

THIS IS A SAMPLE BMC PROCUREMENT CONTRACT AND IS SUBJECT TO CHANGE AT THE SOLE DISCRETION OF THE BALTIMORE METROPOLITAN COUNCIL.

NOTE TO BMC STAFF: WHERE LANGUAGE IS BOLD, MAKE APPROPRIATE INSERTIONS OR EDITS. WHERE LANGUAGE IS BRACKETED SELECT ONE OF THE OPTIONS AND DELETE THE OTHER OR INSERT THE INFORMATION REQUESTED. PLEASE REVIEW WITH COUNSEL BEFORE THIS FORM IS MODIFIED.

**BALTIMORE METROPOLITAN COUNCIL
1500 WHETSTONE WAY, SUITE 300
BALTIMORE, MARYLAND 21230**

AN AGREEMENT

BETWEEN

**BALTIMORE METROPOLITAN COUNCIL
Baltimore, Maryland**

And

**[COMPANY NAME]
[Town, State]**

This Agreement, dated this [] day of [] 20[] by and between [], having offices in [] (hereinafter called "Contractor" and Baltimore Metropolitan Council, a body corporate and politic of the State of Maryland (hereinafter called the "Council"),

WITNESSETH THAT:

WHEREAS, purpose of contract – taken from rfp

WHEREAS, summary of procurement process

WHEREAS, summary of selection process

WHEREAS, the Contractor was awarded the contract after a competitive scoring process; and

WHEREAS, the Contractor possesses the requisite skills and abilities to perform all tasks as requested by the Council; and

WHEREAS, the said Contractor, hereby covenants and agrees to perform all services, in strict and entire conformity with the Attachment A: RFP, Attachment B: Cost

Proposal, Attachment C: Technical Proposal, and Attachment D: Scope and Schedule of Services, (collectively, the "Proposal").

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto do agree that the Council shall pay the Contractor, an amount as set forth herein, for services and/or scope of work rendered in accordance with this Agreement, the other attachments hereto **[ALL ATTACHMENTS MUST BE DESCRIBED HERE AND PROPERLY LABELED]** including the Proposal, Attachment E: Insurance Information and Attachment F: Contract Affidavit], all of which are hereby incorporated into and made a part of this Agreement. In addition, the parties hereto agree as follows:

1. Employment of Contractor. The Council hereby agrees to engage the Contractor, and the Contractor hereby agrees to directly perform the services and/or provide the goods hereinafter set forth in connection with the work of the Council, within a mutually agreeable time frame, as provided for in this Agreement.

2. The Contractor. The Contractor shall be an independent Contractor and not an employee of the Council or any of its member jurisdictions, and shall be responsible for the reporting and remittance of all state and federal taxes. The Contractor shall perform the services outlined in the Proposal. The Contractor's services and/or scope of work to be performed will be provided with due care and in a manner satisfactory to the Council and in accordance with all applicable standards.

3. Scope of Work and Deliverables. **[NEED TO WRITE LANGUAGE ABOUT SCOPE OF WORK AND DELIVERABLES. COULD REFER TO PROPOSAL, ATTACHMENT D SCOPE OF WORK, OR TASK ORDERS. LANGUAGE SHOULD HAVE OPTIONS]** The scope and schedule of services are clearly defined in Attachment D.

4. Time of Performance.

4.1 Upon execution of this Agreement, the Council may request and the Contractor may perform work tasks within the scope of this Agreement. The Council shall in no way be liable for costs incurred before execution of said Agreement. Individual tasks shall be conducted within a mutually agreeable time frame as specified in Attachment D. This agreement shall remain valid to and including _____ unless terminated earlier as provided for in the Agreement.

