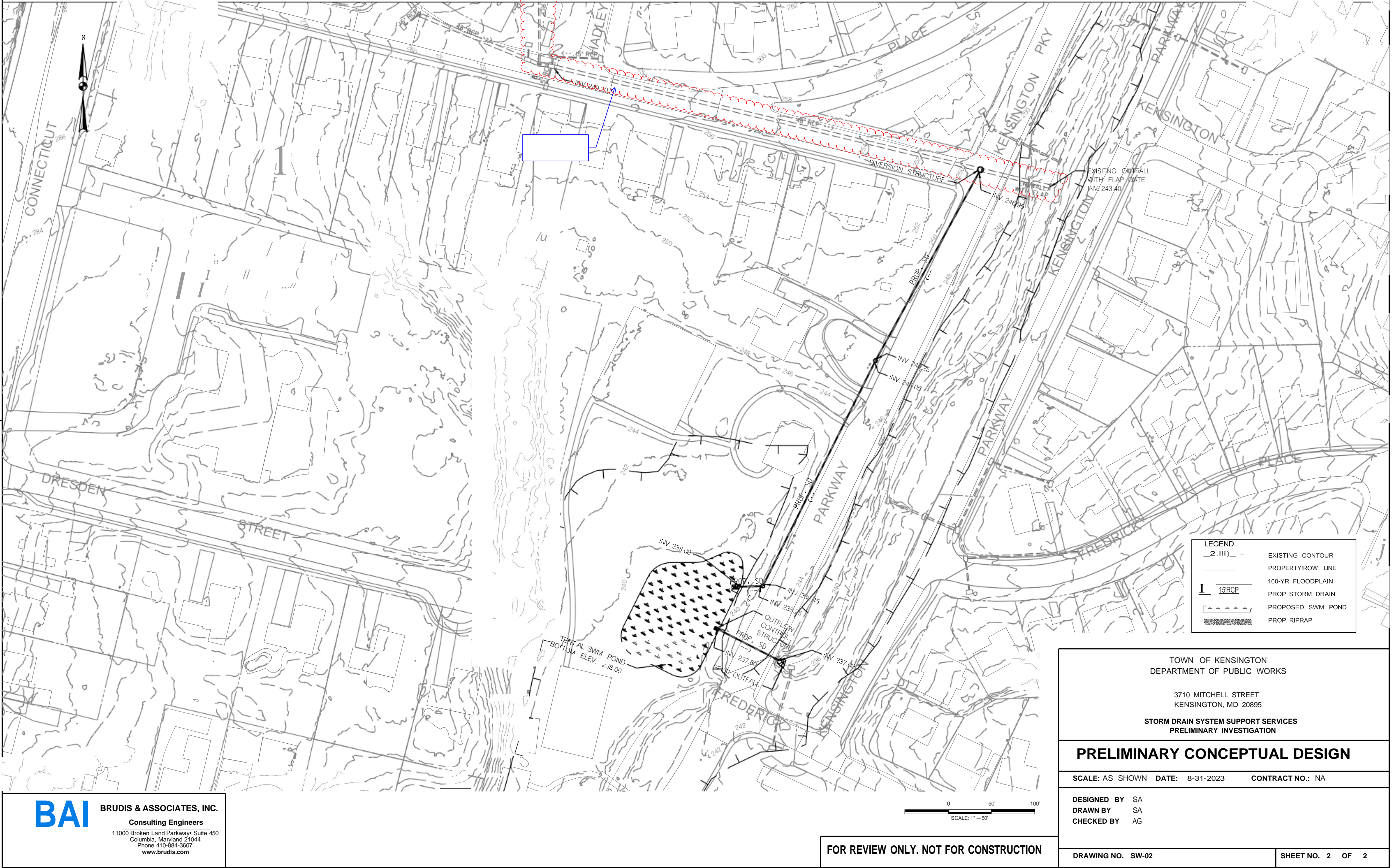
SCALE: AS SHOWN DATE: 8-31-2023 CONTRACT NO.: NA

DESIGNED BY SA
DRAWN BY SA
CHECKED BY AG

DRAWING NO. SW-01 SHEET NO. 1 OF 2

PLOTTED: 9/8/2023

MATCHLINE - SEE SHEET SW-00







CONSULTANT AGREEMENT

THIS CONSULTANT AGREEMENT (the "Agreement") is effective this 20th day of November, 2023 by and between the TOWN OF KENSINGTON (the "Town"), a municipal corporation of the State of Maryland and Brudis & Associates, Inc. ("Consultant").

