

MEMORANDUM

TO: City Council

FROM: Daniel Mears, Assistant City Manager

SUBJECT: Race Track Road Property and BSU

DATE: March 3, 2022

Purpose

The City Council will discuss the next steps for meeting with Bowie State University regarding the joint use of the Race Track Road property at the March 7, 2022 City Council Meeting. Prior to meeting with BSU, staff is seeking guidance from the City Council regarding budget objectives, funding priorities, and the recreational planning process for the property. As this is a new municipal objective and the City will need to coordinate with and make commitments to Bowie State University, staff will need clear direction of the Council's objectives for the property and how commitments will be made.

Background

- During the 2020 State Legislative Session, Senate Bill 987 (Racing and Community Development Act of 2020) was adopted.
- As part of that legislation, on or before December 31, 2023, the City is expected to become the record owner of the property known as the Bowie Race Course Training Center.
- The property is approximately 180 acres on both sides of Race Track Road.
- The legislation limits what may be done with the property by:
 - Property within 100 ft. of the Patuxent Riverbank shall be used for passive recreational activities, including hiking, wildlife viewing, picnicking, and walking.
 - The remainder of the property shall be used only for active recreational activities, including, but not limited to baseball, football, soccer, cricket, and that the property may contain only one future structure that is no greater than 50,000 square feet in floor area.
- The City began, but did not complete, an environmental conditions assessment of the property almost 13 years ago. The Phase I Site Assessment indicated there would need to be some environmental remediation, and further study is needed to quantify that, and identify what may have occurred in the intervening years.
- In December 2020, the City of Bowie sent an executed Joint Use Agreement between the City of Bowie and Bowie State University to the Maryland Delegation as required by the Senate Bill.
- Bowie State University contacted the City in February 2022 to hold a meeting between BSU and the City of Bowie to discuss the property.

Property Use

The Joint Use Agreement with Bowie State University is attached to this memorandum. There remain many items to be resolved between the parties including size and location of the easement for BSU's use, responsibility for development, maintenance, and use of currently unknown improvements. The discussion with BSU would work through these unresolved items and build the basis for committing both parties to the developed plan.

Environmental Considerations

As stated previously, the City will become responsible for the property once transferred to the City. This will include any environmental remediation, which is presently not fully known. The State legislation in its language, absolves the current owner of claims or risks associated with the property after it is conveyed. It is important to highlight the language from SB 0987.

“ON OR BEFORE DECEMBER 31, 2023, THE OWNER OF THE BOWIE RACE COURSE TRAINING CENTER SHALL CONVEY THE BOWIE RACE COURSE TRAINING CENTER PROPERTY TO THE CITY OF BOWIE “AS IS”, WITH ALL DEFECTS THAT MAY EXIST, WHETHER KNOWN OR UNKNOWN, AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, GUARANTEE BY, OR RECOURSE AGAINST THE CONVEYOR OF THE PROPERTY.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE CONVEYOR OF THE BOWIE RACE COURSE TRAINING CENTER PROPERTY SHALL BE HELD HARMLESS AGAINST ANY AND ALL CLAIMS AND RISKS, NOW OR IN THE FUTURE, ARISING DIRECTLY OR INDIRECTLY FROM, OR IN ANY WAY RELATED TO, THE CONDITION OF THE PROPERTY OR CONVEYANCE, WITH ALL THOSE CLAIMS AND RISKS ASSUMED BY THE CITY OF BOWIE.”

This does not mean that the City of Bowie is responsible for all of the risk. The legislation calls out some fiscal responsibility of the State.

“...at least \$1,000,000 but not exceeding \$1,500,000 of the funds transferred to the Racing and Community Development Facilities Fund established under § 10-657.3 of the Economic Development Article in accordance with § 9-1A-29(d)(2) of the State Government Article, as enacted by Section 1 of this Act, shall be transferred to the City of Bowie for remediation costs of the Bowie Race Course Training Center property, provided that a joint use agreement has been executed between the City of Bowie and Bowie State University in accordance with § 11-519 of the Business Regulation Article, as enacted by Section 1 of this Act.”

