

**REPORT OF FORENSIC INVESTIGATION OF  
MONTGOMERY COUNTY, MARYLAND'S  
FINANCIAL RELATIONSHIP  
WITH CERTAIN VENDORS OF THE  
BUSINESS INNOVATION NETWORK**

*Prepared For:*  
THE OFFICE OF THE COUNTY ATTORNEY  
MONTGOMERY COUNTY, MARYLAND

November 16, 2018

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## I. PREFACE AND LIMITATIONS

Baker Tilly Virchow Krause, LLP (“Baker Tilly”) was retained by the Office of the County Attorney (“OCA”) of Montgomery County, Maryland (“Montgomery County” or the “County”) to investigate transactions related to certain vendors of the Montgomery County, Maryland Business Incubator Network (the “BIN Program”), to be known as the “Scope 2 Forensic Investigation.” In the execution of the Scope 2 Forensic Investigation, Baker Tilly followed the Association of Inspectors General *Principles and Standards for Offices of Inspector General, May 2014*.

The Scope 2 Forensic Investigation and related services, as reported in this *Report of Forensic Investigation of Montgomery County, Maryland’s Financial Relationship with Certain Vendors of the Business Innovation Network*, dated November 16, 2018 (the “Scope 2 Report”), are not intended to be, nor should they be, considered an audit, review, or compilation in accordance with generally accepted government auditing standards (“GAGAS”) or generally accepted auditing standards (“GAAS”).

The American Institute of Certified Public Accountants (the “AICPA”) defines the “objective of the ordinary audit of financial statements by the independent auditor is the expression of an opinion on the fairness with which they present, in all material respects, financial position, results of operations, and its cash flows in conformity with generally accepted accounting principles.”<sup>1</sup> This Scope 2 Report does not contain an expression of opinion as to the fairness of the financial statements of Montgomery County, Maryland or any other party referenced herein.

Unlike an accounting audit done in conformity with generally accepted accounting principles (“GAAP”), GAGAS, or GAAS, the Scope 2 Forensic Investigation was conducted to look specifically for indicia of fraud based on the analysis of available records and interviews of internal and external stakeholders. The AICPA states in its *Forensic & Valuation Services Practice Aid: Forensic Accounting - Fraud Investigations* that the objective of a forensic investigation “is to gather sufficient relevant data to help the client or trier of fact reach a conclusion on the merits of the suspected or alleged fraud.”<sup>2</sup> The Association of Certified Fraud Examiners *CFE Code of Professional Standards* states, “no opinion shall be expressed regarding the guilt or innocence of any person or party.”<sup>3</sup> Baker Tilly does not make any determinations of fraud regarding any particular transaction or the legal guilt or innocence of any person; those determinations are the sole province of the judicial system.

As part of the Scope 2 Forensic Investigation described in the Scope 2 Report, it was necessary for Montgomery County and Baker Tilly to identify certain persons and entities related to the transactions determined to be of interest to the County and the OCA. Due to the nature of the

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<sup>1</sup> American Institute of Certified Public Accountants AU-00110 Responsibilities and Functions of the Independent Auditor, revised March 2006, at 1.

<sup>2</sup> American Institute of Certified Public Accountants Forensic & Valuation Services Practice Aid: Forensic Accounting - Fraud Investigations, dated 2014, at 5.

<sup>3</sup> CFE Code of Professional Standards, as of November 3, 2018. <http://www.acfe.com/standards/>, at 5.

Scope 2 Forensic Investigation, those people and entities are referenced in this report by name. Such references in no way should be construed as an indication of guilt of any crime or wrongdoing. However, some of the persons and entities named may be subject to additional investigation to determine if they were, in fact, engaged in criminal activity or other wrongdoing, which would ultimately be decided through the judicial process.

Our analyses are conditional upon the completeness, accuracy and fair presentation of such information. Baker Tilly has not audited or otherwise independently verified the completeness, accuracy, or fair presentation of the information received during Scope 2. In some instances, Baker Tilly determined that the information provided was incomplete or incorrect. The availability of more complete information may have resulted in different findings. Should the County or any of the entities involved identify additional information after the date of this Scope 2 Report, the conclusions reached by Baker Tilly could be different and we reserve the right, but will not be under any obligation, to review this information and revise our calculations, analysis and this Scope 2 Report. Baker Tilly's work also was not an audit of any of the County's or the Department of Economic Development's programs, including economic development, business innovation center or incubator, loan programs, grant programs, or individual loans or grants as to their appropriateness or results achieved.

Baker Tilly will not assume any responsibility or liability for any costs, damages, losses, liabilities or expenses suffered by the County or any third party as a result of circulation, publication, reproduction, use of or reliance upon the Scope 2 Report by any party other than the County. Baker Tilly will not assume any responsibility or liability for any costs, damages, losses, liabilities or expenses incurred by any third party as a result of circulation, publication, reproduction, use of or reliance upon this Scope 2 Report. The Scope 2 Report is not intended, nor should it be interpreted as, legal advice or opinion.

## II. EXECUTIVE SUMMARY

This *Report of Forensic Investigation of Montgomery County, Maryland's Financial Relationship with Certain Vendors of the Business Innovation Network*, dated November 16, 2018 (the "Scope 2 Report"), details the methodology, observations and findings, and recommendations as a result of the forensic investigation of transactions related to certain vendors of the Business Incubator Network (the "BIN Program") for Montgomery County, Maryland ("Montgomery County" or the "County") by Baker Tilly Virchow Krause, LLP ("Baker Tilly"). The investigation is referred to as the "Scope 2 Forensic Investigation." While this Executive Summary is intended to provide a complete overview of the Scope 2 Forensic Investigation for the time period from July 1, 2006 through June 30, 2018 (the "Relevant Period"), please refer to the entire Scope 2 Report, the Appendices and the Exhibits for the detailed analyses performed in connection with the investigation.

### A. EVENTS LEADING TO BAKER TILLY'S RETENTION

On April 6, 2017, the Montgomery County Office of the County Attorney (the "OCA") received a summons from the Internal Revenue Service (the "IRS"). The summons requested all records in possession of Montgomery County related to its business with, among other parties and entities, the following:

- Mr. Byung Il "Peter" Bang ("Mr. Bang"), the former Chief Operating Officer of the Montgomery County Department of Economic Development (the "DED");
- Chungbuk Incubator Fund LLC ("CBIF"), which received payments from the DED;
- Chungcheongbuk-Do Province ("Chungbuk Province" or the "Province"), a Province of the Republic of Korea (South Korea) with which Montgomery County had a relationship for mutually beneficial economic development; and,
- Seung Uk Hong ("Mr. Hong"), a member of Chungbuk Province's Exchange Staff and sole member of CBIF at its inception.<sup>4</sup>

Upon receipt of the summons, the County began its own review of transactions related to these parties. The County identified 13 payments totaling \$5.5 million to the vendor name "Chungbuk Incubator Fund LLC" from 2010 through 2016.

On November 28, 2017, the OCA retained Baker Tilly to perform forensic and consulting services related to certain economic development activities of the County. In connection with the initial scope of retention (the "Scope 1 Forensic Investigation"), Baker Tilly conducted an independent

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<sup>4</sup> Seung Uk Hong is also spelled Seong Uk Hong and Seoung Uk Hong. Other variations include Hong Sung-Wook and Hong Seong-Wook.

forensic investigation into DED transactions at risk for potential fraud, waste, or abuse, including transactions related to Chungbuk Province, CBIF, and Mr. Bang.<sup>5</sup>

In May 2018, Baker Tilly was asked to expand the forensic investigation into the use of funds transferred from the County to the Maryland Economic Development Corporation (“MEDCO”) and Scheer Partners, Inc. (“Scheer”), two external entities responsible for the management of the “Incubators” in the BIN Program for the Relevant Period. The expanded scope also included a financial analysis of the sustainability of the BIN Program and an investigation into the operational and financial relationship between the County and BioHealth Innovation, Inc. (“BHI”). The methodology, observations and findings, conclusions, and recommendations of the Scope 2 Forensic Investigation are contained in this Scope 2 Report.

## **B. BACKGROUND**

In 1999, the County formed the BIN Program.<sup>6</sup> The BIN Program’s mission was “to support the growth and development of businesses in Montgomery County in the fields of biotechnology, information technology, international technology, professional services, and women- and minority-owned businesses.”<sup>7</sup> This support was provided through Incubators that offered below-market rent, turnkey space, common areas such as conference rooms, and access to other services and programs that supported companies’ growth and development.<sup>8</sup> These extra features, above what would be offered by typical commercial space, created the need for continual County support through grants and the direct payment of certain Incubator expenses.

From 1999 through 2008, five Incubators were added to the BIN program. The County contracted with MEDCO for financing and management of the facilities. In turn, MEDCO sub-contracted with Scheer for day-to-day facilities management. Oversight and program services were provided by the DED. BHI became program manager for two Incubators after the dissolution of the DED at end of 2016 and lack of County staff resources to continue providing this service.

## **C. METHODOLOGY**

Baker Tilly received information from the County, MEDCO, Scheer, and BHI. The information included transaction records or journals in database or spreadsheet form, transaction support such as check stubs, cancelled checks, invoices, financial statements, bank statements, and legal

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<sup>5</sup> See the Scope 1 Report dated November 16, 2018 for the analyses, findings, and recommendations of Baker Tilly from the forensic investigation into certain transactions of the Montgomery County Department of Economic Development occurring from July 1, 1996 through June 12, 2017.

<sup>6</sup> Montgomery County Business Innovation Network: Program and Policy Review by Orion Ventures, dated May 2012, at 7.

<sup>7</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 1.

<sup>8</sup> *Id.* The Incubator facilities were approximately half common area, no part of which was charged to tenants. Therefore, the tenants paid below-market rent once an allocation of this additional square footage is included in the square footage calculation for a particular tenant.

agreements. Some of the information was provided in electronic form. Baker Tilly also visited the offices of MEDCO and Scheer to examine and scan hard copy files.

Baker Tilly observed that some information provided was incomplete and/or incorrect. As of the date of this Scope 2 Report, Baker Tilly has not received certain items requested.<sup>9</sup> The findings and observations noted in the remainder of this Scope 2 Report are based on the information received and reviewed by Baker Tilly to date.

Baker Tilly performed reviews and analyses of, among others, the following:

**1. Accounts Payable and Disbursements Data**

*County Accounts Payable Data:* From the transaction data provided to Baker Tilly in the Scope 1 Forensic Investigation, we identified 401 transactions totaling approximately \$46.8 million, relating to Scope 2 ("Scope 2 County Data").<sup>10</sup> During the Scope 1 and Scope 2 Forensic Investigations, Baker Tilly analyzed no less than 90% of the Scope 2 County Data.

*Scheer Disbursements Data:* During the Relevant Period, Scheer disbursed more than \$39.7 million in approximately 15,000 transactions, purportedly related to the BIN Program and BHI ("Scope 2 Scheer Data").<sup>11</sup> We reviewed payments to individuals and vendors identified as having a high risk for potential fraud, waste, or abuse during the Scope 1 Forensic Investigation,<sup>12</sup> and other transactions based on the frequency of payments to a particular vendor and/or individual and the total dollar amount disbursed. In total, Baker Tilly tested \$13.6 million (34.4%) in payments made to 24 entities or individuals.

*MEDCO Accounts Payable Data:* We received MEDCO accounts payable ledgers that included 717 transactions recorded across all accounts ("Scope 2 MEDCO AP Data").<sup>13</sup> All of the transactions selected were reviewed for indications of fraud, waste, or abuse.

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<sup>9</sup> Letter to the Maryland Economic Development Corporation and Scheer Partners Management, Inc., regarding Audit of MEDCO and Scheer Partners' Books and Records Relating to Montgomery County Incubators, dated May 15, 2018.

<sup>10</sup> See Appendix I for the Scope 2 County Data used in conducting the Scope 2 Forensic Investigation.

<sup>11</sup> The amount reflected above is based on the date that the transaction cleared the bank. The disbursements data provided by Scheer also included payments cleared during June 2006 and July 2018, which is outside of the Relevant Period. This \$39.6 million reflects the amount of payments cleared during the Relevant Period and includes \$1.4 million distributed to BHI in connection with unrelated economic development activities of the County. See Appendix J Scope 2 Scheer Data.

<sup>12</sup> Baker Tilly identified payments made by Scheer to entities including, but not limited to, CBIF; Orion Ventures, LLC; Jade Research Corporation; Bendis; BHI; Product Savvy Consulting, and Snyder Consulting. With the exception of Orion Ventures, LLC, Snyder Consulting, and Jade Research Corporation, Baker Tilly tested all payments made by Scheer to entities identified for further review during Scope 1. Orion, Snyder and Jade each had a large number of transactions; those transactions were tested based on a sample population that was less than 100%.

<sup>13</sup> See Appendix K for the Scope 2 MEDCO AP Data.

## **2. Incubator Financial Operating Reports**

On a monthly basis, Scheer prepared financial operating reports for each of the five Incubators. Baker Tilly received more than 600 monthly financial statements, which were used in connection with developing our understanding of the flow of funds between entities involved with the BIN Program and our assessment of financial sustainability.<sup>14</sup> As part of our analysis, we prepared schedules of historical balance sheets, income statements, and cash flow statements for each Incubator to analyze the level of income or loss generated with and without grant funding.

## **3. Email Review**

MEDCO provided approximately 3,000 emails and Scheer provided approximately 150,000 emails. Baker Tilly created a population of emails for review after filtering on keywords and eliminating duplicates.<sup>15</sup> Baker Tilly reviewed 100% of these emails.

## **4. Interviews**

During the course of the Scope 2 Forensic Investigation, Baker Tilly formally interviewed seven individuals employed by the County (currently or formerly) or otherwise connected to the BIN Program.

- Mr. Richard Bendis (“Mr. Bendis”) – President and CEO of BHI;
- Mr. Brian Bouey (“Mr. Bouey”) – Controller, Scheer Partners;
- Mr. Steve Silverman (“Mr. Silverman”) – former Director of DED;
- Ms. Sally Sternbach (“Ms. Sternbach”) – former Acting Director of DED, former Executive Director of Rockville Economic Development, Inc. (“REDI”);
- Ms. Lily Qi (“Ms. Qi”) – County employee, Member of the Board of Directors of BHI; and
- Two Current County Employees.

## **D. QUESTIONABLE PAYMENTS**

Baker Tilly identified 26 payments made by MEDCO and Scheer to eight vendors totaling \$2.1 million.<sup>16</sup> These 26 payments had several characteristics in common, which can be viewed as indications of fraud (each, a “Questionable Payment,” collectively, “Questionable Payments”):

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<sup>14</sup> This includes the monthly report for June 30 (year-end) of each year during the Relevant Period for each Incubator, if available. In addition, to corroborate Baker Tilly’s analysis of funds held by MEDCO, we analyzed the bank statements contained in at least 600 monthly reports. Reports that were not received include February 2006 for the SSIC and January through February 2006 for the SGIC.

<sup>15</sup> These figures do not include emails, which for example, were provided by MEDCO to support transactions, or bundled with other electronic documents. See Appendix C for list of keywords.

<sup>16</sup> Baker Tilly identified these Questionable Payments and/or confirmed the earlier identification of the Questionable Payments by the County.

- All but one of these transactions came at the direction of Mr. Bang in an observed letter, memorandum, or email.<sup>17</sup>
- All but one of the requests for payment had no supporting documentation.<sup>18</sup>
- None of the transactions appear to have a legitimate business purpose for the County or the BIN Program.
- Twelve of the 26 payment requests had instructions to hold payment for, or deliver to, Mr. Bang.
- All were for services or other intangibles, a hallmark of a scheme in which an entity (a “Fictitious Vendor”) submits invoices for goods or services not actually rendered known as a “Fictitious Vendor Scheme.” Services are harder to observe than tangible goods, which would have to be received, inventoried and used.
- All of the payments were made to vendors with observed connections to Mr. Bang, CBIF, Chungbuk Province, or a County employee.

Of these eight vendors receiving Questionable Payments:

- One was CBIF, identified in the Scope 1 Forensic Investigation;
- Two were Chungbuk Exchange Staff;
- One is believed to be a relative or associate of Mr. Bang, and was involved with two different vendors that received Questionable Payments;
- One was potentially a case of identity theft, possibly committed by a former County employee with access to that information; that former employee was also involved with a vendor that received Questionable Payments; and
- One was a County vendor.

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<sup>17</sup> The observed pattern for a letter or memorandum was that it was addressed to the recipient, typically Mr. Brennan, from Mr. Bang, “via” the Director of the DED. One letter was addressed to Mr. Brennan “via” Mr. Ganguly, without the letter being “from” anyone.

<sup>18</sup> The request for disbursement of funds to NLCW, Inc. had a loan offer letter, but none of the supporting documentation that Baker Tilly has observed in other County small business loan files.

**Table 1. Questionable Payments from MEDCO and Scheer**

| <b>Vendor</b>   | <b>From MEDCO</b> | <b>From Scheer</b>  | <b>Total</b>        |
|-----------------|-------------------|---------------------|---------------------|
| CBIF            | \$ 50,000         | \$ 1,163,988        | \$ 1,213,988        |
| ELC             | 141,715           | 52,500              | 194,215             |
| J & K System(s) | 70,600            | -                   | 70,600              |
| NLCW, Inc.      | 80,000            | -                   | 80,000              |
| Seong Uk Hong   | 110,000           | -                   | 110,000             |
| Sohn Jung Mee   | 81,200            | -                   | 81,200              |
| Woodfield LLC   | 145,000           | -                   | 145,000             |
| Young J. Pack   | 163,000           | -                   | 163,000             |
| <b>Total</b>    | <b>\$ 841,515</b> | <b>\$ 1,216,488</b> | <b>\$ 2,058,003</b> |

In addition to these Questionable Payments, Baker Tilly also found payments of seemingly legitimate DED expenses, directed by Mr. Bang, to be paid out of MEDCO or Scheer accounts.

**E. SUSTAINABILITY OF THE BIN PROGRAM**

The OCA requested that Baker Tilly provide a preliminary determination of the sustainability of the five BIN Program Incubators, that is, the ability of the Incubators to be self-supporting, without County assistance. The BIN Program’s objective was “to provide low-cost space with flexible lease terms for emerging, primarily technology-based companies, with the implicit assumption that this capacity would allow new companies to start and grow in Montgomery County.”<sup>19</sup> The Incubators provide other services to Licensees,<sup>20</sup> such as conference space and consulting, included in the cost of rent. These aspects of the Incubators required the County to subsidize the BIN Program through grant funding and other financial assistance.

Baker Tilly analyzed the monthly financial data provided by Scheer; however, we observed that the reports do not contain all of the revenue, including grant funding, or all of the expenses of each Incubator. In addition, the financial reports prepared by Scheer were not prepared in accordance with GAAP. There are instances where grant funding is received and expenses are paid directly by MEDCO that either do not appear to be reflected, or are inaccurately reflected, in the monthly financial reports prepared by Scheer. The County also paid certain expenses directly. Three of the five Incubators have never been audited, and were not required to be. For these reasons and others, we believe the financial reports provided are inaccurate and incomplete.

The BIN Program Incubators’ financial reports reflect a net cumulative loss for the Relevant Period. Contributing to the cumulative loss, in addition to the above-described factors, were varying occupancy rates, the lack of reimbursement for common area maintenance (“CAM”) charges and Questionable Payments, some of which may have been made from the Incubator

<sup>19</sup> Montgomery County Business Innovation Network: Program and Policy Review by Orion Ventures, dated May 2012, at 5.

<sup>20</sup> Incubator tenants are known as “Licensees,” leases as “License Agreements,” and rent as “License Fees.” In this report, we use these terms interchangeably.

Management Accounts or other related accounts. The reported cumulative loss, as well as the level of County funding and the amount of expenses paid directly by the County or MEDCO over the Relevant Period is of a sufficient magnitude to suggest that the Incubators do not appear to be financially sustainable without significant funding from the County.

**F. EXAMINATION OF FUNDS DUE TO/DUE FROM MONTGOMERY COUNTY**

In the twelve years from July 1, 2006 through June 30, 2018,<sup>21</sup> the County provided approximately \$22.3 million to MEDCO and Scheer for the management of the BIN Program. Baker Tilly was retained to quantify the net amount of County funds held by MEDCO for the BIN Program as of June 30, 2018. To determine the total funds held by MEDCO, we analyzed the bank statements for each Incubator account, the accounts payable general ledgers, Scheer disbursement journals, and hundreds of pages of support documentation including, but not limited to, cancelled checks, emails, and invoices. First, we calculated the total cash balance at the beginning of FY 2007 using the bank statements reflected in the Management Account of each Incubator as of June 30, 2007. We then analyzed the transactional level data reflected in the accounts payable ledgers and disbursements journals to determine the total grant funding received from the County and other state agencies for the Incubators. After taking into account the revenue earned by each Incubator, as a result of leasing office space to tenants, it appears that MEDCO received approximately \$46.6 million for the management of the BIN Program from FY 2007 through FY 2018. For the same period, Baker Tilly estimated that MEDCO and Scheer disbursed approximately \$43.8 million in funds for Incubator expenses, and \$2.2 million in funds unrelated to the BIN Program, as directed by the County. The table below provides a summary of Baker Tilly's estimate of funds held by MEDCO:

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<sup>21</sup> The County's and the Incubators' Fiscal Year (or "FY") begins on July 1 and ends on June 30.

**Table 2. Baker Tilly Estimate of MEDCO Funds Held<sup>22</sup>**

| FY 2007- FY 2018                                               |               |
|----------------------------------------------------------------|---------------|
| <i>(\$ in Actual)</i>                                          |               |
| FY 2007 Beginning Balance                                      | \$ 307,013    |
| <u>Funds Received</u>                                          |               |
| County Funding                                                 | 22,295,256    |
| Other Funding                                                  | 1,882,598     |
| Incubator Revenue (reported on unaudited financial statements) | 22,441,139    |
| Total                                                          | \$ 46,618,993 |
| Funds Disbursed                                                | (45,944,792)  |
| FY 2018 Balance (Baker Tilly Estimate)                         | \$ 981,214    |
| FY 2018 Balance (Per MEDCO)                                    | 942,991       |
| Unreconciled Variance                                          | \$ 38,223     |

As discussed throughout this Scope 2 Report, there were several limitations to the data received and analyzed by Baker Tilly. These limitations include, but are not limited to, receipt of accounts payable activity instead of receipts and disbursements data, which may be the cause of the variance between the Baker Tilly estimate of funds held and the amount held as stated by MEDCO as of June 30, 2018. In addition, during our investigation, we identified at least \$2.1 million paid by MEDCO and Scheer, which contained indications of potential fraud, waste, or abuse. Had these payments not been made by MEDCO and/or Scheer, as directed by Mr. Bang, the amount of funds due to the County as of June 30, 2018 may have been higher or the amount of funding provided by the County in total may have been less.

**G. THE COUNTY’S FINANCIAL RELATIONSHIP WITH BIOHEALTH INNOVATION, INC.**

BHI is a public-private entity incorporated pursuant to section 501(c)(3) of Title 26 of the United States Code (the “Internal Revenue Code”) as a tax-exempt organization. BHI “sources and evaluates market-relevant biohealth intellectual properties, connects the IP with funding, and assists businesses in marketing and growth.”<sup>23</sup> BHI also makes investments in client companies through two for-profit subsidiaries. Since Fiscal Year 2012, the County has provided funding of over \$4 million to support BHI’s operations. In September 2016, MEDCO appointed BHI as the program manager of the Rockville Innovation Center (the “RIC”) and the Germantown Innovation Center (the “GIC”) under separate, two-year agreements. BHI’s role in managing the RIC and the GIC is primarily programmatic in nature, replacing services that the County could no longer provide internally, after the dissolution of the DED.

<sup>22</sup> Excludes funds relating to the NCCoE facility. See Appendix F for Baker Tilly’s analysis of MEDCO funds held.

<sup>23</sup> BioHealth Innovation - About Us, <https://www.biohealthinnovation.org/about-us>, last visited October 8, 2018, at 1.

## **H. RECOMMENDATIONS**

These recommendations are discussed in more detail in each respective section. While Baker Tilly's understanding is that the MEDCO relationship was amended in August 2018, the County still must address the shortcomings of the management of the BIN Program, including facilities management, financial reporting, and cash management.<sup>24</sup>

1. Implement and require compliance with more stringent guidelines regarding financial reporting for the Incubators:
  - a. Monthly financial statements, including all revenues and expenses of the Incubator (paid by MEDCO or Scheer). Currently, the reporting provided to the County appears to exclude a detailed accounting for expenses paid directly by MEDCO. Monthly financial statements should be prepared in accordance with GAAP to the extent possible.
  - b. Quarterly schedules reconciling the use of County funds on a go-forward basis.
  - c. An annual audit for each Incubator.
2. Simplify the organizational structure such that the Facilities Manager reports directly to the County, without another entity in-between, as opposed to the two layer structure of MEDCO and Scheer.
3. Rather than maintaining a general ledger account for tracking County funds, require a segregated bank account containing all funds received from the County for the management of the BIN Program.
4. Reconcile the Due To/Due From accounts on a quarterly basis.
5. Consider changing the oversight of the BIN Program from the Department of Finance to a department of the County that would be more "hands on."
6. Consider amending the leases for the Incubator tenants to include CAM charges, as is typical for commercial properties. Each Incubator tenant would be responsible for its proportional share of common area expenses such as landscaping, snow removal, or garbage removal.
7. Require that MEDCO provide the County with a detailed reconciliation of funds on an annual basis for all years in the Relevant Period, with relevant supporting documentation for each transfer.
8. Conduct an analysis of debt service payments made in connection with the PNC Bank mortgage for the NCCoE to determine the total funds provided by the County used for debt service versus those used to supplement operating expenses, possibly inappropriately.

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<sup>24</sup> The County should make amendments to the contracts with BHI and Launch Workplaces, if these terms are not already contained in current contracts.

9. Amend the NCCoE County Grant Agreement to reflect the terms of the agreement accurately, to the extent that the County agrees to continue to supplement the operating expenses of the NCCoE. Ensure that this amended agreement explicitly states the amount and purpose of funds to be provided by the County.
10. Amend the 2016 Master Management Agreement to prohibit the commingling of County funds and provide for a penalty, such as an adjustment to management fees payable, to the extent that a commingling of funds occurs.
11. The County should regularly exercise its right to conduct inspections of the books and records of each Incubator, as outlined in Section 2.3 of the 2016 Master Management Agreement.<sup>25</sup>
12. Draft and execute grant agreements for program grants with specific terms and conditions, including restrictions on using County funds for activities or programs outside the County.
13. Consider limiting the term of the County representative on the BHI Board of Directors.
14. Monitor compliance with all of the above.

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<sup>25</sup> Consolidated, Amended and Restated Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated July 13, 2016, at 2.

### III. INTRODUCTION

#### A. EVENTS LEADING TO BAKER TILLY'S RETENTION

On April 6, 2017, the OCA received a summons from the IRS. The summons requested all records in possession of Montgomery County related to its business with, among other parties and entities, the following:

- Mr. Bang, the former Chief Operating Officer of the DED;
- CBIF, which received payments from the DED;
- Chungbuk Province, with which the County had a relationship for mutually beneficial economic development; and
- Mr. Hong, a member of Chungbuk Province's Exchange Staff and sole member of CBIF at its inception.<sup>26</sup>

Upon receipt of the summons, the County began its own review of transactions related to Mr. Bang, CBIF, and Chungbuk Province. The County identified 13 payments with multiple indications of fraud totaling \$5,529,464.63 to the vendor name "CHUNGBUK INCUBATOR FUND LLC" from 2010 through 2016. There were indications that CBIF was a Fictitious Vendor. There were also multiple indications that Mr. Bang had benefited from these payments to CBIF.

Following the internal review, the County delivered a statement of disciplinary charges to Mr. Bang and placed him on administrative leave effective May 16, 2017.<sup>27</sup> Mr. Bang's employment with the County was officially terminated on June 12, 2017.

#### B. SCOPE OF RETENTION

On November 28, 2017, the OCA retained Baker Tilly to perform forensic and consulting services related to certain economic development activities of the County. In connection with the Scope 1 Forensic Investigation, Baker Tilly conducted an independent forensic investigation into

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<sup>26</sup> Mr. Bang and several other people discussed in this Scope 2 Report are known or believed to be of Korean descent. Korean names use the family name first and the given name last. When "westernized," the given name will be first and the family name last. Given names are generally a hyphenated name of two names, one syllable each. In some cases, people will choose a "western" first name, for example, Mr. Bang goes by the first name "Peter."

People referenced in this Scope 2 Report may have names "westernized" by the person him or herself, or by others. The use of Korean versus "westernized" names may be inconsistent. In addition, "westernized names" are translated phonetically, and so given and family names may have alternate spellings, which may also be used inconsistently. For example, "Park" may also be spelled "Pak" and "Lee" may be spelled "Rhee" when "westernized."

The family names Kim, Lee (or Rhee) and Park are the most common. Caution must be used when attempting to discern relationships between people with these family names in particular. In addition, married men and women usually keep their full personal names, and children inherit the father's family name.

In this Scope 2 Report, Baker Tilly will use the most frequently used name in the documentation provided for each person. However, when referencing a specific document, Baker Tilly will use the name as referenced in that document. As a result, the same person may be referenced with a name with a different spelling, a different order of names, or a "westernized" given name.

<sup>27</sup> Montgomery County Personnel Regulations §33 Disciplinary Actions, amended as of June 30, 2015.

transactions of the DED, including those transactions related to Chungbuk Province, CBIF and Mr. Bang.<sup>28</sup>

In May 2018, Baker Tilly expanded its forensic investigation into the use of funds transferred from the County to MEDCO and Scheer, two external entities responsible for the management of the Incubators in the County's BIN Program during the Relevant Period. The expanded scope also included a financial analysis of the sustainability of the BIN Program, and an investigation into the operational and financial relationship between the County and BHI. Hereinafter, any reference to the Scope 2 Forensic Investigation will relate to the expanded scope of retention described above. The methodology, observations and findings, conclusions, and recommendations of the Scope 2 Forensic Investigation are contained in this Scope 2 Report.

The purpose of the Scope 2 Forensic Investigation was to:

1. Identify all potentially fraudulent, or otherwise inappropriate, transactions from MEDCO or Scheer directed by, or for the benefit of, Mr. Bang, his associates, CBIF, or any other improper recipient;
2. Identify and quantify the amount of County funds being held by MEDCO and/or Scheer based on County funds disbursed to MEDCO and Scheer in connection with the operation of the BIN Program;
3. Examine aspects of the County's relationship with BHI; and
4. Conduct a financial analysis of the sustainability of the BIN Program, that is, its ability to continue without the use of County funds.

Although reference is made throughout this Scope 2 Report to the Scope 1 Forensic Investigation, all methodologies, observations, conclusions, and recommendations relating to Scope 1 are reflected under separate cover, and are not included herein.

In connection with the Scope 2 Forensic Investigation, Baker Tilly was provided with over 20,000 transactions and over 200,000 emails, on which we used forensic testing and keyword filtering to determine a relevant population for review. Baker Tilly reviewed more than 5,000 documents including, but not limited to, invoices, checks, financial operating reports, and agreements. The Scope 2 Forensic Investigation also included interviews with current and former County, Scheer, and BHI personnel to obtain the information needed to reach the conclusions outlined herein.

### **C. QUALIFICATIONS**

Baker Tilly is a full-service accounting and advisory firm, which offers industry-specialized audit, tax, and consulting services. Baker Tilly has over 2,800 employees nationally and is an independent member of Baker Tilly International Limited ("Baker Tilly International"), one of the

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<sup>28</sup> See the Scope 1 Report dated November 16, 2018 for the analyses, findings, and recommendations of Baker Tilly from the forensic investigation into certain transactions of the Montgomery County Department of Economic Development occurring from July 1, 1996 through June 12, 2017.

world's leading networks of independently owned and managed accountancy and business advisory firms. Baker Tilly International employs more than 33,000 people in 147 locations globally.

The Forensic, Litigation & Valuation Services (“FLVS”) practice provides multiple consulting and support services, including fraud and forensic investigations, complex commercial litigation, valuation in disputes, restructuring and bankruptcy disputes, structured finance and capital markets consulting, and monitorships and regulatory compliance. Professionals within the FLVS practice have decades of experience assisting clients during stressful and difficult times. FLVS professionals hold the following designations and accreditations, among others:

- AccessData Certified Examiner (“ACE”)
- Certified in Distressed Business Valuation (“CDBV”)
- Certified in Financial Forensics (“CFF”)
- Certified Fraud Examiner (“CFE”)
- Certified Inspector General (“CIG”)
- Certified Insolvency & Restructuring Advisor (“CIRA”)
- Certified Public Accountant (“CPA”)
- Certified Treasury Professional (“CTP”)
- Juris Doctor (“JD”)
- Master of Forensic Science (“MFS”)

FLVS professionals have extensive experience conducting forensic investigations for a variety of matters including, but not limited to, bankruptcy disputes, computer forensics, corporate securities disputes, data mining and analyses, internal investigations, False Claims Act and government contract investigations, labor investigations, monitorships, post-acquisition disputes, and shareholder and partnership disputes. The FLVS practice is national with offices in Atlanta, Chicago, New York, Oklahoma City, Philadelphia, Pittsburgh, and Washington D.C.

#### **D. BRIAN SANVIDGE QUALIFICATIONS**

I am a Principal at the accounting and advisory firm of Baker Tilly in the FLVS practice. I have over 33 years of experience working with public and private sector entities, leading investigations into fraud, waste, and abuse, compliance with regulations, consent orders and contracts, labor practices, disaster recovery services, and business continuity.

I have 25 years of government experience. I was an Inspector General for over 12 years, 10 of which were for the New York State Department of Labor (“DOL”). I oversaw over 5,000 civil and criminal investigations conducted by the DOL that resulted in criminal convictions and civil restitution of more than \$250 million.

I have been with Baker Tilly for over ten years, specializing in fraud and forensic investigations, data analysis and computer forensics, and monitorship services within the public sector. My

industry specialization, in addition to public sector work, includes construction, hospitality, and healthcare/pharmaceuticals.

I have been qualified as an expert witness in financial crimes in state and federal court systems as well as in American Arbitration Association (“AAA”) arbitrations. I am a Certified Inspector General and a Certified Fraud Examiner. I am also a Certified Financial Records Expert Witness, certified by the National White Collar Crime Center.

I have lectured nationally on labor law, business fraud, white collar crime, tax fraud, regulatory compliance, and government investigations. My speaking engagements have included several judicial and bar associations.

I belong to the Association of Inspectors General, the Association of Certified Fraud Examiners, the National Association of Criminal Defense Lawyers, the American Bar Association, the International Association of Independent Private Sector Inspectors General and the American Society for Industrial Security. I am a Trustee of the Citizen's Budget Commission and a secure member of the New York Metro InfraGard Alliance.

I hold a Bachelor of Arts in Political Science from the State University of New York at Albany.

#### **E.      ENGAGEMENT OVERSIGHT**

All work related to this engagement was performed by Brian Sanvidge or by Baker Tilly professionals under his direction and oversight. For purposes of this Scope 2 Report, Mr. Sanvidge and his team are referred to as “Baker Tilly” or “we.”