WHEREAS, Consultant desires to act for the Town as an independent licensed engineering contractor to provide Storm Drain Downstream Study Engineering Support Services to identify the conditions of the existing pipes downstream of the existing storm drain inlets (C4-A and C10-A), conduct the downstream pipe capacity check for 10-yr storm event and provide recommendations based on the CCTV inspection and the downstream study results ("Project"); and

WHEREAS, the Town desires that Consultant provide such services.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Appointment.** The Town hereby engages Consultant, as an independent licensed engineering consultant and not as an agent or employee of the Town, to provide civil engineering services for the Project. Consultant hereby accepts such work, subject to the terms and provisions of this Agreement.

2. **Scope of Services.** Pursuant to the Agreement, the Consultant agrees to furnish all the material and perform all of the work in compliance with the requirements and standards contained in the Contract Documents, as defined herein ("Services"). All Services shall be performed in accordance with generally accepted engineering practices. The Services are more particularly described in attached Exhibit A, Consultant's proposal dated November 11, 2023,

and attached Exhibit B, the proposal from AB Consultants, Inc., dated October 23, 2023, who will act as subcontractor to consultant, both of which exhibits are incorporated herein by reference.

3. **Dates of Work.** The Consultant agrees to commence work within ten days of notice to proceed. The Services will be completed on or before ninety days from notice to proceed, with the initial recommendations memo to be provided to the Town within 45 days. Consultant shall provide a calendar schedule for each task listed herein for approval by the Town Manager. It is understood by the parties hereto that time is of the essence in the completion of the Services under this Agreement, provided that the Consultant's services must in any event be governed by the exercise of sound professional practices and the Consultant shall not be liable for delays beyond its reasonable control.

4. **Contract Price.** The Town agrees to pay the Consultant, as consideration for the Consultant's performance in accordance with applicable professional standards, a sum not to exceed \$14,375.00 for the Services to be performed by the Consultant under the Agreement, as referenced in Exhibit A, and a sum not to exceed \$9,149.13 for the Services to be performed by AB Consultants, Inc., as subcontractor, as referenced in Exhibit B, for a total not to exceed contract price of \$23,525.00. The Contract Price includes expenses such as travel, printing, copying, binding, telephone, drawings, diagrams and photographs.

Additional services related to this project shall be provided by the Consultant on an as-needed basis as directed by the Town in writing. Such services shall be billed to the Town at the hourly rates established in Exhibit A.

Invoices for payment may be submitted on a monthly basis and, for additional services, must be accompanied by hourly billing and any other documentation required by the Town. In no

event shall the amount billed by the Consultant exceed that amount attributed to the Services completed as of the date of the bill.

5. **Contract Documents.** This Agreement and the following enumerated documents, which are incorporated by reference as if fully set forth herein, form the Agreement and are termed the Contract Documents:

Exhibit A Engineer Proposal dated 11/11/2023
Exhibit B Proposal from AB Associates, Inc., dated 10/23/2023
Required affidavits and certifications
Insurance certificates and additional insured endorsement
Agreed schedule of work

6. **Other Payments; Expenses; Taxes.** The Town will not be responsible for any cost or expenses of operation of any kind associated with Consultant's provision of services pursuant to this Agreement, except as set out herein. Consultant shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered hereunder except as set out herein. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Consultant in connection with the performance of its obligations under this Agreement.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in the gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that Consultant, as an independent contractor of the Town, is responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, Social Security payments, unemployment compensation payments, and any other fees, taxes, and expenses whatsoever. In the event that Consultant is deemed not to be an independent contractor by any local, state or federal governmental agency, Consultant agrees to indemnify and hold harmless

the Town for any and all fees, costs and expenses, including, but not limited to, attorneys fees incurred thereby.

7. **Insurance.** Consultant will purchase and maintain during the entire term of this Agreement comprehensive general liability insurance, automobile liability insurance, professional errors and omissions insurance, and workers' compensation insurance with limits of not less than those set forth below. On each policy except for workers compensation and professional errors and omissions, Consultant will name the Town of Kensington its officers, officials, agents, servants, and employees as additional insureds.

A. Comprehensive General Liability Insurance

- (1) Personal injury liability insurance with a limit of \$2,000,000 each occurrence/aggregate;
- (2) Property damage liability insurance with limits of \$500,000.00 each occurrence/aggregate.

All insurance shall include completed operations and contractual liability coverage.

B. Professional Errors and Omissions Insurance. The Consultant shall maintain a policy with limits of not less than \$1,000,000.00 each claim/aggregate.

C. Automobile Liability Coverage Automobile fleet insurance \$1,000,000.00 for each occurrence/ aggregate; property damage - \$500,000.00 for each occurrence/aggregate.)

