

**MERIDIAN DEVELOPMENT CORPORATION
REQUEST FOR QUALIFICATIONS**

**FOR
ON-CALL ENGINEERING SERVICES**

GENERAL INFORMATION

PURPOSE

The Meridian Development Corporation (MDC) is seeking qualified and experienced respondents (individuals or firms) to submit Statements of Qualifications (SOQs) to provide on-call engineering services to MDC. Services will be assigned through specific Task Orders. Any resultant agreement will not be a guarantee to purchase services.

MERIDIAN DEVELOPMENT CORPORATION (MDC)

MDC was established by Resolution No. 01-367 of the City Council of the City of Meridian, Idaho, adopted July 24, 2001 to function as the City's urban renewal agency. It is an independent agency, authorized under the authority of the Idaho Urban Renewal Law of 1965, as amended, Chapter 20, Title 50, Idaho Code. Based on the authority granted under the Local Economic Development Act of 1988, as amended, Chapter 29, Title 50, Idaho Code, MDC has been granted revenue allocation (tax increment) authority.

The MDC website, www.meridiandevlopmentcorp.com contains a great deal of information about the agency. Several specific web pages contain a variety of information relevant to this Request for Qualifications.

THE BOARD OF COMMISSIONERS

MDC is governed by a nine member Board of Commissioners ("Board") appointed by the Mayor of the City of Meridian with the advice and consent of the Meridian City Council. Board members are appointed for rotating terms according to the requirements of the Idaho Urban Renewal Law of 1965, as amended. The Board meets twice per month on the second Wednesday morning of the month in the Meridian City Hall, beginning at 7:30 am, and the fourth Wednesday of each month at 4:00 pm at the same location.

The Board selects a Chairperson, Vice-Chairperson, Secretary and Treasurer from among its members for one year terms. The Board has also entered into formal agreements for legal counsel and agency administration. Current members of the Board and support staff are listed at www.meridiandevlopmentcorp.com

PROPOSAL TIMELINE

MDC anticipates the following timeline will apply to this RFQ:

Issue the Request for Qualifications:	Wednesday July 13, 2011
RFQ responses Due:	Friday July 29, 2011 by 4:00 pm (MST)
Final Contract Approval by MDC:	Wednesday August 24, 2011

MDC anticipates completing the selection process and adopting a rank-order list of respondents by the conclusion of its Regular meeting of the Board of Commissioners on August 10, 2011. Please note that the Board may, at its sole discretion, delay such action until a later Board meeting. Contract negotiations with the number one ranked firm would commence immediately after the Board accepts a rank-order of respondents. In the event MDC and the number one

ranked firm could not agree on contract terms, MDC would terminate such negotiations and initiate negotiations with the number two ranked firm and continue in such manner until a successful contract is concluded and approved by the MDC Board of Commissioners. Per Idaho Code §67-2320 MDC may contract with up to three (3) consultants.

A proposed Form of Professional Services Agreement is attached hereto as *Exhibit A*. If the proposer is unable to accept any part of the form agreement, the response shall clearly indicate which provisions are unacceptable in its RFQ response.

GENERAL TERMS

This Request for Qualifications (RFQ) does not commit MDC to enter into any contract, to pay any costs incurred in the preparation of a proposal or in subsequent negotiations, or to procure or contract for any Project. MDC expects to negotiate individual work tasks with the successful respondent on a per-task or per-project basis as such services are needed by MDC.

REVISIONS TO RFQ

In the event that it is necessary to revise any part of the RFQ, timely addenda will be posted on the web page and sent via e-mail to those firms that have requested a copy of the RFQ.