## IV. BACKGROUND

### A. OVERVIEW

In 1993, the County created its first business innovation center, or Incubator, the Montgomery County Technology Enterprise Center (the “MCTEC”) in Rockville, Maryland.<sup>29</sup> As a result of the success of the MCTEC,<sup>30</sup> in 1999, the County formed the BIN Program.<sup>31</sup> The mission of the BIN Program was “to support the growth and development of businesses in Montgomery County in the fields of biotechnology, information technology, international technology, professional services, and women- and minority-owned businesses.”<sup>32</sup> This support was provided through Incubators that offered below-market rent, common areas such as conference rooms, and access to other services and programs that supported companies’ growth and development.<sup>33</sup> These extra features, above what would be offered by typical commercial space, created the need for continual County support through grants and the direct payment of certain Incubator expenses, such as rent.

From 1999 through 2008, five Incubators were added to the BIN program. The County contracted with MEDCO for financing and management of the facilities. In turn, MEDCO contracted with Scheer for day-to-day facilities management. Program services were provided by the DED.

BHI is “an innovation intermediary that translates market-relevant research into commercial success by connecting management, funding and markets” in the biohealth sector.<sup>34</sup> The County supports BHI through operating grants. In 2016, BHI became program manager for two of the remaining three Incubators, replacing services that had been provided by the DED prior to its dissolution.

Oversight of these programs was the responsibility of the DED, and specifically, its COO, Mr. Bang. The structure of the relationship between and among the DED, MEDCO, Scheer, and

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<sup>29</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 2.

<sup>30</sup> The Suburban Maryland High Technology Council conducted a review of the MCTEC. As measured against 10 objectives, the Incubator was found to be effective. Montgomery County Business Innovation Network: Program and Policy Review by Orion Ventures, dated May 2012, at 13.

<sup>31</sup> Montgomery County Business Innovation Network: Program and Policy Review by Orion Ventures, dated May 2012, at 7.

<sup>32</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 1.

<sup>33</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 16, 19, 24. The Incubator facilities were approximately half common area, no part of which was charged to tenants. Therefore, the tenants paid below-market rent once an allocation of this additional square footage is included in the square footage calculation for a particular tenant.

<sup>34</sup> BioHealth Innovation - About Us, <https://www.biohealthinnovation.org/about-us>, last visited October 8, 2018, at 2.

the Incubators, combined with the apparent circumvention of controls by Mr. Bang, allowed County funds to flow with little transparency into the ultimate use of those funds. After the dissolution of the DED, the duties relating to the BIN Program became the responsibility of the County's Department of Finance.<sup>35</sup>

## **B. ENTITIES RELATED TO THE BIN PROGRAM**

During the Relevant Period, the County entered into a number of agreements with third-party agencies for the financing, management, and operation of the Incubators in the BIN Program. The County's key relationships relating to the BIN Program are described in more detail below.

### **1. Maryland Economic Development Corporation**

MEDCO is "an instrumentality of the State of Maryland created by the [Maryland] General Assembly to serve as a statewide economic development engine."<sup>36</sup> Its mission is to "assist the state in its economic development efforts by owning real and personal property."<sup>37</sup> MEDCO is granted the authority by the State of Maryland to issue debt for particular projects. This debt is repaid with cash flow from the individual project.

MEDCO played a role in both financing and managing the Incubator locations. MEDCO developed three of the BIN Program locations, and provided financing through the issuance of bonds or mortgages. MEDCO is the management, licensing, and leasing agent of the County for the Incubators in the BIN Program.<sup>38</sup> In July 2003, MEDCO sub-contracted the day-to-day management of the Maryland Technology and Development Center (the "MTDC") to Scheer.<sup>39</sup> As new Incubators were opened, MEDCO contracted with Scheer to be the facility manager for each.

### **2. Scheer Partners, Inc.**

Scheer is a commercial real estate services firm in the Washington D.C./Maryland area.<sup>40</sup> Scheer was and/or is the contracted facilities manager for each of the Incubator facilities in the BIN Program.<sup>41</sup> Scheer's responsibilities for management of the facilities generally included daily

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<sup>35</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding the FY17 Operating Budget: MEDCO Grant – Incubator Network NDA, dated April 25, 2016, at 9.

<sup>36</sup> Maryland Economic Development Corporation - About, <https://medco-corp.com/at-a-glance/about/>, last visited October 8, 2018, at 1.

<sup>37</sup> Testimony of Robert C. Brennan, Executive Director before House Committee on Appropriations Subcommittee on Education and Economic Development, dated February 13, 2017, at 1.

<sup>38</sup> Master Management Agreement by and between the Maryland Economic Development Corporation and Montgomery County, Maryland, dated May 24, 2006, at 1.

<sup>39</sup> Exclusive Facility Management Agreement between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated July 1, 2003, at 1.

<sup>40</sup> Scheer Partners - Services, <https://scheerpartners.com/services/investment-and-development/>, last visited November 14, 2018, at 1.

<sup>41</sup> Management Agreement by and between the Maryland Economic Development Corporation and SPI Asset Management, LLC, dated April 1, 2006 (for WBIC); Management Agreement by and between the Maryland Economic

operations, bookkeeping, administration, collections and disbursements, executing leases, oversight of vendors, and, financial reporting and budgeting.<sup>42</sup>

### **3. BioHealth Innovation, Inc.**

BHI is a public-private entity incorporated pursuant to section 501(c)(3) of Title 26 of the Internal Revenue Code as a tax-exempt organization.<sup>43</sup> BHI “sources and evaluates market-relevant biohealth intellectual properties, connects the IP with funding, and assists businesses in marketing and growth.”<sup>44</sup> Since Fiscal Year 2012, the County has provided annual grants to support BHI’s operations. In September 2016, MEDCO appointed BHI as the program manager of the RIC and the GIC under separate, two-year agreements.<sup>45</sup> BHI’s role in managing the RIC and the GIC is primarily programmatic in nature, replacing services formerly provided by the DED, prior to its dissolution.

### **4. Montgomery County Economic Development Corporation**

The Montgomery County Economic Development Corporation (“MCEDC”), is an Internal Revenue Code section 501(c)(3) not-for-profit organization created in 2016 to help promote economic growth in Montgomery County.<sup>46</sup> In 2015, the County began to explore opportunities to reorganize and privatize its economic development strategy.<sup>47</sup> At the end of the 2016 Fiscal Year, the DED was operationally dissolved, and MCEDC was formed to be the County’s “economic development agent.”<sup>48</sup> The remaining DED employees were moved under the

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Development Corporation and Scheer Partners Management, Inc., dated June 1, 2007 (for RIC); Exclusive Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated September 1, 2008 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated November 10, 2011 (for SGIC); Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated December 1, 2011 (for SSIC), (collectively, the “Facilities Management Agreements”).

<sup>42</sup> Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated June 1, 2007 (for RIC); Exclusive Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated September 1, 2008 (for GIC); Management Agreement between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated December 1, 2011 (for SSIC).

<sup>43</sup> BioHealth Innovation - About Us, <https://www.biohealthinnovation.org/about-us>, last visited October 8, 2018, at 2.

<sup>44</sup> *Id.* at 1.

<sup>45</sup> Management Agreement between the Maryland Economic Development Corporation and BHI, dated August 29, 2016, at 1. Management Agreement between the Maryland Economic Development Corporation and BHI, dated September 9, 2016, at 1.

<sup>46</sup> MCEDC - Who We Are, <https://thinkmoco.com/about-mcedc/who-we-are/>, last visited October 28, 2018, at 1. .

<sup>47</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding the FY17 Operating Budget: MEDCO Grant – Incubator Network NDA, dated April 25, 2016, at 7 - 9.

<sup>48</sup> *Id.* at 7.

Department of Finance or other departments within the County. The BIN Program contract responsibilities were shifted to the County's Department of Finance.<sup>49</sup>

## 5. **TEDCO**

Maryland Technology Development Corp. ("TEDCO") "provides resources and connections that early stage technology and life sciences companies need to thrive in Maryland."<sup>50</sup> TEDCO's mission is "to discover, invest in, and help build great companies."<sup>51</sup> TEDCO has provided reimbursable grants to three of the Incubators.

## 6. **REDI**

REDI supports local businesses and attracts new businesses by providing them tools and services to flourish in the city of Rockville.<sup>52</sup> REDI provides businesses with "site selection assistance, fast track development, demographics data, financing, workforce development, networking, educational programming and general business guidance."<sup>53</sup>

## 7. **Chungbuk Province**<sup>54</sup>

In 2010, Chungbuk Province, South Korea invested \$2.15 million with the County to develop the East County Center for Science and Technology, a biohealth-focused Incubator.<sup>55</sup> Chungbuk Province's high-tech companies would come to establish a U.S. presence as tenants of the new Incubator, bringing jobs to the County. Until that project was ready to begin, the funds were to be used to invest in the County's Small Business Revolving Loan Program. Despite no funds actually being invested by Chungbuk Province in the existing BIN Program Incubators, it seemed to be a common misconception that Chungbuk Province had invested a large sum of money into the BIN Program under Mr. Bang's direction. In 2014, the County and the Province ended the agreement relating to the Province's investment in the County, and the County returned the investment.

### C. **BUSINESS INNOVATION NETWORK FACILITIES**

From 1999 through 2008, the DED opened five Incubators to support its economic development goals.

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<sup>49</sup> *Id.* at 7 – 9.

<sup>50</sup> TEDCO - About TEDCO, <https://www.tedcomd.com/about-tedco>, last visited October 9, 2018, at 1.

<sup>51</sup> *Id.*

<sup>52</sup> Rockville Economic Development - Who We Are, last visited October 9, 2019, <http://rockvilleredi.org/about/who-we-are/>, at 1.

<sup>53</sup> Rockville Economic Development - FAQ, last visited October 9, 2019, <http://rockvilleredi.org/about/faq/>, at 3.

<sup>54</sup> *See* Scope 1 Report for further detail.

<sup>55</sup> Contribution/Donation Instrument County-Chungbuk Agreement, dated March 23, 2010 (the "Contribution Instrument"), at 1. *See* also Scope 1 Report.

**1. Shady Grove Innovation Center/ William E. Hanna Innovation Center<sup>56</sup>**

Opened in 1999, the Shady Grove Innovation Center (the “SGIC”) was the first Incubator in the BIN Program.<sup>57</sup> Initially known as the MTDC, this Incubator was renamed as the SGIC in 2009.<sup>58</sup> The property was located at 9700 Great Seneca Highway, Rockville, Maryland, in an office park environment. As part of the BIN Program, it had 76 offices and 24 wet labs, in a 60,000 square foot facility, with 33,680 of leasable square feet.<sup>59</sup>

MEDCO leased the land from the County in 1998,<sup>60</sup> and financed the development of the Incubator facility on that land from three sources. First, MEDCO issued lease revenue bonds for proceeds of \$4.5 million.<sup>61</sup> The bonds were to be repaid with revenue from leasing facility space to tenants and other revenue sources.<sup>62</sup> Second, MEDCO entered into the June 1, 1998 Grant Agreement with Montgomery County, in which the County agreed to provide initial start-up costs of \$100,000 and annual funding for Incubator operations of \$250,000.<sup>63</sup> Annual funding was to be paid by the County each year for as long as MEDCO’s bonds were still outstanding.<sup>64</sup> The third source of funding was a \$4 million grant from the State of Maryland.

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<sup>56</sup> In 2012, this Incubator was renamed the William E. Hanna Jr. Innovation Center, for the late Rockville Mayor and County Council member. However, Baker Tilly refers to it as the SGIC throughout the Scope 2 Report.

Shady Grove Business Center Renamed for Hanna by Sean R. Sedam, dated August 20, 2012, <https://patch.com/maryland/rockville/shady-grove-business-center-renamed-for-hanna>, at 2.

<sup>57</sup> The SGIC was not the first Incubator in the County. However, MCTEC had since closed and the SGIC was the first Incubator in the BIN Program. Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 2.

<sup>58</sup> Briefing with DED Director Steve Silverman on Incubator Program and Economic Development Fund (EDF) Strategies, dated October 13, 2009, at 2.

<sup>59</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 2.

<sup>60</sup> Ground Lease between Montgomery County, Maryland and the Maryland Economic Development Corporation, dated June 1, 1998.

<sup>61</sup> Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, Maryland, dated June 1, 1998, at 1.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 2.

<sup>64</sup> *Id.*

The SGIC was closed in June 2014. The facility was renovated and re-opened as the National Cybersecurity Center of Excellence (the “NCCoE”) in February 2016.<sup>65</sup> See Section V. for more information regarding the NCCoE.

## **2. Silver Spring Innovation Center**

The second Incubator, the Silver Spring Innovation Center (the “SSIC”), opened in 2004. The facility is located at 8070 Georgia Avenue in downtown Silver Spring, Maryland. Housed in a modern office building on County-owned property, the facility is 21,000 square feet, of which 9,920 square feet is leasable space, which can accommodate approximately 20 tenants.<sup>66</sup>

In July 2003, TEDCO provided the County \$1,000,000 in the form of reimbursable grant funding to finance a portion of the costs to construct the SSIC.<sup>67</sup> In 2012, the 2003 Agreement was amended and the amount outstanding reduced in return for a new ten-year payment amortization schedule.<sup>68</sup>

As of June 2018, the facility housed nine tenants and also served virtual tenants.<sup>69</sup> The SSIC had rent revenues for the year ending June 30, 2018, of approximately \$171,000, and a 44% occupancy rate.<sup>70</sup> In July 2018, the County contracted with Launch Workplaces for the renovation and management of the SSIC under a three-year contract.<sup>71</sup>

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<sup>65</sup> County Executive Leggett's Remarks at the NCCoE Ribbon Cutting and Dedication, dated February 8, 2016. [https://www2.montgomerycountymd.gov/mcgportalapps/Speech\\_Detail.aspx?id=200](https://www2.montgomerycountymd.gov/mcgportalapps/Speech_Detail.aspx?id=200), last visited October 27, 2018.

<sup>66</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 2. Launch Workplaces - Montgomery County Partners with Launch Workplaces to Manage Silver Spring Innovation Center, <https://launchworkplaces.com/montgomery-county-partners-launch-workplaces-manage-silver-spring-innovation-center/>, last visited October 11, 2018, at 1.

<sup>67</sup> Reimbursable Grant Agreement between the Maryland Technology Development Corporation and Montgomery County, Maryland, dated July 31, 2003, at 1.

<sup>68</sup> First Amendment to Reimbursable Grant Agreement, dated May 30, 2012, between the Maryland Technology Development Corporation and Montgomery County, Maryland, at 20 - 25.

<sup>69</sup> Monthly Operating Report for the Silver Spring Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 6. Virtual tenants can access the SSIC's programs and use common areas, but do not rent a dedicated office or laboratory space.

<sup>70</sup> Monthly Operating Report for the Silver Spring Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 3 - 5.

<sup>71</sup> Launch Workplaces - Montgomery County Partners with Launch Workplaces to Manage Silver Spring Innovation Center, <https://launchworkplaces.com/montgomery-county-partners-launch-workplaces-manage-silver-spring-innovation-center/>, last visited October 11, 2018, at 1.

### **3. Wheaton Business Innovation Center**

The third Incubator, the Wheaton Business Innovation Center (the “WBIC”) was established in 2006. The County leased the facility, located at 11002 Viers Mill Road, Wheaton, Maryland, from Westfield Wheaton, LLC.<sup>72</sup> It was approximately 12,000 square feet, with 5,623 leasable square feet.<sup>73</sup> The physical location for the WBIC existed from June 2006 through June 2016, when operations ceased at the end of its lease.<sup>74</sup>

The County continues to provide support to companies in the Wheaton area as part of its “Incubator Without Walls” support program,<sup>75</sup> which focuses on providing technical business assistance to companies related to construction and redevelopment in the Wheaton area.<sup>76</sup> These services will be phased out in the future.

### **4. Rockville Innovation Center**

The fourth Incubator, the RIC, opened in 2007. It is located in the Rockville Town Square in Rockville, Maryland. The RIC has 46 offices spaces, in a total of approximately 22,000 square feet, with 13,339 leasable square feet.<sup>77</sup>

During the Relevant Period, MEDCO was the property owner of record in order to facilitate financing the property.<sup>78</sup> MEDCO purchased the facility, an office condominium, in 2007 for \$6.25 million including construction and development costs.<sup>79</sup> MEDCO borrowed \$4.7 million from PNC Bank, and used \$900,000 in County Incubator development funds already held. The County was granted \$1.0 million from TEDCO, for the total funding of \$6.6 million.<sup>80</sup> Annual

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<sup>72</sup> Office Lease between Wheaton Plaza Regional Shopping Center L.L.P. and Montgomery County, dated April 2006, at 1.

<sup>73</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 2.

<sup>74</sup> Contract between the Maryland Economic Development Corporation and the University of Maryland, dated August 22, 2016, at 1.

<sup>75</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding the FY17 Operating Budget: MEDCO Grant – Incubator Network NDA, dated April 25, 2016, at 3.

<sup>76</sup> Contract between the Maryland Economic Development Corporation and the University of Maryland, dated August 22, 2016, at 2.

<sup>77</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 2. Monthly Operating Report for the Rockville Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 9.

<sup>78</sup> Condominium Unit Purchase Agreement by and between The Mayor and Council of Rockville, Maryland and the Maryland Economic Development Corporation, dated January 2007.

<sup>79</sup> *Id.* at 5.

<sup>80</sup> Reimbursable Grant Agreement between the Maryland Technology Development Corporation and Montgomery County, Maryland, dated March 31, 2007, at 1. Promissory Note between the Maryland Economic Development

funding of \$150,000 per year and initial start-up costs of \$100,000 were provided by the County to MEDCO.<sup>81</sup>

As of June 2018, the RIC had 17 tenants,<sup>82</sup> a 76% occupancy rate,<sup>83</sup> and rent revenue for the twelve months ended June 30, 2018, of approximately \$360,000.<sup>84</sup> In September 2018, the County refinanced the debt and assumed title to the property.<sup>85</sup>

## **5. Germantown Innovation Center**

The GIC was established in 2008 in a leased office building at 20271 Goldenrod Lane on the Germantown campus of Montgomery College in Germantown, Maryland.<sup>86</sup> The facility is 33,000 square feet with total leasable square footage of 17,513 square feet.<sup>87</sup> The layout includes 45 offices and 11 wet labs.<sup>88</sup>

In 2006, Montgomery College sold the property in a sale/leaseback transaction.<sup>89</sup> The County then sub-let the premises from Montgomery College, as a tenant.<sup>90</sup> The sub-lease was retroactive to October 1, 2006.<sup>91</sup> In or around 2011, Montgomery College re-purchased the building from the counterparty to the sale/leaseback transaction.<sup>92</sup> The County likely executed a new lease to reflect

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Corporation and Mercantile Potomac Bank, dated December 7, 2007, at 1. Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated January 31, 2007, at 1.

<sup>81</sup> Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated January 31, 2007, at 2.

<sup>82</sup> Monthly Operating Report for the Rockville Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 9.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Information provided by Montgomery County Department of Finance.

<sup>86</sup> Montgomery County Business Innovation Network: Program and Policy Review prepared by Orion Ventures, LLC dated, May 2012, at 9.

<sup>87</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Status Report - Department of Economic Development (Incubator Review), dated July 19, 2012, [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723\\_PHED2.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/2012/120723/20120723_PHED2.pdf), at 2.

<sup>88</sup> Germantown Innovation Center, <http://www.mcinnovationnetwork.com/facilities-tenants/germantown-innovation-center/>, last visited November 3, 2018.

<sup>89</sup> Montgomery College Execution of Goldenrod Lane Property Lease and Purchase Agreement, dated November 7, 2006, at 3 – 7.

<sup>90</sup> Sublease – Montgomery County Incubator by and between Montgomery College and Montgomery County, Maryland, dated December 21, 2007.

<sup>91</sup> *Id.* at 2.

<sup>92</sup> Memorandum to Assistant Chief Administrative Officer regarding Goldenrod Building Purchase, dated May 26, 2011, at 1. Baker Tilly did not receive any agreement pursuant to which Montgomery College re-purchased the property; however, the above memorandum outlines plans for the College to finance this purchase.

the County's ownership.<sup>93</sup> Based on payment data, it appears that the County's rent was set at 50% of the debt service owed by Montgomery College to finance the re-purchase.<sup>94</sup>

As of June 2018, the GIC had 19 office tenants and seven lab tenants occupying the facility,<sup>95</sup> with 100% occupancy.<sup>96</sup> The Incubator maintains programs for virtual tenants as well. For Fiscal Year 2018, rental revenue was approximately \$525,000.<sup>97</sup>

#### **D. AGREEMENTS RELATING TO MANAGEMENT OF THE BIN PROGRAM**

The BIN Program's main operating agreements were the agreements between the County and MEDCO, and MEDCO and Scheer.

##### **1. 2006 Master Management Agreement**

*The Master Management Agreement by and between Maryland Economic Development Corporation and Montgomery County, Maryland, dated May 24, 2006 ("2006 Master Management Agreement"), appointed MEDCO "sole and exclusive management, licensing and leasing agent" of the County for three of the Incubators. Terms were as follows:*<sup>98</sup>

- **Incubators:** The SSIC (already in existence), the WBIC (to open June 2006), the RIC (then in the planning stages), and the GIC added as an amendment in 2008.<sup>99</sup> The Master Management Agreement did not include the SGIC.
- **Term:** 15 years. Either party may terminate with 120 days written notice.<sup>100</sup>
- **Financial Reporting:** (a) MEDCO to provide operating budget for each Incubator by May 30 of each year; and, (b) MEDCO to provide annual financial report by September 30 of each year.<sup>101</sup>
- **Books and Records:** Expenditures may be subject to a "review audit that satisfies MEDCO's internal audit requirements and/or as required by any third party grantor(s)/investor(s)."<sup>102</sup> The County may request a separate audit of the

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<sup>93</sup> Baker Tilly was not provided with either the new lease or an amendment to the old lease.

<sup>94</sup> Montgomery College Germantown Incubator Center Request for Detail of Checks Received, undated.

<sup>95</sup> Monthly Operating Report for the Germantown Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 9.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Master Management Agreement by and between the Maryland Economic Development Corporation and Montgomery County, Maryland, dated May 24, 2006, at 1.

<sup>99</sup> Amendment No. 4, dated May 24, 2006, to the Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 21.

<sup>100</sup> *Id.* at 1.

<sup>101</sup> *Id.* at 2.

<sup>102</sup> *Id.*

expenditures, at the County's expense.<sup>103</sup> County maintains ownership of books and records and may inspect at any time.<sup>104</sup>

- Duties: (a) general maintenance; (b) program services; and (c) bookkeeping and accounting services.<sup>105</sup>
- Subcontractor: MEDCO may employ a facility manager, in which case MEDCO will supervise the work performed.<sup>106</sup>
- Decision Making: The County maintained control over all primary decision making rights. Decisions were to be made on behalf of the County by the Director of the DED.<sup>107</sup>
- Accounts: Each Incubator may have up to three (3) separate accounts.<sup>108</sup> See Section VII. for a discussion of the actual structure of the various bank accounts used for receipt of funds and disbursements.

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 5.

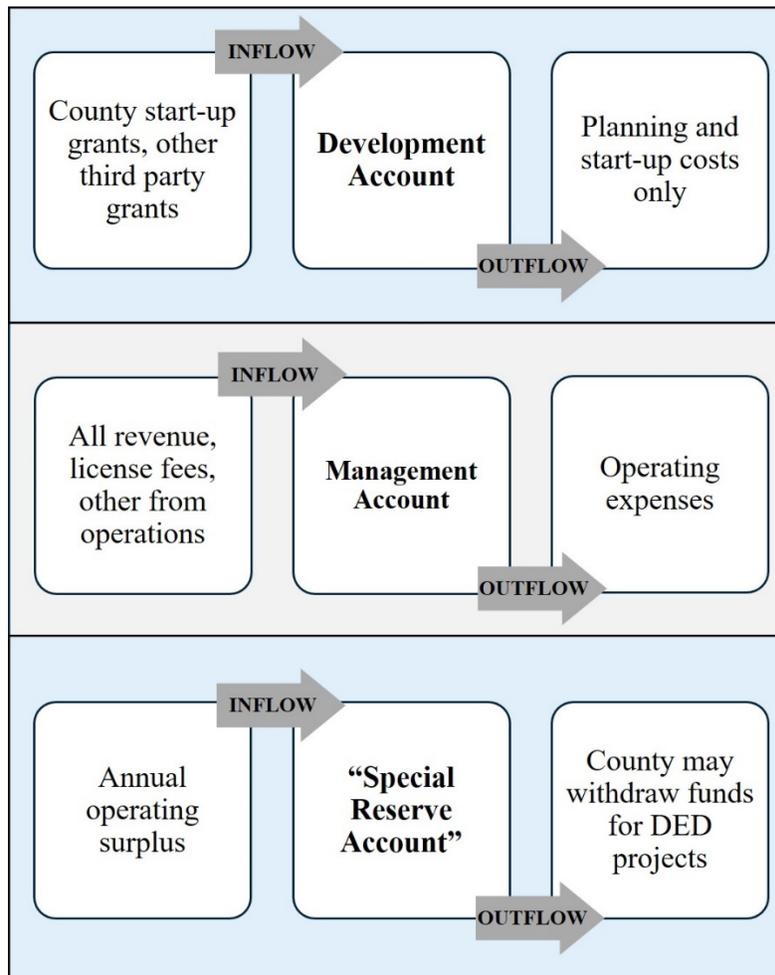
<sup>105</sup> *Id.* at 3.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 9.

<sup>108</sup> *Id.* at 2.

**Figure 1. Flow of Funds per Original Master Management Agreement<sup>109</sup>**



- **Compensation:** MEDCO received 25% of all “Royalties”<sup>110</sup> which were a percentage of future revenues of the Licensee in exchange for the use of the Incubator.<sup>111</sup> The remaining 75% of Royalties were to be deposited in the “Special Reserve Account.”<sup>112</sup> MEDCO was not awarded any other compensation in the original Master Management Agreement.

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<sup>109</sup> *Id.* at 2.

<sup>110</sup> Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 5. Section 5.2.a. defined Royalties or Royalty Agreement as: any written agreement between and individual Licensee and MEDCO under which the Licensee agrees to compensate MEDCO a percentage of future revenue in exchange for the use of office or lab space and other business assistance functions and programs of the Incubator. Not all Licensees will be required to participate in a Royalty Agreement.

<sup>111</sup> *Id.* at 5.

<sup>112</sup> *Id.*

- Amendment No. 1: Executed in December 2006, changed the distribution of Royalties. If TEDCO was part of the Royalty Agreement, then the distribution shall be 50% to TEDCO, 25% to MEDCO, and 25% to the Special Reserve Account.<sup>113</sup>
- Amendment No. 2: Executed in March 2007, replaced Royalties with “Tenant Compensation,” expanded to include “equity, royalties, equity financing payments, or other form of compensation a Licensee agrees to pay to MEDCO under a Tenant Compensation Agreement.”<sup>114</sup>
- Amendment No. 3: Executed in May 2007, granted MEDCO Management Fees of 0.5% of each Incubator’s annual operational gross revenue, based on tenant revenue, but not grant funds, retroactive to the effective date of the original agreement (May 24, 2006).<sup>115</sup>
- Amendment No. 4: Executed in June 2008, added the GIC to the Master Management Agreement.<sup>116</sup>

## **2. 1998 MTDC Grant Agreement**

In 1998, the County and MEDCO entered into a *Grant Agreement*, dated June 1, 1998 (the “1998 MTDC Grant Agreement”) to finance the construction of the MTDC.<sup>117</sup> The agreement provided that MEDCO would operate the Incubator’s day-to-day activities. The operations would be subsidized by \$250,000 per year provided by the County, as long as MEDCO’s bonds were outstanding.<sup>118</sup> The 1998 MTDC Grant Agreement and subsequent amendments governed MEDCO’s management of the MTDC until the Incubator’s transition to the NCCoE. Terms included:

- Term: None specified. The contract was written as a grant renewing annually, not a service contract.
- Financial Reporting: (a) MEDCO to provide operating budget for Incubator by May 30 of each year; and (b) MEDCO to provide evidence of expenditures for the prior fiscal year’s operations.<sup>119</sup>

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<sup>113</sup> Amendment No. 1, dated December 18, 2006, to the Master Management Agreement between Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 13.

<sup>114</sup> Amendment No. 2, dated March 30, 2007, to the Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 15 - 16.

<sup>115</sup> Amendment No. 3, signed May 21, 2007, to the Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 18.

<sup>116</sup> Amendment No. 4, dated June 30, 2008, to the Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 21.

<sup>117</sup> Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated June 1, 1998, at 1.

<sup>118</sup> *Id.* at 2.

<sup>119</sup> *Id.*

- Books and Records: The County may request an audit of MEDCO's books and records to ensure compliance with the Agreement.<sup>120</sup>
- Operating Surplus: MEDCO to calculate, on an annual basis, the operating surplus or deficit resulting from the Incubator operations. If there was a surplus, the funds were to be deposited into a "Special Account," which could be used only for County economic development projects.<sup>121</sup>
- Subcontractor: None specified.
- Accounts: No operating account structure specified.
- Amendment No. 1: Executed in October 2001, added additional funding for the expansion of MTDC and is unrelated to MEDCO's day-to-day management role.<sup>122</sup>
- Amendment No. 2: Executed in September 2006, modified the term "Annual Funds" to include direct cash payments to MEDCO and personnel costs paid by the County.<sup>123</sup>
- Amendment No. 3: Executed in March 2007, established MEDCO's management fees for the operation of MTDC.<sup>124</sup> MEDCO could receive up to \$20,000 per year, given MTDC's operating income exceeded that amount. For years in which operating income was below \$20,000, compensation was deferred.
- Amendment No. 4: Executed in March 2009, affirmed the continuation of the 1998 MTDC Grant Agreement if the bonds used to fund the expansion of MTDC were replaced by a mortgage.<sup>125</sup>
- Amendment No. 5: Added in August of 2009, provided for an additional \$13,000 in compensation to MEDCO, for a total compensation of \$33,000.<sup>126</sup> The additional \$13,000 in fees was provided to MEDCO on the condition that the SGIC's Operating Income was in compliance with the Debt Service Coverage Ratio set forth in the *Leasehold Deed of Trust, Assignment and Security Agreement*, dated March 26, 2009, by and between MEDCO and PNC Bank, National Association.<sup>127</sup>

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<sup>120</sup> *Id.* at 5.

<sup>121</sup> *Id.* at 2.

<sup>122</sup> Amendment No. 1, signed October 2001, of the Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated June 1, 1998, at 11 - 12.

<sup>123</sup> Amendment No. 2, signed August - September 2006, of the Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated June 1, 1998, at 13 - 15.

<sup>124</sup> Amendment No. 3, signed September - October 2007, of the Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated June 1, 1998, at 16 - 17.

<sup>125</sup> Amendment No. 4, signed March 2009, of the Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated June 1, 1998, at 18 - 19.

<sup>126</sup> Amendment No. 5, signed July - August 2009, of the Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated June 1, 1998 at 22 - 23.

<sup>127</sup> Baker Tilly was not provided a copy of this agreement.

### **3. 2016 Consolidated and Restated Master Management Agreement**

*The 2016 Consolidated and Restated Master Management Agreement by and between Maryland Economic Development Corporation and Montgomery County, Maryland* dated July 13, 2016, (“2016 Master Management Agreement”) replaced the 2006 Master Management Agreement. Substantive changes in the 2016 Master Management Agreement as compared to the 2006 Master Agreement included:

- Incubators: Covered Incubators in existence in 2016 (the SSIC, the RIC, the GIC).<sup>128</sup>
- Accounts: MEDCO to establish and maintain a Management Account for each Incubator. All revenue generated from the operation of each Incubator, including grant funds, would be deposited into the Management Account. All expenses would be paid out of the Management Account in accordance with the approved annual budget. There is no reference to Development Account or Special Reserve Account.<sup>129</sup>
- Compensation: \$20,000 annually, 3% automatic increase annually.<sup>130</sup>

### **4. Facilities Management Agreements - Scheer**

Under the 2006 Master Management Agreement between the County and MEDCO, MEDCO had the ability to subcontract its facility management responsibilities. MEDCO contracted with Scheer separately for each Incubator under a Facility Management Agreement.<sup>131</sup> Although separate agreements, the terms were virtually identical for each Incubator, with the exception of compensation. Scheer was typically compensated by MEDCO at a flat monthly fee for each Incubator.

Scheer’s responsibilities under the Facilities Management Agreements included:

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<sup>128</sup> Consolidated, Amended and Restated Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated July 13, 2016, at 1.

<sup>129</sup> *Id.* at 2. However, the 2016 MEDCO Grant Agreement restores the “Special Account.” Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated July 21, 2016, at 3.

<sup>130</sup> Consolidated, Amended and Restated Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated July 13, 2016, at 8.

<sup>131</sup> Management Agreement by and between the Maryland Economic Development Corporation and SPI Asset Management, LLC, dated April 1, 2006 (for WBIC); Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated June 1, 2007 (for RIC); Exclusive Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated September 1, 2008 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated November 10, 2011 (for SGIC); Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated December 1, 2011 (for SSIC).

- Financial Reporting: Prepare detailed monthly financial reports, prepare annual detailed budgets by month for approval by the County and MEDCO.
- Tenant Responsibilities: Assign a “Tenant/Licensee Coordinator” to each Incubator, responsible for managing day-to-day administrative duties and communication with tenants. Negotiate and execute all tenant agreements, contracting and oversight of vendors, and collection of rent.
- Account Structure and Operating Requests: Scheer was to set up three different accounts for each Incubator:
  - Deposit all tenant rents and other income into a “Revenue Account” designated by MEDCO.
  - Disburse all day-to-day management expenses out of an “Operating Account” set up by Scheer in MEDCO’s name. When in need of operating funds, Scheer was to submit a written request to MEDCO for approval to transfer funds from the Revenue Account to the Operating Account.
  - Establish a “Security Deposit Account” in Scheer’s name for each Incubator to hold tenant security deposit funds.

## **5. Facilities Management Agreements - BHI**

On August 29, 2016, and September 9, 2016, BHI entered into agreements with MEDCO to become the “Manager of the Facility” for the GIC and the RIC.<sup>132</sup> BHI assumed responsibility for program delivery to tenants after the dissolution of the DED. Terms of these agreements included:

- Term: Two years, with one-year automatic renewal.<sup>133</sup>
- Account Structure: MEDCO was to fund a “Management Account” with \$100,000, of seed funding. BHI was to deposit any revenues (*e.g.*, License Fees) into the Management Account. MEDCO was to use the Management Account to pay all operational expenses.<sup>134</sup>

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<sup>132</sup> Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated August 29, 2016 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated September 9, 2016 (for RIC).

<sup>133</sup> Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated August 29, 2016, at 1 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated September 9, 2016, at 1 (for RIC).

<sup>134</sup> Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated August 29, 2016, at 2 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated September 9, 2016, at 2 (for RIC)

- Operating Requests: BHI was to request reimbursement of its costs and expenses (e.g., BHI payroll) of managing the Incubators, and MEDCO was to reimburse BHI from the Management Account.<sup>135</sup>
- Financial Reporting: BHI was required to submit operating budgets and monthly and annual financial reports.<sup>136</sup>
- Licensing Duties: BHI was to:
  - Develop each facility's admittance and graduation criteria;
  - Screen prospective Licensees for admittance;
  - Evaluate the progress of Licensees; and
  - Assist Licensees in securing necessary business support services.<sup>137</sup>
- Compensation: Annual management fee of 75% of the operating surplus (revenue, including grants, less operating expenses). BHI was to be penalized for reducing expenses more than 5% below the approved budget – in other words, BHI could not increase its fee by cutting program services.<sup>138</sup>

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<sup>135</sup> Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated August 29, 2016, at 2 - 3 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated September 9, 2016, at 3 (for RIC).