This language indicates that the City would be responsible for all remediation costs in excess of \$1,500,000. Again, the full remediation cost is not known at this time.

Security Concerns

When the property becomes the City's, there will be several security concerns that will need to be managed by the City as an owner. The following items are experiences the City has had at this property and similar open space in our community.

- Illegal Dumping
- After-hours parties

- Off-road vehicle usage (ATVs/Dirt Bikes)
- Hunting on property
- Abandoned vehicles
- Persons living in current structures/stables

Joint Use Agreement

THIS AGREEMENT (the “Agreement”) is made this ____ day of _____, 2020 by and between the City of Bowie, Maryland, a municipal corporation (hereinafter, the “City”), and Bowie State University, a constituent institution of the University System of Maryland, an agency and instrumentality of the state of Maryland (hereinafter, the “University”).

WHEREAS, pursuant to Chapter 590 of the 2020 Laws of Maryland (Racing and Community Development Act of 2020), hereinafter “Chapter 590”, on or before December 31, 2023, the City is expected to become the record owner of the property known as the Bowie Race Course Training Center, which includes approximately 180.844 acres consisting of all of the land located at 8311 Race Track Road, 8406 Race Track Road, 8408 Race Track Road, 8410 Race Track Road, Bowie, Maryland, 20715, currently in the ownership name of Southern Maryland Agricultural Association (SMAA), said land being further identified in Prince George’s County Department of Assessments and Taxation Account numbers 1679885, 1679851, 1679844, 1661099, 1679893, 2940518, 2940526, and 2940534 (hereinafter, collectively, the “Property”), as shown in Exhibit A, which are located within the corporate limits of the City; and

WHEREAS, Chapter 590 requires that:

- (1) The portion of the Property transferred to the City that is within 100 feet of the top of the Patuxent River bank shall be used only for passive recreational activities, including hiking, wildlife viewing, picnicking, and walking;
- (2) The remainder of the Property shall be used only for active recreational activities including, but not limited to, baseball, football, soccer, and cricket, and that the Property may contain only one future structure that is no greater than 50,000 square feet in floor area; and
- (3) The City shall enter into a Joint Use Agreement, including an easement, with Bowie State University to permit the University’s future recreational use of the Property, consistent with the foregoing recitals; and

WHEREAS, the City and the University see an opportunity for the current owners of the Bowie Race Track to divest their interests in the property as part of the overall deal to save the Preakness Stakes and significantly improve Pimlico and Laurel race tracks for the benefit of both University and City; and

WHEREAS, the University desires to use the Property for recreational purposes consistent with the terms set forth in Chapter 590 for students, staff, faculty, and guests at the University; and

WHEREAS, the City and University see an opportunity for joint use of the property, as the parties’ goals for the use of the land overlap and they have significant mutual interests; and

WHEREAS, it is the City’s intention to execute an easement conveying certain usage rights and privileges to the University at such time as the City takes title to the Property, and

WHEREAS, the desired recreational uses of the City and University directly benefit the parties’ constituencies by preserving and enhancing public health and, to meet those objectives, the City and University desire that any transfer of the Property from the current owners be contingent upon full

mitigation of any environmental hazards, including the completion of a Phase II Environmental Assessment to evaluate the property and any related remediation.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and other good and valuable consideration, it is hereby agreed by and between the parties as follows:

1. **Easement**. No later than the 60th day after the City becomes the fee simple owner of the Property, the City shall execute an easement (the "Easement"), in the form attached hereto as Exhibit B, conveying certain usage rights and privileges to the University. The specific uses of the Property have not been determined as of the date of this Agreement, but the parties agree that the Easement shall provide the University with perpetual access to and joint use of the Property for the purposes allowed under Chapter 590.

2. **Uses of the Property**.

2.1 Pursuant to the requirements of Chapter 590, the the Property shall not be used to construct housing, including dormitories or residential housing of any kind, but shall be used solely for the purpose of public recreation, including certain recreational programs that will benefit students of the University.

