

Maryland Economic Development Corporation

Baltimore Transit Oriented Development Investment Study



Request for Proposals

MARYLAND ECONOMIC DEVELOPMENT CORPORATION

7 ST. PAUL STREET, SUITE 940

BALTIMORE, MD 21202

Phone: (410) 625-0051

Issue Date: August 16, 2023
Submission Deadline: September 19, 2023

The Maryland Economic Development Corporation (“MEDCO”) is an instrumentality of the State of Maryland created by the General Assembly to serve as a statewide economic development engine to: relieve unemployment; encourage, attract and retain business activity and commerce; promote economic development and promote the health, safety, right of gainful employment and welfare of residents of the State of Maryland.

For more information on MEDCO please visit our website at: www.medco-corp.com

Overview

The Maryland Department of Transportation (MDOT) in partnership with the Maryland Economic Development Corporation (MEDCO) wishes to conduct a study of the Baltimore metropolitan regional real estate market, particularly those market areas that are served by the Maryland Transit Administration (MTA) Metro Subway and Light Rail systems to understand the market conditions for Transit Oriented Development (TOD) and the market barriers to achieving successful TOD with a mix of uses and meaningful densities¹ at station sites. It is the view of MDOT that the real estate market is not able to produce development proposals that support TOD to a level that can create the most value for the State, local communities, and the transit systems. This study will look to understand the market perspective of this perceived problem.

The study looks to develop recommendations for large scale programs or tools that could be deployed to help incentivize and encourage TOD at meaningful densities at sites served by transit in the Baltimore region. These tools could be implemented at the State or local levels and could also include potential private, institutional or non-profit partnerships. The tools could be completely new programs or initiatives or could entail impactful expansion of existing programs. The overall goal is to have creative and workable ideas for new programs that can incentivize meaningful density, quality, and inclusive TOD around transit in the Baltimore region.

Additionally, this study should produce an overall perspective of which Metro Subway or Light Rail stations are located in a stronger submarket within the Baltimore region and could have stronger market potential for TOD at a meaningful density. The study would look at potential other factors such as presence of local incentives or entitlements that could make a station ripe for TOD in the short term as well as need for inclusive development within adjacent low or disadvantaged communities. Particular focus should be given to stations that have adjacent State-owned land and are served by multiple modes of transit (i.e., Light Rail and Metro Subway). The outcome of this study should be a recommendation of up to 3 stations that are “ripe” in terms of TOD potential and what development program levels could be supported within a 5-year period.

Finally, this scope of work entails support for two (2) public forums to engage the Baltimore regional development community and craft a conversation related to TOD development in the region. These

¹ For the purposes of this study, “meaningful density” refers to the Federal Transit Administrations guidelines of >10 Floor to Area Ratio (FAR) at stations in the central business districts (CBD) and >2.5 at stations outside of CBD’s.

forums may be partnered with local advocacy groups and other governmental agencies. This scope provides a capped budget to be accounted for in the contractor's proposal with specific services to be determined at a later time within that budgeted amount.

The selected contractor should provide a detailed approach on how to achieve the below deliverables in Tasks 1-3, detailing methodology, data sources and outreach needs. In the responses, MDOT and MEDCO are looking for teams to provide creative thinking and problem solving on how to approach these issues and achieve the intent of this scope of work.

Scope of Work:

Task 1 - Baltimore Real Estate Market Analysis:

It is the intent to perform a high-level market survey of the Baltimore regional real estate market and in particular look at those submarkets which are served by MTA Metro Subway and MTA Light Rail. The analysis should look at a range of trends for mixed use development, such as office, retail, residential, and provide a prospective of these trends, overview of drivers and market barriers to TOD in these submarkets.

The overall question to be answered in this task is: **What are the market conditions and trends related to TOD in the Baltimore region and what are some of the factors creating barriers or opportunities to achieving meaningful TOD for the region?**

Deliverable: A high quality report and slide deck, no more than 15 pages, detailing the outcome of the analysis, the methodology and data sources and assumptions. The report should contain high quality graphics, summary tables and related infographics to fully support the information.

Task 2 - Large Scale Investment Tools

The goal of this task is to identify large scale investment programs that could be deployed in the Baltimore region to support TOD at a meaningful density, particularly around MTA Metro Subway and MTA Light Rail stations. These programs could be publicly sourced or could be partnerships with business or institutional actors, but need to be at a scale that will have a meaningful impact in incentivizing and supporting meaningful development around transit. These programs could be enacted through State or local legislation, cooperative working agreements or other vehicles. The selected contractor should provide a recommendation for up to three (3) tools or programs that could be deployed to meet this challenge, what levels of reasonable investment would make the most impact and also provide some examples of where these programs have been successful.