<sup>136</sup> Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated August 29, 2016, at 3 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated September 9, 2016, at 3 (for RIC).

<sup>137</sup> Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated August 29, 2016, at 4 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated September 9, 2016, at 4 (for RIC).

<sup>138</sup> Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated August 29, 2016, at 9 (for GIC); Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated September 9, 2016, at 9 (for RIC).

## V. NATIONAL CYBERSECURITY CENTER OF EXCELLENCE

The National Cybersecurity Center of Excellence is located at 9700 Great Seneca Highway, Rockville, formerly the location of the SGIC. It was created in 2012 through a partnership of the National Institute of Standard and Technology (the “NIST”), an agency of the U.S. Department of Commerce, the State of Maryland, and Montgomery County.<sup>139</sup> The NCCoE, while not part of the BIN Program, is “incubator-like,” in that it seeks collaboration with organizations to solve cybersecurity issues.

### A. FOUNDING OF THE NCCoE

On February 21, 2012, the County, the NIST, and the State of Maryland signed a Memorandum of Understanding (“NCCoE MOU”) to establish the NCCoE as a “public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies.”<sup>140</sup> The establishment of the NCCoE was an opportunity to work with national companies such as Intel and Google, not currently located in the County.<sup>141</sup>

In February 2014, the NIST, the State of Maryland, through the Maryland Department of Business & Economic Development (the “DBED”), and the County, through the DED, entered into a Partnership Intermediary Agreement (the “PIA”),<sup>142</sup> to memorialize and implement the NCCoE MOU.<sup>143</sup> The NCCoE would be under the “technical direction and control of the NIST.”<sup>144</sup> In March 2014, MEDCO and the DBED entered into an Interagency Agreement in which MEDCO agreed to assist “in obtaining various services related to the expansion” of the NCCoE.<sup>145</sup>

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<sup>139</sup> Partnership Intermediary Agreement between the National Institute of Standards and Technology, the Maryland Department of Business & Economic Development, and the Montgomery County Department of Economic Development regarding the National Cybersecurity Center of Excellence, dated February 4, 2014, at 1.

<sup>140</sup> Memorandum of Understanding between Montgomery County, Maryland, the State of Maryland and the National Institute of Standards and Technology, dated February 21, 2012, as referenced in the Partnership Intermediary Agreement between the National Institute of Standards and Technology, the Maryland Department of Business & Economic Development, and the Montgomery County Department of Economic Development regarding the National Cybersecurity Center of Excellence, dated February 4, 2014, at 1. Baker Tilly has not been provided with a copy of the NCCoE MOU.

<sup>141</sup> Letter to the Honorable Craig Rice, Montgomery County Council President from Steven A. Silverman, dated January 14, 2014, at 2.

<sup>142</sup> Partnership Intermediary Agreement between the National Institute of Standards and Technology, the Maryland Department of Business & Economic Development, and the Montgomery County Department of Economic Development regarding the National Cybersecurity Center of Excellence, dated February 4, 2014.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 3.

<sup>145</sup> Inter-Agency Modification Agreement between the Department of Business and Economic Development and the Maryland Economic Development Corporation, dated August 28, 2014, at 1. Baker Tilly has not been provided with the original Inter-Agency Agreement, dated March 7, 2014.

## **B. FUNDING OF THE RENOVATIONS OF THE FACILITY**

The NCCoE had been located at a temporary site, and needed to expand into permanent quarters. The SGIC facility was identified as the permanent location for the NCCoE.<sup>146</sup> A number of SGIC tenants were ready to “graduate,” and assistance was to be provided to move the remaining SGIC tenants to another BIN Program facility.<sup>147</sup> The facility required significant renovations, with an estimated budget of approximately \$12.5 million. In addition, the existing mortgage on the facility had to be satisfied. These costs were financed by a new mortgage, capital costs contributed under the lease of the building, and grants.

### **1. NCCoE County Grant Agreement**

On January 13, 2015, the County and MEDCO entered into a grant agreement (the “NCCoE County Grant Agreement”), pursuant to which the County would provide a grant to pay MEDCO’s debt service on the NCCoE Mortgage Loan (the “NCCoE County Grant”).<sup>148</sup> The NCCoE County grant would pay the debt service, subject to a limit of \$660,000 per year, until the NCCoE Mortgage Loan was paid in full.<sup>149</sup>

### **2. NIST License Agreement**

MEDCO entered into a 10-year agreement with the NIST for the licensing of the SGIC facility on January 14, 2015 (the “NIST License Agreement”).<sup>150</sup> The NIST License Agreement outlined the responsibilities of each party relating to the payment of certain capital costs and operating expenses and maintenance of the facility. An exhibit to the NIST License Agreement provides a schedule of tenant equipment and improvements to be paid for by the NIST, but does not include the dollar value of these items.<sup>151</sup> Based on information, including emails reviewed, Baker Tilly understands the capital costs listed in the schedule to be in the range of \$2 million to \$3 million.

### **3. NCCoE Mortgage Loan**

During January 2015, MEDCO sought to obtain financing through PNC Bank for the renovation of the facility.<sup>152</sup> On February 6, 2015, MEDCO entered into a commercial mortgage loan

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<sup>146</sup> Partnership Intermediary Agreement between the National Institute of Standards and Technology, the Maryland Department of Business & Economic Development, and the Montgomery County Department of Economic Development regarding the National Cybersecurity Center of Excellence, dated February 4, 2014, at 5.

<sup>147</sup> Letter to the Honorable Craig Rice, Montgomery County Council President from Steven A. Silverman, dated January 14, 2014, at 2.

<sup>148</sup> Grant Agreement between the Maryland Economic Development Corporation and Montgomery County for the National Cybersecurity Center of Excellence, dated January 13, 2015.

<sup>149</sup> *Id.* at 2.

<sup>150</sup> License Agreement between the Maryland Economic Development Corporation and the National Institute of Standards and Technology, dated January 14, 2015, at 2.

<sup>151</sup> *Id.* at 5 - 8.

<sup>152</sup> Email between Mr. Genakos (MEDCO) and Mr. Bang (County) regarding the financing for the NCCoE, dated January 20, 2015.

agreement with PNC Bank to fund the NCCoE renovation (the “NCCoE Mortgage Loan”).<sup>153</sup> The funding of the NCCoE Mortgage Loan was contingent upon the following:

1. An agreement with the NIST to provide a grant of no less than \$2 million and funding for the NCCoE operating expenses;
2. A commitment from the State of Maryland to provide a grant of no less than \$2 million; and
3. An agreement by the County to fund debt service obligations under the loan.<sup>154</sup>

MEDCO used a portion of the proceeds of the NCCoE Mortgage Loan to repay MEDCO’s existing debt relating to the 1998 financing of the SGIC of \$1.6 million, after which net proceeds of \$3.6 million remained for the NCCoE renovation.<sup>155</sup> Thus, total funding of the capital costs consisted of the net NCCoE Mortgage Loan proceeds, grants from the State of Maryland and the County, and capital costs provided under the NIST License Agreement. The NCCoE was officially opened in a ribbon-cutting ceremony on February 8, 2006.<sup>156</sup>

It is Baker Tilly’s understanding that in August 2018, the County refinanced the NCCoE Mortgage Loan and assumed title to the property.

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<sup>153</sup> Loan Agreement between the Maryland Economic Development Corporation and PNC Bank, National Association, dated February 6, 2015.

<sup>154</sup> *Id.* at 3; Grant agreement between the Department of Business and Economic Development and Maryland Department of Business & Economic Development, dated March 24, 2015, at 1; Approval Memos for State to Grant MEDCO Funds for NCCoE, dated August 25, 2014 and August 11, 2015, at 1 and 4.

<sup>155</sup> Loan Agreement between the Maryland Economic Development Corporation and PNC Bank, National Association, dated February 6, 2015, at 5 - 7.

<sup>156</sup> County Executive Leggett’s Remarks at NCCOE Ribbon Cutting and Dedication, dated February 8, 2006, [https://www2.montgomerycountymd.gov/mcgportalapps/Speech\\_Detail.aspx?id=200](https://www2.montgomerycountymd.gov/mcgportalapps/Speech_Detail.aspx?id=200), last visited October 28, 2018.

## VI. METHODOLOGY

### A. ACCESS TO DATA

#### 1. Baker Tilly Information Requests<sup>157</sup>

On May 15, 2018, Baker Tilly sent an initial request to MEDCO and Scheer to obtain financial records, transactional support, and other documentation relating to the use of County funds in connection with the management of the BIN Program Incubators from July 1, 2006 through April 30, 2018.<sup>158</sup> The information request included, but was not limited to, the following:

1. Operating policies and procedures;
2. BIN Program-related contracts and grant agreements, including amendments;
3. A schedule and supporting documents for any disbursements made to specific individuals or entities, including Mr. Bang, CBIF, and others;
4. All financial records of the Incubators (*e.g.*, financial statements, general ledgers, cash receipts and disbursements, and bank statements);
5. Rent rolls, occupancy reports, and complete tenant files, including License Agreements and status reports by Incubator;
6. An annual accounting of County funds held in reserve by MEDCO and Scheer attributed to each Incubator; and
7. Information regarding all County funds disbursed by MEDCO and/or Scheer that were not reflected in the Incubator financial statements.<sup>159</sup>

To the extent that any of the items requested were available in electronic format, Baker Tilly provided MEDCO and Scheer access to separate secure web-based portals, to facilitate the upload and sharing of files with Baker Tilly. To obtain documents only available in hard copy, Baker Tilly sent a team to the offices of MEDCO and Scheer to meet with the appropriate personnel and retrieve copies of any available hard-copy documents.

#### 2. Documents Provided

MEDCO uploaded certain documentation to the secure web-based portal and provided access to approximately 30 bankers' boxes of records located in MEDCO's office. On May 21 and

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<sup>157</sup> See Section X.B. for documents requested and received in connection with Baker Tilly's analysis of the County's relationship with BHI.

<sup>158</sup> The request for documents, dated May 15, 2018, did not include NCCoE. The request for documents, dated May 15, 2018, did not include the NCCoE. Letter to the Maryland Economic Development Corporation and Scheer Partners Management, Inc., regarding Audit of MEDCO and Scheer Partners' Books and Records Relating to Montgomery County Incubators, dated May 15, 2018.

<sup>159</sup> Letter to the Maryland Economic Development Corporation and Scheer Partners Management, Inc., regarding Audit of MEDCO and Scheer Partners' Books and Records Relating to Montgomery County Incubators, dated May 15, 2018.

May 22, 2018, Baker Tilly visited MEDCO's office. We reviewed and selected documents supporting funds disbursed by MEDCO in connection with its management of the BIN Program and other related entities such as the NCCoE. These items included support for transactions recorded to certain MEDCO accounts payable accounts, invoices, and cancelled checks.

In June 2018, MEDCO provided two flash drives containing email correspondence and other documents requested, and more than 20 accounts payable ledgers relating to the Incubators. However, MEDCO did not provide some of the key information needed to conduct the Scope 2 Forensic Investigation until as late as September 26, 2018. This included, but was not limited to, the following:

1. Vendor names for the MEDCO accounts payable transactions, which would have provided context, and facilitated a more comprehensive email review;<sup>160</sup>
2. Information regarding County funds commingled in an "escrow account" maintained by MEDCO (the "OPM Account");<sup>161</sup> and
3. Summary of County funds being held by MEDCO (spreadsheets provided to reconcile County funds). These schedules reflect an inconsistent level of data, and ending balances in the OPM Account and Incubator Management Accounts for points in time during the Relevant Period.

As of the date of this Scope 2 Report, Baker Tilly has not received "a year by year accounting of County reserve funds held by MEDCO/Scheer" as requested in May 2018.<sup>162</sup> We also have not received a full reconciliation of any County funds commingled with other funds in the MEDCO OPM Account during the Relevant Period.<sup>163</sup>

During the Scope 2 Forensic Investigation, Baker Tilly was informed that MEDCO was in the process of completing its annual audit, and would dedicate the resources to respond to the Baker Tilly requests as soon as possible. The delay in the receipt of key documentation coupled with the lack of reconciliation schedules prepared in the ordinary course of MEDCO's management of the BIN Program made it difficult for Baker Tilly to reconcile the use of County funds.

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<sup>160</sup> The accounts payable ledgers were originally provided with vendor codes and without vendor names.

<sup>161</sup> In a meeting with MEDCO and Scheer representatives in May 2018, Jim Miller, the MEDCO Chief Financial Officer ("Mr. Miller") indicated that during the Relevant Period, funds received from the County for the management of the BIN Program were deposited into both Incubator Management Accounts and the OPM Account, which he referred to as the "Other People's Money" account. As of the date of this Scope 2 Report, Baker Tilly has not received a detailed reconciliation of County funds transferred in and out of this account during the Relevant Period. Based on our review of the documents received to date, Baker Tilly has determined that the OPM Account is held at TD Bank, account number ending in 1016. TD Bank ACH Transfer from "escrow account"; Email between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) referencing the "Other people's" money checking account, dated May 4, 2011.

<sup>162</sup> Letter to the Maryland Economic Development Corporation and Scheer Partners Management, Inc., regarding Audit of MEDCO and Scheer Partners' Books and Records Relating to Montgomery County Incubators, dated May 15, 2018, at 3.

<sup>163</sup> On September 26, 2018, Baker Tilly received only a reconciliation of the NCCoE funds.

Scheer provided documents requested in several formats: hard copy, including access to an off-site storage room, via upload to the Baker Tilly secure portal, and on two hard drives containing employee emails and attachments (discussed in further detail below). Baker Tilly visited Scheer's office and the off-site storage to review documents.

Baker Tilly made several additional document requests based on preliminary observations and analyses of the information provided. These requests included additional financial reports through the remainder of the 2018 Fiscal Year and information relating to the NCCoE, which was not part of the County's BIN Program, but for which the County did provide funding.<sup>164</sup>

In summary, from MEDCO and Scheer combined, Baker Tilly received, among other items, disbursements journals for each Incubator; no less than 600 financial reports, prepared on a monthly basis (containing bank statements and cash reconciliation schedules); MEDCO accounts payable data, and copies of invoices and cancelled checks. Baker Tilly also received at least 60 agreements related to the BIN Program management, grant funding, and debt issued to finance the construction of certain Incubators.

The findings and observations noted in the remainder of this Scope 2 Report are based on the information received and reviewed by Baker Tilly to date.

### **3. Review of Emails**

MEDCO provided approximately 3,000 emails (containing attachments) based on the 22 keywords in the May 15, 2018 information request.<sup>165</sup> We eliminated duplicates such that our starting review population was approximately 2,200 emails (containing attachments). Baker Tilly reviewed 100% of these emails.

Scheer provided approximately 150,000 emails. Baker Tilly then searched on a list of 142 keywords that had been developed over the course of the Scope 1 and Scope 2 Forensic Investigations in cooperation with the OCA and the County's Department of Finance.<sup>166</sup> This screening produced approximately 19,000 emails and attachments. Baker Tilly then eliminated duplicates such that our starting review population was approximately 10,000 emails and 1,400 attachments. Baker Tilly reviewed 100% of these emails.

### **4. Analysis of Financial Data Provided**

Baker Tilly analyzed the accounts payable, disbursements data, and financial reports provided by the County, Scheer, and MEDCO. This information was used to select transactions for further review, assess the operating performance of the Incubators, and provide an estimate of County

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<sup>164</sup> The May 2018 and June 2018 financial reports were not available at the time of our initial May 2018 request.

<sup>165</sup> These figures do not include emails, which for example, were provided by MEDCO to support transactions, or bundled with other electronic documents. See Appendix C for list of keywords.

<sup>166</sup> See Appendix C for list of keywords.

funds held by MEDCO. To determine which transactions should be reviewed further, Baker Tilly created several schedules to reconcile the data provided.

**a. County Accounts Payable Data**

During the Scope 1 Forensic Investigation, Baker Tilly received payment data from the County from its current and former accounting systems. This data was provided in over 20,000 separate records, representing over 13,000 transactions.

In commencing the Scope 2 Forensic Investigation, Baker Tilly confirmed that the transaction data received in the Scope 1 Forensic Investigation included all payments made to MEDCO, Scheer, and BHI, relating to the Scope 2 Forensic Investigation. During Scope 2, we developed and performed various keyword searches and forensic tests on the data provided to identify transactions related to the BIN Program and the County's relationship with BHI.<sup>167</sup> Keyword searches and forensic tests were also performed to identify Scope 2 transactions with characteristics indicating varying degrees of risk of potential fraud, waste, or abuse. We then analyzed each of the remaining transactions to determine whether the nature or purpose of the transaction related to the BIN Program or the County's relationship with BHI based on a review of several fields.<sup>168</sup> We removed transactions that did not relate to Scope 2 from the population.<sup>169</sup>

Based on the data analytics performed, we identified 401 transactions totaling approximately \$46.8 million, which relate to the Scope 2 Forensic Investigation ("Scope 2 County Data"). These transactions consisted of 384 payments that appeared to be related to the BIN Program and the NCCoE, and 17 payments to BHI or REDI for other County economic development activities.<sup>170</sup>

Approximately 177 payments, representing \$34.1 million, or 73% of the \$46.8 million in payments reflected in the Scope 2 County Data, were analyzed during the Scope 1 Forensic Investigation. Baker Tilly's review of these transactions was performed using hard copy and electronic evidence of internal memorandums, invoices, email correspondence, grant agreements, and leases. Baker Tilly used the documents to corroborate information such as the vendor name, amount, and stated business purpose of the transaction. As described in the Scope 1 Report, all of the transactions selected were assessed for indications of fraud, waste, or abuse. In relation to the Scope 2 Forensic Investigation, these transactions were further analyzed to determine if the payments appeared to be made in connection with the BIN Program or the County's relationship with BHI. During the analysis of County funds held by MEDCO, Baker Tilly conducted further testing on the population of data not tested during the Scope 1 Forensic Investigation. This includes \$2.5 million in payments made to BHI or REDI in connection with other economic development activities, and a review of the bank statements of the Incubators to corroborate several of the grants provided to

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<sup>167</sup> See Appendix C for list of keywords.

<sup>168</sup> Duplicate transactions were removed from the review population.

<sup>169</sup> Examples of transactions removed include payments made by the County to US Bank and MEDCO in connection with a garage and payments to the Rockville Economic Development, Inc. for the Women's Business Center project.

<sup>170</sup> See Appendix I for the Scope 2 County Data used in conducting the Scope 2 Forensic Investigation.

MEDCO and Scheer. During both the Scope 1 and Scope 2 Forensic Investigations, Baker Tilly analyzed no less than 90% of the Scope 2 County Data.

**b. Scheer Financial Operating Reports**

On a monthly basis, Scheer prepared financial operating reports for each of the five Incubators. Consistent with the terms of its Facility Management Agreements with MEDCO, Scheer distributed these reports to various MEDCO and County employees, including Mr. Bang.<sup>171</sup> The detailed monthly financial statements generally contained the following:

- Monthly and year-to-date budget to actual variance report with an explanation for variance in excess of a specified amount (differs by Incubator and year);
- Trial balance detailing the balance sheet and income statement accounts of the Incubator;
- Rent roll summarizing current tenants, annual rent, and lease terms;
- General ledger activity, including a detailed aged accounts receivable journal, and an accounts payable check register; and
- A cash reconciliation schedule with supporting bank statements.

Baker Tilly received more than 600 monthly financial statements that were used in connection with developing our understanding of the flow of funds between entities involved with the BIN Program and our assessment of financial sustainability.<sup>172</sup> As part of our analysis, we prepared schedules of historical balance sheets, income statements, and cash flow statements for each Incubator to analyze the level of income or loss generated with and without grant funding. The results of our analysis of the monthly financial statements are discussed in more detail throughout this Scope 2 Report.

**c. Scheer Disbursements Data**

In connection with our initial May 2018 request for information, we received a listing of all disbursements made by Scheer in connection with its role as disbursing agent for each of the five Incubators from June 30, 2006 to May 15, 2018. This request was later expanded to include disbursements data from May 16, 2018 through June 30, 2018. During the Relevant Period, Scheer

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<sup>171</sup> Montgomery County Business Innovation Network: Program and Policy Review prepared by Orion Ventures, LLC, dated May 2012, at 3. Email between Ms. Tebo (Scheer), MEDCO, County, and Scheer employees attaching April 2008 financials for MTDC, SSIC, RIC & WBIC, dated May 20, 2008. Email between Mr. Bouey (Scheer), MEDCO, County, and Scheer employees attaching October 2013 financials for SGIC and SSIC, dated November 20, 2013. Email between Ms. Corrado (Scheer), MEDCO, County, and Scheer employees, dated January 19, 2018, regarding December 2017 Financials for RIC, GIC, and SSIC.

<sup>172</sup> This includes the monthly report for June 30 (year-end) of each year during the Relevant Period for each Incubator, if available. In addition, to corroborate Baker Tilly's analysis of funds held by MEDCO, we analyzed the bank statements contained in at least 600 monthly reports. Reports that were not received include February 2006 for SSIC and January through February 2006 for SGIC.

disbursed more than \$39.7 million (approximately 15,000 transactions) in payments purportedly related to the BIN Program and BHI.<sup>173</sup> The disbursements data provided was segregated by Incubator and included payee, check number, invoice date, the date the transaction cleared the bank, and the amount. The table below summarizes the total Scheer disbursements by Incubator during the Relevant Period.

**Table 3. Scheer Disbursements by Incubator<sup>174</sup>**

| Year Ended<br>June 30 | INCUBATOR            |                     |                    |                    |                    | Total<br>Disbursements |
|-----------------------|----------------------|---------------------|--------------------|--------------------|--------------------|------------------------|
|                       | GIC                  | SGIC                | RIC                | SSIC               | WBIC               |                        |
| 2007                  | \$ -                 | \$ 1,004,668        | \$ 5,010           | \$ 343,401         | \$ 107,426         | \$ 1,460,505           |
| 2008                  | -                    | 1,203,717           | 702,289            | 261,299            | 120,773            | 2,288,078              |
| 2009                  | 177,423              | 1,883,863           | 737,976            | 288,486            | 127,381            | 3,215,129              |
| 2010                  | 669,617              | 1,356,284           | 776,618            | 276,600            | 121,422            | 3,200,541              |
| 2011                  | 1,229,929            | 1,319,577           | 1,039,156          | 288,017            | 123,538            | 4,000,217              |
| 2012                  | 628,165              | 1,075,083           | 969,843            | 287,084            | 113,819            | 3,073,994              |
| 2013                  | 606,814              | 1,304,710           | 731,198            | 248,427            | 288,931            | 3,180,080              |
| 2014                  | 821,552              | 1,466,237           | 693,381            | 267,892            | 161,683            | 3,410,745              |
| 2015                  | 1,620,100            | 1,228,123           | 682,469            | 300,722            | 162,509            | 3,993,923              |
| 2016                  | 2,288,925            | -                   | 924,469            | 371,145            | 139,602            | 3,724,141              |
| 2017                  | 4,070,127            | -                   | 1,056,403          | 240,055            | 12,955             | 5,379,540              |
| 2018                  | 1,554,967            | -                   | 896,125            | 282,351            | -                  | 2,733,443              |
| <b>Total</b>          | <b>\$ 13,667,619</b> | <b>\$11,842,262</b> | <b>\$9,214,937</b> | <b>\$3,455,479</b> | <b>\$1,480,039</b> | <b>\$ 39,660,336</b>   |

In performing the Scope 2 Forensic Investigation, we first created a compendium of the Scheer disbursement data to determine the existence of payments to individuals and vendors identified as having a high risk for potential fraud, waste, or abuse during the Scope 1 Forensic Investigation.<sup>175</sup> We also reviewed the disbursements data to determine whether Scheer made payments to other entities or individuals identified in the Scope 1 Forensic Investigation requiring additional investigation to determine whether the County funds were at risk for potential fraud, waste, or abuse. After identifying the transactions for testing, Baker Tilly visited the Scheer office and storage unit to obtain support for the transactions selected. We then provided all of the support identified to a third-party vendor for scanning and uploaded to a secure web-based portal maintained by Baker Tilly. After completing our analysis of the first set of transactions tested, we selected additional transactions based on the frequency of transactions with a particular vendor or

<sup>173</sup> The amount reflected above is based on the date that the transaction cleared the bank. The disbursements data provided by Scheer also included payments cleared during June 2006 and July 2018, which is outside of the Relevant Period. This \$39.6 million reflects the amount of payments cleared during the Relevant Period and includes \$1.4 million distributed to BHI in connection with unrelated economic development activities of the County. See Appendix J Scope 2 Scheer Data.

<sup>174</sup> See Appendix J Scope 2 Scheer Data.

<sup>175</sup> Baker Tilly identified payments made by Scheer to entities including, but not limited to, CBIF; Orion Ventures, LLC; Jade Research Corporation; Bendis; BHI; Product Savvy Consulting, and Snyder Consulting. With the exception of Orion Ventures, LLC, Snyder Consulting, and Jade Research Corporation, Baker Tilly tested all payments made by Scheer to entities identified for further review during Scope 1.

individual and the total dollar amount disbursed. Further, we tested additional transactions in connection with our analysis and corroboration of the data used to assess the amount of County funds held by MEDCO discussed in Section IX below. In total, Baker Tilly tested \$13.6 million (34.4%) in payments made to 24 entities or individuals. The table below summarizes the transactions tested by dollar amount.

**Table 4. Stratification of Transactions Tested**

| Amounts Cleared       | # of Trans | \$ Amount            |
|-----------------------|------------|----------------------|
| >\$500,000            | 5          | \$ 4,651,415         |
| \$100,000 - \$499,000 | 22         | 4,719,727            |
| \$50,001 - \$99,999   | 8          | 600,446              |
| \$30,001 - \$50,000   | 25         | 868,713              |
| \$10,001- \$30,000    | 89         | 1,555,826            |
| \$5,001 - \$10,000    | 81         | 617,804              |
| \$1,001 - \$5,000     | 219        | 553,159              |
| \$0 - \$1,000         | 139        | 76,175               |
| <b>Total Tested</b>   | <b>588</b> | <b>\$ 13,643,265</b> |

We analyzed support documentation and the nature and business purpose for each tested transaction as it related to the BIN Program, as well as whether the payment was made from the account of the appropriate Incubator. Baker Tilly also corroborated the data with the Scheer financial statements (and bank statements), when necessary. The observations from our forensic review of the transactions selected are discussed in Section VII of this Report.

**d. MEDCO Accounts Payable Data**

We received 28 electronic MEDCO accounts payable ledgers in response to the County’s request for “all receipts and disbursements from Fiscal Year 2008 through August 29, 2017.”<sup>176</sup> Although 15 of the spreadsheets received were explicitly labeled as relating to the RIC and the MTDC (predecessor to the SGIC and the NCCoE), the remaining were a combination of accounts payable and general ledger detail related to the GIC, the SSIC, and the WBIC. Baker Tilly later requested and received additional schedules containing the transactional data for the months during the Relevant Period. In addition, the initial schedules received only included vendor codes, instead of the names of each vendor. On August 29, 2018, MEDCO provided the list of codes with corresponding vendor names. The table below provides a summary of the account numbers and names for each of the ledgers received.

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<sup>176</sup> Email between Mr. Miller (MEDCO) and County employee, dated August 29 - 30, 2017.

**Table 5. MEDCO Accounts Payable Accounts Provided**

| Account Number | Account Name                |
|----------------|-----------------------------|
| 234-999        | Combined Intercompany       |
| 230-005        | Mont Co.                    |
| 230-009        | Due to Germantown Incubator |
| 230-010        | Montgomery County DED       |

Consistent with the data aggregation performed to analyze the County and Scheer data, we combined the accounts payable data contained on all 28 spreadsheets. In total, the MEDCO accounts payable ledgers included 717 transactions recorded across all accounts.

To standardize the data prior to our detailed review, we added additional fields to the data set such as fiscal year, account name, related Incubator, and transaction category (“Scope 2 MEDCO AP Data”).<sup>177</sup> Baker Tilly selected accounts payable support during our onsite visits to MEDCO’s office in May and June 2018. We engaged a third-party vendor to digitize the accounts payable support, which included, but was not limited to, cancelled checks, invoices, and email correspondence. These documents were uploaded to a secure web-based portal maintained by Baker Tilly and to a document review platform for the ability to search the documents for key words developed during the Scope 1 and 2 Forensic Investigations.

MEDCO provided accounts payable ledgers instead of actual receipts and disbursements data as requested. Therefore, to analyze these transactions, we selected both debits and credits for testing. First, we selected transactions in which the vendor or individual was identified for further review during the Scope 1 or Scope 2 Forensic Investigation. Then, we selected additional entries based on the frequency of transactions with a particular vendor and total dollar amount. All of the transactions selected were reviewed for indications of fraud, waste, or abuse, and a determination of whether each payment or receipt appeared to relate to the normal operations of the BIN Program. (See Section VII. of this report for our findings from the MEDCO accounts payable testing performed.)

**Table 6. Summary of MEDCO Accounts Payable Testing**

|         | Received |              | Tested |     |               |     |
|---------|----------|--------------|--------|-----|---------------|-----|
|         | #        | \$ Amount    | #      | %   | \$ Amount     | %   |
| Debits  | 235      | \$36,937,237 | 52     | 22% | \$ 21,915,194 | 59% |
| Credits | 482      | 35,520,245   | 52     | 11% | 23,610,709    | 66% |

**B. INTERVIEWS**

During the course of the Scope 2 Forensic Investigation, Baker Tilly formally interviewed seven individuals employed by the County or otherwise connected to the BIN Program:

<sup>177</sup> See Appendix K for a schedule of the Scope 2 MEDCO AP Data.

- Mr. Richard Bendis – President and CEO of BHI, July 18, 2018;
- Mr. Brian Bouey – Controller, Scheer Partners, July 12, 2018;
- Mr. Steve Silverman – former Director of DED, August 23, 2018;
- Ms. Sally Sternbach – former Acting Director of DED, former Executive Director of REDI, August 24, 2018;
- Ms. Lily Qi – Assistant Chief Administrative Officer of the County, Member of the Board of Directors of BHI, August 24, 2018; and
- Two Current County Employees, July 13, 2018.

Representatives of the Office of the County Attorney and the Office of the Inspector General were present at each interview. No individual was represented by counsel, and no union representatives were present.

One of the most concerning issues arising from Baker Tilly’s interviews were comments regarding the intentional efforts of DED employees and others to avoid County procurement rules. One interviewee indicated payments made by MEDCO or Scheer to Orion Ventures, authorized by Mr. Bang, were one example of an effort to avoid the County’s procurement rules.<sup>178</sup> Other interviewees recounted how the County made payments to REDI for BHI, to “get around the procurement process at the County.”<sup>179</sup> Another interviewee described a bank account, set up at REDI for BHI prior to its legal formation, into which a \$250,000 grant for BHI was deposited.<sup>180</sup> In fact, there were additional REDI bank accounts set up, but not used for REDI purposes.<sup>181</sup>

The casualness of these efforts to circumvent County rules and controls, put in place specifically to help avoid fraud, waste, and abuse, is also concerning. It appears that there may have been a “tone from the top” at the DED which created an environment in which employees viewed County rules and regulations as a hindrance to performing their work, and that it was easy to work around such rules, and suffer no consequences. In fact, one employee stated that there was “pushback” when someone tried to follow the rules.<sup>182</sup>

At least one interviewee mentioned that Mr. Bang was “able to work with the incubator financials to cover shortfalls” and “always had answers to incubator budget questions.” One interviewee indicated that Mr. Bang likely was aware that only two Incubators were subject to third-party audits.<sup>183</sup> One interviewee indicated that MEDCO was more focused on the two Incubators with third-party debt, which therefore required outside audits. This interviewee also noted that since

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<sup>178</sup> Interview of County Employee; Interview of Ms. Qi.

<sup>179</sup> Interview of Mr. Silverman; Interview of Ms. Qi.

<sup>180</sup> Interview of Current County Employee.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> Interview of Mr. Bouey.

the SSIC, the WBIC and the GIC were not subject to outside audits, MEDCO “ignored” them.<sup>184</sup> This same interviewee indicated that although MEDCO required documentation for all expenditures related to the two audited entities, Scheer was free to pay expenses on behalf of the unaudited entities at its own discretion.<sup>185</sup>

Further, multiple witnesses, including Mr. Silverman himself, indicated Mr. Silverman was a “hands off” supervisor.<sup>186</sup> In that regard, Mr. Silverman indicated he had given his email credentials to three subordinates that he could recall, contrary to County rules, so that those individuals could respond to his emails. However, he did not recall issuing any emails giving Mr. Bang complete financial authority.<sup>187</sup> Mr. Silverman noted during his interview that he did not recognize signatures on certain documents and authorizations for payments and believed them to be forgeries.<sup>188</sup>

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Interview of Current County Employees. Interview of Ms. Sternbach. Interview of Mr. Silverman.

<sup>187</sup> Interview of Mr. Silverman.

<sup>188</sup> *Id.*

## VII. FORENSIC INVESTIGATION

### A. INTRODUCTION

In conducting the Scope 2 Forensic Investigation, Baker Tilly used keyword searching, forensic testing, and email review to identify transactions with characteristics indicating an increased risk for fraud, waste or abuse. As described in Section VI., Baker Tilly was provided with a large amount of transaction data, invoice support and other financial records from the County, MEDCO and Scheer. We performed a detailed review of 104 MEDCO transactions, totaling approximately \$45.5 million of accounts payable data (debits and credits), and 588 Scheer disbursements, totaling \$13.6 million. Our analysis of the MEDCO and Scheer transactions identified 26 Questionable Payments with indicators of risk for fraud.

### B. MANAGEMENT OF BIN PROGRAM-RELATED FUNDS

#### 1. Bank Accounts Used

During the Relevant Period, the County provided more than \$22 million in funds to MEDCO and Scheer in connection with the management of the BIN Program. These funds were generally provided during the first quarter of each Fiscal Year pursuant to the operating budget for each Incubator. There are instances where the County disbursed grants during the Fiscal Year as requested, or in connection with the construction of an Incubator. The County also made payments directly to vendors for Incubator expenses (*e.g.*, Montgomery College and Westfield Wheaton, landlords for GIC and WBIC, respectively).

Baker Tilly identified 33 different accounts associated with the individual Incubators (the “Management Accounts”).<sup>189</sup> The title of each Management Account included the name of the Incubator, MEDCO as account owner, and Scheer as “Agent.”<sup>190</sup> Although the majority of the operating expenses were disbursed by Scheer from the Management Accounts, we observed that MEDCO also paid expenses on behalf of the Incubators.

Despite the language in the agreements,<sup>191</sup> Baker Tilly observed that MEDCO and Scheer also used the OPM Account, and other MEDCO bank accounts, for the management of the BIN Program. As such, County funds were regularly commingled with funds not related to the BIN Program.

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<sup>189</sup> Scheer and MEDCO maintained several Management Accounts for each Incubator. For example, a disbursement account, a rental deposit account, and a security deposit account were maintained for RIC during 2018. Monthly Operating Report for the Rockville Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 29, 39, and 44.

<sup>190</sup> For example, “Maryland Economic Development Corp. GIC/Scheer Partners, Inc. (Agent)” was the name on the checks for the GIC Management Accounts. The Germantown Innovation Center Monthly Operating Report prepared by Scheer Partners, Inc., dated May 2018, at 3.