4.2 **[IF ELECTION FOR MULTIPLE YEAR IS APPLICABLE – IF NOT DELETE 4.2]** The Council reserves the right to renew this Agreement for [insert renewal period] on the same terms and conditions set forth herein. **[INSERT ANY CHANGES TO THE TERMS, i.e. COMPENSATION, UPON RENEWAL OF AGREEMENT, OTHERWISE, IT MUST BE RENEWED ON THE SAME TERMS AND CONDITIONS]** The Council will automatically renew this Agreement at the end of the Initial Term and each renewal term (except the last) unless it provides written notice of non-renewal to the Contractor prior to the end of

the then current term. Unless set forth in a written amendment, the compensation [, reimbursement] and manner of payment shall remain unchanged, including but not limited to, the maximum amount of compensation [and reimbursement] available hereunder.

5. Personnel. Neither the Council nor the Contractor shall assign, subcontract or transfer its interest or obligations under this Agreement to any third party, without the written consent of the other. All professional services required under the provisions of the scope of work of this Contract shall be performed by the Contractor and its employees. None of the professional work or services shall be subcontracted to others without prior written approval by the Council. The Contractor further agrees to provide a minimum of ninety (90) days' written notice to the Council prior to entering into any bankruptcy, merger or consolidation where the surviving entity will be unwilling or unable to accept the Contractor's obligations hereunder, to enable the Council to procure the goods or services elsewhere. In the event the cost of procuring such alternate goods or services increases the cost to the Council, and/or delays delivery time of any product, in addition to any other remedies available to the Council, the Contractor shall pay to the Council, as damages, any additional costs incurred.

6. Subcontractor Payments. The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten business days from the receipt of each payment the Contractor receives from the Council. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from the Council. This clause applies to both DBE and non-DBE sub-contracts. The Contractor shall provide the Council with documentation of all payments to sub-contractors within ten business days of such payments.

7. Designation of Contract Managers. The Council hereby designates [redacted] or his/her successor as Contract Manager to supervise the carrying out of the provisions of said Agreement and to send and receive any official correspondence pertaining thereto. The Contractor names [redacted] or his/her successor to serve in like capacity as Contract Manager. In the event the duties of the Contract Manager are assumed by a person not named herein, the other party to the Agreement shall be sent notice within two working days of such succession.

8. Materials to be furnished by the Council. The Council shall supply the Contractor with information necessary to the performance of this Agreement. All materials furnished by the Council are subject to any and all limitations of state, local and federal law, in the performance of this Agreement and shall be furnished to the Contractor without charge by the Council. All materials furnished by the Council to the Contractor shall not be used for any non-contract related purpose without the express written consent of the Council.

9. Method of Payment.

9.1 An invoice(s) shall be submitted to the Council in accordance with

Attachment D. Notwithstanding any other provision of this Agreement, payment for each invoice will be contingent upon formal acceptance of all work and/or goods by the Council's Contract Manager. Payment will be made on a fixed-price basis based on completed tasks and/or provision of goods. **[EDIT TYPE OF CONTRACT IF NOT FIXED FEE].**

Upon approval of the invoice by the Council, the invoices will be submitted to the Maryland Department of Transportation ("MDOT") for payment under a grant from the United States Department of Transportation ("USDOT") through MDOT (occurs at the end of any given month). Within ten (10) days of receipt of this payment from the MDOT, Council shall pay the invoice to the extent of such payment.

9.2 The Contractor shall submit invoices to the Council **[SELECT ONE OF THE FOLLOWING OPTIONS: [upon completion of an identified task] [upon provision of goods per Attachment A] [monthly] [quarterly] [insert the time period for submission of invoices].** The Contractor's invoices shall reflect the:

- Contract number
- Contractor's name
- Address
- Federal tax identification number
- Services and/or scope of work performed during the preceding billing period
- Any invoices received by the Contractor from any sub-contractors to this Agreement and proof of payment thereof.

Original invoices shall be submitted to:

Baltimore Metropolitan Council
1500 Whetstone Way, Suite 300
Baltimore, MD 21230

The Council reserves the right to approve such invoices, in its sole discretion, and to request such detail and additional information as the Council, in its discretion deems appropriate.