The fundamental question to be answered in this task is: **What are the tools or programs that could be enacted that can provide long-term, significant support for TOD in the Baltimore region?**

Deliverable: A high quality report and slide deck, no more than 20 pages, detailing the investment tools identified in the task, the recommended tools identified by the contractor and the methodology, inputs and assumptions to support this analysis. The report should also detail through case study where these tools have led to successful outcomes. The report should contain high quality graphics, summary tables and related infographics to fully support the information.

Task 3 - Near Term Opportunities

It is the intent of this task to identify near term TOD opportunities at MTA stations in the Baltimore region. While stations with State owned land adjacent is preferred it is not limited to just those stations. Particular focus should be placed on stations served by Metro Subway or Light Rail, with preference for adjacency to both. The analysis should provide a recommendation for up to three (3) sites² which could be opportunities for meaningful TOD in the near-term (5 years) and provide a perspective on what types of uses and levels of density could be supported on those sites. Additionally, what general levels of investment or subsidy might be needed to increase the viability of these sites

The question to be addressed in this task is: **What stations, particularly those Metro Subway or Light Rail stations could support TOD development at a meaningful density? What is the general market perspective on these sites and what level of public investment may be needed to support meaningful, inclusive TOD at these sites?**

Deliverable: A summary report of no more than 20 pages and accompanying slide deck describing the sites recommended in the analysis with all appropriate data and backup information to support their selection. The summary report should also describe the development program with densities that could potentially be supported at the sites and also a recommendation for any public investment or subsidy tools or programs which might be needed to support the realization of that program.

Task 4 - Support for Public Forums

As part of this effort, MDOT and MEDCO wish to support two public forums with public and private industry leaders to discuss ideas for incentivizing and supporting TOD in the Baltimore region. The contractor should provide \$20,000 in their fee budget to support this effort. Support tasks could include collateral development, facilitation, venue support or other services possible within the budget allowed. Once needed, MDOT and MEDCO will request specific services from the contractor and the contractor will provide a detailed response on what services can be provided within the capped \$20,000 budget allowance.

Deliverable: Support for two public forums - the timing, location and format of which is to be determined by MDOT and MEDCO.

Proposal Contents and Submittal Requirements

A. Intent to Submit

An email notification of intent to submit a proposal should be provided by Prospective Offeror to kparks@medco-corp.com prior to the submission deadline. This email notification is required to receive additional information and / or addendums related to the RFP.

B. Proposal Contents

Proposals should provide a straightforward and concise description of how the team intends to meet the goals of this proposal and meet the requirements of this RFP.

² State Center is excluded from this RFP. It should not be included in review of sites for near term opportunities.

The following items must be included in the proposal.

- A cover letter;
- A detailed Project Approach providing a description of all the work tasks required and the methodology to complete the project (not to exceed 5 pages including illustrations and text);
- A description of the firm qualifications and recent experience in managing projects similar in scope and scale, including a discussion on project approach;
- A description of the entire proposed project team, including detailed resumes of the project manager and key personnel. Indicate the percentage of each individual's participation in the project and relevant experience;
- Three recent references for similar projects. At least two references shall be familiar with the work of the project manager;
- A schedule to complete all of the tasks. The schedule should include the amount of time required for each task, including adequate time for staff review of all work products; and
- Detailed budget, including a breakdown of not-to-exceed costs for services to complete the entire project. A schedule that represents billable rates by position per task should be included. This rate is to include all taxes, insurance, compensations, etc. No other additional charges will be accepted. Reimbursables are to be passed through at cost. An overall cost breakdown should be provided in the Bid Form attached as Exhibit A.

Failure to provide any information requested in this RFP may result in disqualification of proposal.

Proposals must disclose any actual or potential conflicts of interest and existing business relationships that may exist with MEDCO and / or MDOT, its appointed officials or employees. MEDCO may rely on such disclosure.

The legal name of the person or firm submitting the proposal should be included in the proposal and should be signed per the following provisions. (i) In the case that the Prospective Offeror is a corporation, the full name of the corporation as well as the authorized signatories should be included in the proposal. The proposal should be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the proposal on behalf of the corporation is submitted.

Where two or more Proposers desire to submit a single proposal in response to this RFP, they should do so on a prime consultant/sub-consultant basis rather than as a joint venture. MEDCO's intent is to contract with a single firm. That firm may have agreements with other firms. This information must be disclosed as part of the RFP response.

Prospective Offerors should include, in their responses to this RFP, any and all exceptions to the proposed, contract attached here to as **Exhibit B**. MEDCO intends for **Exhibit B** to be the basis of the Contract Award under this RFP. MEDCO shall not be bound or negotiate any exceptions to the language of **Exhibit B** taken by a Prospective Offeror and not noted in said Prospective Offeror's response to this RFP.