<sup>191</sup> The 2006 Master Management Agreement allowed up to three accounts: a Development Account, a Management Account and a Special Reserve Account. Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 1 - 2.

We observed that MEDCO and Scheer used at least seven MEDCO and Scheer accounts, for payments related to the BIN Program and the NCCoE, in addition to the 33 Management Accounts:

- **MEDCO TD Bank account ending in 1008:** This account, titled the “Maryland Economic Development Corp Operating Account” (the “MEDCO Operating Account”), was used for the receipt of County grants for the Incubators.<sup>192</sup> We have observed several instances where the funds received were later transferred to the MEDCO OPM Account. However, there were also occasions where expenses related to the BIN Program or NCCoE (including Questionable Payments) were paid directly from this account.<sup>193</sup>
- **MEDCO TD Bank account ending in 1016:** The OPM Account is also known as the TD Bank Restricted account, or the escrow account.<sup>194</sup> The OPM Account was used to receive and disburse funds for the BIN Program. Deposits to this account included funds received from the County, the State of Maryland and NIST for NCCoE and amounts transferred from the MEDCO Operating Account.<sup>195</sup> The reference to “OPM” relates to “other people’s money” because the account also contains funds received from other sources unrelated to the BIN Program or the NCCoE facility.<sup>196</sup>
- **MEDCO SunTrust Bank account ending in 5004:** This account is also called the “MEDCO Operating Account.” During our review, we observed that MEDCO paid

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<sup>192</sup> For example, on July 23, 2013, MEDCO deposited \$500,000 in grants received from the County for RIC and SGIC into the MEDCO Operating Account. The funds were then transferred from the MEDCO Operating Account to the OPM Account on August 20, 2013. Email between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) in regards to “Mont Co. Grant Money” (with cancelled checks attached), dated August 19, 2013, at 3. For another example, see email between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) regarding the transfer of grant funds received for RIC and SGIC, dated October 22, 2012.

<sup>193</sup> For example, on February 1, 2011 MEDCO paid \$50,000 to Chungbuk Incubator Fund, LLC from the MEDCO Operating Account for the “programming support of their company.” Memorandum to Executive Director of the Maryland Economic Development Corporation, dated February 1, 2011.

<sup>194</sup> Email between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) referencing the “Other people’s” money checking account, dated May 4, 2011.

<sup>195</sup> Email between Mr. Bouey (Scheer) and Mr. Nocar (MEDCO) regarding the closing of MTDC accounts and the transfer of funds to the OPM Account, dated May 12, 2015, at 3 - 4; Invoice to Mr. Bang and corresponding check in regards to the 2016 MEDCO Annual Fee, dated October 7, 2016 at 3.

<sup>196</sup> In a meeting with MEDCO and Scheer personnel in May 2018, Mr. Miller indicated that during the Relevant Period, funds received from the County for the management of the BIN Program were deposited into both the Incubator Management Accounts and the OPM Account, which he referred to as the “Other People’s Money” account. As of the date of this Scope 2 Report, Baker Tilly has not received a detailed reconciliation of County funds transferred in and out of this account during the Relevant Period. Based on our review of the documents received to date, Baker Tilly has determined that the OPM Account is held at TD Bank, account number ending in 1016. TD Bank ACH Transfer from “escrow account”; Email between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) referencing the “Other people’s” money checking account, dated May 4, 2011.

expenses related to the management of the BIN Program and other economic development projects of the County from this account.<sup>197</sup>

- **MEDCO SunTrust Bank account ending in 5012:** Baker Tilly is unable to determine the purpose of this account. However, during our review we observed that MEDCO paid expenses related to the management of the BIN Program and other DED projects from this account. This account was used to pay ELC,<sup>198</sup> for services purportedly unrelated to the BIN Program. Baker Tilly has categorized funds disbursed to ELC as Questionable Payments.<sup>199</sup>
- **Scheer EagleBank account ending in 9347:** This account is referred to as the “SPI Management Inc.” account. Scheer regularly transferred amounts from the Management Accounts to the SPI Management Inc. account for the payment of management fees and professional & engineering services.<sup>200</sup>
- **MEDCO Bank of America account ending in 2651:** This account is the “Business Checking” account.<sup>201</sup> MEDCO deposited funds from the RIC certificate of deposit into this checking account during 2007.<sup>202</sup> MEDCO also made two payments (unrelated to the BIN Program) from this account on May 2, 2007, after Mr. Bang requested funds for a “feasibility study” (identified as a Questionable Payment), and “audio/video RFP for Rockville Incubator.”<sup>203</sup>
- **MEDCO PNC Bank account ending in 1487:** This account was opened in February 2015 and was used to pay principal and interest related to the NCCoE Mortgage Loan.<sup>204</sup>

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<sup>197</sup> Memorandum to “Bob” regarding payment for Rockville Commercial Title, dated June 12, 2007, at 1 – 3; MEDCO payment of \$248,176 to Gaudreau CM for the MTDC expansion, Check #2180, dated February 27, 2002, at 2.

<sup>198</sup> The payee ELC, a seemingly Fictitious Vendor, is not an abbreviation, and has no indication of corporation structure in its name, such as “Inc.” or “LLC.”

<sup>199</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated June 3, 2009. Despite the memorandum referencing the 1998 Grant Agreement between the County and MEDCO, the language outlining the Special Account is consistent with the language describing the Special Reserve Account in the Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, Maryland, dated May 24, 2006, at 2.

<sup>200</sup> Exclusive Facility Management Agreement between Scheer Partners, Inc. and the Maryland Economic Development Corporation for the Maryland Technology Development Center, dated July 1, 2003, at 3; Invoice and Check #3507 for \$15,872.47 from Scheer for professional & engineering services and project management fees, dated September 6, 2006, at 1 - 2; EagleBank Bank Statement for the period, ending October 31, 2006, at 3.

<sup>201</sup> May 2007 Bank of America bank statement for account number ending in 2651, at 2 - 3.

<sup>202</sup> The RIC certificate of deposit is also referred to as the Rockville Incubator Development Account or “RIDA.” Email between Mr. Bang (County) and Ms. Trainor (MEDCO) regarding the RIC certificate of deposit account, dated November 16, 2006; May 2007 Bank of America bank statement for account number ending in 2651, at 2 - 3.

<sup>203</sup> Emails between Mr. Bang (County) and Ms. Trainor (MEDCO), dated April 20 - 30, 2007; Check to Young J. Pack from the Maryland Economic Development Corporation, dated May 2, 2007 and Check to Eye Trans from the Maryland Economic Development Corporation, dated May 2, 2007.

<sup>204</sup> PNC Bank deposit ticket and receipt for \$407,159.43, dated February 26, 2015, at 3.

## 2. Special Reserve Account

According to the 2006 Master Management Agreement, each Incubator would have up to three accounts for the management of Incubator funds.<sup>205</sup> These accounts included a Development Account for paying start-up costs, a Management Account for revenue and payments of expenses, and a Special Reserve Account.<sup>206</sup> The Special Reserve account was described as follows:

The Special Reserve Account shall be utilized to hold, account for and disburse funding attributable to any annual operating surplus and royalties described in Section 5.2.a.1. The Special Reserve Account shall be opened in MEDCO's name for use by the County for existing and future Incubator projects. The Special Reserve Account shall hold funds derived from all existing and future Incubators subject to this Agreement and Amendments. Monies deposited into the Special Reserve Account may only be used for economic development projects in Montgomery County, Maryland as approved by the Director of the Montgomery County Department of Economic Development (the "Director"). The County, through the Director, shall also have the right to withdraw funds from the Special Reserve.<sup>207</sup>

However, in practice, the Special Reserve account appears to have been a general ledger account, rather than an actual bank account. As noted in an email from Jim Miller (MEDCO):

Attached is a schedule reflecting the \$\$ we have on deposit for Montgomery County (MEDCO ledger account 230-010). Peter will often call and ask about the balance and send invoices for payment out of these funds, which are on deposit in the "Other people's money" checking account.<sup>208</sup>

Baker Tilly also observed an instance where Mr. Bang emailed John Genakos, Jay Nocar (MEDCO), and Brian Bouey (Scheer) to request the receipt of "special projects funds." In this email chain, Mr. Genakos asks Mr. Bouey where the DED special project funds are held, to which Mr. Bouey refers to the GIC Management Account.<sup>209</sup>

Similarly, the calculation of the balance of the Special Reserve Account does not appear to have been performed in accordance with the 2006 Master Management Agreement. Rather than the annual operating surplus of each Incubator, the Special Reserve Account appears to be a

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<sup>205</sup> Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, Maryland, dated May 24, 2006, at 2.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> Email between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) referencing the "Other people's" money checking account, dated May 4, 2011.

<sup>209</sup> Email between Mr. Bang (County), Mr. Nocar (MEDCO), Mr. Genakos (MEDCO), and Mr. Bouey (Scheer) regarding the NCCoE debt service account, dated May 12 - 19, 2016.

calculation of a running balance based on certain deposits attributable to the County and including certain payments made as directed by Mr. Bang.<sup>210</sup> These payments were for Incubator expenses, DED expenses, and payments identified as Questionable Payments.

The Special Reserve Account appears to have been structured as a way to provide funds for DED use without oversight, including the oversight of the Procurement or Payment processes. While the Special Reserve Account did not operate as outlined in the 2006 Master Management Agreement, it still served as a source of funds to be used by the DED, under the asserted authority of Mr. Bang, with little or no outside controls.

### C. SUMMARY OF QUESTIONABLE PAYMENTS

Baker Tilly identified 26 Questionable Payments to eight vendors, totaling \$2,058,003, diverted from either MEDCO or Scheer, as shown in the table below.<sup>211</sup>

**Table 7. Total Questionable Payments**

| <b>Vendor</b>   | <b>From MEDCO</b> | <b>From Scheer</b>  | <b>Total</b>        |
|-----------------|-------------------|---------------------|---------------------|
| CBIF            | \$ 50,000         | \$ 1,163,988        | \$ 1,213,988        |
| ELC             | 141,715           | 52,500              | 194,215             |
| J & K System(s) | 70,600            | -                   | 70,600              |
| NLCW, Inc.      | 80,000            | -                   | 80,000              |
| Seong Uk Hong   | 110,000           | -                   | 110,000             |
| Sohn Jung Mee   | 81,200            | -                   | 81,200              |
| Woodfield LLC   | 145,000           | -                   | 145,000             |
| Young J. Pack   | 163,000           | -                   | 163,000             |
| <b>Total</b>    | <b>\$ 841,515</b> | <b>\$ 1,216,488</b> | <b>\$ 2,058,003</b> |

These 26 Questionable Payments had several characteristics in common, which can be viewed as indications of fraud:

- All but one of these transactions came at the direction of Mr. Bang in an observed letter, memorandum or email.<sup>212</sup>

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<sup>210</sup> Attachment to email between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) regarding Montgomery County funds, dated May 4, 2011.

<sup>211</sup> Baker Tilly identified these Questionable Payments and/or confirmed the earlier identification of the Questionable Payments by the County.

<sup>212</sup> The observed pattern for a letter or memorandum was that it was addressed to the recipient, from Mr. Bang, "via" the Director of the DED. One letter was addressed to Mr. Brennan "via" Mr. Ganguly, without the letter being "from" anyone.

- All but one of the requests for payment had a very brief description of the expense, with no supporting documentation.<sup>213</sup>
- None of the transactions appear to have a legitimate business purpose or benefit to the County or the BIN Program.
- Twelve of the 26 requests had instructions to hold the check for or deliver the check to Mr. Bang.
- All were for services or other intangibles, a hallmark of a Fictitious Vendor Scheme. Services are harder to observe than tangible goods, which would have to be received, inventoried and used.
- All of the payments were made to vendors with observed connections to Mr. Bang, CBIF, Chungbuk Province or a County employee.

Of these eight vendors receiving Questionable Payments:

- One was CBIF, identified in the Scope 1 Forensic Investigation;
- Two were Chungbuk Exchange Staff;
- One is believed to be a relative or associate of Mr. Bang, and was involved with two different vendors that received Questionable Payments;
- One was potentially a case of identity theft, possibly committed by a former County employee with access to that information; that former employee was also involved with a vendor that received Questionable Payments; and
- One was a County vendor.

#### **D. DETAIL OF QUESTIONABLE PAYMENTS**

##### **1. CBIF**

In the Scope 1 Forensic Investigation, Baker Tilly observed certain circumstances and activity related to 13 DED transactions, totaling \$5.53 million from 2010 to 2016, which suggested that the entity CBIF was used as part of a Fictitious Vendor Scheme.<sup>214</sup> There were also indications that Mr. Bang and Mr. Hong may have been participants in this scheme. While the Scope 1 Report describes the observations of the indications of fraud of those particular transactions in further detail, we noted in the Scope 2 Forensic Investigation that CBIF and Mr. Hong were transferees of funds from MEDCO and Scheer and, therefore, we refer to the Scope 1 observations herein.

CBIF was organized in the State of Maryland in July 2010,<sup>215</sup> seemingly for the sole purpose of participating in a Fictitious Vendor Scheme. Invoices were submitted to the County for what was

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<sup>213</sup> The request for disbursement of funds to NLCW, Inc. had a loan offer letter, but none of the supporting documentation that Baker Tilly has observed in other County small business loan files.

<sup>214</sup> See Scope 1 Report for detail regarding all of this Section VII.D.1.

<sup>215</sup> Chungbuk Incubator Fund LLC Articles of Organization for a Limited Liability Company, dated July 22, 2010, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018, at 2.

portrayed as valid expenses for the Incubators, such as rent, operating expenses, or payment of annual grants. Similarly, MEDCO was directed to make a payment to CBIF for “programming support” for Chungbuk Province tenants moving into the GIC.<sup>216</sup> Scheer was directed to make eight payments to CBIF. Five of these payments were purportedly for rent payments for the Incubators.<sup>217</sup> One of the payments was related to “the County’s partnership MOU with Chungbuk Province, Korea.”<sup>218</sup> One of the payments was for the “remaining amount” in the “Chungbuk deposit in GIC,” after the termination of the relationship with Chungbuk Province.<sup>219</sup> One of the payments was to fund a portion of the return of capital to Chungbuk Province.<sup>220</sup>

However, the County had not contracted with CBIF to provide any goods or services to the Incubators or any other County program. There were other vendors in place to manage the Incubators. There was no agreement with the Province that required any payments to the Province for Incubator expenses, to any intermediary for the Province, or to the Incubators on behalf of the Province.<sup>221</sup>

Based on various communications between Mr. Bang, Chungbuk Province officials, and the DED, it appears that the County was led to believe that CBIF was an arm of Chungbuk Province, while Chungbuk Province was led to believe it was an arm of the County. Baker Tilly did not observe any indications that the validity of CBIF as a vendor had been questioned by anyone at the County, although we did see communications from Chungbuk Province officials questioning the purpose of CBIF.<sup>222</sup>

The name “Chungbuk Incubator Fund LLC” appears to have been chosen to seem familiar and legitimate, a hallmark of a Fictitious Vendor Scheme. The name referenced both Chungbuk Province, with which the County had a relationship, and Incubators, a legitimate County economic development program.

Mr. Bang had a 100% partnership stake in CBIF.<sup>223</sup> He appeared to have control over CBIF’s bank account. Copies of CBIF bank statements show Mr. Bang’s home address as CBIF’s

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<sup>216</sup> Memorandum to the Maryland Economic Development Corporation regarding Advanced Rent Payment for Incubator Companies from Chungbuk, Korea, dated February 1, 2011.

<sup>217</sup> Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated May 4, 2011. Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated May 7, 2013. Letter to Mr. Bang (County), dated June 12, 2013. Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated November 7, 2013. Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated March 20, 2014.

<sup>218</sup> Letter to Mr. Bouey (Scheer) regarding Request to draw from Germantown Innovation Center’s Montgomery County’s Due To Account, dated August 4, 2010.

<sup>219</sup> Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated May 20, 2014.

<sup>220</sup> Emails between Mr. Bouey (Scheer) and Mr. Bang (County), dated July 22, 2014.

<sup>221</sup> The Province’s investment in the Small Business Revolving Loan Program required payment of a portion of the interest and fees from the loan portfolio annually. Payments for FY 2013 and FY 2014 were approximately \$10,000 in total.

<sup>222</sup> However, a Province official did question the nature of, and reason for, CBIF. Emails between Mr. Bang, Mr. Hong, and “nada0214@---”, dated February 27 - March 4, 2013 with Baker Tilly performed translation.

<sup>223</sup> Chungbuk Incubator Fund, LLC Schedule K-1 for 2014, at 1.

address.<sup>224</sup> Based on a limited number of CBIF bank statements provided, Baker Tilly observed several checks were written in what appears to be Mr. Bang's handwriting and signature, made payable to Mr. Bang and endorsed with what appears to be Mr. Bang's signature.<sup>225</sup> CBIF invoices and cover letters to the County were addressed to Mr. Bang at the DED. None of the requests for payment went through the procurement process.

**a. Payment from MEDCO - Detail**

Baker Tilly identified one payment made by MEDCO to "CHUNGBUK INCUBATOR FUND LLC" on February 2, 2011, for \$50,000. The request was made in a memo from Mr. Bang.<sup>226</sup> The memo referenced an "enclosed check."<sup>227</sup> This check was written by the County to MEDCO, dated October 29, 2010, three months prior.<sup>228</sup> There was no explanation as to why the check was held for three months. MEDCO was instructed to deposit half of the check, \$50,000, to the GIC Management Account, and the other half was to be remitted to CBIF.<sup>229</sup>

The memo states that "Chungbuk...desires to use...\$50,000 for the programming support of their [i.e., Chungbuk's] company."<sup>230</sup> Check number 14377 for \$50,000 was paid by MEDCO to CBIF on February 2, 2011.<sup>231</sup>

**b. Payment from Scheer - Detail**

Scheer made eight payments to CBIF as follows:

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<sup>224</sup> Chungbuk Incubator Fund, LLC Bank of America Bank Statements, for the period of September 1-30, 2010, at 1.

<sup>225</sup> Baker Tilly is not making a determination as to authenticity of these signatures.

<sup>226</sup> Memorandum to the Maryland Economic Development Corporation regarding Advanced Rent Payment for Incubator Companies from Chungbuk, Korea, dated February 1, 2011.

<sup>227</sup> While the memo does not state the amount overtly, it does reference splitting the check into two halves of \$50,000, indicating a total of \$100,000.

<sup>228</sup> Check to the Maryland Economic Development Corporation from the Department of Finance for \$100,000, dated October 29, 2010.

<sup>229</sup> MEDCO's records show that a general ledger transaction representing a deposit of \$100,000 was made on February 2, 2011, description "Germantown" (MEDCO General Ledger detail). Memorandum to the Maryland Economic Development Corporation regarding Advanced Rent Payment for Incubator Companies from Chungbuk, Korea, dated February 1, 2011.

<sup>230</sup> Memorandum to the Maryland Economic Development Corporation regarding Advanced Rent Payment for Incubator Companies from Chungbuk, Korea, dated February 1, 2011.

<sup>231</sup> Check to Chungbuk Incubator Fund LLC from the Maryland Economic Development Corporation, dated February 2, 2011.

**Table 8. Payments from Scheer to CBIF**

| Check No. | Date     | Vendor | Description                        | Amount              |
|-----------|----------|--------|------------------------------------|---------------------|
| 1381      | 08/04/10 | CBIF   | ChungBuk [ <i>sic</i> ] Incubator  | \$ 56,000           |
| 1561      | 05/17/11 | CBIF   | Chucgbuk [ <i>sic</i> ] Incubator  | 200,000             |
| 2098      | 05/08/13 | CBIF   | Germantown Incubato [ <i>sic</i> ] | 200,000             |
| 2332      | 06/12/13 | CBIF   | FY14 Rent – WBIC                   | 150,000             |
| 2235      | 11/08/13 | CBIF   | FY14 GIC Rent First                | 149,131             |
| 2318      | 03/21/14 | CBIF   | FY14 2nd Rent GIC FY14 Second      | 120,000             |
| 2371      | 05/27/14 | CBIF   | Chungbuk Balance                   | 42,336              |
| 2421      | 07/22/14 | CBIF   | Chungbuk Investment                | 246,521             |
|           |          |        |                                    | <b>\$ 1,163,988</b> |

**i. Payment of \$56,000 on August 4, 2010**

The request for payment of \$56,000 was made in a letter to Mr. Bouey from Mr. Bang dated August 4, 2010, subject “[r]equest to draw from Germantown Innovation Center’s Montgomery County’s Due to Account.”<sup>232</sup> In this letter, Mr. Bang requested that Scheer Partners prepare a check for \$56,000 made payable to Chungbuk [*sic*] Incubator Fund LLC. The description of the purpose for the payment was, “this annual payment is related to the County’s partnership MOU with Chungbuk Province Korea.”<sup>233</sup> Neither the MOU, the Contribution Instrument, nor any other agreement between Chungbuk Province and the County require any sort of annual payment. Check number 1381 for \$56,000 was paid out of the GIC Management Account to CBIF on August 4, 2010.<sup>234</sup>

**ii. Payment of \$200,000 on May 17, 2011**

The request for payment of \$200,000 was made in an email to Mr. Bouey from Mr. Bang dated May 4, 2011,<sup>235</sup> which stated, “Brian, please ... prepare \$200,000 check to Chungbuk Incubator Fund, LLC on County’s behalf.”<sup>236</sup> There was no other description as to the purpose of the payment. Check number 1561 for \$200,000 was paid from the GIC Management Account to CBIF on May 17, 2011.<sup>237</sup>

<sup>232</sup> Letter to Mr. Bouey (Scheer) regarding Request to draw from Germantown Innovation Center's Montgomery County's Due To Account, dated August 4, 2010.

<sup>233</sup> *Id.*

<sup>234</sup> Check to CBIF from the Maryland Economic Development Corporation and Scheer Partners Inc. as Agent, dated August 4, 2010.

<sup>235</sup> Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated May 4, 2011.

<sup>236</sup> *Id.*

<sup>237</sup> Check to Chungbuk Incubator Fund LLC from the Maryland Economic Development Corporation and Scheer Partners, Inc. as Agent, dated May 17, 2011.

**iii. Payment of \$200,000 on May 8, 2013**

The request for payment of \$200,000 was made in an email to Mr. Bouey from Mr. Bang dated May 7, 2013.<sup>238</sup> The email states, “[f]or the rent, please prepare \$200,000 check to CBIF, LLC as they will be comingling [*sic*] the fund and making the rent payment to college. I will pick up on Thursday.”<sup>239</sup> There is no provision under any agreement that the Province or its intermediary would make a rent payment on behalf of any of the Incubators. Check number 2098 for \$200,000 was paid from the GIC Management Account to CBIF on May 8, 2013.<sup>240</sup>

**iv. Payment of \$150,000 on June 12, 2013**

The request for payment of \$150,000 was made in a letter to Mr. Bang from Mr. Bouey dated June 12, 2013, subject “WBIC Rent Pymt.”<sup>241</sup> The letter reads, “Dear Peter: Please find enclosed check # 2332 06/12/13 CBIF, LLC \$150,000 from Wheaton Incubator as we discussed on 6/11/13.”<sup>242</sup> Baker Tilly does not have a communication from Mr. Bang requesting the check from Scheer. Again, there is no provision under any agreement that the Province or its intermediary would make a rent payment on behalf of any of the Incubators. Check number 2332 for \$150,000 was paid from the WBIC Management Account to CBIF on June 12, 2013.<sup>243</sup> The request support lists “FY14 Rent – WBIC” as the description for the payment.<sup>244</sup>

**v. Payment of \$149,130.63 on November 8, 2013**

The request for payment of \$149,130.63 was made in an email to Mr. Bouey from Mr. Bang dated November 7, 2013.<sup>245</sup> Mr. Bang requested, “Brian, Please prepare two checks for me: ... And \$149,130.63 to Chungbuk Incubator Fund, LLC for FY14 GIC Rent first payment from GIC account.”<sup>246</sup> Again, there is no provision under any agreement that the Province or its intermediary would make a rent payment on behalf of any of the Incubators. Check number 2235 for \$149,130.63 was paid from the GIC Management Account to CBIF on November 8, 2013.<sup>247</sup>

**vi. Payment of \$120,000 on March 21, 2014**

The request for payment of \$120,000 was made in an email to Mr. Bouey from Mr. Bang dated March 20, 2014, which stated, “Brain [*sic*], As we discussed please prepare \$120,000 check to

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<sup>238</sup> Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated May 7, 2013.

<sup>239</sup> *Id.*

<sup>240</sup> Check to CBIF from the Maryland Economic Development Corporation and Scheer Partners, Inc. as Agent, dated May 8, 2013.

<sup>241</sup> Letter to Mr. Bang (County), dated June 12, 2013.

<sup>242</sup> *Id.*

<sup>243</sup> Check to CBIF from the Maryland Economic Development Corporation and Scheer Partners Inc. as Agent, dated June 12, 2013.

<sup>244</sup> *Id.*

<sup>245</sup> Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated November 7, 2013.

<sup>246</sup> *Id.*

<sup>247</sup> Check to Chungbuk Incubator Fund LLC from the Maryland Economic Development Corporation and Scheer Partners Inc. as Agent, dated November 8, 2013.

CBIF, LLC for the GIC's FY2014 second and last rent payment. We will comingle \$240K from our side to pay the rent. I will pick up the check tomorrow 3pm."<sup>248</sup> Again, there is no provision under any agreement that the Province or its intermediary would make a rent payment on behalf of any of the Incubators. Mr. Bang notified Mr. Bouey that "we will be terminating the Agreement with Chungbuk come August 2014 and the balance of funds until there will be sent back to Chungbuk." Check number 2318 for \$120,000 was paid from the GIC Management Account to CBIF on March 21, 2014.<sup>249</sup>

**vii. Payment of \$42,366 on May 27, 2014**

The request for payment of \$42,336 was made in an email to Mr. Bouey from Mr. Bang dated May 20, 2014, subject "Request for an invoice."<sup>250</sup> Mr. Bang stated:

The current Chungbuk companies in GIC, and any new companies from Chungbuk will no longer receive discounted rent effective 7/1/2014 as we are 'finally' terminating the partnership agreement. Between Ms. Lee and I [*sic*], we will notify the current companies (2?) with a letter stating to that effect. Please offset the Chungbuk deposit in GIC with June portion of 2 companies rent shortfall and send the remaining amount to me (check to CBIF, LLC) so I can forward the payment due to Chungbuk and close the partnership.<sup>251</sup>

Check number 2371 for \$42,336 was paid from the GIC Management Account to CBIF on May 27, 2014.<sup>252</sup> The transaction described in the request support read, "Chungbuk Balance."<sup>253</sup>

**viii. Payment of \$246,521 on July 22, 2014**

The request for payment of \$246,521 was made in a series of emails between Mr. Bang and Mr. Bouey, subject "Wire to Chungbuk, Korea."<sup>254</sup> On July 22, 2014 at 2:53 PM, Mr. Bang requested that Mr. Bouey process an international wire in US dollars to Chungbuk, Korea as soon as possible. Mr. Bang explained, "[w]e will later replenish \$96,521 (difference between \$150K and \$246,521) to GIC. Calculation error from our end on how much of their investment we had in the finance account."<sup>255</sup> Mr. Bouey advised in a return email to Mr. Bang at 2:57 PM that he is not set up to initiate wire transfers, and was unsure if the GIC account can process an international wire. Mr. Bouey advised that he was capable of writing a check for that amount, but to let him

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<sup>248</sup> Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated March 20, 2014.

<sup>249</sup> Check to CBIF from the Maryland Economic Development Corporation and Scheer Partners, Inc. as Agent, dated March 21, 2014.

<sup>250</sup> Email between Mr. Bouey (Scheer) and Mr. Bang (County), dated May 20, 2014.

<sup>251</sup> *Id.*

<sup>252</sup> Check to CBIF from the Maryland Economic Development Corporation and Scheer Partners, Inc. as Agent, dated May 27, 2014.

<sup>253</sup> *Id.*

<sup>254</sup> Emails between Mr. Bouey (Scheer) and Mr. Bang (County), dated July 22, 2014.

<sup>255</sup> *Id.* at 2.

know if it will be redirected to MEDCO.<sup>256</sup> In a reply email from Mr. Bang at 3:07 PM, he advised, “OK, just talked to their staff, they have not closed the CBIF, LLC account yet. Please prepare a check to them and send it to my attention. Thanks and this utterly complex deal with Korea will finally be over!”<sup>257</sup> Mr. Bouey then issued check 2421 to CBIF from the GIC Management Account for \$246,521, on July 22, 2014.<sup>258</sup> The transaction described in the request support read “Chungbuk Investment.”<sup>259</sup> This payment was related to the return of Chungbuk Province’s investment at the termination of the relationship (*see* Scope 1 Report for detailed discussion of those transactions).

## 2. Chungbuk Province Exchange Staff

Exchange Staff were appointed by the Governor of Chungbuk for a two-year term to represent the Province’s interests in Montgomery County. There were three Exchange Staff personnel from 2007 to 2014.<sup>260</sup>

### a. Sohn Jung Mee<sup>261</sup>

In a letter to the County Executive dated October 10, 2007, Dr. Woo-taik Chung, Governor of Chungbuk Province, appointed Jungmee Sohn (“Ms. Sohn”) as the first Exchange Staff member.<sup>262</sup> In a response dated November 25, 2007, Mr. Ganguly welcomed Ms. Sohn and stated the terms of her tenure in Montgomery County (emphasis added):

The DED will provide office space...for Ms. Sohn, as well as the necessary furniture, computer/printer, other IT equipment and the telecommunication connections at no cost. As previously agreed, **I expect Chungbuk to pay for the salary, cost of living and other incidental expenses** for Ms. Sohn. We will, however, **provide seed funding of \$20-\$30,000** to begin implementing partnership initiatives.<sup>263</sup>

Baker Tilly identified one payment from MEDCO to “Sohn Jung Mee.” The request for payment of \$81,200 was made in a memorandum to Mr. Brennan from Mr. Bang dated November 3, 2009,

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<sup>256</sup> *Id.* at 1.

<sup>257</sup> *Id.*

<sup>258</sup> Check to CBIF from the Maryland Economic Development Corporation and Scheer Partners Inc. as Agent, dated July 22, 2014.

<sup>259</sup> *Id.*

<sup>260</sup> The third Exchange staff person, Jeong Soon Lee, started on March 19, 2013 and “left abruptly” after the termination of the relationship between the County and the Province. Baker Tilly did not observe any payments to Jeong Soon Lee. Email between Mr. Bang (County) and the DED, dated March 19, 2013. Email between Mr. Bang (County), Mr. Silverman (County), Ms. Sternbach (County), and County employee, dated July 28, 2014.

<sup>261</sup> The name Sohn Jung Mee is referenced various ways throughout supporting documentation including but not limited to Jungmee Sohn, Jungmee Sohn Lee, Sohn Jungmee Lee, and Jongmee Sohn Lee.

<sup>262</sup> Letter to Mr. Leggett (County), dated October 10, 2007.

<sup>263</sup> Letter to Mr. Chung (Province), dated November 25, 2007.

subject “Request to Draw Funds From MEDCO Held DED Special Accounts.”<sup>264</sup> The payment was purportedly for a High-Tech Medical Complex Feasibility & Partnership. Baker Tilly was unable to locate any support to suggest that: (a) this study was commissioned by the County; (b) that the County agreed to pay for such a study on behalf of Chungbuk Province; or (c) that such a study was conducted by this individual. No reports, agreements, statements of work, invoices, or timesheets detailing work completed by Sohn Jung Mee or any other person were identified.

Check number 1338 for \$81,200 was paid by MEDCO to Sohn Jung Mee on November 4, 2009.<sup>265</sup> The payee was listed in Mr. Bang’s memo as “Sohn Jung Mee, c/o ChungCheongNamdo,”<sup>266</sup> an alternate name for Chungbuk Province. In the Scope 1 Forensic Investigation, Baker Tilly identified three transactions totaling \$69,700 paid to Ms. Sohn from the County under the vendor names “Jungmee Lee” and “Jungmee Sohn-Lee” which contained indications of potential fraud, waste, or abuse. Ms. Sohn returned to Korea in or around November 2009.<sup>267</sup>

**b. Seong Uk Hong**

Mr. Hong was the second Chungbuk Province Exchange Staff person. He was also the signatory on the first CBIF invoice to the County.<sup>268</sup> Mr. Hong signed as “Chungbuk’s Exchange Staff, Manager, Chungbuk Incubator Fund, LLC.” Because Mr. Hong was the Chungbuk Exchange Staff Member, his signing as Manager, Chungbuk Incubator Fund, LLC likely was designed to legitimize CBIF as being related to Chungbuk Province. CBIF was organized under the laws of the State of Maryland,<sup>269</sup> with Seung Uk Hong the sole member.<sup>270</sup> Seung Uk Hong was the contact listed on the County vendor application.<sup>271</sup>

Baker Tilly identified two payments totaling \$110,000 from MEDCO to “Seong Uk Hong” paid at the direction of Mr. Bang between March 19, 2010 and May 20, 2010. These transactions were purportedly to fund the foreign exchange staff in the DED. Payments are described as “[p]artial funding for foreign exchange staff,”<sup>272</sup> and “[a]dvance funding for Chungbuk’s exchange staff in DED.”<sup>273</sup> Baker Tilly saw no evidence that would indicate that the terms of Mr. Ganguly’s letter

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<sup>264</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated November 3, 2009.

<sup>265</sup> Check to Sohn Jung Mee from the Maryland Economic Development Corporation, dated November 4, 2009.

<sup>266</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated November 3, 2009.

<sup>267</sup> Email between Ms. Sohn (Chungbuk Province) and the DED, dated November 27, 2009.

<sup>268</sup> See Scope 1 Report.

<sup>269</sup> Chungbuk Incubator Fund LLC Articles of Organization for a Limited Liability Company, dated July 22, 2010, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018, at 2.

<sup>270</sup> *Id.* at 4.

<sup>271</sup> County Supplier Form for Chungbuk Incubator Fund LLC, dated September 2, 2010.

<sup>272</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated March 18, 2010.

<sup>273</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated April 28, 2010.

described above had changed and that the County, MEDCO, Scheer, or the Incubators would be responsible for funding Exchange Staff compensation or expenses. Mr. Hong left as Exchange Staff in or around March 2013.<sup>274</sup>

**Table 9. Payments from MEDCO to Seong Uk Hong**

| Check No. | Date     | Vendor        | Description                                                                                                                  | Amount            |
|-----------|----------|---------------|------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 1384      | 03/22/10 | Seong Uk Hong | Project: Partial funding for foreign exchange staff                                                                          | \$ 20,000         |
| 1411      | 05/10/10 | Seong Uk Hong | Project: Advance funding for Chungbuk's exchange staff in DED (to be restored in June 2010, upon receipt of Chungbuk's fund) | 90,000            |
|           |          |               |                                                                                                                              | <b>\$ 110,000</b> |

The request for payment of \$20,000 was made in a memorandum to Mr. Brennan from Mr. Bang via Mr. Silverman dated March 18, 2010, subject “[r]equest to Draw Funds From MEDCO Held DED Special Accounts.”<sup>275</sup> There was no supporting documentation provided. Check number 1384 for \$20,000 was paid by MEDCO to Mr. Hong on March 22, 2010.<sup>276</sup> The transaction description reads, “[p]artial funding for foreign exchange staff” and the payee address was “111 Maryland Pike, Suite 800, Rockville, MD 20850.”<sup>277</sup>

The request for payment of \$90,000 was made in a memorandum to Mr. Brennan, from Mr. Bang, via Mr. Silverman dated April 28, 2010, subject “[r]equest to Draw Funds From MEDCO Held DED Special Accounts.”<sup>278</sup> There was no supporting documentation provided. Check number 1411 for \$90,000 was paid by MEDCO on May 10, 2010.<sup>279</sup> The transaction description reads “[p]roject: Advance funding for Chungbuk's exchange staff in DED (to be restored in June 2010, upon receipt of Chungbuk's fund).” The payee address was “111 Maryland Pike, Suite 800, Rockville, MD 20850.”<sup>280</sup>

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<sup>274</sup> Letter to Mr. Hong (Province), dated March 4, 2013.