9.3 **[IF A NOT TO EXCEED CONTRACT - DELETE OR EDIT IF NECESSARY]** In no event shall the compensation paid to the Contractor exceed the sum of _____ Dollars (\$_____) [in any contract year] [during the Initial Term of this Agreement, as defined below] [or during any renewal period] [provided, however, that the Council may entertain a request for escalation in any year subsequent to the first year in accordance with [SELECT ONE OF THE FOLLOWING: [Paragraph ___ of the Invitation to Bid] OR [Paragraph ___ of this Agreement]. OR [In no event shall the total compensation paid to the Contractor under this Agreement exceed the sum of _____ Dollars (\$_____) during the entire term of this Agreement including renewals thereof.]

10. Compliance with Regulations. The Contractor shall comply with all of the requirements imposed by Title VI of the Civil Rights Act of 1964 and with the Regulations of the U.S. Department of Transportation relative to non-discrimination and maximum opportunities for Minority Business Enterprises (MBE) in all activities related to this Agreement. These actions are described in 49 CFR Part 21, "Non-Discrimination in Federally Assisted Programs of the Civil Rights Act of 1964" and Part 23 "Participation by Minority Business Enterprise in Department of Transportation Program."

11. Good Faith Efforts to Replace DBE. The Contractor will make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. The Contractor will notify the Contract Manager immediately of the DBE's inability or unwillingness to perform and will provide reasonable documentation of good faith efforts to replace the DBE on the Agreement. If the Contractor fails or refuses to comply in the time specified, the Council will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the Contractor still fails to comply, the Council may issue a termination for default.

12. Retention of Records. Financial records, supporting documents, statistical records, and all other records pertinent to the program shall be maintained by the contractor and any sub-contractor to this agreement and open to review at all reasonable times during the period of USDOT grant support by the Project Officer and any authorized representative of USDOT, the Comptroller General of the United States, the Department of Labor, or the State of Maryland shall be retained for a period of three years, with the following qualifications:

(A) The records shall be retained beyond the three-year period if audit findings have not been resolved.

(B) Records for non-expendable property acquired with Federal grant funds, if any, shall be retained for three years after final disposition of title by USDOT. The retention period shall start from the date of final payment by the Council.

13. Materials, Documents, etc. All materials including documents and related matter, charts, graphs, etc., developed by the Contractor under the terms of this Agreement and submitted to the Council during the course of the project shall become the property of the Council. The Contractor, or any third party to this Agreement may use these materials only with the express written consent of the Council.

14. Confidential Information. The Contractor shall not disclose any documentation and information of any kind or nature disclosed to the Contractor in the course of its performance of duties hereunder to any third party without the express written consent of the Council.

15. Contractor Publication Rights. The Contractor shall have the right, with the written concurrence of the Council, to prepare technical papers describing methods, procedures,

or findings of this work; to submit such papers to technical societies or journals; to present such papers at technical conferences or to use the materials in any way to advance the transportation planning profession.

16. Maryland Law to Control. This Agreement shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

17. Contract Modifications. The Council may, from time to time and with the consent of the Contractor, make changes in the scope of services to be performed under this Agreement. Such changes, and any agreed increase or decrease in the total amount of the Contractor's compensation on account of the changes, shall be described in written amendments to this Agreement.

18. Severability. If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

19. Disputes. The Contractor must file a written notice of claim with the Council's Contract Manager within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Pending resolution of any disputes or claims, the Contractor shall proceed diligently with the performance of the Agreement in accordance with the decision of the Council's Contract Manager.

20. Termination for Default.

20.1 If the Contractor fails to fulfill its obligations under this Agreement properly and on time, or otherwise violates any provision of the Agreement, the Council may terminate the Agreement by written notice to the Contractor. This notice shall specify the acts or omissions relied upon as a cause for termination for default. All finished or unfinished work provided by the Contractor shall, at the Council's option, become the Council's property. The Council shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the Council may affirmatively collect damages.