C. Submittal Requirements

All submittals must be received as a single printable 8 ½X11 PDF attached to an email delivered to kparks@medco-corp.com by 3 PM on September 19, 2023. Responses should be clearly marked with the name and address of the respondent and the project title. Late responses will not be accepted.

Three (3) bound hard copies should be submitted and can follow the electronic submission deadline.

Request for Proposals – Baltimore Transit Oriented Development Investment Study
Katie Parks
Maryland Economic Development Corporation
Director of Community Development
7 St. Paul Street, Suite 940
Baltimore, Maryland

Questions

All questions, inquiries or requests for clarification regarding this RFP should be directed via email to kparks@medco-corp.com no later than 3:00 PM Eastern Time August 24, 2023.

Requests must be clearly labeled “RFP – Baltimore Transit Oriented Development Investment Study” to be considered for response.

Questions and answers will be distributed to all firms that provide email notice of their intent to submit a proposal.

A pre-proposal meeting will be held via Teams on August 21, 2023 1:00 PM Eastern Time. The meeting link will be provided upon email request to kparks@medco-corp.com.

Schedule

The schedule for this RFP is as follows:

Issue of the RFP:	August 16, 2023
Pre-proposal conference via Teams:	August 21, 2023, 1:00 PM (Eastern)
Proposer Questions/Clarifications due:	August 24, 2023
MEDCO responds to Questions/Clarifications:	August 28, 2023
Proposals due:	September 19, 2023, 3:00 PM (Eastern)
Finalist Interviews:	October 3, 2023*

*Prospective Offerors should be available for a virtual interview on this date. Interview notifications will be provided by September 27, 2023.

Evaluation Criteria

The following will be considered when evaluating proposals:

- A. Background and Qualifications 15%
 - a) Qualifications and experience of firm including key personnel

- b) Demonstrated experience coordinating with multiple stakeholders
 - c) Examples of teams successfully and efficiently working together
- B. Project Management 15%
 - a) Staffing and approach to managing project
 - b) Commitment to project completion within time and budget
- C. Responsiveness to RFP 10%
 - a) Completeness and clarity of proposal
- D. Project Approach 30%
 - a) Understanding of goals of the scope
 - b) Knowledge of scope and methodology to complete
 - c) Adequately addresses project goals, tasks, and deliverables
- E. Innovation & Value Add 10%
 - a) Ideas on how to successfully and efficiently accomplish any aspects of the work by means not described in the scope of work
- F. Budget / fee structure 20%
 - a) Cost of services

MEDCO will review and evaluate all responses and may request further information, clarifications, and presentations in order to make a final selection.

Reservations

- MEDCO reserves the right to reject any or all proposals or parts of proposals and waive informalities or technicalities in proposals as the interest of MEDCO may require.
- This RFP creates no obligation on the part of MEDCO to award the Contract or to compensate Prospective Offerors for proposal preparation expenses. All costs to prepare and submit a response to this RFP shall be borne by the Prospective Offeror submitting such response. MEDCO reserves the right to award the Contract based upon proposals received without further negotiation and may do so; Prospective Offerors should not rely upon the opportunity to alter their proposals during discussions.
- MEDCO reserves the right to negotiate with any or all Prospective Offerors in any manner necessary to best serve its interest, and to make a whole award, multiple awards, a partial award, or no award. MEDCO reserves the right to cancel this RFP, in whole or in part, as deemed necessary. By submitting a proposal, a Prospective Offeror represents that it has the expertise, qualifications, resources, and relevant experience to supply and perform the services as proposed in its bid.
- An award will be made by MEDCO, in its sole discretion, to the most qualified Prospective Offeror based upon the evaluation criteria set forth herein, including, but not limited to, competitive cost.

EXHIBIT A

Bid Form Baltimore Transit Oriented Development Investment Study

Bids Due: September 19, 2023 3:00 PM

<u>Scope/Task Item</u>		<u>Total</u>		
Task 1	Baltimore Real Estate Market Analysis			
Task 2	Large Scale Investment Tools			
Task 3	Near Term Opportunities			
Task 4	Support for Public Forums			

Staff Position	Hourly Rate

Exhibit B

CONSULTANT CONTRACT
by and between the
MARYLAND ECONOMIC DEVELOPMENT CORPORATION
and
(INSERT FIRM NAME)
Contract No.

This contract (the "Contract") is made by and between the Maryland Economic Development Corporation ("MEDCO") a body politic and corporate and a public instrumentality of the State of Maryland and, (insert selected firm) (the "Consultant"), whose Federal Tax Identification Number is XX-XXXXXXX in relation to the _____ ("Project").