<sup>275</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated March 18, 2010.

<sup>276</sup> Check to Seong Uk Hong from the Maryland Economic Development Corporation, dated March 22, 2010.

<sup>277</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated March 18, 2010.

<sup>278</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated April 28, 2010.

<sup>279</sup> Check to Seong Uk Hong from the Maryland Economic Development Corporation, dated May 10, 2010.

<sup>280</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated April 28, 2010.

### 3. ELC and J & K System(s)

Baker Tilly identified requests for payment for two vendors for related services. ELC and J & K Systems both purportedly provided information systems consulting, including services related to Salesforce, customer relationship management software used by the DED and by the Incubators. There was a request for a payment to Salesforce grouped with a payment to ELC or J & K Systems once for each vendor.

#### a. ELC

Baker Tilly identified five payments to ELC totaling \$194,215.00 between March 2009 and June 2010, paid at the direction of Mr. Bang. These transactions were purportedly for software programs, website design, and database expenses. There was no indication whether ELC was an acronym for another name. There was no indication of ELC's organizational form in the name, *i.e.*, the name did not include "Inc." or "LLC," for example. There is no listing for "ELC" in the Maryland Secretary of State business entity registry.<sup>281</sup> The name was too generic and imprecise to be able to run a background check. There was no individual's name associated with ELC in the supporting documentation. Despite the references to the work having been performed for the DED, there is no such vendor registered with the County.<sup>282</sup> The mailing address of ELC was listed as 22 West Jefferson Street, Suite 305, Rockville, MD 20850. There were references to invoices, but none were attached to the payment requests and none were provided to Baker Tilly.

In an email on October 29, 2009, subject line Marketing and Communications Manager, Jin Hee Noh applied for a position at the Convention and Visitors Bureau. This email, which was then forwarded to Mr. Bang on November 9, 2009, contained Jin Hee Noh's résumé and cover letter.<sup>283</sup> She is listed as "self-employed, Director" of "Elite Learning Center" located in Rockville, Maryland. She references Elite Learning Center as "ELC." Ms. Noh states that the address of ELC as 22 West Jefferson Street #305,<sup>284</sup> the same address as for the vendor ELC. Per the résumé, ELC was a tutoring company designed to prepare students for "higher education in South Korea and US."<sup>285</sup> Baker Tilly did not observe any degrees or experience on the résumé that would qualify Ms. Noh to execute an IT contract of almost \$200,000. She holds a Bachelor of Science in Biology. Her work experience, in addition to Elite Learning Center, includes executive assistant performing "routine administrative duties," Korean interpreter, and Dental Assistant.

During the Scope 1 Forensic Investigation, Baker Tilly identified 15 payments totaling \$21,492.51 from April 9, 2010 to October 3, 2013, from the County to the vendor "Jin Hee Noh" for temporary administrative services, and for driving Mr. Hong's family around the area for four days upon their

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<sup>281</sup> Maryland Business Express, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited October 21, 2018.

<sup>282</sup> Information provided by the County.

<sup>283</sup> Emails between Jin Hee Noh (County) and an employee of the Convention and Visitors Bureau and forwarded to Mr. Bang (County), dated October 29 - November 9, 2009 and attachments.

<sup>284</sup> *Id.* at 2.

<sup>285</sup> *Id.*

arrival to the United States. The address listed for the vendor “Jin Hee Noh” was 22 West Jefferson Street, Rockville, MD 20850.<sup>286</sup> The Suite or Apartment number varied between 303B and 305. A background check of Elite Learning Center on September 18, 2018, listed the Principal as Jin Hee Noh. Elite Learning Center is not a vendor in the County purchasing or payables systems, nor does it appear in the Maryland Secretary of State business entity registry.<sup>287</sup>

**i. Payments from MEDCO to ELC**

The three payments from MEDCO to ELC were as follows:

**Table 10. Payments from MEDCO to ELC**

| Check No. | Date     | Vendor | Description                                                                    | Amount           |
|-----------|----------|--------|--------------------------------------------------------------------------------|------------------|
| 1598      | 06/04/09 | ELC    | FY10 Development & Subscription of MIS for DED.                                | \$ 43,715        |
| 1194      | 07/28/09 | ELC    | Project: DED Website Construction, Reference: Invoice MCDED#09-2 (Web and GIS) | 46,000           |
| 1429      | 06/10/10 | ELC    | DED website completion FY10-11                                                 | 52,000           |
|           |          |        |                                                                                | <b>\$141,715</b> |

The request for payment of \$43,715 was made in a memorandum to Mr. Brennan from Mr. Bang via Mr. Silverman dated June 3, 2009, subject “[r]equest to Draw Funds from MEDCO Held DED Special Accounts.”<sup>288</sup> Check number 1598 for \$43,715 was paid by MEDCO to ELC on June 4, 2009.<sup>289</sup> The transaction description reads “FY10 Development & Subscription of MIS for DED” and the payee address was “22 West Jefferson Street, Suite 305, Rockville, MD 20850.”<sup>290</sup>

The request for payment of \$46,000 was made in a memorandum to Mr. Brennan from Mr. Bang via Mr. Silverman dated July 28, 2009, subject “Request to Draw Funds From MEDCO Held DED Special Accounts.”<sup>291</sup> The memo included a reference to invoice MCDED#09-02, but did not indicate that the invoice was attached. This invoice was not identified in the support provided to Baker Tilly. Check number 1194 for \$46,000 was paid by MEDCO on July 28, 2009.<sup>292</sup> The

<sup>286</sup> Various invoices for Jin Hee Noh, dated April 9, 2010 - October 3, 2013.

<sup>287</sup> Maryland Business Express, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited October 21, 2018.

<sup>288</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated June 3, 2009.

<sup>289</sup> Check to ELC from the Maryland Economic Development Corporation, dated June 4, 2009.

<sup>290</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated June 3, 2009.

<sup>291</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated July 28, 2009.

<sup>292</sup> Check to ELC from the Maryland Economic Development Corporation, dated July 28, 2009.

transaction description reads “DED Website Construction” and the payee address was “22 West Jefferson Street, suite 305, Rockville, MD 20850.”<sup>293</sup>

The request for payment of \$52,000 from MEDCO to ELC was made in a memorandum to Mr. Brennan from Mr. Bang via Mr. Silverman dated June 11, 2010, subject “[r]equest to Draw Funds from MEDCO Held Germantown Innovation Center Special Accounts.”<sup>294</sup> The memo included a reference to invoice MCDED#10-02, but does not indicate that the invoice was attached. This invoice was not identified in the support provided to Baker Tilly. Check number 1429 for \$52,000 was paid by MEDCO on June 10, 2010.<sup>295</sup> The transaction description reads “DED Website Completion FY10-11” and the payee address was 22 West Jefferson Street, Suite 305, Rockville, MD 20850.<sup>296</sup>

## ii. Payments from Scheer to ELC

Baker Tilly identified two payments from Scheer to ELC totaling \$52,500.

**Table 11. Payments from Scheer to ELC**

| Check No. | Date     | Vendor | Description                                  | Amount          |
|-----------|----------|--------|----------------------------------------------|-----------------|
| 4620      | 03/04/09 | ELC    | Charge against MTDC Budget                   | \$17,500        |
| 1182      | 08/28/09 | ELC    | Germantown Incubator Reimburse Data Expenses | 35,000          |
|           |          |        |                                              | <b>\$52,500</b> |

On March 4, 2009, in an email from Mr. Bang addressed to Mr. Genakos and Mr. Miller, both of MEDCO, Mr. Bang stated, “I have requested Scheer to prepare two checks for Salesforce and ELC against the County’s \$25,000 encumbrance for the Incubator Operational Study.”<sup>297</sup> However, the amount of the funding of ELC and Salesforce was in excess of \$25,000. Mr. Bang wrote “[d]ue to some internal procurement requirement, we are going to go ahead and tie the contract with DED funds but use MTDC reimbursement for database—used by Incubator and DED--related costs for Salesforce (due to the total costs, we have to keep it out of our system).” This language points to another example of Mr. Bang circumventing the procurement process.

The support for this payment includes the PNC bank statement for the MEDCO MTDC/Scheer Partners MGMT Inc. account ending in 6631 for the period March 1, 2009 to March 31, 2009.<sup>298</sup>

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<sup>293</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated July 28, 2009.

<sup>294</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held Germantown Innovation Center Special Accounts, dated June 11, 2010.

<sup>295</sup> Check to ELC from the Maryland Economic Development Corporation, dated June 10, 2010.

<sup>296</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held Germantown Innovation Center Special Accounts, dated June 11, 2010.

<sup>297</sup> Emails between Mr. Bang, Mr. Genakos (MEDCO), Mr. Miller (MEDCO), Ms. Benjamin (County), and Ms. Tebo (MEDCO), dated March 4 - April 2, 2009, at 2.

<sup>298</sup> The Maryland Technology & Development Center Monthly Operating Report prepared by Scheer Partners, Inc. for March 2009, at 3 and 5.

The statement includes an image of both sides of the cancelled check. The check is endorsed by the signature of what appears to be “Jungmee Noh” or “Jungmee Nah.”

The payment request on August 28, 2009, for a payment of \$35,000, was made in an email chain between Mr. Bouey and Mr. Bang.<sup>299</sup> In the email on August 28, 2009, Mr. Bouey wrote, “You [Mr. Bang] indicated that we [Scheer] should also prepare a \$35,000 check to ELC for Reimb Data Expenses.”<sup>300</sup> Mr. Bouey wrote that he “cannot find where we [Scheer] have paid this vendor previously.” and requested the address. Mr. Bang replied with the address 22 East Jefferson Street Rockville, MD 20850.<sup>301</sup> Baker Tilly does not have any communications evidencing the original request for this payment.

**b. J & K System(s)**

Baker Tilly identified two payments made by MEDCO to the vendors “J & K System” and “J & K Systems” (collectively, “J & K Systems”) totaling \$70,600. Based on the type of work performed as listed in the description, and the common address, we assume that these two vendors are the same entity. These transactions were both for customization of software and MIS services for the DED and the BIN Program.<sup>302</sup> The payee address for J & K Systems is listed on both requests as 11567 Edmonston Road, Beltsville, MD 20705.<sup>303</sup> That location appears to be in an office or light industrial park.<sup>304</sup> There was no indication if “J & K” was an acronym for another name. There was no indication of J & K Systems’ organizational form in the name, *e.g.*, the name did not include “Inc.” or “LLC,” for example. Despite the references to the work having been performed for the DED, there is no such vendor in the County database.<sup>305</sup> There are no individual names associated with the vendor in the supporting documentation. A search of the Scheer disbursements database and the County Accounts Payable database did not reveal any payments made to J & K System, J & K Systems, or other versions of this name.

The Maryland Secretary of State business entity database contained no records for either J & K System or J & K Systems. However, Baker Tilly identified an entity with a similar name, JK Systems, Inc., which filed Articles of Incorporation on August 23, 2013.<sup>306</sup> The resident agent

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<sup>299</sup> Emails between Mr. Bang (County) and Mr. Bouey (Scheer), dated August 28, 2009.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> MIS is an abbreviation for Management Information Services, another term for Information Technology or IT.

<sup>303</sup> Letter to the Maryland Economic Development Corporation, dated September 19, 2008; Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated April 3, 2009.

<sup>304</sup> <https://www.google.com/earth/>, last visited October 22, 2018.

<sup>305</sup> Confirmed by OCA personnel on October 23, 2018.

<sup>306</sup> JK Systems, Inc. Articles of Incorporation for a Close Corporation, dated August 23, 2013, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

listed is a former County employee within the DED from 2006 to 2011. JK Systems, Inc. filed Articles of Dissolution on January 30, 2017.<sup>307</sup>

In the Scope 1 Forensic Investigation, Baker Tilly identified 14 payments from the County to this former employee totaling \$3,465.10.<sup>308</sup> Four payments totaling \$1,573.85 had supporting documentation. These payments were for expense reimbursement and the translation of a document. None of these payments showed indications of fraud. Ten payments totaling \$1,891.25 were beyond the County’s document retention policy and thus there was no supporting documentation. The vendor addresses did not coincide with the addresses noted above.

Email support indicates that this former employee appeared to have knowledge of the Salesforce platform, performed Salesforce related duties for the DED, and may have held training sessions. An email from this former employee to a DED email group dated November 11, 2009, discussed her work in Salesforce for the department and indicated that she would be holding a training session for County employees.<sup>309</sup> Another email from this former employee to Mr. Bang on July 13, 2010, discussed an employee’s Salesforce entries and included an attached Salesforce report.<sup>310</sup> However, this experience does not appear sufficient for a project at the level implied by the size of the payments to J & K Systems.

Both payments reference the project for the DED and the Incubators. These payments may be another example of an attempt to avoid the procurement process by not making the payment directly from the County. We have identified no correspondence to or from Mr. Bang that acknowledges that this former employee is associated with J & K Systems or JK Systems, Inc.

One of the job functions of this former employee was related to the Small Business Revolving Loan Program and/or Community Legacy Loan Program, as noted in the description of the payment to NLCW, Inc.

**Table 12. Payments from MEDCO to J & K Systems, Inc.**

| Check No. | Date     | Vendor        | Description                                                                                                                  | Amount           |
|-----------|----------|---------------|------------------------------------------------------------------------------------------------------------------------------|------------------|
| 1136      | 09/22/08 | J & K System  | Customization of Salesforce (prospect/management database) to track DED and Incubator companies [sic] performance and impact | \$ 21,000        |
| 1168      | 04/08/09 | J & K Systems | Development of MIS for DED programs FY09-FY10                                                                                | 49,600           |
|           |          |               |                                                                                                                              | <b>\$ 70,600</b> |

<sup>307</sup> JK Systems, Inc. Articles of Dissolution, dated February 1, 2017, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>308</sup> See Appendix I for Scope 2 County Data

<sup>309</sup> Email between this former employee and the DED, dated November 11, 2009.

<sup>310</sup> Email between Mr. Bang (County) and this former County employee, dated July 13, 2010.

#### **4. Young J. Pack and Woodfield, LLC<sup>311</sup>**

Baker Tilly identified one payment of \$145,000 from MEDCO to Woodfield, LLC on June 3, 2008. An entity called Woodfield, LLC is shown in the Maryland Secretary of State Business Database as organized in 1996 by Alan H. Grant at the former address of Grant, Riffkin & Strauss, P.C.<sup>312</sup> Woodfield, LLC is shown as forfeited in 1999 due to failure to file a property return in 1998.<sup>313</sup>

J and Y Remnant, LLC (“J and Y Remnant”), was formed on June 19, 2007.<sup>314</sup> Youn Hee Jung, believed to be the spouse of Mr. Bang, was the Resident Agent at an address known to be associated with Mr. Bang. On January 22, 2008, J and Y Remnant’s address was changed to a different address known to be associated with Mr. Bang.<sup>315</sup> On June 23, 2015, the Resident Agent of J and Y Remnant was changed to Youngja Pack and the address was changed to 18544 Woodfield Road, Gaithersburg MD 20879, the location of the Woodfield Diner.<sup>316</sup> J and Y Remnant registered the trade name “Woodfield Diner” on November 30, 2007.<sup>317</sup> The registration lapsed on November 19, 2012.<sup>318</sup> J and Y Remnant re-registered the trade name on August 6, 2015.<sup>319</sup>

Public records and records obtained from Mr. Bang’s County hard drive evidence that the Woodfield Diner is owned by J and Y Remnant. Youn Hee Jung is listed on various documents as the Vice President and Member of J and Y Remnant.<sup>320</sup> Byung Il Bang (Mr. Bang) signed as a

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<sup>311</sup> Young J. Pack is also referred to as, but not limited to, Young Jae Pack, Young Ja Pack Youngja Pack, Young J Pack and Pack Young Ja.

<sup>312</sup> Maryland Business Express: Woodfield, LLC, dated October 30, 1996, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited October 18, 2018; FindLaw: Grant, Riffkin, & Strauss, P.C, [https://pview.findlaw.com/view/1632832\\_1](https://pview.findlaw.com/view/1632832_1), last visited November 6, 2018.

<sup>313</sup> Maryland Business Express: Woodfield, LLC, dated October 30, 1996, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited October 18, 2018.

<sup>314</sup> J and Y Remnant, LLC Articles of Organization, dated June 19, 2007, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>315</sup> J and Y Remnant, LLC Resolution to Change Principal Office or Resident Agent, dated January 22, 2008, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>316</sup> J and Y Remnant, LLC Resolution to Change Principal Office or Resident Agent, dated June 23, 2015, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018; Trade Name Application for Woodfield Diner, dated November 30, 2007, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>317</sup> Trade Name Application for Woodfield Diner, dated November 30, 2007, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>318</sup> Maryland Business Express, Woodfield Diner, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>319</sup> Trade Name Application for Woodfield Diner, dated August 6, 2015, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>320</sup> J and Y Remnant, LLC IRS Form 8453-PE for the tax year beginning June 2018 and ending December 31, 2007; J and Y Remnant, LLC IRS Form 941 for the Fourth Quarter of 2010, at 1 and 3.

third-party designee for J and Y Remnant on its IRS Form 941.<sup>321</sup> Mr. Bang's home address is listed on this tax form. An organization chart for J and Y Remnant, LLC (DBA: Woodfield Diner) includes Young Ja Pack as President & Managing Member, Youn Hee Jung as Operational Manager and David Bang as Cook.

**a. Young J. Pack**

Baker Tilly identified five payments to Young J. Pack totaling \$163,000 between May 2007 and September 2009. As described below, these payments were made at the direction of Mr. Bang. These transactions were ostensibly for a feasibility study and/or CIP Project 789057.<sup>322</sup> Baker Tilly believes that this person may be an associate or relative of Youn Hee Jung.

Three transactions contain a reference to CIP 789057 in the description field. "CIP" is the County's acronym for Capital Improvement Project. As posted on the County's website, CIP 789057 is entitled "Life Sciences and Technology Centers."<sup>323</sup> This project "provides funds for the development and land use plans for the Germantown Life Sciences Park (GLSP) and the Site II development, also referred to as the East County Center for Science and Technology (ECCST)."<sup>324</sup> The ECCST was the proposed Incubator for the investment by Chungbuk Province. There is additional mention of the project supporting "the development of the Germantown, East County, and Rockville business incubators."<sup>325</sup>

While CIP 789057 includes feasibility studies,<sup>326</sup> Baker Tilly was unable to locate any support to suggest that: (a) a feasibility study was commissioned by the County; (b) that the County agreed to pay for such a study on behalf of Chungbuk Province; or (c) that such a study was conducted by this individual. No reports, agreements, statements of work, invoices, or timesheets detailing work completed by Young J. Pack or any other person was identified. MEDCO and Scheer have

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<sup>321</sup> J and Y Remnant, LLC IRS Form 941 for the Fourth Quarter of 2010, at 2.

<sup>322</sup> Emails between Mr. Bang (County) and Ms. Trainor (MEDCO), dated April 20 - 30, 2007; Email between Mr. Bang (County) and Ms. Trainor (MEDCO), dated May 30, 2007; Email between Mr. Bang (County) and Ms. Trainor (MEDCO), dated July 10, 2007; Letter to the Maryland Economic Development Corporation, dated September 7, 2007; Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated September 22, 2009.

<sup>323</sup> The Department of Economic Development: Review of Budget and Strategies, dated February 3, 2009, at 2 - 3; CIP No. 789057: Life Sciences and Technology Centers, dated August 11, 2008, <https://www.montgomerycountymd.gov/OMB/Resources/Files/omb/pdfs/fy09/vol3/789057.pdf>, last visited November 1, 2018.

<sup>324</sup> CIP No. 789057: Life Sciences and Technology Centers, dated August 11, 2008, <https://www.montgomerycountymd.gov/OMB/Resources/Files/omb/pdfs/fy09/vol3/789057.pdf>, last visited November 1, 2018.

<sup>325</sup> *Id.*

<sup>326</sup> The Department of Economic Development: Review of Budget and Strategies, dated February 3, 2009, at 2 - 3; CIP No. 789057: Life Sciences and Technology Centers, dated August 11, 2008, <https://www.montgomerycountymd.gov/OMB/Resources/Files/omb/pdfs/fy09/vol3/789057.pdf>, last visited November 1, 2018.

advised that neither had any documentation regarding a Chungbuk planning or feasibility study for the ECCST.

**Table 13. Payments from MEDCO to Young J. Pack**

| Check No. | Date     | Vendor        | Description                                                                                 | Amount           |
|-----------|----------|---------------|---------------------------------------------------------------------------------------------|------------------|
| 2509      | 05/02/07 | Young J. Pack | Life Science-CIP Project 789057-MOU on Feasibility Study                                    | \$ 15,000        |
| 2519      | 05/30/07 | Young J. Pack | Remainder of CIP 789057 MOU on Feasibility                                                  | 17,500           |
| 2536      | 07/17/07 | Young Ja Pack | The final and closeout payment to Chungbuk Province under CIP MOU; Young J. Pack /CK:002536 | 27,500           |
| 1013      | 09/11/07 | Young J. Pack | For Amendment to CIP 789057 MOU                                                             | 48,000           |
| Wire      | 09/29/09 | Pack Young Ja | Chungbuk's planning/feasibility study; Partnership project with Chungbuk Korea              | 55,000           |
|           |          |               |                                                                                             | <b>\$163,000</b> |

**i. Payment of \$15,000 on May 2, 2007**

The request for payment of \$15,000 was made in an email from Mr. Bang to a current or former employee at MEDCO dated April 30, 2007, subject “RE: Rockville Invoice.”<sup>327</sup> Mr. Bang stated, “[i]t is time for us to utilize the \$164,252.98 of county funds not held in the CD.”<sup>328</sup> The transaction description in the email read, “Reference: Life Science-CIP Project 789057-MOU on Feasibility Study.”<sup>329</sup> The address listed for the address was “Chungcheongbuk-do Province Government, 158, Sangdang-ro, Cheongju-si, Korea.”<sup>330</sup> No supporting documentation was provided. The check number 2509 for \$15,000 was paid by MEDCO to Young J. Pack on May 2, 2007.<sup>331</sup> The request instructed that the check be forwarded to Mr. Bang’s attention.<sup>332</sup>

**ii. Payment of \$17,500 on May 30, 2007**

The request for payment of \$17,500 was made in an email from Mr. Bang to a current or former employee at MEDCO dated May 30, 2007, subject “check request and retur [sic] of a check.”<sup>333</sup> No supporting documentation was provided. Check number 2519 for \$17,500 was paid by

<sup>327</sup> Emails between Mr. Bang (County) and Ms. Trainor (MEDCO), dated April 20 - 30, 2007.

<sup>328</sup> “CD” is understood to be an incubator development account to accrue interest on held funds surrounding the incubator start up; *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> Check to Young J. Pack from the Maryland Economic Development Corporation, dated May 2, 2007 and Check to Eye Trans from the Maryland Economic Development Corporation, dated May 2, 2007.

<sup>332</sup> Emails between Mr. Bang (County) and Ms. Trainor (MEDCO), dated April 20 - 30, 2007.

<sup>333</sup> Email between Mr. Bang (County) and Ms. Trainor (MEDCO), dated May 30, 2007.

MEDCO to Young J. Pack on May 30, 2007.<sup>334</sup> The transaction description in the email reads “remainder of CIP 789057 MOU on Feasibility.”<sup>335</sup> There was no payee address identified in the supporting request. The request instructed that the check be forwarded to Mr. Bang’s attention.<sup>336</sup>

**iii. Payment of \$27,500 on July 17, 2007**

The request for payment of \$27,500 was made in an email from Mr. Bang to Ms. Trainor dated July 10, 2007, subject “Checks fro mand [sic] for Montgomery County.”<sup>337</sup> No supporting documentation was provided. Mr. Bang informs Ms. Trainor in the email, “I have fedexed FY08 incubator budgets and [4] checks for MEDCO [from the County].”<sup>338</sup> Mr. Bang requested a check for \$27,500 to “c/o Young Ja Pack” for “the final and closeout payment to Chungbuk Province under CIP MOU.”<sup>339</sup> There was no payee address identified and the request directed MEDCO to “send the checks to [Mr. Bang’s] attention.”<sup>340</sup>

A check from Montgomery County to MEDCO for \$70,000 was issued on July 3, 2007.<sup>341</sup> Handwriting on the cancelled check noted that the check to Young Ja Pack is one of three payments to be issued from the proceeds of that check.<sup>342</sup> Baker Tilly identified the payment of \$27,500 on July 17, 2007, as the transaction referenced on the cancelled check.

**iv. Payment of \$48,000 on September 11, 2007**

The request for payment of \$48,000 to Young Ja Pack was made in a letter to MEDCO from Mr. Bang dated September 7, 2007.<sup>343</sup> Mr. Bang requested a check to be prepared by MEDCO with the payee “c/o Young Ja Pack.”<sup>344</sup> No other supporting documentation was provided. Check number 1013 for \$48,000 was paid by MEDCO to Young J. Pack on September 11, 2007.<sup>345</sup> The transaction description was for “[a]mendment to CIP 789057 MOU” for “c/o Young Ja Pack.” No payee address was listed in the letter. The request directed MEDCO to “send it to [Mr. Bang] once the funds become available to MEDCO.”<sup>346</sup>

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<sup>334</sup> Check to Young J. Pack from the Maryland Economic Development Corporation, dated May 30, 2007.

<sup>335</sup> Email between Mr. Bang (County) and Ms. Trainor (MEDCO), dated May 30, 2007.

<sup>336</sup> *Id.*

<sup>337</sup> Email between Mr. Bang (County) and Ms. Trainor (MEDCO), dated July 10, 2007.

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> Check to the Maryland Economic Development Corporation from Montgomery County, Maryland, dated July 3, 2007.

<sup>342</sup> *Id.*

<sup>343</sup> Letter to the Maryland Economic Development Corporation, dated September 7, 2007.

<sup>344</sup> *Id.*

<sup>345</sup> Check to Young J. Pack from the Maryland Economic Development Corporation, dated September 11, 2007.

<sup>346</sup> Letter to the Maryland Economic Development Corporation, dated September 7, 2007.

**v. Payment of \$55,000 on September 29, 2009**

The request for payment of \$55,000 was made in a memorandum to Mr. Brennan from Mr. Bang via Mr. Silverman dated September 22, 2009, subject “[r]equest to Draw Funds From MEDCO Held DED Special Accounts.”<sup>347</sup> The purported purpose of the payment was for “Chungbuk’s planning/feasibility study” but no supporting documentation was attached.<sup>348</sup> A wire for \$55,000 was paid by MEDCO to Young Ja Pack on September 29, 2009.<sup>349</sup> The transaction description for the wire reads, project: “[p]artnership project with Chungbuk Korea” reference: Chungbuk’s planning/feasibility study, payee “Pack Young Ja” with bank wiring information.<sup>350</sup> The beneficiary bank and account number do not match the bank used by Chungbuk Province to wire funds to or receive funds from the County.<sup>351</sup>

**b. Woodfield, LLC**

Baker Tilly identified one payment of \$145,000 from MEDCO to Woodfield, LLC on June 3, 2008. On June 2, 2008, Mr. Bang requested, via email to Jim Miller, a check for \$145,000 for Woodfield, LLC: “I would appreciate if you could ... prepare two checks ...so I can pick up during Wednesday’s meeting. 1) Woodfield, LLC for \$145,000 and 2) Montgomery County for \$15,000.”<sup>352</sup> There was no description of the purpose of the check, no address for the vendor and no support attached. In the same email trail, Mr. Miller stated that he had requested that Mr. Bang’s funding requests “be documented by him and another senior representative from his office. We ned [*sic*] this to assure thefunds [*sic*] are being utilized appropriately.”<sup>353</sup> Check number 1101 was paid to Woodfield, LLC in the requested amount of \$145,000.<sup>354</sup>

Samuel Kim, CPA, the Organizer and Registered Agent of CBIF, and contact person for invoices presented by CBIF to the County,<sup>355</sup> prepared an accountant’s compilation report for J and Y Remnant in June 2011. The balance sheet contained therein lists an intangible asset of \$145,000, the same amount of MEDCO’s payment.

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<sup>347</sup> Memorandum to the Maryland Economic Development Corporation regarding Request to Draw Funds From MEDCO Held DED Special Accounts, dated September 22, 2009.

<sup>348</sup> *Id.*

<sup>349</sup> See Appendix K Scope 2 MEDCO AP Data.

<sup>350</sup> See Appendix K Scope 2 MEDCO AP Data.

<sup>351</sup> Governor of Chungbuk Province Korea Invoice #071514 support packet, dated July 14 - 22, 2014.

<sup>352</sup> Emails between Mr. Bang, Mr. Brennan (MEDCO), Mr. Miller (MEDCO), Mr. Robinson (MEDCO), and Ms. Trainor (MEDCO), dated June 2 - 4, 2008, at 2.

<sup>353</sup> *Id.* at 1.

<sup>354</sup> Check to Woodfield, LLC from the Maryland Economic Development Corporation, dated June 3, 2008.

<sup>355</sup> See Scope 1 Report.

## 5. NLCW, Inc.

Baker Tilly identified one payment made by MEDCO to NLCW, Inc. (“NLCW”) for \$80,000.00 on April 30, 2008, made per Mr. Bang’s request in a letter to Mr. Brennan dated April 24, 2008.<sup>356</sup> This is the only transaction without an observable connection to Mr. Bang, CBIF, or Chungbuk Province, other than Mr. Bang’s request for payment. However, the transaction contains indications of fraud, including possible identity theft used to obtain the payment.

Mr. Bang’s letter requested payment for NLCW because the company had been awarded a Community Legacy Small Business Loan. Mr. Bang stated that “we” have to “upfront” the money and that the funds would be restored after State funding was received.<sup>357</sup> The request included a copy of the purported loan offer letter signed by Mr. Ganguly.<sup>358</sup> The loan offer letter referenced the loan recipient as “NLCW, Inc. T/A Rainbow Café.”<sup>359</sup>

Baker Tilly noted that the same former employee who is believed to be the Resident Agent of JK Systems, Inc. is listed as one of two County contacts for the loan application process. She is listed as the “Business Financing Programs Specialist” in the loan documentation. Baker Tilly has not been provided with a copy of the cancelled check, which might have shown an endorsement or other information which might have been used to determine who had negotiated the check.

The Maryland Secretary of State business entity database shows that MNK, Inc. (“MNK”) had filed for the trade names “Rainbow Café” and the “Across the Street Café.”<sup>360</sup> MNK had applied for a Community Legacy Small Business Loan on March 1, 2008. The Montgomery County Department of Finance provided Baker Tilly with MNK’s loan file. The file evidenced that MNK’s loan offer was issued on June 3, 2008, executed loan documents were dated October 21, 2008, and a check for \$60,000 was issued on November 21, 2008.<sup>361</sup> The loan file also included a 2012 letter from Mr. Bang to MNK indicating that the loan was “completely paid off.”<sup>362</sup>

A search by Baker Tilly of the Maryland Secretary of State business entity database, Dun & Bradstreet, and other national public record databases failed to disclose any corporate filing information or business information for NLCW, Inc. The purported “loan offer” was addressed to the same individual at the same Silver Spring address as that of the individual who was listed as

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<sup>356</sup> Letter to the Maryland Economic Development Corporation, dated April 24, 2008.

<sup>357</sup> *Id.*

<sup>358</sup> Purported Letter to NLCW, Inc., dated April 26, 2008.

<sup>359</sup> T/A is an abbreviation for “trading as.”

<sup>360</sup> Trade Name Application for Rainbow Café Restaurant, Bar & Lounge, dated April 17, 2007, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018; Trade Name Application for Across the Street Café Restaurant and Bar, dated April 10, 2008, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>361</sup> MNK, Inc. loan file provided by Montgomery County Department of Finance.

<sup>362</sup> Letter to the Borrower regarding the Community Legacy Small Business Revolving Loan Agreement, dated December 20, 2012.

the President of MNK (the “Borrower”). Baker Tilly interviewed the Borrower by telephone on September 4, 2018. The Borrower stated that he was the owner of MNK, Inc., and that he had operated a restaurant in Silver Spring, which he had since sold. The restaurant was at one point named “The Rainbow Café” and later called the “Across the Street Café.” He stated that he had applied for, and received, a small business loan in 2008 from the County DED for \$60,000. The loan was made to his company, MNK, Inc. He never received a check from MEDCO for \$80,000, nor does he know NLCW. He further advised that the Silver Spring address used on the MNK and NLCW documentation was his personal residence. A search of the Maryland Department of Assessment & Taxation’s Real Property Database shows that the Borrower has owned the property at that address since December 29, 2000.<sup>363</sup> The Borrower recalled that he had dealt with Mr. Bang at some point in that process, but could not recall specifics of their interaction. He stated that he had paid off the loan in 2012 and that \$15,000 of the \$60,000 principal amount was forgiven by the County as part of a grant program.

#### **E. OTHER PAYMENTS**

Baker Tilly observed payments directed by Mr. Bang from both Scheer and MEDCO, which may be legitimate business expenses of the DED, but may not have supported the operation of the various Incubators or the BIN Program specifically. We observed payments to, for example, Salesforce and The Economic Report. However, under the 2006 Master Management Agreement, DED expenses could be paid from the Special Reserve Account. We also noted payments to BHI made from Incubator Management Accounts, *see* Section X.

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<sup>363</sup> Real Property Data Search for Montgomery County,  
<https://sdat.dat.maryland.gov/RealProperty/Pages/default.aspx>, last visited October 19, 2018, at 1.

## VIII. SUSTAINABILITY OF THE BIN PROGRAM

### A. OVERVIEW

The BIN Program’s “very clear, almost singular, objective” since inception was “to provide low-cost space with flexible lease terms for emerging, primarily technology-based companies, with the implicit assumption that this capacity would allow new companies to start and grow in Montgomery County.”<sup>364</sup> The Incubators provide other services to Licensees, such as conference space and consulting, included in the rent. These aspects of the BIN Program, low rent, flexible leases and extra services, almost by definition, created entities that would run at a loss. This shortfall required continual County support through grant funding and other financial assistance.

In addition to the forensic investigation reported elsewhere in this Scope 2 Report, the OCA requested Baker Tilly provide a preliminary determination of the sustainability of five BIN Program Incubators, that is, the ability of the Incubators to be self-supporting, without County assistance.

### B. ACCESS TO DATA

As discussed in Section VI., Scheer provided Baker Tilly with unaudited monthly financial records for FY 2007 through FY 2018 for each of the five Incubators (the “Monthly Financial Reports”).<sup>365</sup> One of the “primary responsibilities of the Facility Manager” was to “prepare detailed monthly reports...of receipts and disbursement [*sic*] both for preceding month and year to date.”<sup>366</sup> The Facilities Management Agreements required a “Monthly Reporting Package,” which was to contain “financial and management reports summarizing all matters pertaining to the management, licensing, maintenance, accounting and operation of the Facility for the previous calendar month.”<sup>367</sup>

Baker Tilly received audited financial statements for the SGIC for the years ended June 30, 2007 through 2013. In addition, Baker Tilly received MEDCO’s consolidated audited financial statements for the years ending June 30, 2008 through June 30, 2017. The MEDCO audit reports include certain supplemental information for each of MEDCO’s individual projects, including the RIC and the NCCoE.