D. Workers' Compensation Insurance. Consultant shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation insurance. All Corporations are required to provide Workers' Compensation Certificates of Insurance.

Consultant covenants to maintain insurance, in these amounts, which will insure all activities undertaken by Consultant on behalf of the Town under this Agreement throughout the term of the Agreement. Copies of the certificates of insurance and additional insured endorsements for all required coverage shall be furnished to the Town within ten (10) days following the execution of this Agreement and prior to commencement of any work. The Certificate shall demonstrate that the Consultant has complied with the requirements of this section and be in a form acceptable to the Town. The Town shall receive 30 days prior written notice of any reduction or elimination of the insurance coverage required herein.

A policy which allows the costs associated with investigating, management or defense of any claim, or any other cost incurred by the insured or the insurance carrier, to be deducted from the policy limits is not acceptable. Required insurance shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Insurance companies providing coverage herein shall have an AM Best rating of A-VII or better.

The Consultant shall be responsible for the maintenance of this insurance, whether the work is performed directly by the Consultant; by any subcontractor; by any person employed by the Consultant or any subcontractor; or by anyone for whose acts the Consultant may be liable.

Provision of any insurance required herein does not relieve Consultant of any of the responsibilities or obligations assumed by the consultant in the Agreement awarded, or for which the Consultant may be liable by law or otherwise. Provision of such insurance is not intended in any way to waive the Town's immunities or any damage limits applicable to municipal government as provided by law.

8. Indemnification. The Consultant shall indemnify and save harmless the Town, its officers, officials, and employees, from third-party claims, damages, costs, liabilities, and

expenses recoverable by law, including reasonable attorneys' fees, to the extent caused by the negligent or willful act or omission on the part of the Consultant, its agents, servants, employees and subcontractors.

9. **Licenses, Applicable Laws.** Consultant will be responsible for obtaining any and all licenses pertaining to performance of work under the Agreement. All services and materials provided by consultant shall conform to all applicable laws and regulations, subject to professional standards.

10. **Materials and Standard of Work.** All work performed and material provided pursuant to this Agreement shall be in conformance with standards and specifications applicable in the industry. All work shall be performed in a neat and workmanlike manner by trained and experienced personnel. Defective or unsuitable materials or workmanship may be rejected and shall be made good by the Consultant at Consultant's expense, notwithstanding that such deficiencies have been previously accepted; provided, however, the Consultant shall not be liable for deficiencies in information furnished by the Town or others for whom the Consultant was not legally liable.

11. **Subcontracting.** The Consultant may not subcontract any other Services required under this Agreement without the consent of the Town. If the Consultant wishes to subcontract any of the said Services, it must provide subcontractor names, addresses, and telephone numbers and a description of the work to be done. The Consultant is not relieved of primary responsibility for full and complete performance of any Services identified to the subcontractor. There shall be no contractual relationship between the Town and the subcontractor.

12. **Accurate Information.** The Consultant certifies that all information provided in response to requests for information is true and correct to the best of its knowledge and belief. Any intentionally false or misleading information is grounds for the Town to terminate this Agreement.

13. **Errors in Specifications.** The Consultant shall take no advantage of any known error or omission in the specifications, but the Consultant shall be entitled to rely upon the specifications. The Town shall make such corrections and interpretations as may be deemed necessary and that decision shall be final.

14. **Construction and Legal Effect.** This Agreement, including all Contract Documents, constitutes the entire understanding between the parties. No modification or addition to this Agreement shall have any effect unless made in writing and signed by both parties hereto.

15. **No Assignment.** This Agreement shall not be assigned or transferred by consultant, whether by operation of law or in any other manner, without prior consent in writing from the Town. In the event of insolvency of either party, this Agreement shall terminate immediately at the election of the other party.

16. **Termination for Default.** Notwithstanding anything to the contrary herein, this Agreement may be terminated upon the failure of the Consultant to deliver work, supplies, materials or services in a timely manner, to correct defective work or materials, to act in good faith, or to carry out the work in accordance with Contract Documents, each of which shall constitute a breach of this Agreement. In such event, the Town may give notice to the Consultant to cease work until the cause for such order has been eliminated. Should the Consultant fail to correct, or commence and reasonably continue to correct, such default within 24 hours in an emergency situation, and otherwise within 72 hours, after receipt of notification, the Town may terminate this Agreement. This provision shall not limit the Town in exercising any other rights or remedies it may have.

17. **Termination for Convenience.** The performance of work or delivery of services under this Agreement may be terminated in whole or in part at any time upon written notice when the Town determines that such termination is in its best interest. The Town will be liable only for labor, materials, goods, and services furnished up to the effective date of such termination.