1. Contract

1.1 Contract Documents. This Contract consists of the matters identified in this Section 1 (the "Contract Documents"), all of which are part of this Contract as if fully set forth herein (all as amended from time to time):

- A. This Contract;
- B. Attachment A: Request for Proposals, dated August 16, 2023 (the "RFP")
- C. Attachment B: Contractor's Technical and Price Proposals dated September XX, 2023 (the "Proposal", the RFP and the Proposal being collectively referred to as the "Solicitation Documents"); and
- D. Exhibit 1: Key Personnel.
- E. Exhibit 2: Price Proposal

If there are any inconsistencies between or among the Contract or Attachments A or B, the Contract Documents shall control in the following order of priority: the Contract, then Attachment A, then Attachment B, except for the template version of the Contract attached to the Solicitation Documents which is superseded by adjustments made in this executed Contract, the obligations, representations, terms and conditions set forth in the Solicitation Documents and the Affidavit are provisions of this Contract and are supplemental to the provisions set forth here.

1.2 Contract Term. The Contract shall commence on _____, 2023 (the "Commencement Date") and shall expire on the earlier of (a) Two (2) years after the Commencement Date (the "Expiration Date"), or (b) upon completion of all work authorized on or before the Expiration Date, unless renewed or sooner terminated in accordance with this Contract.

At the option of MEDCO, this Contract may be renewed on the same terms and conditions for up to one additional one-year term. The Consultant shall be notified at least thirty (30) days prior to the end of the initial term whether the Contract will be renewed and what the length of the renewal term (if any) will be.

2. Scope of Services.

2.1 The scope of work for this Contract is set forth in the RFP. Contractor shall provide the services set forth in the RFP in accordance with the terms and conditions of this Contract. MEDCO shall have the unilateral right to require changes in the scope of services, provided such changes are within the general scope of the work to be performed. Such authority shall be final, sole, and unreviewable. In the event of a change in scope which results in a change in work or risk to the Consultant, the parties will act reasonably to agree to an equitable adjustment to the fee structure.

2.2 Key Personnel:

A. The personnel listed on Exhibit 1 are considered to be essential to the Work required under this Agreement and are considered to be “Key Personnel”.

B. Consultant shall not substitute, nor permit its subconsultants to substitute Key Personnel, without prior written consent of MEDCO, which consent MEDCO shall not unreasonably withhold. MEDCO shall have the right in its sole but reasonable discretion to direct the removal from the Project of any personnel of the Consultant. Prior to removing any Key Personnel from the Project, the Consultant shall notify MEDCO within 14 days of such proposed removal and shall submit justification (including proposed substitutions for MEDCO’s prior approval) in sufficient detail to permit evaluation of the impact on the Contract.

3. Compensation and Method of Payment.

3.1 MEDCO will pay the Consultant for services rendered under the Contract in accordance with Exhibit 2 – Price Proposal.

3.2 Consultant will:

A. During the term of the Contract, be paid at the Hourly Rates Per Grade provided in the Price Proposal included herein as Exhibit 2.

B. During the term of the Contract, be reimbursed for reasonable, allowable and allocable direct costs and expenses incurred in the performance of the Contract services as follows:

- (1) Pre-approved travel expenses incurred by Consultant, including transportation, meals and lodging may be reimbursed at the rates set in the state of Maryland's standard travel regulations, as amended from time to time, and must comply with Fly America Act, 49 USC Section 40118;
 - (2) Messenger or overnight delivery services for critical time sensitive documents (to the extent reasonable electronic document delivery is preferable);
 - (3) Services of experts previously approved by the MEDCO;
 - (4) Photocopying charges at cost, if approved in advance.
- C. Consultant will not be reimbursed for indirect costs such as:
- (1) Secretarial services, whether performed during regular business hours or overtime;
 - (2) Preparation and review of billings;
 - (3) In-house messenger services;
 - (4) In-house information technology equipment and service;
 - (5) Long distance telephone or other communication services between itself and subconsultants in a Contract, if any.
- D. Consultant shall maintain records relating to the invoices, costs and expenses incurred by Consultant in the performance of the Contract for a period of five years from the date of final term of this Contract.

3.3 Consultant shall submit invoices monthly in a form acceptable to MEDCO, and shall include the following:

A. All invoices for services rendered shall be subject to the review and approval of MEDCO.

B. Each invoice shall state Consultant's Federal Tax Identification Number.

C. Each invoice shall also include an itemized listing of reimbursable expenses and shall submit supporting documentation for said expenses, including but not limited to, third-party or vendor receipts and automobile mileage traveled, points of travel, and purpose of travel.

Upon receipt of invoice from Consultant, MEDCO will review each invoice within five (5) business days, and either advise Consultant of any questions, concerns or errors to be addressed, or MEDCO promptly shall submit such invoice and appropriate back-up to MDOT. Receipt of

payment of Consultant's invoices from MDOT by MEDCO shall be a condition precedent of MEDCO's payment thereof to Consultant. MEDCO shall pay Consultant, within sixty (60) days of receipt of approved invoice.