RESERVATION OF RIGHTS BY MDC

The issuance of this RFQ does not constitute an assurance by MDC that any contract will actually be entered into by MDC. MDC expressly reserves the right to:

- Waive any immaterial defect or informality in any response or response procedure
- Reject any and all SOQs
- Reissue the Request for Qualifications
- Invite additional respondents to submit SOQs
- Request additional information and data from any or all respondents
- Extend the date for submission of responses
- Supplement, amend, or otherwise modify the RFQ or cancel this request with or without the substitution of another RFQ
- Disqualify any respondent who fails to provide information or data requested herein or who provides inaccurate or misleading information or data
- Disqualify any respondent on the basis of any real or apparent conflict of interest
- Disqualify any respondent on the basis of past performance on MDC projects

By responding to this RFQ, each respondent agrees that any finding by MDC of any fact in dispute as to this RFQ or the responses thereto shall be final and conclusive except as provided herein. MDC may, at its own discretion, accept such submissions as it deems to be in the best public interest and in furtherance of the purposes of the Idaho Urban Renewal Law, or it may proceed with further selection processes, or it may reject any and all submissions. MDC also reserves the right to waive any informalities.

EVALUATION

An RFQ Evaluation Committee will be formed by the MDC Board to evaluate and determine the individual and comparative merits of each of the SOQs received. It is the responsibility of the respondent to ensure that the SOQ complies with this RFQ, demonstrates qualifications, and provides the information requested. If a respondent fails to provide any information requested in this RFQ, such failure may result in rejection of the proposal. The Evaluation Committee may conduct interviews of responsive firms as it deems appropriate if needed to facilitate the scoring of the SOQs provided.

ENGINEERING REGISTRATION

Engineering firms are required to register with the Idaho State Board of Professional Engineers and Land Surveyors, and to maintain such registration during the life of the negotiated contract. For additional information regarding the registration, please contact the Idaho State Board of Professional Engineers and Land Surveyors at (208) 334-3860.

REQUIRED INSURANCE

Consultant shall agree to indemnify and save and hold harmless MDC from and for any and all losses, claims, actions, judgment for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, arising out of, resulting from, or in connection with the performance of any contract, agreement or task order from or with MDC. Consultant shall at all times during its contract or agreement with MDC maintain liability insurance in which MDC shall be named as an additional insured in the minimum amounts as follows: General Liability (\$1,000,000.00) per incident or occurrence, Professional Liability/errors and omissions (\$1,000,000.00) aggregate, automobile liability insurance (\$1,000,000.00 per incident or occurrence. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless MDC, and if MDSC becomes liable for an amount in excess of the insurance limits herein provided, Consultant covenants and agrees to indemnify and save and hold harmless MDC from any and all such losses, claims, actions or judgments for damages or injury to persons or property resulting from or in connection with the performance of this Agreement by the Consultant or Consultant's officers, employees, agents representatives or subcontractors, and Consultant shall provide to MDC a Certificate of Insurance evidencing Consultants compliance with these requirements at least five days prior to the date Consultant begins performance of its obligations under any Contract or Task Order with MDC.

PROPRIETARY MATERIAL

MDC assumes no liability for disclosure of proprietary material submitted by respondents. All SOQ submittals shall be considered public documents under applicable state law except to the extent portions of the submittals are otherwise protected under applicable law.

INSTRUCTIONS

SUBMITTAL REQUIREMENTS

SOQs must conform to the attached instructions. One sealed original and five (5) sealed copies must be received **by 4:00 pm MST on Friday July 29, 2011**. MDC will not accept copies sent by FAX or e-mail.

SOQs must be submitted in a single sealed envelope or package and clearly marked SOQ FOR ONCALL ENGINEERING SERVICES, and the consultant's name and address clearly indicated on the envelope or package. SOQs must be in the actual possession of MDC on or prior to the above noted time and date, and at the location indicated below. Late submittals will be returned to the respondent unopened. SOQs shall be sent to:

Ashley Ford, Administrator
Meridian Development Corporation
33 E Broadway
Meridian ID 83642

FORMAT FOR SUBMITAL

The SOQ shall be submitted in the format as outlined. Content and completeness are important. Clear and effective presentations are preferred. Elaborate, decorative or extraneous materials are strongly discouraged. Any SOQ not following the correct format may be rejected. The SOQ shall be for the firm's expertise only. Inclusion of sub-consultant services is unacceptable.