2.2. The City and the University agree that establishment of a ROTC fitness/obstacle course, including a ropes course (the "ROTC Course"), is an immediate need of the University and should be given priority in terms of siting and construction. Once the plans for the ROTC Course are initially approved by action of the City Council, the University shall have perpetual access to, and exclusive control of, improvements the University makes to the Property related to the ROTC Course, the use of which the University may also offer to outside groups for team building activities.

2.3 The University may operate track and field events, including large group events, not more than four times per year, which will be given priority over any other activities permitted by the City or the University on the Property during the same time. By June 30th of each year, the University shall notify the City of the planned dates for the track and field events to be held the following school year.

2.4 For specific uses of the Property in addition to the ROTC Course and track and field events, the City and the University will work together to institute a system for City approval of University uses of the Property. This system shall include the ability for students, staff, faculty, and guests of the University to make University-specific reservations for use of the Property, pursuant to the City's established rules and regulations, through the City's Department of Community Services.

2.5 Picnic reservations shall be made in accordance with the City's published Picnic Reservation Guidelines and procedures. Hours of operation shall be generally dawn to dusk. Reservations shall be made on a first come, first served basis. At least once annually, the University shall provide a calendar of anticipated events to Department of Community Services staff, so that coordination of reservations for University events may occur.

2.6 The University, its students, staff, faculty, and guests, shall comply at all times with the City's Park Rules and Regulations (Chapter 17 of the City Code) applicable to the University's use of the Property, which are incorporated herein by reference.

3. **Improvements to the Property.**

3.1 **Construction of Improvements.**

- a.) Any improvement to the Property shall require prior written approval by the City, which approval shall not be unreasonably withheld.
- b.) The City and the University shall cooperate in the formal design process for any improvements planned for the Property. The City shall have the right to review all plans, inspect any improvement under construction, and direct corrective measures be taken, in accordance with best practices.
- c.) The party responsible for constructing a specific improvement shall be responsible for obtaining all required permits, licenses and inspections pertaining to the construction of said improvement.

3.2 **Ownership of Improvements.** The City and the University shall negotiate, at a later time, the ownership of improvements made by the University on the Property. However, the parties agree that all equipment and improvements related to the ROTC Course shall be owned exclusively by the University.

3.3 **Maintenance of Improvements.**

- a.) The University shall maintain any improvements constructed by the University on the Property and any portion of the Property on which the University has constructed improvements which maintenance shall include, but is not limited to: normal maintenance and payment of utility costs; weekly or more frequent removal and disposal of litter, trash mowing, landscaping; tree care, snow removal; monthly inspections of play equipment and major maintenance repairs and costs of facilities and equipment such as surfacing, fencing and restriping. The responsibility for maintenance described in this section may be assigned to the City, provided both parties are in agreement and as set forth in writing and signed by both parties. The Bowie City Council must approve the form of any such agreement and authorize the City Manager to execute the document on behalf of the City.
- b.) The City shall maintain the portion of the Property on which no University built improvements exist and all recreational facilities installed by the City.

4. **Limitation of Traffic Impact.** The University and the City shall each work to limit the impact of traffic that results from activities conducted on the Property.

5. **University's Insurance.** With respect to property loss, the University is self-insured under the State Insurance Program administered by the Maryland State Treasurer's Office pursuant to Title 9 of the State Finance and Procurement Article of the Annotated Code of Maryland. The University does not have any insurance coverage for general liability. The University and its personnel acting within the scope of their employment are subject to the Maryland Tort Claims Act (Md. Code Ann., State Government Article, Title 12, Subtitle 1) (the "Tort Claims Act").

6. **University's Indemnification.** The University shall indemnify and defend the City and save the City harmless from and against all actions, liability, claims, suits, damages, costs or expenses of any kind that may be brought or made against the City arising from the University's negligence, or that of its officials, agents, or employees in connection with the use of any facilities on the Property.