3.4 Federal, State and local taxes and FICA taxes, if any, will not be withheld from payments made pursuant to the Contract.

3.5 The Contract constitutes the entire agreement between the parties and any other communications between the parties before the execution of the Contract, whether written or oral, with reference to the subject matter of the Contract, are superseded by the agreements contained herein.

3.6 The Contract may not be modified, amended, changed, or altered except by written instrument executed by the parties hereto and approved by MEDCO.

4. Governing Law/Forum. This Contract shall be governed by the laws of the State of Maryland, without giving effect to principles of conflicts of law thereof. If mediation efforts to resolve a dispute are unsuccessful, either party may then commence litigation. Each of the parties to this Contract hereby irrevocably and unconditionally: (i) consents to submit to the exclusive jurisdiction of the courts of Baltimore City, Maryland for any proceeding arising out of or in connection with this Contract and each such party agrees not to commence any such proceeding except in such courts, and (ii) waives any objection to the laying of venue of any such proceeding in the courts of Baltimore City, Maryland.

5. Limited Recourse. Consultant acknowledges, agrees and accepts that any obligation of MEDCO hereunder is solely on a limited recourse basis and that MEDCO has no taxing power. Notwithstanding anything to the contrary contained in this Contract or in any other agreement or contract executed and delivered by MEDCO in connection with the Project, neither this Contract nor any such other contract or agreement shall (a) constitute a debt of the State of Maryland or any political subdivision, agency or instrumentality thereof other than MEDCO, (b) constitute a debt to which the faith and credit or taxing power of the State of Maryland or any political subdivision, agency or instrumentality thereof is pledged, or (c) obligate the State of Maryland or any political subdivision, agency or instrumentality thereof to make any appropriation for payment. Consultant agrees that it shall not have any recourse against the officers, directors or employees of MEDCO, and that the officers, directors and employees of MEDCO shall not be personally liable for, or have any personal obligation in any respect for, any claim based on or in respect of any liability of MEDCO for the performance of any covenant, agreement, obligation, term or condition contained in this Contract. Consultant further agrees that, for payment hereunder or for the performance of any other covenant, agreement, obligation, term or condition contained in this Contract, Consultant shall have recourse solely and exclusively against funds made available to MEDCO by MDOT pursuant to the Interagency Agreement dated as of August 15, 2023 by and between MEDCO and the MDOT. Consultant further agrees that for payment hereunder or for the performance of any other covenant, agreement, obligation, term or condition contained in this Contract, Consultant shall have no recourse against any other assets, properties or funds of MEDCO or the State of Maryland or any political subdivision, agency or instrumentality thereof, and that in no event shall MEDCO be obligated to use any of its other assets, properties or funds to make any payment or discharge any covenant, agreement, term or condition under this Contract. Consultant further

agrees that, other than as stated herein, it shall have no recourse against MEDCO and shall not seek to assert any claim or to enforce any award or judgment against MEDCO for any liability or other obligation of MEDCO in connection with this Contract or the transactions contemplated by this Contract, whether such claim, award, judgment, liability or obligation be asserted or based in contract or in tort or otherwise. This provision shall survive the termination or expiration of this Contract.

6. Nondiscrimination. Consultant shall comply with all applicable federal and State laws, rules and regulations and policies and procedures of the State involving nondiscrimination on the basis of race, color, creed, political or religious opinion or affiliation, marital status, sexual orientation, national origin, age, gender, or physical or mental disability. Consultant certifies that it prohibits, and covenants to continue to prohibit, discrimination on the basis of (i) political or religious opinion or affiliation, marital status, sexual orientation, race, color, creed, or national origin, or (ii) gender or age, except when gender or age constitutes a bona fide occupational qualification, or (iii) the physical or mental disability of a qualified individual with a disability. Upon request, Consultant will submit information to MEDCO relating to the Contractor's operations with regard to the above.

7. Consultant Responsibilities. Consultant shall assume sole responsibility for all work to be performed under the Contract. Consultant shall perform the services with the standard of care, skill, and diligence normally of similarly situated consultants providing similar services to states, municipalities and/or economic development agencies. In addition, the Consultant shall provide the services in accordance with applicable professional standards.

8. Subcontracting. Consultant shall not subcontract, outside of the proposed subcontractors included in proposal, in whole or in part, for any of the services to be performed under this Contract without the prior written consent of MEDCO at its sole discretion.

9. Assignment of Contract. Consultant shall not assign, transfer, convey or otherwise dispose of the Contract or any rights created hereunder to any person, firm, partnership, company, corporation or other entity without the prior written consent of MEDCO. MEDCO may assign or transfer this Contract to MDOT with prior written notice to Consultant.