- A fully executed Cover Page shall be the first page of the submittal.
- The maximum length of the body of the submittal shall be two (2) pages for an introductory letter, plus up to fifteen (15) additional pages specific to on-call engineering service capabilities.
- The submittal shall be on 8 ½ x 11 inch paper, single sided.
- Type style shall be no more than six lines per vertical inch and not smaller than 12 point.
- The proposals shall be bound with a single staple or clip placed in the upper left-hand corner.
- Certifications and Releases shall be appended as noted below.

The following sections must be included in all SOQ provided:

1 INTRODUCTORY LETTER

The introductory letter should be addressed to Ashley Ford at the above address. It should introduce the consultant's firm, the general nature of the firm's qualifications and list a contact name and phone number. The consultant shall include his/her acceptance of the terms of the sample Form of Professional Services Agreement and indicate willingness to execute said agreement. The sample Form of Professional Services Agreement is attached as *Exhibit A* to this document.

2 ON-CALL ENGINEERING SERVICE CAPABILITIES

A Provide a brief history of the company, its organization, number and type of personnel and the location of the company's office. If the consultant/company does not have an office in Meridian, then specifically address how the resources available will be efficiently provided to MDC in the Urban Renewal Area.

B List up to five projects performed within the past five (5) years pertaining to on-call engineering services. This should include specific information on the dates and types of services provided.

C Describe how the company is structured and set up to handle this type of work and identify the specific project manager who would be responsible for the work, as well as that project manager's specific experience relevant to this RFQ. Do not list sub consultant work.

D List three (3) verifiable professional service references for your company with a contact person and phone number.

- E Identify key personnel and the following information for each:
- Idaho professional registration (if applicable) and their hourly rate;
 - Experience in the past three (3) years relevant to this RFQ;
 - Brief description of their qualifications as specifically pertains to the functions, policy and objectives of MDC.

CERTIFICATIONS AND RELEASES

Attach the following documents:

- Proof of Registration with the Idaho State Board of Professional Engineers
- An original, signed copy of the Release Form

QUESTIONS

Any explanation desired by a respondent regarding the meaning or interpretation of the Request for Qualifications, or any part thereof, must be requested in writing (via fax or email) and with sufficient time allowed for a reply to reach respondent before submission of their SOQ. Any interpretation will be made in the form of an "Addendum" to the Request for Qualifications, issued by Ashley Ford, and will be furnished to all prospective respondents of record. Oral explanations or instructions given before Qualifications opening will not be binding. Please direct any questions or comments to Ashley Ford:

Ashley Ford, Administrator
Meridian Development Corporation
33 E Broadway
Meridian ID 83642
208.287.2199 office
208.287.2198 facsimile
208.830.7786 cellular

EVALUATION CRITERIA

MDC will evaluate proposals received that conform to the instructions outlined in this RFQ on a 1,000 point scale according to the respective weighted importance as follows:

<u>Criteria</u>	<u>Points available</u>	<u>Score</u>
1 Adherence to RFQ Instructions	100	_____
2 Project Manager's experience	200	_____
3 Company's experience	300	_____
3 The number, location, and availability Of qualified personnel	200	_____
4. Related work: the nature, qualify, and relevance of recently completed work	200	_____
<u>RATING POINTS - TOTAL SCORE</u>		_____

The MDC Evaluation Committee may conduct interviews of responsive firms as it deems appropriate if needed to facilitate the scoring of the SOQs provided.

After MDC has identified the Qualifications with the best value for MDC, MDC shall have the right to negotiate with the respondent over the final terms and conditions of the contract. The primary objective of the negotiations is to maximize MDC's ability to obtain the best value based on the requirement and evaluation factors set forth in the Request for Qualifications. Per Idaho Code §67-2320 MDC may contract with up to three (3) consultants.