Notwithstanding anything to the contrary contained in the foregoing indemnification provision or any other provisions of this Agreement, the University's liability for any tort related claims, damages, losses or costs arising out of this Agreement shall be governed by and subject to the Maryland Tort Claims Act; and the University's liability for any contract related claims, damages, losses or costs arising out of this Agreement shall be governed by and subject to Maryland Annotated Code, State Government Article, Title 12, Subtitle 2. Any indemnification obligation by the University under this Agreement shall be contingent upon and subject to an appropriation by the Maryland State General Assembly specifically for the purposes contemplated in the applicable provision or provisions of this Agreement, at the time or after an event which may give rise to the University's obligation to indemnify or save harmless occurs, and to the extent that a tortious claim is involved, the University's obligations shall not be greater than the liability that might be determined under the Maryland Tort Claims Act. Any indemnification agreement made by the University in this Agreement is not deemed a waiver of immunity or defense that may exist in any action against the University.

7. **Termination of Agreement.** Unless terminated by either party with at least one (1) year's prior written notice, this Agreement shall continue in perpetuity.

8. **Miscellaneous Provisions.**

8.1 This Agreement contains the entire agreement made by and between the parties hereto. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the party to be bound thereby.

8.2 The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement or any other provision of it. This Agreement shall be construed, interpreted and enforced according to the laws of the State of Maryland.

8.3 The University may not assign this Agreement, in whole or part, without the prior written approval of the City. If changes to the Property occur as a result of the assignment, these changes must be reviewed by the City.

8.4 This Agreement shall be given effect and construed by application of the law of Maryland, and any action or proceeding arising hereunder shall be brought in a court of competent jurisdiction in Maryland.

8.5 The rights and remedies of either party provided for under this Agreement are in addition to any other rights and remedies that either party may have as a matter of law. A waiver by either party of any terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of any such term or condition for the future or any subsequent breach or occurrence thereof. Nothing contained herein shall constitute a waiver of the University's sovereign immunity.

8.6 If any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such term or provision shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable term or provision had not been part of this Agreement.

8.7 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com), or other transmission method. Any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

8.8. The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided only for convenience of reference, and shall not be considered in construing their contents.

8.9. Each writing or other document referred to in this Agreement as being an attachment or exhibit hereto or otherwise affixed hereto is hereby incorporated in this Agreement and made a part hereof.

[Signatures on following page]

In witness whereof, the parties hereto have caused this Agreement to be properly executed on the day first written above.

ATTEST:

CITY OF BOWIE

By:

Print Name: _____

Alfred D. Lott
City Manager

ATTEST:

BOWIE STATE UNIVERSITY

By:





University President

EXHIBIT A BOWIE RACE COURSE TRAINING CENTER PARCELS

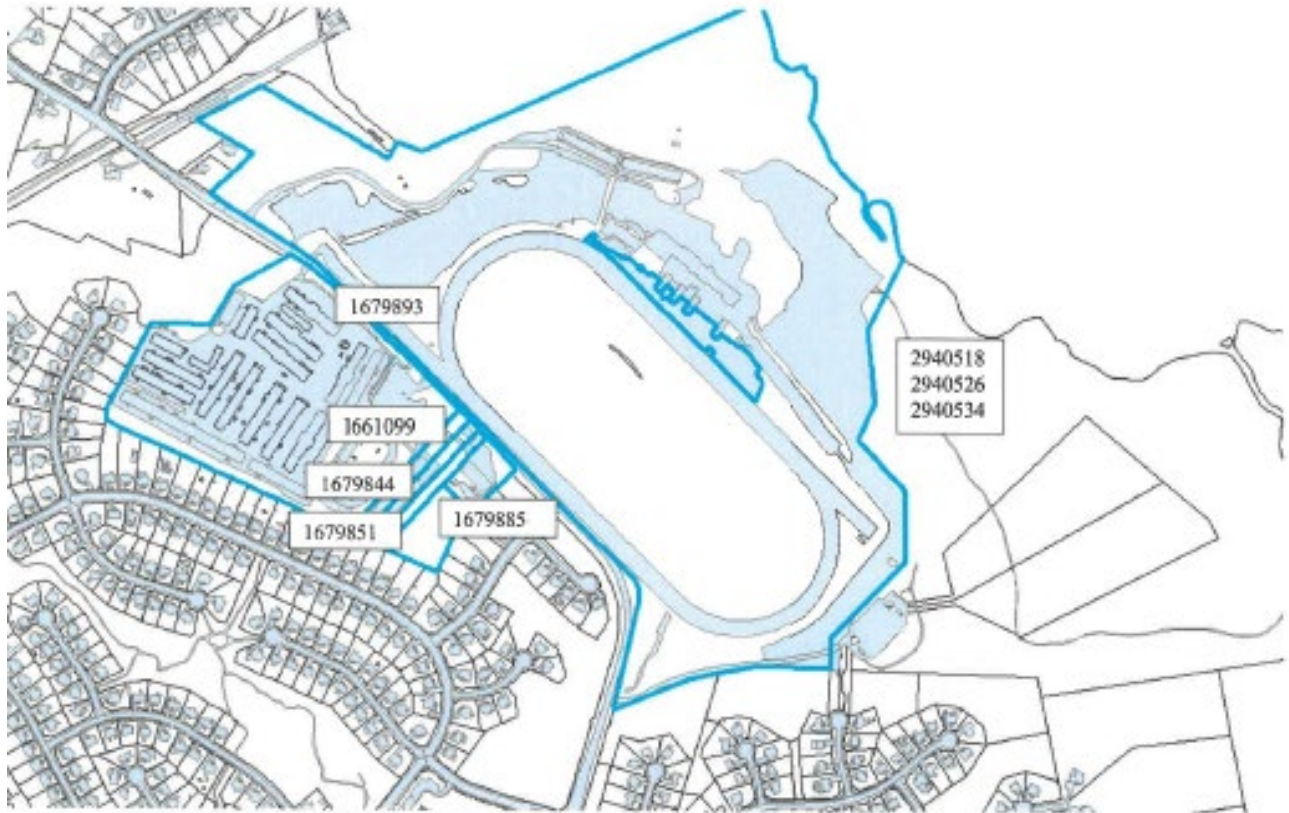


EXHIBIT B
ACCESS AND USE EASEMENT



ACCESS AND USE EASEMENT

THIS ACCESS AND USE EASEMENT (this “Easement”) is made this ____ day of _____, 2023, between the City of Bowie, Maryland (“Grantor”), a Maryland municipal corporation, with offices at 15901 Excalibur Road, Bowie, Maryland 20716 and Bowie State University (“Grantee”), a constituent institution of the University System of Maryland, an agency and instrumentality of the State of Maryland.

WHEREAS, Grantor is the fee simple owner of certain real property (“Grantor’s Property”) known as the Bowie Race Course Training Center, which includes approximately 180.844 acres consisting of all of the land located at 8311 Race Track Road, 8406 Race Track Road, 8408 Race Track Road, and 8410 Race Track Road, Bowie, Maryland, 20715, by virtue of a Deed, dated _____, from Southern Maryland Agricultural Association (SMAA), said land being further identified in Prince George’s County Department of Assessments and Taxation Account numbers 1679885, 1679851, 1679844, 1661099, 1679893, 2940518, 2940526, and 2940534 (hereinafter, collectively, the “Property”), as shown in Exhibit A, which is located within the corporate limits of the City; and

WHEREAS, Grantor and Grantee desire to use the Property jointly for certain recreational purposes in perpetuity; and

WHEREAS, to that end, Grantee desires that Grantor grant to it, and Grantor desires to grant, certain rights of access over and use of the Property; and