10. Dissemination of Information. During the term of the Contract, Consultant shall:

A. not (and shall not permit any related firm providing services hereunder, agents or employees to) release, disseminate, publish, distribute or circulate, in any manner whatsoever, any information, data, documents or materials related to the services or performance of the services under the Contract or to the Contract, nor publish any final reports or documents, without the prior written consent of MEDCO.

B. Indemnify and hold harmless MEDCO, MDOT, and its respective officers, agents and employees, from all liability which may be incurred by reason of the unauthorized release, dissemination, publication, distribution or circulation, in any manner whatsoever, of any information, data, document, or materials pertaining in any way to the Contract or the performance of services under the Contract by Consultant, its affiliated companies, agents or employees.

C. At the request of MEDCO collect, return or destroy confidential data of

MEDCO or MDOT obtained through the efforts of this Contract, and shall ensure that no physical or virtual copies remain in the Consultant's possession, or in any of its employees or agents. Notwithstanding the foregoing, the Consultant may retain copies of such information in automatic electronic back-up systems or in accordance with policies and procedures implemented by Consultant to comply with document retention policies, legal requirements or professional standards.

11. Confidentiality of Information. Consultant acknowledges that it or its employees may, in the course of performing its responsibilities under this Contract, be exposed to or acquire information which is proprietary to or confidential to MEDCO and MDOT. Any and all non-public information of any form so marked by MEDCO and obtained by Consultant in the performance of this Contract will be deemed to be confidential and proprietary information. Consultant agrees to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever during the Project and for a period of two (2) years thereafter without the written consent of MEDCO, except as necessary for (a) the performance of its services under this Contract; (b) to advise each of its employees who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential; (c) compliance with professional standards of conduct for the performance of the services and/or related matters; (d) compliance with any law, regulation, ordinance, court order or governmental directive or other legal mandate; and/or (e) protection of Consultant against any claims or liabilities arising from performance of services under this Contract. In the event of any disclosure by Consultant under subparagraphs (c), (d) or (e), Consultant will give MEDCO fourteen (14) days advance courtesy notice of such disclosure to the extent permissible. In the event that the Consultant becomes legally compelled to disclose any such confidential or proprietary information, the Consultant shall provide MEDCO with prompt written notice (at least five (5) days prior to any disclosure) of such request to the extent legally permissible so that MEDCO may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Contract. The foregoing obligations will not apply to information previously in Consultant's possession or in the public domain, or information lawfully acquired on a non-confidential basis from others. This provision will survive termination of this Contract.

12. Retention of Records.

A. Consultant shall maintain all records and documents (including information stored by electronic means) relating to this Contract for five (5) years after final payment hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of MEDCO and or the State, at all reasonable times therein.

B. MEDCO may, upon reasonable notice, audit the records of Consultant and its subconsultants during regular business hours to the extent necessary to verify billing, during the term of this Contract and for a period of three (3) years after final payment is made under this Contract or longer, if required by law.

For purposes hereof, "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in MEDCO's judgment have any bearing on or pertain to this Contract, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments,

arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

13. Insurance.

A. Consultant shall, at its expense, purchase, maintain and provide certification for the following insurance coverage on all employees performing contract services:

1. Workers' Compensation as required by law in the state where the property is located and where any operations relating to the contract are located, with waiver of subrogation against Maryland Economic Development Corporation ("MEDCO").
2. Employer's Liability \$1,000,000 each accident and as to aggregate limits.
3. Commercial General Liability* \$1,000,000 per occurrence and aggregate
4. Business Automobile Coverage Form- coverage set at Maryland State minimum limits or greater (any auto/owned/non owned/hired)
5. Professional Liability Coverage

*These coverages shall be primary to any coverage carried by the Maryland Economic Development Corporation (MEDCO) insurance. MEDCO and MDOT will be named as additional insureds on policies for Commercial General Liability.

The insurance policies above shall be written on an "occurrence" and not "claims-made" form basis.

Contractor or subcontractor shall submit a Certificates of Insurance and endorsements in form and substance satisfactory to MEDCO as evidence of the coverages required herein. Each policy required herein will provide for (A) separation of insured in liability policies; and (B) waiver of subrogation against MEDCO, MDOT and the State of Maryland. Each certificate will provide for thirty (30) days' prior written notice to MEDCO of cancellation.

B. The insurance required in this section must be issued by companies that are licensed to do business in the State of Maryland and have an AM Best rating of "A-" or better.

C. Consultant shall not commence work under the contract until evidence of the above coverage has been received and approved by MEDCO. The insurance referred to in 13.A. shall include MEDCO and its officers, employees and agents as additional insureds which may be satisfied by a blanket additional insured endorsement. Coverage under all policies shall remain in full force and effect throughout the Contract term and until all services have been completed.