COVER PAGE

Company Name: _____

Address: _____

Is this a Primary Office or a Subsidiary branch office? _____

Contact Name: _____

Telephone: _____

Fax: _____

E-Mail: _____

Web site: _____

Year present firm established: _____

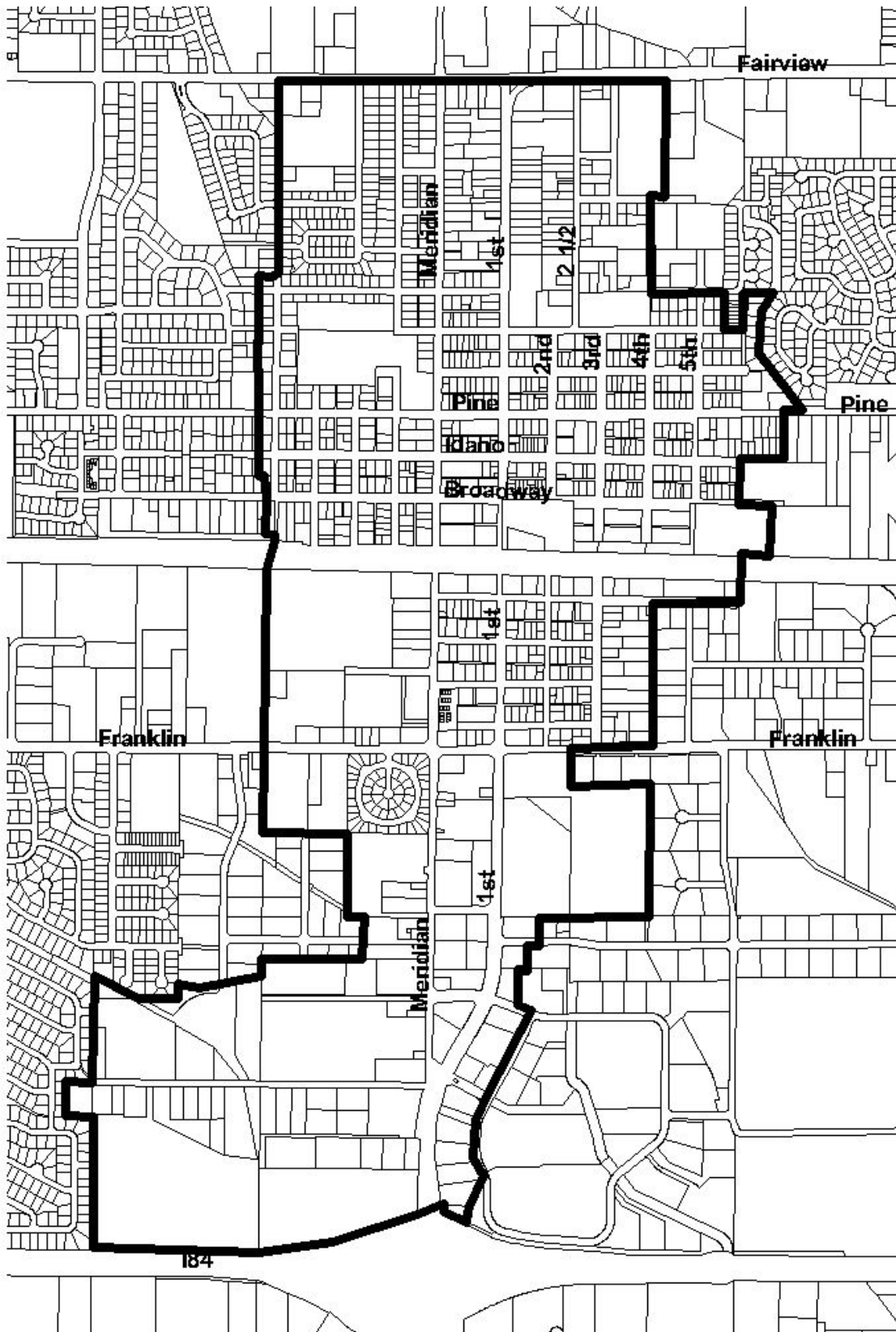
Number of full time employees: _____

2010 Gross Receipts: _____

Type of firm: Corporation LLC Partnership Sole Proprietorship

Other _____

URBAN RENEWAL AGENCY BOUNDARY MAP



RELEASE FORM

(Respondents must attach a signed copy of this Release with their response)

The undersigned has read and fully accepts the Meridian Development Corporation's ("MDC's") discretion and non-liability as stipulated herein and expressly for, but not limited to, MDC's decision to proceed with a selection process in response to the Request for Qualifications for On-Call Engineering Services ("the RFQ").