20.2 Default. The term "Default" as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

(A) Representations and Warranties. If any representation or warranty, expressed or implied, of the Contractor and pertaining to this Agreement shall prove at any time to be incorrect or misleading in any material respect either on the date when made or throughout the term of this Agreement.

(B) Compliance with Covenants and Conditions. If the Contractor shall fail to comply with the terms of any covenant, condition, agreement or any express or implied warranty contained in this Agreement.

(C) Performance of Contractual Obligations. If the services and/or scope of work hereunder are not performed in good faith and in accordance with the provisions of this Agreement.

(D) Conditions Precedent to Any Disbursement. If the Contractor shall be unable to satisfy any condition precedent to its right to receive a disbursement.

(E) Bankruptcy. If the Contractor becomes insolvent or generally does not pay its debts as they become due, or if a petition for relief is filed by the Contractor in a bankruptcy court, or if the Contractor applies for, consents to, or acquiesces in the appointment of a trustee, custodian, or receiver for the Contractor or any of its assets and property, or makes a general assignment for the benefit of creditors; or in the absence of such application, consent, or acquiescence, a trustee, custodian, or receiver is appointed for the Contractor or for a substantial part of the assets and property of the Contractor and is not discharged within thirty (30) days; or any bankruptcy, reorganization, debt arrangement, or other proceeding or case under any bankruptcy or insolvency or any dissolution or liquidation proceeding is instituted against the Contractor and is consented to or acquiesced to by the Contractor or remains for sixty (60) days undismissed; or the Contractor takes any action to authorize any of the actions described in this subsection.

21. Remedies for Default.

21.1 The Council shall have the right upon the happening of any Default, without providing notice to the Contractor:

(A) In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part;

(B) To suspend the Contractor's authority to receive any undisbursed funds; and/or

(C) To proceed at any time or from time to time to protect and enforce all rights and remedies available to the Council, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under this Agreement, including but not limited to, calling upon any security, letter of credit, or bond and any other action authorized or permitted by applicable law; regulation, or equity.

21.2 Upon termination of this Agreement for default, the Council may elect to pay the Contractor for services and/or scope of work provided up to the date of termination, less the amount of damages caused by the default, all as determined by the

Council in its sole discretion. If the damages exceed the undisbursed sums available for compensation, the Council shall not be obligated to make any further disbursements hereunder.

22. Remedies Cumulative and Concurrent. No remedy herein conferred upon or reserved to the Council is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Council shall be concurrent and may be pursued separately, successively or together against the Contractor, and every right, power and remedy given to the Council may be exercised from time to time as often as may be deemed expedient by the Council.

23. Termination for Convenience. The performance of work under this Agreement may be terminated by the Council in accordance with this clause in whole, or from time to time in part, whenever the Council shall determine that such termination is in its best interest. The Council will pay all reasonable costs associated with this Agreement that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. The Contractor acknowledges that the absence of a reciprocal right of termination for convenience does not render this Agreement illusory or unenforceable.

24. Delays and Extension of Time. The Contractor agrees to prosecute the work continuously and diligently and will make no charges or claims for damages by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Agreement. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

25. Suspension of Work. The Executive Director of the Council unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such periods of time as he may determine to be appropriate for the convenience of the Council.

26. Dependence of Federal Funds. The funding for the work is dependent upon the availability of Federal funding under grant from USDOT passed through to the Council by MDOT. If funds are not otherwise made available for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the Council's rights or the Contractor's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge

both the Contractor and the Council from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. The Council shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

27. Compliance with Laws. The Contractor hereby represents and warrants that:

[FOR CORPORATIONS, LIMITED OR GENERAL PARTNERSHIPS OR LLC'S – DELETE IF CONTRACTOR IS AN INDIVIDUAL]:

(A) It is duly formed and validly existing under **[INSERT STATE HERE]** law AND qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

(B) It shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement; and

(C) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

(D) It has the power and authority to consummate the obligations and responsibilities contemplated hereby, and has taken all necessary action to authorize the execution, delivery and performance required under this Agreement.