### C. FINANCIAL STATEMENTS AS REPORTED

The tables below summarize the total revenue and expenses reported in the Monthly Financial Reports for each Incubator during the Relevant Period.

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<sup>364</sup> Montgomery County Business Innovation Network: Program and Policy Review by Orion Ventures, dated May 2012, at 5.

<sup>365</sup> To the extent that each Incubator was open during the period.

<sup>366</sup> For example, Management Agreement between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated December 1, 2011 (for SSIC), at 2. Management Agreement by and between the Maryland Economic Development Corporation and Scheer Partners Management, Inc., dated November 10, 2011 (for SGIC), at 3.

<sup>367</sup> *Id.* at 8; *Id.* at 8.

**Table 14. Total Reported Net Income (Loss)<sup>368</sup>**

| <i>As reported</i>                     | <b>FY 2007 - FY 2018</b> |
|----------------------------------------|--------------------------|
| Revenue                                |                          |
| Operating Revenue                      | \$ 22,441,139            |
| Grant Revenue                          | 10,829,133               |
| Total Revenue                          | 33,270,272               |
| Total Expenses                         | (34,627,298)             |
| Net Income (Loss) – <i>As Reported</i> | <b>\$ (1,357,026)</b>    |

**Table 15. Total Reported Net Income (Loss) by Incubator<sup>369</sup>**

| <i>As reported</i>                     | <b>FY 2007 - FY 2018</b> |
|----------------------------------------|--------------------------|
| Net Income (Loss)                      |                          |
| GIC                                    | \$ (1,655,604)           |
| RIC                                    | (1,925,234)              |
| SGIC                                   | 3,200,492                |
| SSIC                                   | (96,423)                 |
| WBIC                                   | (880,257)                |
| Net Income (Loss) – <i>As Reported</i> | <b>\$ (1,357,026)</b>    |

#### **D. FINANCIAL ANALYSIS**

Baker Tilly analyzed the Monthly Financial Reports and other financial data provided. Information provided and analyses developed as part of other segments of the Scope 1 and Scope 2 Forensic Investigations, including interviews of individuals involved in the BIN Program, also assisted in forming this analysis. After performing the steps outlined in Section VI., Methodology, Baker Tilly analyzed the Scope 2 County Data, the Scope 2 MEDCO AP Data, and the Scope 2 Scheer Data (collectively, the “Scope 2 Transaction Data”).<sup>370</sup>

#### **E. LIMITATIONS**

The monthly financial statements provided by Scheer may be incomplete or incorrect. In some cases, these issues are material. Among other issues, we observed:

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<sup>368</sup> See Appendix D for Incubator Financial Analysis.

<sup>369</sup> *Id.*

<sup>370</sup> As described previously, the Scope 2 Scheer Data contained approximately 15,000 transactions, totaling \$39.6 million in disbursements. To remove transfers from one bank account to another, we reviewed 99% of the total dollar amount of disbursements from Scheer to MEDCO and 15% of the disbursements from Scheer to Scheer. The majority of the disbursements from Scheer to Scheer were less than \$20,000.

**1. Revenue**

Not all of the revenue, including grant funding, was included in the revenue as shown on the monthly financial statements. Baker Tilly observed that the County provided approximately \$18.8 million to MEDCO and Scheer for the management of the BIN Program.<sup>371</sup> In addition, the Incubators received approximately \$1.5 million in grant funds from TEDCO. The Monthly Financial Reports prepared by Scheer reflect only \$10.8 million in grant funds:

**Table 16. Grant Revenue as Reported and as Identified<sup>372</sup>**

|                                      | <b>FY 2007 - FY 2018</b> |
|--------------------------------------|--------------------------|
| <i>As reported</i>                   |                          |
| Grant Revenue                        | \$ 10,829,133            |
| <i>As identified</i>                 |                          |
| County payments to MEDCO and Scheer  | 18,795,256               |
| Grants from TEDCO                    | 1,485,635                |
| <b>Total Grant payments received</b> | <b>\$ 20,280,891</b>     |
| <i>Variance</i>                      | <b>\$ (9,451,758)</b>    |

**2. Expenses**

Certain expenses may have been included improperly in the Monthly Financial Reports, and conversely, certain expenses, including those paid by the County directly to vendors, and those paid by MEDCO, may not have been included or may have been included inaccurately.

**a. Payments by the County Directly to Vendors**

We do not see evidence that payments made by the County directly to vendors were accurately included in the Incubator financial statements. These payments totaled over \$4.3 million. Payments to the landlords of GIC and WBIC were the majority of these payments.

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<sup>371</sup> The Scope 2 Scheer Data contained \$20.1 million paid to MEDCO and Scheer, less \$1.4 million paid to MEDCO and Scheer on behalf of BHI, unrelated to the BIN Program.

<sup>372</sup> See Appendix D for Incubator Financial Analysis. Does not include County payments to other vendors or payments to MEDCO and Scheer for expenses unrelated to the BIN Program, such as grants to BHI paid through MEDCO.

**Table 17. Payments by the County Directly to BIN Program Vendors<sup>373</sup>**

|                                       | <b>FY 2007 -<br/>FY 2018</b> |
|---------------------------------------|------------------------------|
| Rent Payments                         |                              |
| Rent - GIC                            | \$ 1,793,410                 |
| Rent - WBIC                           | 1,928,116                    |
| Total Rent Payments                   | 3,721,526                    |
| Payments to Other BIN Program Vendors | 626,962                      |
| <b>Total</b>                          | <b>\$ 4,348,488</b>          |

**b. Questionable Payments**

As described in Section VII., Scheer made Questionable Payments totaling \$1.2 million. These payments were paid from different Incubator Management Accounts and accounted for in different ways. As shown below, \$486,631 in Questionable Payments were improperly included in Incubator expenses.

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<sup>373</sup> See Appendix I for Scope 2 County Data.

**Table 18. Accounting Treatment of Questionable Payments<sup>374</sup>**

| Check No.                          | Date     | Vendor | Incubator | Account                        | Financial Statement Impacted | Amount              |
|------------------------------------|----------|--------|-----------|--------------------------------|------------------------------|---------------------|
| 1381                               | 08/04/10 | CBIF   | GIC       | Advance from Montgomery County | Balance Sheet                | \$ 56,000           |
| 1561                               | 05/17/11 | CBIF   | GIC       | Advance from Montgomery County | Balance Sheet                | 200,000             |
| 2371                               | 05/27/14 | CBIF   | GIC       | Chungbuk Credit                | Balance Sheet                | 42,336              |
| 2421                               | 07/22/14 | CBIF   | GIC       | Due to/from Montgomery County  | Balance Sheet                | 246,521             |
|                                    |          |        |           |                                |                              | <b>\$ 544,857</b>   |
| 2332                               | 06/12/13 | CBIF   | WBIC      | Accrued Expenses               | Balance Sheet                | \$ 150,000          |
| 2098                               | 05/08/13 | CBIF   | GIC       | Rent Expense                   | Income Statement             | \$ 200,000          |
| 2235                               | 11/08/13 | CBIF   | GIC       | Rent Expense                   | Income Statement             | 149,131             |
| 2318                               | 03/21/14 | CBIF   | GIC       | Rent Expense                   | Income Statement             | 120,000             |
|                                    |          |        |           |                                |                              | <b>\$ 469,131</b>   |
| 4620                               | 03/04/09 | ELC    | SGIC      | Professional Fees              | Income Statement             | \$ 17,500           |
| 1182                               | 08/29/08 | ELC    | GIC       | Advance from Montgomery County | Balance Sheet                | 35,000              |
| Total accrued on Balance Sheet     |          |        |           |                                |                              | 797,857             |
| Total expensed to Income Statement |          |        |           |                                |                              | 486,631             |
| <b>Total</b>                       |          |        |           |                                |                              | <b>\$ 1,216,488</b> |

**3. Incorrect Incubator**

Expenses were not always attributed to the correct Incubator. In particular, the GIC Management Account appeared to have been used for a large volume of payments unrelated to the GIC. However, these are appropriate expenses to include in an analysis of the aggregate expenses.

**4. Inappropriate Accounting Treatment**

The accounting methods used for certain items, including rent paid directly by the County, did not adequately or appropriately capture those transactions. Baker Tilly noted numerous instances of incomplete accounting for certain transactions.

For example, although Scheer made payments from the SGIC Management Account for debt service on the underlying building loan, the Monthly Financial Reports do not include an asset for the building, the associated depreciation expense of such building, or the liability for the debt it is paying. Rather, Scheer recorded this payment as a contra-liability on the balance sheet of the SGIC. In other words, because the debt was technically an obligation of MEDCO, when Scheer paid the debt service from the SGIC Management Account, that payment reduced the debt that

<sup>374</sup> See Appendix J for Scope 2 Scheer Data.

MEDCO owed. Scheer was then owed that money from MEDCO. A “contra-liability” is a negative liability, *i.e.*, it is net against the total amount the Scheer owes MEDCO. The contra-liability account held a debit balance of \$4.2 million in the “Due to/from MEDCO” account as of February 28, 2015, the last financial report provided by Scheer related to the SGIC. However, this accounting treatment does not accurately record the interest expense portion of each payment. It is simply one entity paying a debt of the other entity and recording the money owed.

Based on our analysis of the SGIC audited financial statements, it appears Scheer had not properly recorded building and improvements of \$10 million; accumulated depreciation of \$3.9 million; deferred financing costs of approximately \$26,600; accumulated amortization of \$25,255; and, notes payable of \$1.7 million. We also noted that although Scheer allocated a portion of each monthly debt payment to interest expense, a comparison with the audited financial statements for June 30, 2013, indicates Scheer’s allocation under-reported interest expense that year by approximately \$25,880. The SGIC Monthly Financial Reports also do not include depreciation expense, \$285,537 for the year ended June 30, 2013.

**Table 19. Comparison of June 30, 2013 Balance Sheet - SGIC Monthly Financial Report versus Audited Financial Statements<sup>375</sup>**

|                                              | Monthly Operating Report | Audited Financials  | Variance           |
|----------------------------------------------|--------------------------|---------------------|--------------------|
| <b>Assets</b>                                |                          |                     |                    |
| <b>Current Assets</b>                        |                          |                     |                    |
| Cash - operating account                     | \$ 26,175                |                     |                    |
| Cash - grant account                         | 26,545                   |                     |                    |
| Cash - rental deposit account                | 401,487                  |                     |                    |
| Cash - security deposit account              | 184,414                  |                     |                    |
| <i>Total Cash</i>                            | <u>\$ 638,621</u>        | \$ 1,145,604        | (506,983)          |
| Accounts receivable - base r                 | 128,495                  |                     |                    |
| Allowance for doubtful accou                 | (76,073)                 |                     |                    |
| <i>Net Accounts Receivable</i>               | <u>52,422</u>            | 52,422              | -                  |
| Related Party Receivable                     |                          | 59,377              |                    |
| <i>Net Prepaid Expenses and Other Assets</i> | <u>10,062</u>            | <u>10,062</u>       | -                  |
| <b>Total Current Assets</b>                  | <b>701,105</b>           | <b>1,267,465</b>    | <b>(566,360)</b>   |
| Buildings and Improvements                   | -                        | 9,477,425           |                    |
| Furnishing and Equipment                     | -                        | 545,000             |                    |
| Accumulated depreciation                     | -                        | (3,905,865)         |                    |
| <i>Net Capital Assets</i>                    | <u>-</u>                 | <u>6,116,560</u>    |                    |
| Deferred Financing Costs                     | -                        | 26,600              |                    |
| Interest Rate Swap                           | -                        | 26,404              |                    |
| <b>Total Non-current Assets</b>              | <b>-</b>                 | <b>6,169,564</b>    | <b>(6,169,564)</b> |
| <b>Total assets</b>                          | <b>\$ 701,105</b>        | <b>\$ 7,437,029</b> | <b>(6,735,924)</b> |

<sup>375</sup> William Hanna Innovation Center, A Project of Maryland Economic Development Corporation, Management's Discussion and Analysis and Financial Statements Together with Independent Auditors' Report, years ended June 30, 2013 and 2012.

|                                                        | Monthly Operating<br>Report | Audited<br>Financials | Variance    |
|--------------------------------------------------------|-----------------------------|-----------------------|-------------|
| <b>Liabilities and equity</b>                          |                             |                       |             |
| <b>Current liabilities</b>                             |                             |                       |             |
| <i>Net Accounts Payable and Other Accrued Expenses</i> | \$ 109,473                  | \$ 109,473            | -           |
| Accrued interest                                       | 4,695                       | 8,730                 | (4,035)     |
| Security deposits payable                              | 153,706                     | 153,706               | -           |
| Notes payable                                          | -                           | 410,463               | (410,463)   |
| <b>Total current liabilities</b>                       | 267,874                     | 682,372               | (414,498)   |
| <b>Long term liabilities</b>                           |                             |                       |             |
| Notes payable - long term                              | (1,089,815)                 | 1,647,593             | (2,737,408) |
| Due to/from MEDCO                                      | (4,151,200)                 | -                     |             |
| Interest Rate Swap Liability                           | -                           | 26,404                |             |
| <b>Long term liabilities</b>                           | (5,241,015)                 | 1,673,997             | (6,915,012) |
| <b>Total liabilities</b>                               | (4,973,141)                 | 2,356,369             | (7,329,510) |
| <b>Equity</b>                                          |                             |                       |             |
| Invested in capital assets, net of related debt        | -                           | 4,085,104             |             |
| Restricted under loan agreement                        | -                           | 500,000               |             |
| Unrestricted net assets                                | -                           | 495,556               |             |
| Earned surplus                                         | 5,235,548                   | -                     |             |
| Owner's contribution                                   | 230,000                     | -                     |             |
| Net income                                             | 208,698                     | -                     |             |
| <b>Total equity</b>                                    | 5,674,246                   | 5,080,660             | 593,586     |
| <b>Total liabilities and equity</b>                    | \$ 701,106                  | \$ 7,437,029          | (6,735,923) |

## F. OBSERVATIONS

### 1. Rental Income

Baker Tilly understands from interviews with County employees, several Licensees, and other individuals that license fees (*i.e.*, rent) per square foot, after factoring in the significant common areas and facilities available for Licensee use, were below market rates for similar commercial facilities. This was a means of assisting the Licensees. Baker Tilly did not perform any independent research and analysis to corroborate this.

### 2. Common Area Maintenance Charges

One of the features of the Incubators was the significant common area space, including, in some locations, laboratory or other technical space. Baker Tilly understands from the analysis of Scheer financial reports, license agreements, and interviews with several tenants and certain County employees, that CAM charges were not allocated and billed to tenants. A substantial amount of the square footage of each Incubator constituted common area and no rent, utility, or other maintenance costs related to such space were ever charged back to any tenant. In fact, the leasable square footage of the five Incubators was just 54% of the total square footage.

**Table 20. Leasable Square Feet by Incubator<sup>376</sup>**

|              | Total<br>Square Feet | Leasable<br>Square Feet | %<br>Leasable |
|--------------|----------------------|-------------------------|---------------|
| <b>GIC</b>   | 33,000               | 17,513                  | 53%           |
| <b>RIC</b>   | 22,000               | 13,339                  | 61%           |
| <b>SGIC</b>  | 60,000               | 33,680                  | 56%           |
| <b>SSIC</b>  | 21,000               | 9,920                   | 47%           |
| <b>WBIC</b>  | 12,000               | 5,623                   | 47%           |
| <b>Total</b> | 148,000              | 80,075                  | 54%           |

### **3. Occupancy Rates**

Baker Tilly was informed that the DED attempted to keep the Incubators at a 90% occupancy rate.<sup>377</sup> However, the actual occupancy rates varied widely on a month-by-month basis, in part, due to the flexible lease terms offered. The monthly operating reports produced by Scheer include certain limited data on the occupancy. With the exception of the SGIC, the monthly reports included leased and vacant square footage information. Baker Tilly noted that although monthly occupancy rates could fluctuate from less than 50% to full occupancy of 100%, using year-end occupancy rates for those four Incubators where occupancy information was available, occupancy averaged approximately 85% over the Relevant Period.<sup>378</sup>

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<sup>376</sup> Montgomery County Business Innovation Network: Program and Policy Review by Orion Ventures, dated May 2012, at 11; *See* Appendix D for Incubator Financial Analysis.

<sup>377</sup> Interview of current County employee.

<sup>378</sup> Unaudited monthly operating reports prepared by Scheer Partners, Inc. for each of the five Incubators, for the period of FY 2007 through FY 2018.

**Table 21. Historical Occupancy Rates<sup>379</sup>**

| Average Occupancy  |     |
|--------------------|-----|
| At Fiscal Year End | %   |
| 2007               | 87% |
| 2008               | 83% |
| 2009               | 83% |
| 2010               | 92% |
| 2011               | 86% |
| 2012               | 92% |
| 2013               | 85% |
| 2014               | 90% |
| 2015               | 89% |
| 2016               | 82% |
| 2017               | 77% |
| 2018               | 78% |
| Average            | 85% |

**4. Real Estate and Associated Funding Costs**

Two of the Incubators, the GIC and the WBIC, were located in rented space. The County paid the leases directly; the County was party to the two leases, not the Incubators. Two others, the RIC and the SGIC, were in space owned and financed by MEDCO. The SSIC was owned by the County and partially financed by TEDCO. Baker Tilly did not independently research or analyze third-party comparable rental rates.

**a. SGIC**

MEDCO leased the land from the County,<sup>380</sup> and financed the development of the Incubator facility from three sources. First, MEDCO issued lease revenue bonds for proceeds of \$4.5 million.<sup>381</sup> The bonds were to be repaid with revenue from leasing facility space to tenants and other revenue sources.<sup>382</sup> Second, MEDCO entered into the June 1, 1998 Grant Agreement with Montgomery County, in which the County agreed to provide initial start-up costs of \$100,000 and annual funding for Incubator operations of \$250,000.<sup>383</sup> Annual funding was to be paid by the

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<sup>379</sup> Unaudited monthly operating reports prepared by Scheer Partners, Inc. for each of the five Incubators, for the period of FY 2007 through FY 2018.

<sup>380</sup> Ground Lease between Montgomery County, Maryland and the Maryland Economic Development Corporation, dated June 1, 1998.

<sup>381</sup> Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, Maryland, dated June 1, 1998, at 1.

<sup>382</sup> *Id.*

<sup>383</sup> *Id.* at 2.

County each year for as long as MEDCO's bonds were still outstanding (not to exceed 20 years).<sup>384</sup> The third source of funding was a \$4 million grant from the State of Maryland.

**b. RIC**

During the Relevant Period, MEDCO was the property owner of record of the RIC facility.<sup>385</sup> MEDCO purchased the facility, an office condominium, in 2007 for \$6.25 million, including construction and development costs.<sup>386</sup> To fund the purchase, MEDCO borrowed \$4.7 million from PNC Bank and used \$900,000 in County Incubator development funds already held. The County was granted \$1.0 million from TEDCO, for the total funding of \$6.6 million.<sup>387</sup> Annual funding of \$150,000 per year and initial start-up costs of \$100,000 were provided by the County to MEDCO.<sup>388</sup>

**c. SSIC**

The SSIC is owned by the County. In July 2003, TEDCO provided the County \$1,000,000 in reimbursable grant funding to finance a portion of the costs to construct the SSIC.<sup>389</sup> In 2012, the 2003 Agreement was amended and the amount outstanding reduced in return for a new ten-year payment amortization schedule.<sup>390</sup>

Baker Tilly did not receive information as to any other funding provided to the County to construct the SSIC.

**d. GIC**

The GIC was sub-leased, then leased, from Montgomery College. Payments for rent were made by the County. Certain Questionable Payments were made from the GIC Management Account and charged to rent expense. There is no rent expense at all for two years, and no payments recorded by the County.

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<sup>384</sup> *Id.*

<sup>385</sup> Condominium Unit Purchase Agreement by and between The Mayor and the Council of Rockville, Maryland and the Maryland Economic Development Corporation, dated January 2007. In September 2018, the County refinanced the debt and assumed title to the property (information provided by Montgomery County Department of Finance).

<sup>386</sup> *Id.*

<sup>387</sup> Reimbursable Grant Agreement between the Maryland Technology Development Corporation and Montgomery County, Maryland, dated March 31, 2007; Promissory Note between the Maryland Economic Development Corporation and Mercantile Potomac Bank, dated June 12, 2007, at 1 and 5; Grant Agreement between the Maryland Economic Development Corporation and Montgomery County, dated January 31, 2007.

<sup>388</sup> Grant Agreement between Maryland Economic Development Corporation and Montgomery County, dated January 31, 2007.

<sup>389</sup> Reimbursable Grant Agreement between the Maryland Technology Development Corporation and Montgomery County, Maryland, dated July 31, 2003, at 1.

<sup>390</sup> First Amendment to Reimbursable Grant Agreement, dated May 30, 2012, between the Maryland Technology Development Corporation and Montgomery County, Maryland, at 20 - 25.

**Table 22. GIC Reported Rent Expense<sup>391</sup>**

| <b>Year Ending</b>      | <b>Reported Rent Expense</b> | <b>Rent Paid Directly by County</b> |
|-------------------------|------------------------------|-------------------------------------|
| 06/30/09                | \$ -                         | \$ -                                |
| 06/30/10                | 191,394                      | -                                   |
| 06/30/11                | 518,640                      | -                                   |
| 06/30/12                | 518,639                      | 246,057                             |
| 06/30/13                | 552,684                      | 517,406                             |
| 06/30/14                | 556,656                      | 515,761                             |
| 06/30/15                | 584,484                      | 369,456                             |
| 06/30/16                | 613,704                      | 144,731                             |
| 06/30/17                | 613,704                      | -                                   |
| 06/30/18                | -                            | -                                   |
| <b>Total</b>            | <b>\$ 4,149,905</b>          | <b>\$ 1,793,410</b>                 |
| Questionable Payments   | (469,131)                    |                                     |
| <b>Net Rent Expense</b> | <b>\$ 3,680,774</b>          | <b>\$ 1,793,410</b>                 |

e. **WBIC**

The WBIC was located in several suites at the Westfield Wheaton Mall in Wheaton, Maryland. The Monthly Financial Reports for the WBIC showed a rent expense in only five out of the ten years that the WBIC was in existence, yet in four of those years, it does not appear that the County paid the rent directly. In addition, this lease, and the County's payments, included CAM charges that are likely not included in the reported rent expense. In addition, this lease was amended and re-negotiated more than once, the new terms of which do not appear to be reflected in the reported expense.

<sup>391</sup> See Appendix I for Scope 2 County Data and Appendix J for Scope 2 Scheer Data.

**Table 23. WBIC Reported Rent Expense**

| Year Ending            | Reported Rent Expense <sup>392</sup> | Rent Paid Directly by County <sup>393</sup> | Rent per Lease Agreements <sup>394</sup> |
|------------------------|--------------------------------------|---------------------------------------------|------------------------------------------|
| 6/30/07                | \$ -                                 | \$ -                                        | \$ 320,922                               |
| 6/30/08                | -                                    | -                                           | 371,714                                  |
| 6/30/09                | 254,369                              | -                                           | 382,292                                  |
| 6/30/10                | 254,369                              | 261,342                                     | 343,098                                  |
| 6/30/11                | 260,148                              | 179,652                                     | 304,252                                  |
| 6/30/12                | 260,148                              | 395,372                                     | 365,641                                  |
| 6/30/13                | 292,224                              | 233,016                                     | 427,501                                  |
| 6/30/14                | -                                    | 273,768                                     | 439,602                                  |
| 6/30/15                | -                                    | 584,965                                     | 452,065                                  |
| 6/30/16 <sup>395</sup> | -                                    | -                                           | 438,437                                  |
| <b>Total</b>           | <b>\$ 1,321,258</b>                  | <b>\$ 1,928,116</b>                         | <b>\$ 3,845,524</b>                      |

**G. CONCLUSION**

For the reasons described above, Baker Tilly does not consider the Monthly Financial Reports to be complete and accurate reflections of the financial results of the underlying Incubators. Based on information obtained during the Scope 1 and the Scope 2 Forensic Investigations, and interviews of individuals involved with the BIN Program, Baker Tilly understands that profitability of the Incubators was not the County’s primary goal. Factors such as below-market rents or large unreimbursed common area charges are an immediate indication that the Incubators may not be sustainable absent significant support from the County to offset low revenues and higher expenses not typically found in commercially viable enterprises.

Based solely on the underlying Incubator financial reports received from Scheer, it is apparent that absent the substantial grants received from the County, as well as other support in the form of loans, rent or other payments made on the behalf of the underlying Incubators but not properly recorded in the financial records of the underlying Incubators, each could not operate as a viable going concern entity during the Relevant Period. Even when taking into consideration those payments made by the individual Incubators that are now considered to be potentially fraudulent or otherwise linked to the Scope 1 and 2 Forensic Investigations, the underlying Incubators likely could not have functioned on a daily basis absent the substantial grants contributed by the County.

<sup>392</sup> Unaudited monthly operating reports prepared by Scheer Partners, Inc. for WBIC, for the period of FY 2007 through FY 2016.

<sup>393</sup> See Appendix I – Scope 2 County Data. County payments include CAM charges.

<sup>394</sup> Wheaton Plaza Regional Shopping Center Lease, commencement date of July 1, 2006. First Amendment to Lease, dated April 1, 2009.

<sup>395</sup> Lease ended April 30, 2016.

Baker Tilly also notes that Mr. Bang had the ability to direct MEDCO and Scheer's disbursements of funds. As discussed elsewhere in this Scope 2 Report, Mr. Bang instructed MEDCO and Scheer to make payments of expenses not related to the BIN Program, including the Questionable Payments, which are improperly captured on the Incubator financial statements.

Baker Tilly understands that the County has made major changes in the way it will manage the BIN Program in the future that address what would be our recommendations.

## **IX. EXAMINATION OF FUNDS DUE TO/DUE FROM MONTGOMERY COUNTY**

### **A. OVERVIEW**

Baker Tilly was requested to quantify the net amount of County funds held by MEDCO from the operation of the BIN Program at June 30, 2018. We analyzed more than 100 financial reports prepared by Scheer on a monthly basis; thousands of pages of accounts payable, receipts, and disbursements support; and bank statements for 33 accounts for the Relevant Period.<sup>396</sup>

During the Relevant Period, the County disbursed approximately \$22.3 million in grants to MEDCO and Scheer. In addition, MEDCO and Scheer received \$22.4 million of rental income from the Incubators, and \$1.9 million in other receipts. MEDCO and Scheer disbursed \$45.9 million. We have determined that MEDCO is holding approximately \$980,000 of County funds (excluding any amounts related to the NCCoE). The table below provides a summary of Baker Tilly's estimate of funds held by MEDCO:<sup>397</sup>

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<sup>396</sup> Baker Tilly analyzed more than 600 financial reports in conducting the entire Scope 2 Investigation, of which more than 100 reports were used to corroborate the County funds held by MEDCO. As described above, the financial reports contained income statements, balance sheets, bank statements, cash reconciliation schedules and other detailed schedules disbursements journals for each Incubator for amounts paid by Scheer; and general ledger detail and support for several transactions. *See* Appendix D for financial statements by Incubator and Appendix E for the summary of bank account activity.

<sup>397</sup> The Baker Tilly analysis is an estimate of funds held based on the information received and reviewed as of the date of this Report. This analysis was prepared using Baker Tilly's allocation of expenses and receipts based on accounts payable data and not receipts and disbursements data. As such, this analysis is subject to revision and may reflect inaccuracies as a result of the other data limitations outlined in more detail throughout this Report.

**Table 24. Baker Tilly Estimate of MEDCO Funds Held<sup>398</sup>**

| <b>FY 2007- FY 2018</b>                      |                      |
|----------------------------------------------|----------------------|
| <i>(\$ in Actual)</i>                        |                      |
| FY 2007 Beginning Balance (a)                | <b>\$ 307,013</b>    |
| <u>Sources of Funds</u>                      |                      |
| County Funding (b)                           | 22,295,256           |
| TEDCO Funding                                | 1,485,635            |
| Other Cash Receipts (c)                      | 396,963              |
| Incubator Lease Revenue (d)                  | 22,441,139           |
| Total Source of Funds                        | <b>\$ 46,618,993</b> |
| Less: Use of Funds                           |                      |
| BHI Grants (b)                               | 2,150,000            |
| Operating Expenses Paid by Scheer (e)        | 33,738,817           |
| Operating Expenses Paid by MEDCO (f)         | 10,055,975           |
| Total Use of Funds                           | <b>\$ 45,944,792</b> |
| FY 2018 Balance (Baker Tilly Estimate)       | <b>\$ 981,214</b>    |
| Funds held in MEDCO OPM (g)                  | 395,289              |
| Funds held in Management Accounts (h)        | 537,627              |
| Funds held in RIC Certificate of Deposit (h) | 10,075               |
| FY 2018 Balance (Per MEDCO)                  | <b>\$ 942,991</b>    |
| Variance                                     | <b>\$ 38,223</b>     |

- (a) The beginning cash balance represents the total funds reflected on the SGIC, the SSIC, and the WBIC bank statements as of June 30, 2006 (see Table 25). These three Incubators were the only ones in operation as of the beginning of the 2007 Fiscal Year.
- (b) County funding of \$22.3 million consists of any payments to MEDCO, Scheer, or BHI.<sup>399</sup> Beginning in 2016, County funding includes payments of \$1.3 million made directly to Scheer for disbursement to BHI. Upon receipt of the County funds, Scheer remitted these amounts to BHI. As such, there is approximately \$1.3 million in payments to BHI included in the “Operating Expenses Paid by Scheer” line item.
- (c) This amount primarily relates to interest earned on certificates of deposits maintained for certain Incubators and other transactions that appear to relate to the receipt of funds where there is a limited description in the MEDCO accounts payable data.

<sup>398</sup> Excludes funds relating to the NCCoE facility. See Appendix F for Baker Tilly’s analysis of MEDCO funds held.

<sup>399</sup> The balance also includes Fiscal Year 2007 grant revenue paid to WBIC in June 2006.

- (d) Lease revenue represents the License Fees collected from the tenants of each Incubator.
- (e) Operating expenses paid by Scheer are based on the date a payment cleared the bank, as reflected in the disbursement information provided. These amounts exclude transactions identified by Baker Tilly as transfers from one bank account to another within the BIN Program (*e.g.*, a transfer from the GIC Management Account to the SSIC Management Account or a transfer from the GIC Management Account to the OPM Account).
- (f) Operating expenses paid by MEDCO are based on the accounts payable data provided, excluding amounts that appear to relate to transfers from one bank account to another and accounting entries (*e.g.*, reversals).
- (g) This amount was provided by MEDCO as the amount of County funds held in the OPM Account as of June 30, 2018.<sup>400</sup>
- (h) Funds held in the Management Accounts were retrieved from schedules provided by MEDCO. Baker Tilly confirmed these amounts after preparing a reconciliation between the schedule provided by MEDCO and the bank statements (including outstanding checks) in the monthly financial reports prepared by Scheer. The balance also includes approximately \$10,000 in funds for RIC contained in a money market certificate of deposit.

## **B. ANALYSIS AND OBSERVATIONS**

### **1. Summary of Bank Statement Activity**

Baker Tilly analyzed data from 33 bank accounts for the Incubators (consisting of more than 1,500 bank statements). These accounts appear to represent the Management Accounts referenced in the 2006 Master Management Agreement and the 2016 Master Management Agreement.<sup>401</sup> The bank statements were included in the monthly financial reporting packages prepared by Scheer, which also contained cash reconciliation schedules summarizing outstanding checks. Baker Tilly used these bank statements, in conjunction with email correspondence and vendor invoices, to corroborate amounts reflected in the Scope 2 Transaction Data. The table below provides a

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<sup>400</sup> Sum of the unredacted columns contained in the Redacted OPM file titled “115006 FY 2018 redacted updated 083018,” excluding “Mont Co-NIST NCCoE” balance.

<sup>401</sup> Pursuant to §2.1.b of the 2006 Master Management Agreement, MEDCO was to establish a Management Account for each Incubator to be used for the deposits of all revenue and payment of all costs of operations. The definition of the Management Account in the 2016 Master Management Agreement was changed slightly to reflect language regarding the use of the Management Account for the debt service and to allow MEDCO to make certain payments in excess of budgeted amounts, at its “reasonable” discretion. Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 2.

summary of the balance at the end of the Fiscal Year in the Management Accounts of each Incubator during the Relevant Period.

**Table 25. Ending Bank Balance by Incubator<sup>402</sup>**

| Year End | GIC     | RIC     | SGIC       | SSIC       | WBIC      | Total Incubator Accounts |
|----------|---------|---------|------------|------------|-----------|--------------------------|
| Jun-06   | \$ -    | \$ -    | \$ 167,706 | \$ 128,687 | \$ 10,620 | \$ 307,013               |
| Jun-07   | -       | 178,666 | 385,934    | 85,365     | 46,958    | 696,923                  |
| Jun-08   | -       | 83,639  | 519,483    | 44,310     | 63,117    | 710,549                  |
| Jun-09   | 145,960 | 215,024 | 382,227    | 52,956     | 69,075    | 865,242                  |
| Jun-10   | 254,770 | 297,380 | 523,343    | 91,739     | 123,496   | 1,290,728                |
| Jun-11   | 199,280 | 125,255 | 730,988    | 124,158    | 176,629   | 1,356,310                |
| Jun-12   | 170,236 | 353,100 | 769,438    | 130,601    | 240,853   | 1,664,228                |
| Jun-13   | 239,590 | 492,362 | 648,097    | 158,124    | 132,730   | 1,670,903                |
| Jun-14   | 253,743 | 231,102 | 698,757    | 182,672    | 145,238   | 1,511,512                |
| Jun-15   | 452,291 | 230,516 | -          | 167,375    | 166,360   | 1,016,542                |
| Jun-16   | 449,282 | 124,175 | -          | 53,460     | 312,788   | 939,705                  |
| Jun-17   | 664,381 | 219,701 | -          | 131,346    | -         | 1,015,428                |
| Jun-18   | 445,430 | 65,759  | -          | 26,438     | -         | 537,627                  |

Baker Tilly reviewed each bank statement to track the account description, account number, and beginning and ending balances. We also attempted to isolate transactions with MEDCO, the County, and other vendors using the keywords developed during the Scope 1 and 2 Forensic Investigations.

## 2. Analysis of Accounts Payable and Disbursements Data

After performing the steps outlined in Section VI, Methodology, Baker Tilly analyzed the Scope 2 Transaction Data to determine if there was any duplicative or corroborating information across the data sets. We reviewed each line of the Scope 2 Transaction Data (more than 16,000 transactions) to determine whether the transaction appeared to be an operating expense, invoice, receipt of grant or other funds, accounting entry, or transfer from one bank account to another.<sup>403</sup> In allocating each transaction to a specific category, Baker Tilly analyzed invoices, email correspondence, and bank statements, among other documents. After categorizing each transaction, we prepared a schedule depicting the flow of funds between the County, MEDCO, Scheer, and any other entity related to the BIN Program, such as Montgomery College (“Scope 2 Flow of Funds”). We then

<sup>402</sup> Extracted from the bank statements contained in the monthly financial reports.