- I. *Discretion of MDC:* MDC reserves the right in its sole discretion and judgment for whatever reasons it deems appropriate to, at any time:
 - a. Modify or suspend any and all aspects of the process seeking interested parties to provide on-call engineering services;
 - b. Obtain further information from any person, entity, or group, including, but not limited to, any person, entity, or group responding to the RFQ (any such person, entity, or group so responding is, for convenience, hereinafter referred to as "Submitter"), and to ascertain the depth of Submitter's capability and desire to provide on-call engineering services;
 - c. Waive any formalities or defects as to form, procedure, or content with respect to the RFQ and any responses by any Submitter thereto;
 - d. Accept or reject any statement and/or fee proposal received in response to the RFQ, including any statement or fee proposal submitted by the undersigned, or select any one submission over another;
 - e. Accept or reject all or any part of any materials, plans, implementation programs, schedules, phasing, and proposals or statements, including, but not limited to, the nature and type of proposal.
- II. *Non-Liability of MDC.* The undersigned agrees that MDC shall not have any liability whatsoever of any kind or character, directly or indirectly, by reason of all or any decision made at the discretion of MDC as identified above.
- III. The undersigned declares that he/she holds the position indicated below as a corporate officer or the owner or a partner in the business entity submitting this SOQ; that the undersigned is informed of all relevant facts surrounding the presentation and submissions of this SOQ; that the undersigned knows and represents to MDSC that this SOQ is prepared and submitted without collusion with any other person or entity with any interest in this RFQ. I declare under penalty of perjury that the forgoing is true and correct.

"Submitter"

By: _____

Its: _____

Date: _____

FORM OF PROFESSIONAL SERVICES AGREEMENT

MERIDIAN DEVELOPMENT CORPORATION PROFESSIONAL SERVICES AGREEMENT (ON CALL ENGINEERING)

This Professional Services Agreement ("Agreement") is made by and between MERIDIAN DEVELOPMENT CORPORATION, an independent public body corporate and politic, organized and existing under the laws of the State of Idaho and known as the urban renewal agency of the City of Meridian, Idaho ("MDC"), and _____ an Idaho _____ existing under and by virtue of the laws of the state of Idaho ("Engineer").

WHEREFORE, MDC desires to hire Engineer to provide professional engineering services on an "on call as needed" basis with each task covered by a written task order signed by MDC and Engineer,

NOW THEREFORE, for consideration, the parties agree as follows:

AGREEMENT

Engineer agrees to provide professional engineering services on an "on call as needed" basis pursuant to the terms and conditions of this agreement.

1. **TASK ORDERS:** The services to be performed under this Agreement shall commence upon MDC's issuance of a Task Order for a specific project. The Task Order shall include a description of the nature of the particular work to be completed and the products or services to be produced by Engineer. The Task Order shall specify the schedule for completion, shall specify whether payment to Engineer shall be based on time and expenses or otherwise, and shall specify a schedule of compensation based on hourly rates, a fixed sum, or an alternative method. Hourly rates for Engineer shall be as shown in **Exhibit A**, unless otherwise provided in the Task Order. If an alternative method of payment is specified, the Task Order shall also state the method of payment to be used for work completed to date if the contract is terminated by MDC in accordance with **Section 19**.

2. **AMOUNT AND METHOD OF PAYMENT:** MDC agrees to pay Engineer for services rendered under this Agreement based on the method of payment specified in the Task Order as provided in **Section 1**.