18. **Notices.** All notices shall be sufficient if delivered in person or sent by certified mail to the parties at the following addresses:

Matt Hoffman
Town Manager
Town of Kensington
3710 Mitchell Street
Kensington, MD 20895

Brudis & Associates, Inc.
11000 Broken Land Pkwy
Suite 450
Columbia MD 21044

19. **Enforcement Provisions.** The failure of the Town or Consultant, at any time, to enforce any of the provisions of this Agreement, or any right with respect thereto, will in no way be construed to be a waiver of such provisions or right, or in any way to affect the validity of this Agreement. The exercise by either party of any rights under this Agreement shall not preclude or prejudice the subsequent exercise of the same or any other rights under this Agreement.

20. **Governing Law.** This Agreement shall be governed by the laws of the State of Maryland, excluding its conflict of law rules, as if this Agreement were made and to be performed entirely within the State of Maryland.

21. **Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

22. **Set-Off.** In the event that Consultant shall owe an obligation of any type whatsoever to the Town at any time during the term hereof or after termination of the relationship created hereunder, the Town shall have the right to offset any amount so owed by the Consultant against any compensation due the Consultant from the Town.

23. **Counterparts.** The parties may execute this Agreement in counterparts, which each such document shall, in the aggregate and when signed by both parties, constitute one and the same instrument; and, thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it. This Agreement shall not be valid or enforceable unless and until duly executed by a duly authorized officer of each party. The Parties may sign in writing or by electronic signature. An electronic signature will have the same effect as an original signature.

24. **Ownership and Use of Documents.** All documents, materials or data developed as a result of this Agreement are the Town's property. The Town has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this Agreement. The Town may use this information for its own purposes, including reporting to state and federal agencies. Any modification or reuse of such documents, materials, or data, without the written consent of the Consultant, shall be at the user's sole risk and without liability to the Consultant. The Consultant warrants that, to the best of its knowledge, information, and belief, it has title to or right of use of all documents, materials or data used or developed in connection with this Agreement.

25. Changes. The Town may unilaterally increase or decrease (“Change”) the work, materials and Services to be performed. The Change must be in writing and within the general scope of the Agreement. The Agreement will be modified to reflect any time or money adjustment the Consultant is entitled to receive or to provide to the Town. Consultant must bring to the Project Manager, in writing, any claim about an adjustment in time or money resulting from a Change, within 30 days from the date the Town issued the change in Services, or the claim is waived. The Consultant must proceed with the prosecution of the Services as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

26. Confidentiality. The Town may disclose Consultant’s information to the extent required by the Maryland Public Information Act (“MPIA”) or other applicable law. Consultant shall mark any information that it wishes to remain “confidential” or “proprietary” before providing the information to the Town. In the event that, pursuant to the MPIA or other process, the Town receives a request for information that has been so marked by Consultant, and the Town agrees that the information may be exempt from disclosure under Maryland law, then the Town will not disclose the information and will notify the Consultant of the request. Consultant shall bear the costs of asserting any right to non-disclosure of its information. This Agreement is not a confidential document. The Consultant shall keep confidential all information provided by the Town, or to which the Consultant has access as part of the provision of services under this Agreement.

27. Patents, Copyrights and Royalties. Whenever any article, material, appliance, process composition, means or things called for by these specifications is covered by Letter of Patent, copyright or license, or other property or privacy right the Consultant must secure, before using or employing such materials, the authorizations and approvals related to its use in writing

from the owner or licensee of such letters of patent, copyright or license , or other property or privacy right, and file the same with the Town. The Consultant will indemnify and hold harmless the Town related to Consultant's infringing or otherwise improper or unauthorized use to the extent that the Consultant performs, commits, specifies or directs an infringement on a patent, copyright, license or trade secret or other private property right; provided, however, the Consultant shall not be liable for infringements specified or directed by the Town or others for whom the Consultant is not legally liable. In the event that an injunction shall be obtained against the Town's use of items by reason of infringement of any patent, copyright, license or trade secret or other property or privacy right, the Consultant will, at its expense, procure for the Town the right to continue using the items, replace or modify the same so that it becomes non-infringing.

28. Performance During Dispute. Unless otherwise directed by the Town, the Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

29. Third Party Beneficiary. This Agreement is entered into solely for the benefit of the Town and the Consultant. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal the day and year first above written.

WITNESS:

TOWN OF KENSINGTON



Susan Engels, Clerk-Treasurer

By: 

Matthew J. Hoffman, Town Manager

WITNESS:

BRUDIS & ASSOCIATES, INC.

By: Anthony Brudis
Name: Anthony Brudis

Title: Principal

Approved as to form and legal sufficiency:

Suellen M. Ferguson,
Attorney for the Town of Kensington