<sup>403</sup> As described previously, the Scope 2 Scheer Data contained approximately 15,000 transactions, totaling \$39.6 million in disbursements. To remove transfers from one bank account to another, we reviewed 99% of the total dollar amount of disbursements from Scheer to MEDCO and 15% of the disbursements from Scheer to Scheer. The majority of the disbursements from Scheer to Scheer were less than \$20,000.

used the Scope 2 Flow of Funds to prepare the summary of funds held by MEDCO.<sup>404</sup> In the table below, the values reflect the net cash activity related to the BIN program for each entity for the Relevant Period. For example, a payment by the County to MEDCO will be represented by a negative value for the County and a positive value for MEDCO.

The table below summarizes the Scope 2 Flow of Funds:

**Table 26. Scope 2 Flow of Funds<sup>405</sup>**

| <b>Total FY 2007 - FY 2018</b> |                       |
|--------------------------------|-----------------------|
| County (a)                     | <b>\$(35,838,485)</b> |
| MEDCO                          | 14,467,604            |
| Scheer                         | (30,292,641)          |
| Chungbuk Province              | 2,010,198             |
| Questionable Payments (b)      | 7,587,467             |
| Other Vendors                  | 42,065,857            |
| <b>Total</b>                   | <b>\$35,838,485</b>   |

- (a) The County payment value is comprised of all operating expenses, management fees, and other transactions Baker Tilly has determined were made by the County on behalf of the BIN Program. These payments include \$22.3 million of funding to MEDCO, Scheer and BHI, and approximately \$13.5 million in payments directly to vendors for Incubator expenses (*e.g.*, Montgomery College). *See* Table 24.
- (b) The Questionable Payments are made up of the sum of such payments from MEDCO (\$0.8 million), Scheer (\$1.2 million), and the County (\$5.5 million), with no offsetting expenses, representing the receipt of the funds by those vendors from the County, MEDCO, and Scheer.

### **3. MEDCO Schedules of Funds Held**

In response to Baker Tilly’s request for an annual accounting of receipts and disbursements by Incubator and County funds held, MEDCO provided accounts payable ledgers and schedules showing the ending balance that MEDCO states was in the OPM Account for each Incubator as of June 30, 2016, September 20, 2017, October 31, 2017, March 31, 2018, and June 30, 2018.<sup>406</sup> These schedules include grants received from the County and other agencies and amounts for net

<sup>404</sup> The Scope 2 Flow of Funds schedules include transactions between MEDCO and Scheer, whereas the Baker Tilly’s analysis of MEDCO funds held does not. *See* Appendix G for Scope 2 Flow of Funds.

<sup>405</sup> *See* Appendix G for the Scope 2 Flow of Funds detail by transaction.

<sup>406</sup> The data provided does not reflect activity prior to June 30, 2016. Files provided, “Mont County projects bank balances 072817”; “Mont County projects bank balances 092017”; “Mont County projects bank balances 103117”; “Mont County projects bank balances 033118”; “Mont County projects bank balances 063018.”

activity by Incubator for certain periods. MEDCO also provided a redacted excel file that MEDCO purported to represent the amount of cash in the OPM Account for each Incubator from June 2017 through June 30, 2018.<sup>407</sup> Baker Tilly was able to verify that the Scope 2 MEDCO AP Data included the transfers reflected in the redacted OPM file by matching the date and dollar amounts.<sup>408</sup> The table below provides a summary of the schedules provided by MEDCO, including amounts held for the NCCoE.

**Table 27. MEDCO Summary of County Funds Held<sup>409</sup>**

| <b>Incubator</b>               | <b>Management Accounts</b> | <b>Total OPM Balance</b> | <b>Total Account Balance</b> |
|--------------------------------|----------------------------|--------------------------|------------------------------|
| GIC                            | \$ 445,430                 | \$ -                     | \$ 445,430                   |
| NCCoE                          | 434,175                    | 1,009,335                | 1,443,510                    |
| SSIC                           | 26,438                     | 50,000                   | 76,438                       |
| RIC                            | 75,834                     | -                        | 75,834                       |
| Other                          | -                          | 45,679                   | 45,679                       |
| WBIC                           | -                          | 299,610                  | 299,610                      |
| <b>Total</b>                   | <b>\$ 981,877</b>          | <b>\$ 1,404,624</b>      | <b>\$ 2,386,501</b>          |
| Less NCCoE Related Funds       |                            |                          | (1,443,510)                  |
| <b>Total County Funds Held</b> |                            |                          | <b>\$942,991</b>             |

#### **4. NCCoE Related Expenses**

Baker Tilly noted that the MEDCO accounts payable data contained transactions related to the NCCoE facility. Although this facility is not part of the BIN Program, the funding for this facility was commingled with Incubator funds in the MEDCO OPM Account. As such, Baker Tilly was required to identify the NCCoE transactions contained in the data provided.

##### **a. Analysis of NCCoE Funding**

In addition to funds provided by the County and the State of Maryland for the NCCoE, the NIST initially agreed to provide \$2 million towards the renovation of the facility, leaving a “\$2.5M gap” in funding.<sup>410</sup> In November 2014, the NIST agreed to secure an additional \$1 million in funding

<sup>407</sup> Redacted OPM file titled “115006 FY 2018 redacted,” provided to Baker Tilly on August 8, 2018.

<sup>408</sup> Redacted OPM file titled “115006 FY 2018 redacted updated 083018.xlsx,” provided to Baker Tilly on August 30, 2018.

<sup>409</sup> Files provided, “Mont County projects bank balances 072817”; “Mont County projects bank balances 092017”; “Mont County projects bank balances 103117”; “Mont County projects bank balances 033118”; “Mont County projects bank balances 063018”; Monthly Operating Report for the Germantown Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 7 - 21; Monthly Operating Report for Rockville Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 16 - 46; Monthly Operating Report for Silver Spring Innovation Center prepared by Scheer Partners, Inc., dated June 2018, at 8 - 24.

<sup>410</sup> Email between Mr. Genakos (MEDCO) and County and State employees regarding the NCCoE project, dated April 18, 2014.

(\$100,000 per year, over the 10-year license agreement) referred to as an “Enhanced Management Fee.”<sup>411</sup> The Enhanced Management Fee was to be used for expenses including the MEDCO management fee, insurance costs, and maintenance of the building exterior and parking surface. A total of \$3 million from the NIST was to be used solely for the expansion of the facility. Specifically, in an email, Mr. Genakos, Associate Director for Development & Technology at MEDCO, stated (emphasis added):

Per my conversations yesterday with Lynn Flanagan, NIST should be able to provide \$3M funding towards the project to pay for tenant build-out items by way of using the License Agreement as the vehicle/mechanism for such. **The important qualifier is that none of the \$3M can be used towards any operating costs.**

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As you recall, NIST’s [*sic*] initially intended to provide \$2M towards tenant built-out for the project and I work [*sic*] with Tim McBride and Karen Waltermire to identify \$2M worth of capital items within the construction budget that those funds would be applied towards as tenant build-out. Now **that NIST intends to provide \$3M towards tenant build-out towards the project, I will need to circle back with Tim and Karen to identify an additional \$1M in capital items within the construction budget to add to the initial \$2M list.**

\*\*\*\*

After that has been accomplished, I will then add an exhibit to the License Agreement that identifies the tenant build-out list that Tim, Karen and I have worked out and the target end product will be a License Agreement that we can execute.<sup>412</sup>

Between FY 2014 and FY 2018, MEDCO received approximately \$5.4 million in funding from the DBED, \$3.6 million in proceeds from the NCCoE Mortgage Loan, and at least \$6 million from the NIST for the NCCoE facility. Prior to 2016, it appears that MEDCO paid certain NCCoE related expenses directly, and then requested reimbursement from the NIST.<sup>413</sup> Beginning in FY 2016, it appears that MEDCO provided invoices directly to the NIST, and then received an ACH transfer to be used to pay the invoices submitted.<sup>414</sup>

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<sup>411</sup> Email between Mr. Bang (County) and Kevin Kimball (NIST), and related chain, summarizing a discussion regarding funding for the NCCoE, dated November 7, 2014, at 2.

<sup>412</sup> Email between Mr. Genakos (MEDCO) to various parties regarding the NIST- NCCoE Project License Agreement, dated December 16, 2014, at 2.

<sup>413</sup> Emails between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) dated February 29 - March 2, 2016 along with the corresponding Checks and Invoices; Emails between Mr. Miller (MEDCO) and Mr. Nocar (MEDCO) dated January 27, 2016 along with relevant Checks and Wire transfer receipts.

<sup>414</sup> Email between Mr. Miller (MEDCO) and Mr. Genakos (MEDCO) dated June 10, 2016 with corresponding Checks and Invoices.

In response to requests made by Baker Tilly regarding the OPM Account and a reconciliation of funds contained therein, MEDCO provided six PDF files containing a summary of the flow of funds (grants and expenses) for the NCCoE facility. We were informed that the files represented an annual accounting of funds transferred to and from the OPM Account for the NCCoE facility. The table below provides a summary of funds held by MEDCO related to the NCCoE facility.

**Table 28. MEDCO Funds Held Related to NCCoE**

| <b>Incubator</b> | <b>Management Accounts</b> | <b>Total OPM Balance</b> | <b>Total Account Balance</b> |
|------------------|----------------------------|--------------------------|------------------------------|
| NCCoE            | \$ 434,175                 | \$ 1,009,335             | \$ 1,443,510                 |

MEDCO stated that it was holding approximately \$1 million in NIST funds for the NCCoE facility in the OPM Account as of June 30, 2018. Based on the documents provided, it is likely that the amount remaining in the OPM Account for NCCoE represents funds provided by NIST. However, Baker Tilly recommends that the County request a full accounting of all County funds received and disbursed for the NCCoE facility to confirm that MEDCO is not in possession of any other amounts due to the County. In addition, we note that MEDCO also maintains an operating account and a debt service account for the NCCoE facility. Other than the operating account balance shown in the table above, we have not been provided with an accounting of funds contained in either of these accounts.

**b. NCCoE Debt Service**

Pursuant to the NCCoE County Grant Agreement, the County agreed to provide grant funding in support of MEDCO’s debt service obligations, subject to a limit of \$660,000 per year, until the NCCoE Mortgage Loan was paid in full.<sup>415</sup> Although the agreement explicitly stated that the funds provided by the County were to be used to pay for the principal and interest for the NCCoE Mortgage Loan, in November 2014, due to a delay in the closing date for the NCCoE Mortgage Loan, Mr. Bang directed MEDCO to use County funds for approximately \$47,000 in expenses for the SGIC, and to “provide cashflow” for the SGIC until the NCCoE projects starts.<sup>416</sup> Mr. Bang also stated that the County would continue to provide financial support in excess of the funds provided for debt service. The email from Mr. Bang discussing the NIST’s agreement to provide MEDCO with an Enhanced Management Fee stated that, “[i]f MEDCO required service costs exceeds, \$100,000, Montgomery County, through DED, will pay up to \$30K/year to fill the shortfall.”<sup>417</sup> By January 2015, MEDCO’s request of the County to cover any shortfall in funds for operating expenses had increased to \$60,000, to which Mr. Bang responded:

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<sup>415</sup> Grant agreement between the Maryland Economic Development Corporation and Montgomery County, dated January 13, 2015, at 2.

<sup>416</sup> Email from Mr. Bang (County) to Mr. Brennan (MEDCO) regarding SGIC Check Run, dated November 4, 2014, at 5.

<sup>417</sup> Email between Mr. Bang (County) and Mr. Kimball (NIST), and related chain, summarizing a discussion regarding funding for the NCCoE, dated November 7, 2014, at 2.

I will try to give MEDCO a stronger assurance than “trust me or based on MEDCO/County’s good working relationship.” However, I need to start with some definitive number to finesse the overall budgeting. The main and the controlling number will be the final loan servicing amount for the new PNC loan. If the annual debt service is let’s say \$620k, then it gives me the room of \$40k from the current appropriation and I can afford to do a number of things. But if it is \$660k, then I will have to explore lots of options to make the arrangement happen as MEDCO desire [*sic*].<sup>418</sup>

Without executing an amendment to the NCCoE County Grant Agreement, in May 2016, MEDCO asked Mr. Bang to confirm that the County would provide \$60,000 in reserves, as previously discussed. Mr. Bang responded, “\$60K range should be attainable. Let’s fine tune the number after we review the 1st full year operating.”<sup>419</sup> According to the schedules provided by MEDCO in response to Baker Tilly’s requests for support for funds contained in the OPM Account:

NCCoE was given an Operating Grant of \$1,000,000. This grant was to pay for up to \$100,000 in operationa [*sic*] expenses for each year of the 10 year lease. If the operational expenses exceeded that amount, Montgomery [*sic*] County agreed to pay for the difference.<sup>420</sup>

Baker Tilly is unable to determine whether the County agreed to pay up to \$30,000, \$60,000, or the difference of the NCCoE operating expenses. We were also unable to determine whether any County employee, other than Mr. Bang, was aware of a change to the initial agreement. On July 21, 2016, MEDCO entered into another grant agreement with the County (“FY 2017 County Grant Agreement”).<sup>421</sup> Pursuant to this agreement, the County agreed to provide MEDCO with an additional “[a]nnual [g]rant” of \$25,000 for NCCoE and “one-time” grants totaling \$246,650 for marketing and contract extensions with Orion for consulting services to be provided for the NCCoE and Life Sciences programs.<sup>422</sup> These amounts would be in addition to the County’s existing agreement regarding the NCCoE debt service, and any grant amounts for the BIN Program.

We identified that the County made approximately \$3.4 million in payments to MEDCO and other vendors on behalf of the NCCoE facility through June 30, 2018, of which \$2.4 million appears to

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<sup>418</sup> Email between Mr. Bang (County) and Mr. Genakos (MEDCO), Mr. Miller (MEDCO), and Mr. Brennan (MEDCO) regarding the final draft of the MEDCO-NIST License Agreement, dated January 13, 2015, at 2.

<sup>419</sup> Email between Mr. Bang (County) to MEDCO regarding the new Management Agreement for the BIN program, dated May 9, 2016, at 1.

<sup>420</sup> Per file titled “NCCoE Operational Grant 063018.”

<sup>421</sup> Grant Agreement between the Maryland Economic Development Corporation and Montgomery County dated July 21, 2016.

<sup>422</sup> *Id.* at two.

be for debt service (*see* Table 30).<sup>423</sup> The table below provides a summary of the payments made by the County for the NCCoE facility.

**Table 29. Summary of County Payments for NCCoE<sup>424</sup>**

| <i>(\$ in Actual)</i> |                        |                  |                     |
|-----------------------|------------------------|------------------|---------------------|
| Fiscal Year           | County to MEDCO/Scheer | County to CBIF   | Total               |
| 2013                  | \$ 5,500               | \$ -             | \$ 5,500            |
| 2014                  | 164,000                | -                | 164,000             |
| 2015                  | 782,900                | -                | 782,900             |
| 2016                  | 450,000                | 382,500          | 832,500             |
| 2017                  | 931,650                | -                | 931,650             |
| 2018                  | 660,000                | -                | 660,000             |
| <b>Total</b>          | <b>\$2,994,050</b>     | <b>\$382,500</b> | <b>\$ 3,376,550</b> |

Baker Tilly also observed that the County funds provided for debt service appear to be in excess of MEDCO’s debt service requirements on the NCCoE Mortgage Loan. We have not been able to confirm whether the additional amount provided by the County was used for operating expenses, or whether these amounts have been maintained by MEDCO in another account. The table below provides a summary of the NCCoE debt service as outlined in the MEDCO audited financial statements, compared to the funds provided by the County pursuant to the NCCoE County Grant Agreement. Information for MEDCO’s FY 2018 was not available. It is Baker Tilly’s understanding that in August 2018, the County refinanced the NCCoE Mortgage Loan and assumed title to the property.

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<sup>423</sup> Includes \$660,000 provided by the County during the 2018 Fiscal Year not included in Table 30 as MEDCO’s FY 2018 financial statements were not available.

<sup>424</sup> *See* Appendix H for Baker Tilly analysis of NCCoE related transactions.

**Table 30. Summary of NCCoE Debt Service<sup>425</sup>**

| <i>(in Actual \$ )</i>                       | <b>MEDCO Fiscal Year Ended June 30,</b> |                   |                   |                     |
|----------------------------------------------|-----------------------------------------|-------------------|-------------------|---------------------|
|                                              | <b>2015</b>                             | <b>2016</b>       | <b>2017</b>       | <b>Total</b>        |
| <b><i>Per MEDCO Auditors' Reports</i></b>    |                                         |                   |                   |                     |
| Principal Paid                               | \$ 339,444                              | \$ 441,000        | \$ 460,000        | \$1,240,444         |
| Interest Paid                                | 28,660                                  | 102,555           | 176,908           | 308,123             |
| <b>Total Paid</b>                            | <b>\$ 368,104</b>                       | <b>\$ 543,555</b> | <b>\$636,908</b>  | <b>\$ 1,548,567</b> |
| <b><i>County Grants for Debt Service</i></b> |                                         |                   |                   |                     |
| County to MEDCO                              | 650,000                                 | 450,000           | 660,000           | 1,760,000           |
| County to CBIF                               | -                                       | 382,500           | -                 | 382,500             |
| <b>Total County Funding for NCCoE Debt</b>   | <b>\$ 650,000</b>                       | <b>\$ 832,500</b> | <b>\$660,000</b>  | <b>\$ 2,142,500</b> |
| Less: County to CBIF                         | -                                       | 382,500           | -                 | 382,500             |
| <b>Total County Funding to MEDCO</b>         | <b>\$ 650,000</b>                       | <b>\$ 450,000</b> | <b>\$ 660,000</b> | <b>\$1,760,000</b>  |
| <b>Variance</b>                              | <b>\$ (281,896)</b>                     | <b>\$ 93,555</b>  | <b>\$(23,092)</b> | <b>\$ (211,433)</b> |

**C. DATA LIMITATIONS**

Baker Tilly identified several limitations in the data provided, and inconsistencies with the processes employed by Scheer and MEDCO in connection with the management of the BIN Program. These limitations and inconsistencies include, but are not limited to incomplete or missing financial data; inconsistent record keeping by MEDCO, Scheer, and the County; and the commingling of County funds.

**1. Incomplete or Missing Financial Data**

Baker Tilly did not receive actual receipts and disbursements data from MEDCO or the County. However, more than half of the Scope 2 County Data contains information regarding the payment or cleared date, which was used to identify whether amounts were deposited to the Incubator Management Accounts. We also did not receive cash receipts data from MEDCO, Scheer, or the County. As a result, our analysis reflects certain assumptions regarding whether a payment occurred, when it occurred, or whether a transaction listed was purely an accounting entry. Other instances of incomplete or missing financial data include the following:

- Detailed bank statements for the OPM Account by year;
- Lack of annual schedules depicting the sources and uses of County funds prepared in the ordinary course of operations;<sup>426</sup>

<sup>425</sup> The County provided approximately \$2.4 million for debt service. However, the table above excludes \$660,000 provided by the County during the 2018 fiscal year as the MEDCO FY 2018 financial statements were not available. MEDCO Management’s Discussion, Analysis, and Financial Statements, for the years ended June 30, 2015, at 3; June 30, 2016, at 7; and June 30, 2017, at 11.

<sup>426</sup> It appears that these schedules may have been prepared at some point for funds in the OPM Account, and provided in response to emails from Peter requesting funding from the “Special Reserve Account”. However, Baker Tilly has not been provided an annual reconciliation of the use of County funds. Email between Mr. Miller (MEDCO) to Mr. Bang (County) regarding a funding request, dated April 29, 2010, with schedule attached.

- Unaudited and incomplete financial statements for Incubators;
- Incomplete picture of all operating expenses of a particular Incubator because of the failure to maintain all transactions for each Incubator separately;
- Difficulty separating transactions by Incubator due to lack of separate MEDCO general ledger accounts, and instances where deposits are made into the bank account of one Incubator for expenses of another (*e.g.*, grant funds); and
- Scheer disbursements data includes the vendor name only in the description field. As such, Baker Tilly made assumptions regarding the nature of payment based on the dollar amount, frequency, and supporting documentation identified.

## **2. Inconsistent Record Keeping**

During our review, we noted that the transactions reflected in one of the accounts payable ledgers included in the Scope 2 MEDCO Data did not operate like a normal accounts payable ledger, whereby a credit represents an increase to the account and a debit represents a decrease.<sup>427</sup> Upon our initial review, we expected the credits to the accounts payable ledger to represent invoices presented for payment or advances made by certain parties, and for the debits to relate to payment of such invoices.

The County data also contained inconsistencies that made it difficult for Baker Tilly to determine whether an expense related to the BIN Program. The data provided contained cost center and description fields that reflect an Incubator name or other information that Baker Tilly used to determine that the transaction related to the BIN Program. However, we have also identified instances where the information was incorrect. For example, Baker Tilly identified a payment made on May 20, 2018 to Montgomery College, the landlord for the GIC.<sup>428</sup> Although the description of the transaction states that the payment is for 50% of the debt service related to the GIC lease, this transaction is coded to the SGIC cost center in the Scope 2 County Data.

## **3. Commingling of County Funds**

The majority of the transactions reflected in the MEDCO accounts payable data occurred in the OPM Account, to which we did not have access. We were informed that account information would not be provided because the OPM Account contained funds that were not related to MEDCO's relationship with the County. It is not necessarily inappropriate for a management company such as MEDCO to commingle funds. However, both the 2006 and 2016 Master Management Agreements outlined specific requirements for maintaining separate funds for the Incubators. As described above, pursuant to both Master Management Agreements, MEDCO was to maintain Management Accounts for each Incubator to be used for the deposit of all revenues,

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<sup>427</sup> For example, it appears that MEDCO initially recorded amounts advanced by the County or other parties as a debit, and then reduced this account.

<sup>428</sup> See Appendix I for BT Unique ID AP5652.

including license fees, chargebacks, and revenue generated from the operations and to pay all expenses and all costs of operations of each Incubator.<sup>429</sup>

#### **4. Lack of Contemporaneous Reconciliations of Sources and Uses of Funds**

It is also inappropriate for a management company not to track and maintain records to reconcile the sources and uses of funds. Although we have seen instances where MEDCO provided an update to the County regarding an operating deficit or surplus, or an accounting of County funds held,<sup>430</sup> Baker Tilly has not seen evidence that MEDCO and Scheer regularly prepared these types of reconciliations of funds and made appropriate updates to the monthly financial reports to reflect all revenue and expenses for each Incubator in the ordinary course of business.

Due to the lack of visibility into the actual bank statements for the OPM Account, Baker Tilly was required to make certain assumptions with respect to whether a transaction was an actual payment, receipt, or an accounting entry or transfer between bank accounts.<sup>431</sup> In addition, Baker Tilly was unable to confirm whether there are additional funds in OPM Account that should be payable to the County, or whether there are other MEDCO accounts that contain County funds. Baker Tilly was initially provided with a file from MEDCO that purported to represent an accounting of the County funds held in the OPM Account from June 30, 2017 through June 30, 2018. Although this file contained 11 columns of data, only three were labeled as relating to the County. The other columns contained the word “Redacted” as the column title.<sup>432</sup> Upon further review, Baker Tilly determined that other columns in the file provided appeared to contain transactions related to the WBIC. After discussions with MEDCO, we were provided with an updated schedule confirming that the WBIC transactions were redacted in the original schedule provided.

#### **D. RECOMMENDATIONS**

We suggest that the County consider the following recommendations:

1. Require that MEDCO provide the County with a detailed reconciliation of funds on an annual basis for all years in the Relevant Period, with relevant supporting documentation for each transfer.
2. Conduct an analysis of debt service payments made in connection with the PNC Bank mortgage for the NCCoE to determine the total funds provided by the

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<sup>429</sup> Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated May 24, 2006, at 2; Consolidated and Restated Master Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated July 13, 2016, at 2.

<sup>430</sup> Email between Mr. Woo (PNC), Mr. Brennan (MEDCO), and Mr. Bang (County) regarding the RIC deficit, dated January 22 -23, 2009

<sup>431</sup> In addition to the MEDCO accounts payable ledgers, MEDCO provided a schedule of funds held in its OPM Account titled “115006 FY 2018 redacted updated 083018.” The ending balances reflected in this schedule tie to the ending balances in the accounts payable ledgers provided. However, Baker Tilly has not received sufficient document support to confirm that all of the transactions in the accounts payable ledger are reflected in the bank statements.

<sup>432</sup> Spreadsheet provided by MEDCO titled “115006 FY 2018 redacted”. The file only contained titles for the following columns “Mont Co RIC”, “Mont Co DED”, and “Mont Co-NIST NCCoE”.

- County used for debt service versus those used to supplement operating expenses.
3. Amend the NCCoE County Grant Agreement to reflect the terms of the agreement accurately, to the extent that the County wants to make operating grants to the NCCoE. Ensure that this amended agreement explicitly states the amount and purpose of funds to be provided by the County.
  4. Amend the 2016 Master Management Agreement to prohibit the commingling of County funds and provide for a penalty, such as an adjustment to management fees payable, to the extent that a commingling of funds occurs.
  5. Rather than maintaining a general ledger account for the purpose of tracking County funds, establish a segregated bank account containing all funds received from the County for the management of the BIN Program.
  6. Implement and require compliance with more stringent guidelines regarding financial reporting for the Incubators:
    - a. Monthly financial statements, including all revenues and expenses of the Incubator (paid by MEDCO or Scheer). Currently, the reporting provided to the County appears to exclude a detailed accounting for expenses paid directly by MEDCO.
    - b. Quarterly schedules reconciling the use of County funds on a go-forward basis.
    - c. An annual audit for each Incubator.
  7. The County should regularly exercise its right to conduct inspections of the books and records of each Incubator, as outlined in Section 2.3 of the 2016 Master Management Agreement.<sup>433</sup>

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<sup>433</sup> Consolidated, Amended and Restated Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated July 13, 2016, at 2.

## **X. OVERVIEW OF THE COUNTY'S FINANCIAL RELATIONSHIP WITH BIOHEALTH INNOVATION, INC.**

### **A. INTRODUCTION**

In FY 2009, the County and other private and public stakeholders in biotechnology development formed a Biosciences Task Force (“Task Force”) to help the County “leverage its assets more effectively to become a global leader in life sciences, clinical research, and translational research and product delivery.”<sup>434</sup> In November 2010, Mr. Bendis was engaged by the Task Force as an independent consultant to craft a strategy to carry out its mission and form an organizational plan for an entity that would do so. BHI was incorporated as a 501(c)(3) tax-exempt public-private organization in November 2011.<sup>435</sup> The County has provided annual grant funding to support BHI’s operations since BHI’s inception. In 2016, BHI became the facilities manager for the RIC and the GIC, after the dissolution of the DED.

### **B. ACCESS TO INFORMATION**

Because BHI is a recipient of County funds, the review of transactions involving BHI began during the Scope 1 Forensic Investigation. During the Scope 1 and Scope 2 Forensic Investigations, the County provided the following types of support related to BHI:

- Support (*e.g.*, invoices, checks, payment requests) related to transactions in which the County disbursed funds directly or indirectly to BHI;
- Documents provided to the County by BHI, including presentations and requests for funding;
- Certain internal County email communications (and related attachments) pertaining to BHI, as well as certain email communications between the County and BHI employees; and
- Contracts, communications, and other documentation related to Mr. Bendis’ work as an independent consultant to the Task Force.

Baker Tilly obtained documentation associated with BHI’s role in the BIN Program through requests and support provided by Scheer. Support included:

- Support (*e.g.*, invoices, checks, payment requests) related to transactions in which Scheer or MEDCO disbursed funds to BHI for grants, program management or other miscellaneous payments; and

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<sup>434</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Worksession - Executive's Recommended FY10 Operating Budget - Department of Economic Development (DED), dated April 13, 2009, [https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2009/090415/20090415\\_PHED04.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2009/090415/20090415_PHED04.pdf), at 3.

<sup>435</sup> Biohealth Innovation, Inc. Articles of Incorporation, dated November 16, 2011, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

- Email communication between and among Scheer employees, County employees, BHI employees, or others related to BHI.

Baker Tilly requested documentation directly from BHI.<sup>436</sup> Based on these requests, Baker Tilly received a production of over 1,000 pages of information including the following:

- Monthly, quarterly and annual reports for the GIC and the RIC from January 2017 through July 2018;
- Contracts and grant agreements related to the GIC and the RIC;
- Audited Financial Statements of BHI for the years ending December 31, 2012 to December 31, 2017.

Baker Tilly examined documents in the public domain, such as Montgomery County, Maryland Planning, Housing, and Economic Development (“PHED”) Committee Memoranda in which BHI funding was discussed.

### **C. PROGRAMS**

BHI is “an innovation intermediary that translates market-relevant research into commercial success by connecting management, funding and markets” in the biohealth sector.<sup>437</sup> BHI’s current activities include the Entrepreneur-In-Residence Program and incubator management, which includes three incubators in addition to the RIC and the GIC. BHI is a founding partner of the BioHealth Capital Region (“BHRC”). Per BHRC’s website, “the BHCR brand represents collaboration among leading stakeholders with a collective goal to make the BHCR a top 3 biohealth cluster by 2023.”<sup>438</sup>

Lastly, BHI managed two “accelerator” programs.<sup>439</sup> An accelerator is a short term “boot camp” for early stage and entrepreneurial companies which provides intensive assistance, including coaching on business plans, customer introductions, and capital raising. In addition to the technical assistance provided, BHI also purchases equity interest in these companies through two for-profit subsidiaries.

The first accelerator program was based in Baltimore, in concert with DreamIt Ventures and Johns Hopkins University. The second, the Relevant Health Accelerator Program (“Relevant Health Accelerator”) was based in Montgomery County and was partially funded by the County. The Relevant Health Accelerator took place from October 2015 through March 2016, with seven

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<sup>436</sup> Letter to Biohealth Innovation Inc. regarding Audit of Montgomery County, Maryland, Department of Economic Development, dated August 2, 2018; Letter to Biohealth Innovation Inc. regarding Audit of Montgomery County, Maryland, Department of Economic Development, dated August 3, 2018; Letter to Biohealth Innovation Inc. regarding Forensic Investigation of Montgomery County, Maryland, Department of Economic Development, dated October 15, 2018.

<sup>437</sup> BioHealth Innovation - About Us, at 2, <https://www.biohealthinnovation.org/about-us>, last visited October 8, 2018.

<sup>438</sup> BioHealth Capital Region - About, [www.biohealthcapital.com](http://www.biohealthcapital.com), last visited October 7, 2018, at 1.

<sup>439</sup> Management Charter: BioHealth Innovation's Management of Montgomery County Innovation Centers, undated, at 4.

participating companies, and was located in the RIC. BHI renovated 12 offices to house the program.

#### **D. INCUBATOR PROGRAM MANAGER**

In August and September 2016, BHI became facility manager of the RIC and the GIC under separate agreements.<sup>440</sup> Both agreements were effective on September 1, 2016, for a two-year term, with automatic one-year renewals. BHI's principal responsibility was to provide services to the Incubator tenants based on its "track record in company formation, support, and capital raising."<sup>441</sup> Scheer remained as facility manager. Scheer reimbursed BHI \$358,780.74 from October 11, 2016 through April 16, 2018, for expenses in connection with BHI's role at the RIC and the GIC. These reimbursements were primarily payroll expenses.

At the request of the County, Baker Tilly conducted interviews with seven CEOs, presidents, or founders of the RIC and the GIC tenant companies to evaluate BHI's role as program manager. As a whole, tenant company founders did not observe a significant increase in the level or quality of services provided by BHI as compared to the County, which provided the same services prior to the dissolution of the DED in late 2016. However, tenant company interviewees stated that BHI has performed adequately in its role.

#### **E. COUNTY FUNDING TO AND ON BEHALF OF BHI**

From Fiscal Year 2012 through Fiscal Year 2018, the County provided \$4.2 million in funding to BHI. The County made an operating grant each of these years, beginning with the County's first grant to BHI in January 2012.<sup>442</sup> In FY 2015, the County increased the approved operating grant for BHI from \$250,000 to \$500,000, and in FY 2018, to \$750,000.<sup>443</sup> In FY 2016, in addition to the annual operating grant, the County appropriated \$430,000 for a program grant in support of the Relevant Health Accelerator; however, \$445,000 was ultimately paid for this purpose.<sup>444</sup> The total payment was \$15,000 higher than the amount approved. BHI also submitted requests for payment to the County totaling \$23,244 for items such as community sponsorships. In FY 2016, MCEDC requested \$25,000 for sponsorship of the Relevant Health Accelerator, to be paid from DED funds.<sup>445</sup>

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<sup>440</sup> Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated August 29, 2016; Management Agreement by and between the Maryland Economic Development Corporation and BHI, dated September 9, 2016.

<sup>441</sup> Management Charter: BioHealth Innovation's Management of Montgomery County Innovation Centers, undated, at 3.

<sup>442</sup> Montgomery County Council Resolution 17-331, adopted January 31, 2012.

<sup>443</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding FY15 Operating Budget: Department of Economic Development, dated April 14, 2014, at 3; Montgomery County FY18 Approved Operating Budget and FY18-23 Public Services Program, dated July 2017, at 3.

<sup>444</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding FY16 Operating Budget: Department of Economic Development, dated April 16, 2015, at 3 and 5.

<sup>445</sup> See Appendix I for Scope 2 County Data and Appendix J for Scope 2 Scheer Data. Does not include amounts reimbursed to BHI for its role as Facilities Manager of the RIC and the GIC.

**Table 31. County Funds to and on Behalf of BHI<sup>446</sup>**

| Fiscal Year  | Operating Grants    | Program Related   | Paid through AP Process | Total               |
|--------------|---------------------|-------------------|-------------------------|---------------------|
| 2012         | \$ 250,000          | \$ -              | \$ -                    | \$ 250,000          |
| 2013         | 500,000             | -                 | 536                     | 500,536             |
| 2014         | 500,000             | -                 | 6,500                   | 506,500             |
| 2015         | 500,000             | -                 | 6,500                   | 506,500             |
| 2016         | 500,000             | 445,000           | 34,708                  | 979,708             |
| 2017         | 500,000             | 110,000           | -                       | 610,000             |
| 2018         | 750,000             | 110,000           | -                       | 860,000             |
| <b>Total</b> | <b>\$ 3,500,000</b> | <b>\$ 665,000</b> | <b>\$ 48,244</b>        | <b>\$ 4,213,244</b> |

**F. PAYMENTS TO AND ON BEHALF OF BHI**

Baker Tilly noted instances where certain DED employees and others may have attempted to circumvent procedures or otherwise have made payments inappropriately.

**a. 2016 MEDCO Grant Agreement**

The County and MEDCO executed the Grant Agreement dated July 21, 2016 (the “2016 MEDCO Grant Agreement”), pursuant to which the County’s annual operating grant to BHI would be paid to MEDCO.<sup>447</sup> County funds would be dispersed to MEDCO, then dispersed from MEDCO for payment to BHI. In an email on June 7, 2016, from Mr. Bang to Amanda Wilson, Director, Finance & Human Resources, BHI, copy to Mr. Bendis, Mr. Bang stated (emphasis added):

I am trying to insert a provision in the County’s Agreement with MEDCO so we can **funnel** the \$500K to MEDCO and MEDCO can release that grant to BHI **without a contract** [between BHI and the County]. If not, BHI will have to enter into a contract with the County (Department of Finance) and it can be time consuming.<sup>448</sup>

On July 18, 2016, Mr. Bendis referred to a problem regarding the timing of County funding to BHI.<sup>449</sup> Mr. Bang responds to Mr. Bendis on that day by stating:

I know you are not pleased with the funding towards the end of the month. However, believe me, if I did not wrap BHI funding into MEDCO deal and

<sup>446</sup> *Id.* Payment of \$110,000 in FY 2018 is unverified.