(a) For each Task Order issued by MDC to Engineer, Engineer shall maintain time and expense records and make them available to MDC monthly and provide monthly invoices in a format acceptable to MDC for work performed to the date of the invoice. Each invoice shall specify charges as they relate to the tasks in the Task Order. Each invoice shall also specify current billing and previous payments, with a total of costs incurred and payments made to date.

(b) Reimbursable expenses (which shall cover general out-of-pocket expenses including long-distance telephone charges, copying expenses, overnight or standard

mailing expenses, travel-related expenses, and the like) shall be billed to MDC at actual cost to Engineer with no mark-up, unless provided otherwise in the Task Order.

(c) All invoices shall be paid by MDC within forty-five (45) days of receipt of proper invoice.

(d) If the services subject to a specific invoice do not meet the requirements of this Agreement as MDC may determine, MDC shall notify Engineer in writing and provide specific deficiencies in the work that do not meet the requirements. Engineer shall have seven (7) working days to correct or modify the work to comply with the requirements of the Agreement as set forth in MDC's written notice. If MDC again determines the work fails to meet the requirements, MDC may withhold payment until deficiencies have been corrected to MDC's satisfaction.

3. **RIGHT OF CONTROL:** MDC agrees that it will have no right to control or direct the details, manner, or means by which Engineer accomplishes the results of the services performed hereunder. Engineer has no obligation to work any particular hours or days or any particular number of hours or days. Engineer agrees, however, that its other contracts and services shall not interfere with its performance under this Agreement and that Engineer shall meet all deadlines imposed by MDC for any specific Task Order. MDC agrees to make reasonable efforts to coordinate project schedules and respective commencements and deadlines with other consultants that are part of any project team.

4. **INDEPENDENT CONSULTANT RELATIONSHIP:** Engineer is an independent consultant and is not an employee, servant, agent, partner, or joint venture of MDC. MDC shall determine the work to be done by Engineer, but Engineer shall determine the legal means by which it accomplishes the work specified by MDC. This Agreement shall not be construed to create any employer-employee relationship between MDC and Engineer.

5. **RECORDS ACCESS AND AUDITS:** Engineer shall maintain complete and accurate records with respect to costs incurred and manpower expended under this Agreement and any Task Order issued. All such records shall be maintained according to generally accepted accounting principles, shall be clearly identified, and shall be readily accessible. Such records shall be available for review by MDC representatives for three (3) years after final payment. Copies shall be made available to MDC upon request.

6. **FEDERAL, STATE AND LOCAL PAYROLL TAXES:** Neither federal, state or local income taxes, nor payroll taxes of any kind shall be withheld and paid by MDC on behalf of Engineer or the employees of Engineer. Engineer shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. Engineer understands that Engineer is responsible to pay, according to law, Engineer's income tax. Engineer further understands that Engineer may be liable for self-employment (Social Security) tax to be paid by Engineer according to law.

7. **LICENSES AND LAW:** Engineer represents that it possesses the requisite skill, knowledge, and experience necessary, as well as all licenses required to perform the services under this Agreement. Engineer agrees to comply with all applicable Meridian City Code and any amendments thereto, the laws of the State of Idaho, any other applicable ordinances, and codes of Federal, State, and local governments in the performance of the services hereunder.

8. **FRINGE BENEFITS:** Because Engineer is engaged in its own independently established business, Engineer is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plans of MDC.

9. **INDEMNIFICATION:** Engineer shall agree to indemnify and save and hold harmless MDC from and for any and all losses, claims, actions, judgment for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, arising out of, resulting from, or in connection with the performance of any contract, agreement or task order from or with MDC

10. **INSURANCE AND WORKER'S COMPENSATION:** Engineer shall at all times during its Contract or Agreement with MDC maintain liability insurance in which MDC shall be named as an additional insured in the minimum amounts as follows: General Liability (\$2,000,000.00) per incident or occurrence, Professional Liability/errors and omissions (\$1,000,000.00) aggregate, automobile liability insurance (\$1,000,000.00) per incident or occurrence. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless MDC, and if MDC becomes liable for an amount in excess of the insurance limits herein provided, Consultant covenants and agrees to indemnify and save and hold harmless MDC from any and all such losses, claims, actions or judgments for damages or injury to persons or property resulting from or in connection with the performance of this Agreement by the Consultant or Consultant's officers, employees, agents representatives or subcontractors.