D. Consultant shall not alter or change, reduce the limit of liabilities, cancel, or fail to renew any of the required insurance coverage without thirty (30) days prior written notice of

same to MEDCO, and shall maintain all coverage until it receives notice from MEDCO that Contract services have been completed.

14. Conflicts. To avoid potential conflicts of interest, Consultant agrees to examine its client/matter listings before execution of this Contract and on a periodic basis and to notify MEDCO immediately of any potential conflict of interest and, if requested, to undertake immediate action to eliminate the source of the potential conflict of interest. MEDCO reserves the right to make Consultant aware of situations in which they believe Consultant is involved that may present a conflict of interest and to request that Consultant promptly remedy the situation. Consultant hereby further acknowledges that MEDCO reserves the right, in his sole discretion, to select another firm to represent MEDCO in a particular matter if the conflict of interest is not resolved to the satisfaction of MEDCO.

15. Compliance with Law. Consultant hereby represents and warrants that:

A. it is qualified to do business in the State and that it will take such action as, from time to time, may be necessary to remain so qualified;

B. it is not in arrears with respect to the payment of any moneys due and owing the State, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. it shall comply with all federal, State and local laws, ordinances, rules and regulations applicable to its activities and obligations under this Contract;

D. it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract; and

16. Termination of Contract for Default. If Consultant fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provisions of the Contract, MEDCO may terminate the Contract by written notice to Consultant. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by Consultant, shall, at MEDCO's option, become the property of MEDCO provided MEDCO has paid the sums, if any, due to Consultant pursuant to this Section 20. MEDCO shall pay Consultant (a) fair and equitable compensation (based upon the rates of compensation described in Section 3 hereof) for satisfactory performance prior to receipt of notice of termination and (b) all reasonable expenses incurred by Consultant prior to receipt of such notice, less the amount of damages caused by Consultant's breach. If the damages are more than the compensation payable to Consultant, Consultant will remain liable after termination, and MEDCO can affirmatively collect damages.

17. Termination of Contract for Convenience. The performance of work under this Contract may be terminated by MEDCO in accordance with this clause in whole, or from time to time in part, whenever MEDCO shall determine that such termination is in the best interest of MEDCO. MEDCO will pay Consultant (a) compensation for services satisfactorily performed prior to the date of termination based upon the rates set forth in Section 3 hereof and (b) all reasonable expenses as set forth in Section 3 incurred by Consultant prior to such date of termination.

18. Termination of Contract Funding Appropriation. If funds are not appropriated or if funds are not otherwise made available for continued performance of this Contract by MDOT at any time during the Contract term, this Contract shall be canceled as of the time for which funds were not appropriated or otherwise made available; however, this will not affect MEDCO's rights under any other termination clause of this Contract. The effect of termination of this Contract pursuant to this Section will be to discharge Consultant and MEDCO from future performance of this Contract, but not from their obligations existing at the time of termination. Consultant shall be paid (a) compensation for services satisfactorily performed prior to the date of termination based upon the agreed upon terms set forth in Section 3 hereof, and (b) all reasonable expenses as set forth in Section 3 incurred by Consultant prior to such date of termination. MEDCO shall notify Consultant within 30 days prior to the termination of the Contract pursuant to this Section.

19. Termination of Contract by Consultant. If at any time during the term hereof the Consultant has determined, in its reasonable discretion, that it cannot continue performing the services hereunder in accordance with applicable laws or Section 7 hereof, and has delivered written notice of such determination to MEDCO together with a detailed explanation of the reasons why it cannot continue performing the services hereunder, then the performance of work under this Contract may be terminated by the Consultant on ninety (90) days' prior written notice to MEDCO. In such event, (i) the Consultant shall work with MEDCO as reasonably required or requested to transition the obligations hereunder to a replacement consultant or advisor and (ii) MEDCO will pay Consultant compensation for services satisfactorily performed prior to the date of termination based upon the rates set forth in Section 3 hereof. For the avoidance of doubt, this Section does not grant to Consultant a right to terminate this Contract for mere convenience. Rather, Consultant's termination of this Contract pursuant to this Section shall be limited to events or occurrences which render its performance of the services hereunder impossible, impractical or in violation of applicable laws or the standard of care described in Section 7.