<sup>447</sup> Grant Agreement by and between the Maryland Economic Development Corporation and Montgomery County, Maryland, dated July 21, 2016. Baker Tilly has seen documentation with a different breakdown of the grant,

<sup>448</sup> Emails between Mr. Bang (County), Mr. Bendis (BHI), and Ms. Wilson (BHI), dated June 7, 2016.

<sup>449</sup> Emails between Mr. Bang (County), Mr. Bendis (BHI), and other County employee, dated May 3 - July 18, 2016, at 2.

had to do a staright [*sic*] contract between the County Finance and BHI, we will be lucky if we can get funds to BHI in late August...<sup>450</sup>

Half of the FY 2017 BIN Program Grant of \$3,416,621 was disbursed on July 21, 2016. This amount included the BHI FY 2017 grant of \$500,000, which was disbursed to BHI on July 26, 2016.<sup>451</sup> BHI's FY 2018 grant of \$750,000 was disbursed by the County to MEDCO in two parts: \$500,000 on August 3, 2017 and \$250,000 on September 28, 2017. The payments flowed from Scheer to BHI in the same way: \$500,000 on August 17, 2017, and \$250,000 on October 24, 2017.<sup>452</sup> All three payments were made from the GIC Management Account.<sup>453</sup>

**b. Advance (Unapproved) Payment of Program Grant**

To support the Relevant Health Accelerator within the RIC, the County appropriated \$430,000 in Fiscal Year 2016.<sup>454</sup> This grant was made up of three parts:

- A \$250,000 program grant, provided directly to BHI to support the operations of the Relevant Health Accelerator;
- \$110,000, to underwrite the rent associated with the Relevant Health Accelerator; and
- \$70,000, to pay for one-time renovation and furniture costs to convert the space in RIC for the Relevant Health Accelerator.

In a March 10, 2015 email, Mr. Bendis asked Mr. Bang when “the first 100k for the accelerator will be available as it would be great to receive this month.”<sup>455</sup> On March 10, 2015, Mr. Bang replied:

CE's [County Executive's] recommended FY16 budget, to be unveiled 3/16, includes funding of \$250K grant to BHI. Hence, I feel comfortable advancing \$100K in FY15. Please send me an invoice dated after 3/17 for \$100K, indicating the remaining balance to be paid as \$150K in FY2016.

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<sup>450</sup> *Id.* at 1.

<sup>451</sup> See Appendix I for Scope 2 County Data and Appendix J for Scope 2 Scheer Data. Does not include amounts reimbursed to BHI for its role as Facilities Manager of the RIC and the GIC.

<sup>452</sup> *Id.*

<sup>453</sup> *Id.*

<sup>454</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding FY16 Operating Budget: Department of Economic Development, dated April 16, 2015, at 3 and 5. Baker Tilly has seen documentation which breaks down the components of the grant differently, although the total amount was the same.

<sup>455</sup> Emails between Mr. Bang, Mr. Bouey (Scheer), Mr. Bendis (BHI), and other parties, dated December 11, 2013 - March 23, 2015, at 3. Invoice to Montgomery County Department of Economic from BioHealth Innovation for \$100,000, dated March 17, 2015.

Invoice should state; County's Partnership funding for the BHI Accelerator.<sup>456</sup>

Ms. Wilson responded on March 10, 2015, within the same email trail, with an invoice as directed.<sup>457</sup> In a March 11, 2015 email, Mr. Bang directed Mr. Bouey that "once we put this \$85K into GIC, we will advance \$100K from here for County's match for the Accelerator programming."<sup>458</sup> The funds were to be taken out of the Life Sciences Grant, a separate, unrelated grant, and then "restored" when the DED's FY16 Operating Budget was approved.<sup>459</sup>

On March 20, 2015, Mr. Bang forwarded the invoice from Ms. Wilson to Mr. Bouey, COO of Scheer, with the directive "[c]an you process this invoice [the invoice from BHI to the DED] and forward the check to me?"<sup>460</sup> He asked Mr. Bouey, "[a]lso, can you correct the previous invoice of \$85K for Life Sciences Grant [from Scheer/GIC to the DED], and send me invoice for \$185K?"<sup>461</sup> Mr. Bouey responded with the invoice from Scheer to the DED on March 23, 2015.<sup>462</sup> On that day, in the same email trail, Mr. Bang asked Mr. Bouey to re-issue the invoice with the instructions, "do not put \$100K for accelerator. Just reference \$185K for Life Sciences Impact Grant."<sup>463</sup> Thus, it appears that Mr. Bang was instructing Mr. Bouey to make the advance payment to BHI on behalf of the DED, and the DED would reimburse Scheer/GIC through the addition of \$100,000 to the Life Sciences Grant invoice. The advance of \$100,000 was made to BHI on March 23, 2015, from the GIC Management Account.<sup>464</sup> The budget item was later approved on May 21, 2015, for Fiscal Year 2016.<sup>465</sup> The County paid Scheer \$185,000 by check on March 26, 2015, for "Additional funding for Life Sciences Grant."<sup>466</sup> The County had paid Scheer \$500,000 for the Life Sciences Grant earlier in Fiscal Year 2015 on July 8, 2014.<sup>467</sup>

On September 4, 2015, Mr. Bang requested that Scheer bill the County for \$360,000, but included the Life Science Initiative Contract as part of the Accelerator grant:

Brian,  
Can you forward me an invoice for \$360K.

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<sup>456</sup> *Id.* at 2.

<sup>457</sup> *Id.* at 2.

<sup>458</sup> Emails between Mr. Bang (County) and Mr. Bouey (Scheer) dated March 10 - 11, 2015, at 1.

<sup>459</sup> *Id.*

<sup>460</sup> Emails between Mr. Bang, Mr. Bouey (Scheer), Mr. Bendis (BHI), and other parties, dated December 11, 2013 - March 23, 2015, at 1.

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

<sup>463</sup> *Id.*

<sup>464</sup> See Appendix I for Scope 2 County Data and Appendix J for Scope 2 Scheer Data. Does not include amounts reimbursed to BHI for its role as Facilities Manager of the RIC and the GIC.

<sup>465</sup> Montgomery County FY16 Approved Operating Budget and FY16-21 Public Services Program, dated July 2015, at 2.

<sup>466</sup> Invoice from Scheer Partners, dated March 23, 2015.

<sup>467</sup> Invoice from Scheer Partners, dated July 3, 2014.

- 1) BHI Accelerator construction cost & furniture: \$85K
- 2) BHI Accelerator Advanced lease payment: \$110K
- 3) Orion's FY16 Life Science Initiative contract: \$165K

You can lump all amount and invoice under FY16 Accelerator Lease and Programming. Funds will be wired 5-7 days after the receipt of invoice.

I will also send you the Orion contract for execution in the next week or so.<sup>468</sup>

The County received an invoice from Scheer of \$360,000 on the same day,<sup>469</sup> and paid Scheer by EFT. Thus it appears that the funds encumbered for the Life Sciences Grant which were used for the advance of the Accelerator Program Grant were now being restored (albeit at a different amount) by disguising them as part of the Accelerator Program Grant.

Baker Tilly also notes that \$85,000 was billed to the County for the purpose of converting and renovating the office space in the RIC, \$15,000 above the amount appropriated by the County.<sup>470</sup>

**c. Payments through REDI**

In or around June 2011, REDI entered into a consulting contract with Mr. Bendis as an individual.<sup>471</sup> Total compensation to Mr. Bendis was \$250,000,<sup>472</sup> paid \$10,000 per month for the first three months beginning July 1, 2011, and \$20,000 per month thereafter through August 31, 2012 (11 months). Agreements between REDI and Mr. Bendis were constructed such that the funding for Mr. Bendis' work as an independent consultant was to be provided by private sector funding.<sup>473</sup> At the time Mr. Bendis was owed monthly installment fees, not all of this funding had been received by REDI from the relevant funding agents.<sup>474</sup> As such, the County advanced \$32,500, \$20,000 paid from the County to REDI, then disbursed to Mr. Bendis, and \$12,500 paid directly from Scheer to Mr. Bendis.<sup>475</sup>

Mr. Silverman was designated REDI's contract administrator under Section 5 of the undated Consulting Contract between Richard Bendis and Rockville Economic Development Inc. (the

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<sup>468</sup> Emails between Mr. Bang (County), Mr. Bouey (Scheer), and County employee, dated September 4, 2015.

<sup>469</sup> Invoice to the Department of Economic Development, dated September 4, 2015.

<sup>470</sup> *Id.*

<sup>471</sup> The copy of the Bendis Contract provided to Baker Tilly is undated and unexecuted. Consulting Contract between Richard Bendis and the Rockville Economic Development Inc., undated.

<sup>472</sup> The Consulting Contract specified "not more than \$260,000." Consulting Contract between Richard Bendis and the Rockville Economic Development Inc., undated.

<sup>473</sup> Emails between Ms. Sternbach (REDI), Mr. Bang (County), and other parties, dated September 22, 2010, at 1.

<sup>474</sup> Emails between Mr. Bang (County), Ms. Wilson (REDI), and other parties, dated October 27, 2011.

<sup>475</sup> Emails between Mr. Bang (County) and Mr. Silverman (County), dated June 8, 2011; Rockville Economic Development Inc. Invoices Packet, dated September 2011 - February 2012, at 2; Check to Mr. Bendis (BHI) from the Maryland Economic Development Corporation and Scheer Partners, Inc. as Agent, dated June 30, 2011.

“Bendis Contract”).<sup>476</sup> During an interview with Mr. Silverman on August 23, 2018, he stated that he was not aware that he was listed as the Contract Administrator.

**i. Payment and Return of \$20,000**

REDI invoiced the DED \$20,000 on invoice #09272011 dated September 27, 2011.<sup>477</sup> The description on the invoice read, “Bendis Investment Group July and August 2011 monthly fees.” While the amount for two months agreed with the Bendis Contract, the County was not a party to the Bendis Contract. On September 29, 2011, the County paid REDI by check for \$20,000, with the description “BENDIS CONTRACT PYMT JULY-AUG 2011.”<sup>478</sup>

An email among and between Mr. Silverman, Mr. Bang, and Ms. Qi indicated the need for funding immediately.<sup>479</sup> BHI was not yet organized as of the date of the payment, and would therefore not have had an Employer Identification Number or have received an IRS Determination Letter indicating 501(c)(3) status.<sup>480</sup> These funds were returned to the County by BHI via check dated April 18, 2012.<sup>481</sup> The memo on the check noted “reimb DED funds.”<sup>482</sup>

**ii. Payment from Scheer to Mr. Bendis of \$12,500**

On June 30, 2011, Mr. Bang made a request by email to Mr. Bouey to make a \$12,500 payment to Mr. Bendis from the GIC Management Account.<sup>483</sup> Similar to the above-described advance of \$20,000, the funds were needed to cover the shortfall in private contributions. Check number 1583 for \$12,500 was issued to Mr. Bendis on June 30, 2011.<sup>484</sup> On October 31, 2011, Scheer issued invoice number 10311101 for \$12,500 to REDI to request the return of the funds.<sup>485</sup> Baker Tilly was not provided with direct evidence of the funds were returned. However, there is a deposit of that amount into the Scheer operating account in that amount seven days after the invoice was issued.<sup>486</sup>

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<sup>476</sup> Consulting Contract between Richard Bendis and the Rockville Economic Development Inc., undated, at 3.

<sup>477</sup> Rockville Economic Development Inc. Invoices Packet, dated September 2011 - February 2012, at 2.

<sup>478</sup> See Appendix I for Scope 2 County Data.

<sup>479</sup> Emails between Mr. Bang (County), Mr. Silverman (County), and Ms. Qi (County), dated November 5, 2010 - September 26, 2011, at 1.

<sup>480</sup> Biohealth Innovation, Inc. Articles of Incorporation, dated November 16, 2011, <https://egov.maryland.gov/businessexpress/entitysearch>, last visited November 1, 2018.

<sup>481</sup> Rockville Economic Development Inc. Invoices Packet, dated September 2011 - February 2012, at 3

<sup>482</sup> *Id.*

<sup>483</sup> Email between Mr. Bang (County) and Mr. Bouey (Scheer), dated June 30, 2011.

<sup>484</sup> Check to Mr. Bendis (BHI) from the Maryland Economic Development Corporation and Scheer Partners, Inc. as Agent, dated June 30, 2011.

<sup>485</sup> Scheer Partners, Inc. invoice, dated October 31, 2011.

<sup>486</sup> GIC Reconciliation Journal, dated December 13, 2011.

**iii. Payment of \$250,000**

The County Council for Montgomery County, Maryland approved a \$250,000 grant to BHI through the award of a non-competitive contract.<sup>487</sup> In the appropriation, the DED was instructed to “develop a new contract with BioHealth Innovation Inc. for provision of services.”

REDI invoiced the County \$250,000 on Invoice #021512 dated February 15, 2012.<sup>488</sup> The description on the invoice read, “Montgomery County support of BioHealth Innovation, Inc. FY’12.” Although the invoice indicated that payment should be made to BHI, the County processed the invoice with REDI as the vendor and payment was made to REDI. On February 17, 2012, the County paid \$250,000 with the description “MC SUPPORT BIOHEALTH INNOVATION INC, FY12.”<sup>489</sup>

Baker Tilly’s understanding was that, although the grant to BHI was approved by Council Resolution, BHI was not established as a County vendor and could not be paid. Because BHI needed the funds immediately, the payment was made to REDI because the process to establish BHI as a vendor would take too long. The table below details the grants made to BHI by source:

**Table 32. Grants Paid to BHI by Source of Funds<sup>490</sup>**

| Fiscal Year  | Grants paid directly to BHI by County | Paid through AP Process by County | County Payments on Behalf of BHI | Paid from GIC Management Account | Total               |
|--------------|---------------------------------------|-----------------------------------|----------------------------------|----------------------------------|---------------------|
| 2012         | \$ -                                  | \$ -                              | \$ 250,000                       | \$ -                             | \$ 250,000          |
| 2013         | 500,000                               | 536                               | -                                | -                                | 500,536             |
| 2014         | 500,000                               | 6,500                             | -                                | -                                | 506,500             |
| 2015         | 500,000                               | 6,500                             | -                                | -                                | 506,500             |
| 2016         | 650,000                               | 34,708                            | 195,000                          | 100,000                          | 979,708             |
| 2017         | -                                     | -                                 | 110,000                          | 500,000                          | 610,000             |
| 2018         | -                                     | -                                 | 110,000                          | 750,000                          | 860,000             |
| <b>Total</b> | <b>\$ 2,150,000</b>                   | <b>\$ 48,244</b>                  | <b>\$ 665,000</b>                | <b>\$ 1,350,000</b>              | <b>\$ 4,213,244</b> |

**G. EQUITY INVESTMENTS**

BHI makes equity investments through its for-profit subsidiaries, BHI Management, Inc. (“BHIM”) and Relevant Health Holdings I, LLC (“RHH”, collectively, the “For-Profit Entities”). As of December 31, 2017, the For-Profit entities had equity investments in 32 companies.<sup>491</sup>

<sup>487</sup> Montgomery County Council Resolution 17-331, adopted January 31, 2012.

<sup>488</sup> Rockville Economic Development Inc. Invoices Packet, dated September 2011 - February 2012, at 5 - 7.

<sup>489</sup> See Appendix I for Scope 2 County Data and Appendix J for Scope 2 Scheer Data. Does not include amounts reimbursed to BHI for its role as Facilities Manager of the RIC and the GIC.

<sup>490</sup> *Id.*

<sup>491</sup> December 2017 BHI Clients Dashboard.

BHI did not provide complete information regarding the sale of any portfolio company interests. However, a portfolio company for which BHIM provided services in exchange for equity interest was acquired.<sup>492</sup> In May, BeneVir Biopharm, Inc. (“BeneVir”) was acquired by Janssen Biotech, Inc., of Johnson & Johnson.<sup>493</sup> Based on published information, the purchase price at closing was \$140 million in cash.<sup>494</sup> Contingent payments based on the achievement of certain milestones could raise the acquisition price to a reported \$1.04 billion.<sup>495</sup>

In an interview with Baker Tilly, Mr. Bendis stated that BHIM has or will receive approximately \$870,000 from the proceeds at closing. This dollar value implies ownership of approximately 0.62%. BHIM could receive in excess of \$6 million if BeneVir achieves its milestones.

Baker Tilly has been asked to examine this topic further, including the details of the investment portfolio and the locations of the portfolio companies, the use of County funds outside of Montgomery County, and the means by which investment proceeds, including the proceeds from the sale of the ownership interest in BeneVir, flow up from BHIM to BHI. A complete report will be provided to the OCA in the near future.

#### **H. USE OF COUNTY FUNDS WITHIN MONTGOMERY COUNTY**

Baker Tilly was asked to determine how and where the County’s funding to BHI was used. Baker Tilly was asked, in particular, to determine if the County’s funds were used for activities outside of Montgomery County.

From FY 2012 through FY 2018, the County made \$3.5 million in general operating grants. The FY15 PHED Committee Memorandum request for BHI funding states, “[t]he County does not limit BHI’s ability by requiring our own ‘performance targets’ beyond BHI’s existing goals.”<sup>496</sup> The award of the initial grant of \$250,000 by Montgomery County Council Resolution 17-331, states, “the Department of Economic Development must administer this appropriation and assure that it is used by BioHealth Innovation Inc. (BHI) to advance the local economy.”<sup>497</sup> However, we are not aware of any agreement between the County and BHI that contained any stipulations about the use of these general operating grants or means to enforce the use of funds for local programs.

The County was aware, from the inception of BHI, that it would not be an organization dedicated solely to Montgomery County. A PHED Memorandum titled “Briefing: Biosciences” begins with

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<sup>492</sup> Interview of Mr. Bendis.

<sup>493</sup> Md. Biotech to be acquired by New Jersey pharmaceutical goliath by Sara Gilgore, dated May 8, 2018, <https://www.bizjournals.com/washington/news/2018/05/08/md-biotech-to-be-acquired-by-new-jersey.html>, last visited November 1, 2018.

<sup>494</sup> *Id.*

<sup>495</sup> *Id.*

<sup>496</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding FY15 Operating Budget: Department of Economic Development dated April 14, 2014, at 5.

<sup>497</sup> Montgomery County Council Resolution 17-331, adopted January 31, 2012.

the description of BHI as “regional” and repeats that description throughout the memorandum.<sup>498</sup> The minutes of a BHI Board of Directors meeting on July 23, 2012, reflect that Ms. Qi, “speaking on behalf of the leadership of Montgomery County, [she] highlighted the excitement of Montgomery County in seeing the Baltimore presence and leadership emerge on the BHI Board.”<sup>499</sup> The County representative on the BHI Board of Directors would have been provided with information describing all of BHI’s activities, in and outside of Montgomery County.

The County made program grants for the Relevant Health Accelerator, located at the RIC, in Montgomery County. While the program took place in Montgomery County, Baker Tilly observed that a majority of the participants in the program are now located outside of the County.

Because funding provided without restrictions should be considered fungible, Baker Tilly cannot determine how much of the County’s general operating grants were used exclusively in Montgomery County. However, we note that the County’s \$3.75 million in general operating and program grants are approximately 41% of BHI’s total contributions from January 1, 2012 through December 31, 2017.<sup>500</sup>

Further examination of this topic will be included in the report to the OCA referenced above.

#### **I. BAKER TILLY OBSERVATIONS**

- With regard to the provision of Fiscal Year 2012 County funding through REDI as a conduit, Baker Tilly saw no evidence that a contract with BHI had been executed, despite this action being requested by Montgomery County Council Resolution 17-331. There was no mention of REDI as a conduit in the Council resolution.
- Baker Tilly observed that the contract between REDI and Mr. Bendis contained no language regarding the County’s financial responsibility to Mr. Bendis, if a funding shortfall occurred. In his interview, Mr. Silverman stated that he did not know that the payments to REDI on behalf of BHI may have inadvertently or deliberately circumvented County policy and procedures.<sup>501</sup>
- Baker Tilly observed that the inclusion of the BHI operating grants in the 2016 MEDCO Grant Agreement did not appear to serve a business purpose related to the BIN Program. Based on Mr. Bang’s email communications, one purpose appeared

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<sup>498</sup> Memorandum to the Planning, Housing, and Economic Development Committee regarding Biosciences Briefing, dated November 14, 2011, at 1.

<sup>499</sup> Ms. Qi was not a member of the BHI Board of Directors at that time. BHI Board of Directors Meeting Minutes, dated July 23, 2012.

<sup>500</sup> In calculating this figure, Baker Tilly used the “Contributions” line item from BHI’s Income Statement in each of the Audited Financial Statements for the years 2012 through 2017. As BHI generates revenue from sources in addition to grant funding, the “Total Revenue” figure was not used. BioHealth Innovation, Inc. and Subsidiary Audited Consolidated Financial Statements Years Ended December 31, 2012 and 2013. BioHealth Innovation, Inc. and Subsidiary Audited Consolidated Financial Statements Years Ended December 31, 2014 and 2015. BioHealth Innovation, Inc. and Subsidiary Audited Consolidated Financial Statements Years Ended December 31, 2016 and 2017.

<sup>501</sup> Interview of Mr. Silverman.

to be the ability to circumvent County procurement policy and avoid the need to create a contract between the County and BHI.

- The \$100,000 disbursement of County funds from Scheer to BHI for support of the Accelerator Program was also paid from the GIC Management Account. The payment was made prior to the appropriation of the funds in the FY16 Budget. Email communication from Mr. Bang indicates an attempt to bundle the \$100,000 payment within a separate, unrelated expense, by re-writing the invoice directions to Scheer.
- A Fiscal Year 2016 appropriation for lost rent revenue and renovation costs related to the Relevant Health Accelerator space in RIC was bundled within another payment in a similar fashion to the \$100,000 disbursement above.
- Although \$70,000 was appropriated for construction and renovation costs in the office space for the Relevant Health Accelerator, \$85,000 was billed to the County by Scheer for this purpose.

## **XI. SUMMARY OBSERVATIONS, CONCLUSIONS, AND RECOMMENDATIONS**

The Scope 2 Forensic Investigation was an analysis of various aspects of the County BIN Program. These analyses are related, but each has its own particular set of circumstances and types of analyses. Therefore, these observations, conclusions and recommendations may be universal to the Scope 2 Forensic Investigation or specific to a particular aspect. Overall, Baker Tilly observed certain actions, activity, and practices, which could be considered non-compliant, questionable, improper and/or containing indications of potential fraud.

### **A. SUMMARY OBSERVATIONS AND CONCLUSIONS**

#### **1. Management of Funds**

- Baker Tilly found that the bank accounts used for BIN Program-related payments were not structured in accordance with the 2006 Master Management Agreement or the Facilities Management Agreement.
- Baker Tilly identified no less than 40 bank accounts used for receipts and disbursements related to the BIN Program.
- County funds were commingled in these accounts among and between MEDCO, Scheer, the Incubator Management Accounts, NIST funds, State of Maryland funds, and NCCoE funds.
- In addition, County funds were commingled in the OPM account, which is an acronym for “Other People’s Money,” an indication that there was, in fact, other people’s money in the account. Baker Tilly had no visibility into this account.
- The structure of the Special Reserve Account called for in the 2006 Master Management Agreement creates a source of unrestricted and unmonitored County funds for use by the DED. The Special Reserve Account is supposed to be the annual operating surplus of each Incubator. Rather than mandating the use of any operating surplus to further the BIN Program or reduce the need for future grants to the BIN Program, the funds are to be used for any program that the DED deems economic development projects in Montgomery County, Maryland as approved by the Director of the Montgomery County Department of Economic Development, with no other restrictions.
- Mr. Bang exercised authority over the Special Reserve Account, legitimate or not, and was able to direct no less than \$2.5 million in payments with little or no supporting documentation to validate his requests.
- While at times MEDCO or Scheer questioned Mr. Bang’s authority and/or the lack of documentation supporting his requests, his requested payments were made.<sup>502</sup>

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<sup>502</sup> Baker Tilly saw no evidence that any request was refused.

- Baker Tilly observed an instance where Mr. Bang directed BHI and Scheer to falsify invoices.

## 2. Questionable Payments

Baker Tilly identified 26 payments made by MEDCO and Scheer to eight vendors from May 2007 through July 2014, totaling \$2.1 million, which carried indications of fraud. These 26 Questionable Payments had several characteristics in common, which can be viewed as indications of fraud:

- All but one of these transactions came at the direction of Mr. Bang as documented in a letter, memorandum or email.<sup>503</sup>
- All but one of the requests for payment had no supporting documentation.<sup>504</sup>
- None of the transactions appear to have a legitimate business purpose or benefit to the County or the BIN Program.
- Twelve of the 26 requests had instructions to hold the payment for, or deliver it to, Mr. Bang.
- All were for services or other intangibles, a hallmark of a Fictitious Vendor Scheme. Services are harder to observe than tangible goods, which would have to be received, inventoried and used.
- All of the payments were made to vendors with observed connections to Mr. Bang, CBIF, Chungbuk Province, or a current or former County employee.

Of these eight vendors receiving Questionable Payments:

- One was CBIF, identified in the Scope 1 Forensic Investigation and the Scope 1 Report;
- Two were Chungbuk Exchange Staff;
- One is believed to be a relative or associate of Mr. Bang, and was involved with two different vendors that received Questionable Payments;
- One was potentially a case of identity theft, possibly committed by a former County employee with access to that information; that former employee was also involved with a vendor that received Questionable Payments; and
- One was a temporary employee of the County.

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<sup>503</sup> The observed pattern for a letter or memorandum was that it was addressed to the recipient, typically Mr. Brennan, from Mr. Bang, “via” the Director of the DED. One letter was addressed to Mr. Brennan “via” Mr. Ganguly, without the letter being “from” anyone.

<sup>504</sup> The request for disbursement of funds to NLCW, Inc. had a purported loan offer letter, but none of the supporting documentation that Baker Tilly had observed in other County small business loan files in the Scope 1 Forensic Investigation.

**Table 33. Questionable Payments from MEDCO and Scheer**

| <b>Vendor</b>   | <b>From MEDCO</b> | <b>From Scheer</b>  | <b>Total</b>        |
|-----------------|-------------------|---------------------|---------------------|
| CBIF            | \$ 50,000         | \$ 1,163,988        | \$ 1,213,988        |
| ELC             | 141,715           | 52,500              | 194,215             |
| J & K System(s) | 70,600            | -                   | 70,600              |
| NLCW, Inc.      | 80,000            | -                   | 80,000              |
| Seong Uk Hong   | 110,000           | -                   | 110,000             |
| Sohn Jung Mee   | 81,200            | -                   | 81,200              |
| Woodfield LLC   | 145,000           | -                   | 145,000             |
| Young J. Pack   | 163,000           | -                   | 163,000             |
| <b>Total</b>    | <b>\$ 841,515</b> | <b>\$ 1,216,488</b> | <b>\$ 2,058,003</b> |

In addition to these Questionable Payments, Baker Tilly also found payments of seemingly legitimate DED expenses, directed by Mr. Bang, to be paid out of MEDCO or Scheer accounts improperly.

### **3. Sustainability of the BIN Program**

The monthly financial statements provided by Scheer do not contain all of the revenue, including grant funding, or all of the expenses of each Incubator. The financial reports prepared by Scheer were not prepared in accordance with GAAP. There are instances where grant funding is received and expenses are paid directly by MEDCO that do not appear to be reflected in the monthly financial reports prepared by Scheer. The County also paid expenses directly which do not appear to be reflected in the monthly financial reports prepared by Scheer either. Three of the five Incubators have never been audited (and were not required to be). For these reasons and others, we believe the financial reports provided are inaccurate and incomplete. We therefore cannot form the basis of a conclusion on sustainability of the BIN Program Incubators.

The BIN Program Incubators' financial reports reflect a net cumulative loss for the Relevant Period. Contributing to the cumulative loss, in addition to the above-described factors, were varying occupancy rates, the lack of reimbursement for CAM charges and Questionable Payments made from the Incubator Management Accounts. The reported cumulative loss, as well as the level of County funding and the amount of expenses paid directly by the County or MEDCO over the Relevant Period is of a sufficient magnitude to indicate that the BIN Program is not sustainable without County subsidies.

### **4. Examination of Funds Due To/Due From Montgomery County**

In the eleven years from July 1, 2007 through June 30, 2018, the County provided approximately \$22.3 million to MEDCO and Scheer for the management of the BIN Program. To determine the net County funds held by MEDCO at June 30, 2018, we analyzed the bank statements for each Incubator account, the accounts payable general ledgers, Scheer disbursement journals, and hundreds of pages of support documentation including, but not limited to, cancelled checks, emails, and invoices. After taking into account all relevant factors, it appears that MEDCO received approximately \$46.6 million for the management of the BIN Program from County

grants, tenant rent and other sources, during the Relevant Period. For the same period, Baker Tilly estimated that MEDCO and Scheer disbursed approximately \$43.8 million in funds for Incubator expenses, and \$2.2 million in funds unrelated to the BIN Program, as directed by the County. The table below provides a summary of Baker Tilly’s estimate of funds held by MEDCO:

**Table 34. Baker Tilly Estimate of MEDCO Funds Held<sup>505</sup>**

| FY 2007- FY 2018                                               |               |
|----------------------------------------------------------------|---------------|
| <i>(\$ in Actual)</i>                                          |               |
| FY 2007 Beginning Balance                                      | \$ 307,013    |
| Funds Received                                                 |               |
| County Funding                                                 | 22,295,256    |
| Other Funding                                                  | 1,882,598     |
| Incubator Revenue (reported on unaudited financial statements) | 22,441,139    |
| Total                                                          | \$ 46,618,993 |
| Funds Disbursed                                                | (45,944,792)  |
| FY 2018 Balance (Baker Tilly Estimate)                         | \$ 981,214    |
| FY 2018 Balance (Per MEDCO)                                    | 942,992       |
| Unreconciled Variance                                          | \$ 38,222     |

As discussed in this Scope 2 Report, there were several limitations to the data received and analyzed by Baker Tilly. These limitations likely contributed to the cause of the variance between the Baker Tilly’s estimate of funds held and the amount held as stated by MEDCO as of June 30, 2018. In addition, during our investigation, we identified at least \$2.1 million paid in connection with the management of the BIN Program containing indications of potential fraud, waste, or abuse. Had these payments not been made by MEDCO and/or Scheer, as directed by Mr. Bang, the amount of funds due to the County as of June 30, 2018 may have been higher.

**5. The County’s Financial Relationship with BioHealth Innovation, Inc.**

Since FY 2012, the County has made \$3.5 million in general operating grants to BHI. These grants were made without a grant agreement outlining the specific terms and conditions of how and where the funds were to be spent. Baker Tilly recommends that the County consider making program-specific grants in the future, with a grant agreement describing all of the terms and conditions of the particular program, including stipulations regarding activity to be based in Montgomery County.

<sup>505</sup> Excludes funds relating to the NCCoE facility. See Appendix F for Baker Tilly’s analysis of MEDCO funds held.

## **B. SUMMARY RECOMMENDATIONS**

These recommendations are discussed in more detail in each respective sections. While Baker Tilly's understanding is that the MEDCO relationship was amended in August 2018, the County still must address the shortcomings of the management of the BIN Program, including facilities management, financial reporting and cash management.<sup>506</sup>

1. Implement and require compliance with more stringent guidelines regarding financial reporting for the Incubators:
  - a. Monthly financial statements, including all revenues and expenses of the Incubator (paid by MEDCO or Scheer). Currently, the reporting provided to the County appears to exclude a detailed accounting for expenses paid directly by MEDCO. Monthly financial statements should be prepared in accordance with GAAP to the extent possible.
  - b. Quarterly schedules reconciling the use of County funds on a go-forward basis.
  - c. An annual audit for each Incubator.
2. Simplify the organizational structure such that the Facilities Manager reports directly to the County, without another entity in-between, as opposed to the two layer structure of MEDCO and Scheer.
3. Rather than maintaining a general ledger account for tracking County funds, require a segregated bank account containing all funds received from the County for the management of the BIN Program.
4. Reconcile the Due To/Due From accounts on a quarterly basis.
5. Consider changing the oversight of the BIN Program from the Department of Finance to a group that would be more "hands on."
6. Consider adding CAM charges to the License Agreement for the Incubator tenants.
7. Require that MEDCO provide the County with a detailed reconciliation of funds on an annual basis for all years in the Relevant Period, with relevant supporting documentation for each transfer.
8. Conduct an analysis of debt service payments made in connection with the PNC Bank mortgage for the NCCoE to determine the total funds provided by the County used for debt service versus those used to supplement operating expenses, possibly inappropriately.
9. Amend the NCCoE County Grant Agreement to reflect the terms of the agreement accurately, to the extent that the County wants to make operating

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<sup>506</sup> The County should make amendments to the contracts with BHI and Launch Workplaces, if these terms are not already contained in current contracts.

grants to the NCCoE. Ensure that this amended agreement explicitly states the amount and purpose of funds to be provided by the County.

10. Amend the 2016 Master Management Agreement to prohibit the commingling of County funds and provide for a penalty, such as an adjustment to management fees payable, to the extent that a commingling of funds occurs.
11. The County should regularly exercise its right to conduct inspections of the books and records of each Incubator, as outlined in Section 2.3 of the 2016 Master Management Agreement.<sup>507</sup>
12. Draft and execute grant agreements for program grants with specific terms and conditions, including restrictions on using County funds for activities or programs outside the County.
13. Consider limiting the term of the County representative on the BHI Board of Directors.
14. Monitor compliance with all of the above.

\* \* \* \* \*

The procedures performed were limited to those described herein based on the documents provided to date and other information obtained. Information obtained subsequent to the date of this report may affect our analysis and this effect may be material. If requested, we will update our analysis.

Our procedures were performed solely with respect to the above referenced engagement. Any findings included herein are dependent upon the facts and circumstances in the present matter and cannot be applied to other situations or disputes.

Respectfully submitted,

Brian P. Sanvidge, CIG, CFE

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<sup>507</sup> Consolidated, Amended and Restated Management Agreement between the Maryland Economic Development Corporation and Montgomery County, dated July 13, 2016, at 2.

## **XII. APPENDICES**

*See separate volume titled *Appendices to the Report of Forensic Investigation of Montgomery County, Maryland's Financial Relationship with Certain Vendors of the Business Innovation Network*.*

- A. Brian P. Sanvidge Curriculum Vitae
- B. Documents Relied Upon [Exhibits]
- C. List of Keywords
- D. Incubator Financial Analysis FY 2007 – FY 2018
- E. Summary of Bank Account Activity FY 2007 – FY 2018
- F. Analysis of MEDCO Funds Held FY 2007 – FY 2018
- G. Scope 2 Flow of Funds FY 2007 – FY 2018
- H. NCCoE Flow of Funds FY 2007 – FY 2018
- I. Scope 2 County Data
- J. Scope 2 Scheer Data
- K. Scope 2 MEDCO AP Data

### **XIII. EXHIBITS**

*See separate volume titled Exhibits to the Report of Forensic Investigation of Montgomery County, Maryland's Financial Relationship with Certain Vendors of the Business Innovation Network.*