(a) Engineer shall provide to MDC a Certificate of Insurance evidencing Engineer's compliance with these requirements at least five (5) days prior to the date Engineer begins performance of its obligations under any Contract or Task Order with MDC.

(b) Engineer shall maintain in full force and effect worker's compensation for Engineer and any agents, employees at all times within this Agreement or any extensions thereto.

11. **EQUIPMENT, TOOLS, MATERIALS, SUPPLIES:** Engineer shall supply, at Engineer's sole expense, all equipment, tools, materials, and/or supplies to accomplish the services to be provided herein including any related Task Order.

12. **PROPRIETARY RIGHTS:** All data, materials, reports, maps, graphics, tables, memoranda, and other documents or products developed under this Agreement or Task Order, whether finished or not, shall become the property of MDC, shall be forwarded to MDC at its request, and may be used by MDC for any business purpose. MDC agrees that if it uses products prepared by Engineer for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Engineer harmless therefore.

13. **CONFIDENTIALITY:** Engineer agrees to maintain confidentiality of all work product produced under this Agreement, including both interim and draft, materials, reports, maps, graphics, tables, memoranda, and other documents unless and until MDC signifies its written approval that such work product may be published as final work product. MDC reserves the right to distribute the final work product as it sees fit provided that Engineer may use final reports as approved and adopted by the Meridian Development Corporation Board of Commissioners in the marketing of its firm.

14. **TERM OF AGREEMENT:** This Agreement shall commence as of the effective date specified in Section 29 and shall remain in effect for two (2) years unless terminated by either party as specified in Section 20.

15. **ENTIRE AGREEMENT:** This Agreement, along with any and all Exhibits attached hereto and incorporated herein by reference, contains the entire Agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

16. **GENERAL ADMINISTRATION AND MANAGEMENT:** The Administrator of MDC or his/her designee shall be MDC's representative and shall oversee and approve all services to be performed, coordinate all communications, review and approve all invoices, and carry out any and all tasks as may be required under this Agreement.

17. **CHANGES:** MDC reserves the right to makes changes from time to time in the scope of services to be performed hereunder. Such changes, including any increase or decrease in Engineer's compensation, which are mutually agreed upon by and between MDC and Engineer, shall be incorporated in written amendments to this Agreement.

18. **AMENDMENTS:** This Agreement may be amended only in writing upon mutual agreement of both MDC and Engineer.

19. **ASSIGNMENT:** It is expressly agreed and understood by the parties hereto that Engineer shall not have the right to assign, transfer, hypothecate, or sell any of its rights under this Agreement except upon the prior express written consent of MDC.

20. **TERMINATION OF AGREEMENT:**

(a) **TERMINATION BY MDC:** MDC reserves the right to terminate this Agreement at any time, for any reason or no reason, by giving at least fifteen (15) days' notice in writing to Engineer. If this Agreement is terminated by MDC as provided herein, Engineer shall be paid an amount for each Task Order not yet completed based on the method of payment specified in the Task Order. If the Task Order specifies that payment shall be based on time and expenses, payment shall be based on actual work performed for each Task Order not yet completed, less payment or compensation previously made for the Task Order. If a Task Order specifies that payment shall be for a flat fee, payment shall be for an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of Engineer covered by this Agreement, less payment or compensation previously made. If the Task Order specifies that payment shall use an alternative method of payment, the method of payment at time of termination shall be as specified in the Task Order. Engineer shall also provide MDC all products or works of consulting generated to date of termination.