20. Indemnification.

A. Consultant shall indemnify and hold harmless MEDCO and MDOT, and its respective officers, agents and employees from and against all claims, suits, judgments, expenses, actions, damages and costs (including reasonable attorneys' fees) of every name and description (collectively, the "Losses"), arising out of, or resulting from, the performance of the services of Consultant under this Contract or a breach of any or all of Consultant's obligations under this Contract; provided, however, that Consultant shall not be required to so indemnify or hold harmless MEDCO, to the extent of such parties' gross negligence or willful misconduct. Consultant agrees to reimburse MEDCO and MDOT for reasonable expenses, including attorney's fees, incurred in connection with the above. Nothing in this Section 22 shall be construed as a waiver of MEDCO's limitation on liability as set forth in Subsection 5, nor a waiver of MEDCO's sovereign immunity, nor shall this Section expand MEDCO's liability to any third party beyond that expressly authorized by the Maryland Tort Claims Act, State Government Article § 12-101, et seq. Consultant agrees to also require its subcontractors and affiliated companies to, defend, indemnify, and hold MEDCO and MDOT harmless from and against any and all Losses for death of or injury to any person and for damage to any property sustained during or arising from the performance of the services under this Contract.

B. MEDCO has no obligation to provide legal counsel or defense to Consultant in the event that a suit, claim, or action of any character is brought by any person or entity against the Consultant as a result of or relating to the Consultant's obligations under this Contract.

C. MEDCO has no obligation for the payment of any judgments or the settlement of any claims against Consultant as a result of or relating to Consultant's obligations under this Contract.

D. Consultant shall immediately notify MEDCO of any claim or suit made or filed against Consultant resulting from or relating to Consultant's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to Consultant's performance under this Contract.

E. Notwithstanding anything herein to the contrary, MEDCO may not recover from Consultant, in contract or tort, under statute or otherwise, aggregate damages in excess of two (2) times the total fees paid to Consultant for services performed under this Contract in connection with claims arising out of this Agreement or otherwise relating to the services. This limitation will apply to the indemnification obligations hereunder, provided, however, that this limitation will not apply to losses caused by Consultant's fraud, gross negligence or willful misconduct, or damage to tangible property, bodily injury or death caused by Consultant's negligence or to the extent prohibited by applicable law or professional regulations. MEDCO may not recover from Consultant, in contract or tort, under statute or otherwise, any consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the services, including any amount for loss of profit, data or goodwill, whether or not the likelihood of such loss or damage was contemplated.

21. Correction of Errors, Defects and Omissions. Consultant, upon request, agrees to perform work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to MEDCO. The acceptance of the work set forth herein by MEDCO, shall not relieve Consultant of the responsibility of subsequent correction of such errors.

22. Drug and Alcohol Free Workplace. Consultant certifies that it shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace during the term of this Contract. Specifically, Consultant shall:

A. prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace;

B. prohibit its employees from working under the influence of alcohol or drugs;

C. not hire or assign to work on an activity funded in whole or part with State funds, anyone whom it knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a bona fide rehabilitation program;

D. promptly inform the appropriate law enforcement agency of every drug related crime that occurs in its workplace if it or any of its employees has observed the violation

or otherwise has reliable information that a violation has occurred; and

E. notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug and alcohol free workplace.

23. Ownership of Documents and Materials.

A. Consultant agrees that all documents and materials including, but not limited to, reports, research memoranda, correspondence and recommendation in Consultant's possession in any format or medium, received and/or prepared by or for Consultant under the terms of this Contract (the "Files") shall at any time during the performance of the services be made available to the MEDCO and shall become and remain the property of MEDCO upon termination or completion of the services. MEDCO, MDOT and the State of Maryland shall have the right to use the same without restriction or limitation and without compensation to Consultant other than that provided in this Contract. Notwithstanding the foregoing, the Consultant shall retain ownership of certain means, methods, tools, designs, software and practices related to the performance of the services hereunder which Consultant has eloped independently of the Project and which it typically utilizes in its business.

B. Immediately upon termination or expiration of this Contract, Consultant shall deliver the Files to MEDCO or to a location within the State designated by MEDCO. Consultant shall have the right to retain copies of those portions of the Files that Consultant reasonably requires for professional liability purposes.

24. Procurement Regulations. This Contract is not subject to the provisions of Division II of the State Finance and Procurement Article of the Annotated Code of Maryland or the State procurement regulations set forth in COMAR Title 21.

25. No Assurance of Work. Consultant acknowledges that it has received no assurances of any minimum amount or type of work under this Contract.

26. Notices. Service of any notice under this Contract shall be complete upon mailing of such notice, mailed through the United States mail, postage prepaid, or hand delivery to MEDCO, if such notice is to the MEDCO, or to the person executing this Contract on behalf of Consultant, if such notice is given to Consultant.

27. Effective Date. This Contract shall take effect on the Commencement Date, provided it has first been duly executed by all parties hereto.

28. Amendments. This Contract may not be modified, amended, changed, or altered except by written instrument executed by the parties hereto and approved by MDOT.

Witness the following signatures and seals:

WITNESS:

CONSULTANT:

By: _____

(Typed Name)

(Title)

(Taxpayer Identification Number)

(Date)

WITNESS

MARYLAND ECONOMIC DEVELOPMENT
CORPORATION

Executive Director