(E) The services and/or scope of work to be provided under this Agreement shall be performed competently and with due care, in accordance with all applicable laws, codes, ordinances, regulations and licensing requirements and free from defects in workmanship and materials, as applicable. The parties understand and agree that this Agreement may be for the provision of a combination of goods and services. In such case, the parties hereby agree that the warranties of merchantability and fitness for a particular purpose and use shall apply to the portion of this Agreement that is pertaining to or for goods. The parties understand and agree that Council shall rely upon all express warranties contained in this Agreement, including but not limited to the Bid, and any sample or model presented by Contractor and expressly accepted by the Council.

(F) The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Council deems appropriate.

28. Interest of Members of Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

29. Conflict of Interest. The Contractor represents and warrants that there exists no actual or potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any extension or renewal thereof, the Contractor shall immediately advise the Council in writing thereof.

30. Non-Hiring of Contract Related Employees. Through the duration of this Agreement, the Contractor or any party or parties hereby contracting with the Council may not hire, or offer to hire, or in any way employ any employee of the Baltimore Metropolitan Council, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement.

31. Non-Discrimination in Employment. The Contractor agrees:

(A) Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, political affiliation, belief or opinion, sexual orientation, or physical or mental disability unrelated in nature and extent so as reasonably to preclude the performance of such employment;

(B) to include a provision similar to that contained in subsection (A), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and

(C) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

32. Insurance Program

(A) The Contractor shall procure and pay for insurance specified herein, issued by companies acceptable to the Council and authorized to do business in the State of Maryland. The Contractor shall maintain the following insurance program:

- Worker's Compensation and Employer's Liability. Limits - Coverage A, Statutory and Coverage B to a minimum limit of \$500,000.
- Comprehensive General Liability with a combined Single minimum limit of \$1 million per occurrence.
- Automobile Liability Insurance with combined single minimum limit of \$1 million.

(B) The Contractor shall deliver to the Council upon execution of this Agreement accurate and true Certificates of Insurance which show that the above coverage has been procured and that the policies will not be canceled, terminated, or modified without 30 days prior written notice to the Council. The Certificate of Insurance is acceptable in lieu of true copies of the policies if all policy exclusions are noted on the Certificate or through attachment to the Certificate by the policy writer.

33. Indemnification from Liability.

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

33.2 The Contractor shall also defend, indemnify and hold harmless the Council, its employees, agents and officials from any and all liabilities, claims, suits, or demands including attorney fees which may be made against the Council, its employees, agents or officials by any third party arising from the alleged violation of any third party's trade secrets, proprietary information, trademark, copyright, patent rights, or intellectual property rights in connection with the Contractor's work under this Agreement.

33.3 Unless notified by the Council in writing to the contrary, Contractor shall provide defense for the Council, its employees, agents and officials in accordance with this Article 34. Contractor shall allow the Council to participate in said defense of the Council, its employees, agents and officials, to the extent and as may be required by the Council and the Contractor shall cooperate with the Council in all aspects in connection therewith.

33.4 If this project is funded by MDOT grant dollars, the Contractor shall also protect, indemnify, defend and hold harmless MDOT, its officers, agents, employees, successors and assigns or contractors, against and with respect to any and all liabilities arising out of or in any way connected with the activities within the scope of this agreement.

34. Consequential Damages. Notwithstanding anything to the contrary herewithin, neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective authorized representatives

WITNESS:

BALTIMORE METROPOLITAN COUNCIL

by: _____

Michael B. Kelly

Executive Director

ATTEST:

[COMPANY NAME]

by: _____

[SIGNATORY'S NAME]

[TITLE]