(b) **TERMINATION BY ENGINEER:** The obligation to provide further services under this Agreement may be terminated by Engineer upon sixty (60) days' written notice. Such termination shall be based upon substantial lack of performance by MDC under the terms and conditions of this Agreement when said substantial lack of performance is through no fault of Engineer. If this Agreement is terminated by Engineer, Engineer shall be paid for services rendered and for reimbursable expenses incurred to the date of such termination.

21. **NOTICES:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this Agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

To MDC:

Ashley Ford, Administrator
Meridian Development Corporation
33 E Broadway
Meridian ID 83642

To Engineer:

XXXXX
XXXXX
XXXXX

22. **DISCRIMINATION PROHIBITED:** In performing the services required herein, Engineer agrees not to discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or handicap. Violation of this section shall constitute a material breach of this Agreement and deemed grounds for cancellation, termination, or suspension of the Agreement by MDC, in whole or in part, and may result in ineligibility for further work for MDC.

23. **STANDARD OF SERVICE:** Engineer shall provide for MDC professional engineering services on an on call as needed basis as described in this Agreement. These services will be performed in accordance with generally accepted professional practices for the intended use of each project. Engineer makes no other warranty either expressed or implied. Engineer acknowledges that the execution of this Agreement is not a guarantee to purchase services from Engineer or the issuance of any Task Order by MDC to Engineer.

24. **INDEMNIFICATION:** Engineer agrees to indemnify, defend, and hold harmless MDC and its officers, agents, and employees from and against all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the act and/or any performances or activities of Engineer, Engineer's agents, employees, or representatives under this Agreement.

25. **NONWAIVER:** Failure of either party to exercise any of the rights under this Agreement or breach thereof shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

26. **APPLICABLE LAW:** Any dispute under this Agreement or related to this Agreement shall be decided in accordance with the laws of the state of Idaho with venue for any disputes to occur exclusively in Ada County, Idaho.

27. **SEVERABILITY:** If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

28. **ATTORNEY FEES:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other

relief as may be granted, to costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

29. **EFFECTIVE DATE:** The effective date of this Agreement shall be the day this Agreement is signed by MDC.

30. **DISPUTES:** In the event that a dispute arises between MDC and Engineer regarding application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises. If the parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise as the parties may mutually agree before resorting to litigation. Should the parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process or structured negotiation, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

31. **SUCCESSORS IN INTEREST:** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereby and their respective successors and assigns.

32. **OPINIONS OF COST:** Engineer may be asked to provide opinions of construction or any project costs as part of the professional services under this Agreement. MDC understands and agrees that Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. MDC understands that Engineer's opinions of cost are based on Engineer's experience and represents Engineer's judgment based on that experience, but Engineer does not guarantee or warranty that either quotes, bids, or estimates prepared by contractors, subcontractors, or others will not deviate from opinions prepared by Engineer. The MDC agrees to employ an independent cost estimator if the MDC desires additional assurance, warranty, or guarantee of any project costs.

33. **HAZARDOUS WASTE AND ASBESTOS:** MDC and Engineer agree that the work covered in this Agreement does not anticipate either the presence or remediation of hazardous waste and/or asbestos. Hazardous materials may exist where there is no reason to believe they should be present. Engineer and MDC agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. Engineer and MDC also agree that the discovery of unanticipated hazardous materials may make it necessary for Engineer to take immediate measures to protect human health and safety and/or the environment. Engineer agrees to notify MDC in writing as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. MDC encourages Engineer to take any and all measures that in Engineer's professional opinion are justified to preserve and protect the health and safety of Engineer's personnel and the public and/or the environment, and MDC agrees to compensate Engineer for the additional cost of such work.

34. **NON-USE:** MDC may or may not utilize Engineer during the life of this Agreement and assumes no obligation of any kind for expenses incurred by Engineer should Engineer not be utilized during the life of this Agreement.

IN WITNESS WHEREOF, MDC and Engineer have executed this Agreement as of the date noted below.

MERIDIAN DEVELOPMENT CORPORATION

ENGINEER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____