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Recitals. The above Recitals are hereby incorporated as operative provisions of this Easement.
2. Easement. The Grantor grants and conveys to the Grantee, its successors, assigns, contractors, subcontractors and invitees, the right, at Grantee’s sole expense to enter in, upon, along, over, across, and through the Property, in order to provide certain programming for Grantee’s officials, employees and students, as permitted by the Racing and Community Development Act (SB987, 2020 Reg. Session) and in accordance with a Joint Use Agreement between the parties, dated December ____, 2020, as it may be amended from time to time.
3. Indemnification. The University shall indemnify and defend the City and save the City harmless from and against all actions, liability, claims, suits, damages, costs or expenses of any kind that may be brought or made against the City arising from the University’s negligence, or that of its officials, agents, or employees in connection with the use of any facilities on the Property. Notwithstanding anything to the contrary contained in the foregoing indemnification provision or any other provisions of this Agreement, the University’s liability for any tort related claims, damages, losses or costs arising out of this Agreement shall be governed by and subject to the Maryland Tort Claims Act, Section 12-101 et seq. of the State Government Article, Maryland

Annotated Code (the “Act”); and the University’s liability for any contract related claims, damages, losses or costs arising out of this Agreement shall be governed by and subject to Maryland Annotated Code, State Government Article, Title 12, Subtitle 2. Any indemnification obligation by the University under this Agreement shall be contingent upon and subject to an appropriation by the Maryland State General Assembly specifically for the purposes contemplated in the applicable provision or provisions of this Agreement, at the time or after an event which may give rise to the University’s obligation to indemnify or save harmless occurs, and to the extent that a tortious claim is involved, the University’s obligations shall not be greater than the liability that might be determined under the Act. Any indemnification agreement made by the University in this Agreement is not deemed a waiver of immunity or defense that may exist in any action against the University.

4. Term of Right of Access. The rights of access granted pursuant to this Easement shall continue in perpetuity, unless the entity currently known as Bowie State University ceases operating as an educational institution of the State of Maryland, under any name, in which case this Easement shall terminate.

5. Grant of Easement Only. By this Easement, Grantor is not conveying fee simple title to any land, but is merely granting to Grantee the rights, privileges and easements set for herein.

6. Running of Benefits and Burdens. The benefits and the burdens of the easements and the obligations of each covenant set forth in this Easement shall run with the land and shall bind and benefit Grantor and Grantee and their respective assigns and successors in title.

7. Governing Law. This Easement shall be governed by, and constructed and interpreted under, the laws of the State of Maryland. Any suit to enforce the terms hereof, or for damages or other relief for the breach or alleged breach hereof, shall be brought exclusively in the courts of the State of Maryland in and for Prince George’s County and the parties consent to the jurisdiction thereof and acknowledge that venue is proper therein, unless by operation of law, the United State federal courts have exclusive jurisdiction.

9. Headings. The headings of the parts of this Easement are for convenience of reference only, and shall not limit or otherwise affect any of the terms of this Easement.

10. Amendments. Neither this Easement nor any provision hereof may be changed, waived, discharged, modified, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, modification, or termination is sought.

11. Counterparts. This Easement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same document.

12. Complete Understanding. This Easement represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior negotiations,

promises, statements or agreements, either written or oral, between the parties hereto as to the Easement Area.

[Signatures on following page]

In witness whereof, the parties hereto have caused this Easement to be properly executed on the day first written above.

THE CITY OF BOWIE, MARYLAND

_____ (Seal)
By: Alfred Lott, City Manager

STATE OF MARYLAND:
COUNTY OF PRINCE GEORGE'S, to wit:

On this ____ day of _____, 20____, before me, the undersigned officer personally appeared Alfred Lott, who acknowledged himself to be the City Manager of the City of Bowie, and that he, as such City Manager, and being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his name on behalf of the City of Bowie.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

BOWIE STATE UNIVERSITY.

_____ (Seal)
Witness By: Dr. Aminta H. Breaux, President

STATE OF MARYLAND:
COUNTY OF PRINCE GEORGE'S, to wit:

On this ____ day of _____, 20____, before me, the undersigned officer personally appeared Dr. Aminta H. Breaux, who acknowledged herself to be the President of Bowie State University, constituent institution of the University System of Maryland, an agency and instrumentality of the State of Maryland, and that she, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Bowie State University.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

THE UNDERSIGNED, hereby certifies that the within instrument was prepared by or under the supervisions of an attorney licensed to practice in the State of Maryland.

Elissa D. Levan, Esquire