PROFESSIONAL SERVICES CONTRACT

Workers' Comp. Claims Administrative Services
Project No. _____
Statewide

This CONTRACT, is made and entered into by and between the Mississippi Transportation Commission, a body Corporate of the State of Mississippi (the "COMMISSION"), acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation and, _____ (the "CONSULTANT"), a_____ , duly licensed and registered to do business in the State of Mississippi, whose address for mailing is _____, effective as of the date of latest execution below. This CONTRACT shall be effective as of the date of latest execution below.

WITNESSETH:

WHEREAS, the COMMISSION requires the services of a firm to provide the professional services and qualified personnel to _____ services, Project No. _____, Statewide, hereinafter called the "PROJECT"; and

WHEREAS, the COMMISSION desires to engage a qualified and experienced CONSULTANT to conduct said services as stated above, hereinafter called the "SERVICES"; and

WHEREAS, the CONSULTANT has represented to the COMMISSION that it is experienced and qualified to provide those services, and the COMMISSION has relied upon such representation; and

WHEREAS, the CONSULTANT herein was chosen and found satisfactory by the COMMISSION to the end that both parties are now desirous of entering into a CONTRACT;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration flowing unto the parties, the receipt and sufficiency of which is hereby acknowledged, the COMMISSION and the CONSULTANT do hereby CONTRACT and agree as follows:

ARTICLE I. GENERAL RECITALS

The CONSULTANT shall, for the agreed fees, furnish all SERVICES and materials required to perform the tasks described in the Scope of Work for the proposed project. In so doing, the CONSULTANT shall comply with all terms of this CONTRACT, including the Scope of Work and other exhibits, to the satisfaction of the COMMISSION, which shall include any special requirements of the COMMISSION. The CONSULTANT shall perform all SERVICES according to the terms of the CONTRACT, including all technical specifications and according to the prevailing industry standards, including standards of conduct and care, format and content.

The COMMISSION, in support of the CONSULTANT, will provide the CONSULTANT a Scope of Work shown in "Exhibit 2" hereto and any other data which may be of assistance to the CONSULTANT and within the possession and control of the COMMISSION.

Manuals, guides, and specifications applicable to this CONTRACT shall be those approved and/or adopted by MDOT and/or the COMMISSION and in effect on the effective date of this CONTRACT, unless otherwise specified in this Contract or subsequently directed by MDOT or the COMMISSION during the course of the CONTRACT.

ARTICLE II. SCOPE OF WORK

The CONSULTANT shall conduct the SERVICES in accordance with the Scope of Work attached to this CONTRACT as "Exhibit 2" and made a part hereof as if fully set forth herein. The performance of the SERVICES referred to in "Exhibit 2" shall be the primary basis for measurement of performance under this CONTRACT. The COMMISSION specifically reserves the right and privilege to enlarge or reduce the scope or to cancel this CONTRACT at any time.

ARTICLE III. CONTRACT TERM, TERMINATION

This CONTRACT shall commence _____ and continue until such time as the above named project is successfully completed to the satisfaction of the COMMISSION or until _____ at 11:59 p.m., at which time this CONTRACT shall absolutely and finally terminate.

During the term of this CONTRACT, the COMMISSION reserves the right to terminate this CONTRACT in whole or in part, at any time, with or without cause, upon prior written notice to the CONSULTANT, notwithstanding any just claims by the CONSULTANT for payment for SERVICES rendered prior to the date of termination. In addition to payment for services rendered prior to the date of termination, the COMMISSION shall be liable only for the reasonable costs, fees and expenses for demobilization and close out of this CONTRACT, based on actual expenses incurred by the CONSULTANT in the packaging and shipment of all documents covered by this CONTRACT to the COMMISSION. In no event shall the COMMISSION be liable for lost profits or other consequential damages.

Prior to the COMMISSION'S taking official action to terminate this CONTRACT, the Executive Director of MDOT may notify the CONSULTANT, in writing, of MDOT'S intentions to ask the COMMISSION to terminate this CONTRACT. Upon notice from the Executive Director of MDOT, the CONSULTANT shall suspend all activities under this CONTRACT, pending final action by the COMMISSION.

ARTICLE IV. TIME OF PERFORMANCE

Time is of the essence in this contract. The CONSULTANT shall be prepared to perform its responsibilities for providing SERVICES by the date of execution of this CONTRACT.

The CONSULTANT may not begin work on any feature of this PROJECT prior to receiving a **Notice to Proceed**.

ARTICLE V. RELATIONSHIP OF THE PARTIES

The relationship of the CONSULTANT to the COMMISSION is that of an independent contractor and, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the COMMISSION. The CONSULTANT shall not make any claim, demand or application for any right or privilege applicable to an officer or employee of the COMMISSION, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.

The COMMISSION executes all directives and orders through the MDOT. All notices, communications, and correspondence between the COMMISSION and the CONSULTANT shall be directed to the key personnel and designated agents designated in this CONTRACT.

ARTICLE VI. COMPENSATION, BILLING & AUDIT

A. Cost and Fees

The CONSULTANT shall be paid on the basis set forth in "Exhibit 3" to this CONTRACT. Under no circumstances shall the COMMISSION be liable for any amounts, including any costs, which exceed the maximum dollar amount of compensation that is specified in Exhibit 3.

B. Monthly Billing

The CONSULTANT may submit monthly billing to the COMMISSION. A sample of an invoice is attached as "Exhibit 4". A modified sample invoice may be used per MDOT's approval. Each billing shall include all allowable expenses through the end of the billing period. The COMMISSION retains the right to verify time and expense records by audit of any or all the CONSULTANT'S accounting records at any time during the life of this CONTRACT and up to three years thereafter.

If SERVICES are rendered within a given State fiscal year, an invoice requesting payment from the CONSULTANT shall be presented to the MDOT within 60 days of the end of the State fiscal year. **Should the CONSULTANT fail to present the invoice within the allotted time, legislative approval may be required before payment can be rendered.**

The CONSULTANT further agrees that FHWA or any other federal agency may audit the same records at any time during the life of this CONTRACT and up to three years thereafter, should the funding source for all or any part of this CONTRACT be funds of the United States of America.

C. Record Retention

The CONSULTANT shall maintain all time and expense records related to the PROJECT and used in support of its proposal and shall make such material available at all reasonable times during the period of this CONTRACT and for three years from the date of final payment under this CONTRACT for inspection by the COMMISSION, and copies thereof shall be furnished upon request, at the COMMISSION'S expense. The CONSULTANT agrees that the provisions of this Article shall be included in any CONTRACT it may make with any subconsultants, assignees or transferees.

ARTICLE VII. FINAL PAYMENT

The CONSULTANT shall clearly indicate on its last Invoice for the CONTRACT that the Invoice is "FINAL". The MDOT Project Manager will confirm that the CONTRACT is ready to be closed and the "FINAL" Invoice may be paid. All "FINAL" invoices shall pay any retainage if withheld on the CONTRACT. However, under no circumstances will the total amount paid exceed the maximum not to exceed amount established for the CONTRACT. The CONSULTANT agrees that acceptance of the final payment shall be in full and final settlement of all claims arising against the COMMISSION for payment for work done, materials furnished, cost incurred, or otherwise arising out of this CONTRACT and shall release the COMMISSION from any and all further claims for payment, whether known or unknown, for and on account of said CONTRACT, including payment for all work done, and labor and material furnished in connection with the same. Failure to perform, to the satisfaction of the COMMISSION, all terms of this CONTRACT, which include the Scope of Work and other exhibits, any technical specifications, and special requirements of the COMMISSION, or the CONSULTANT'S failure to perform according to the prevailing industry standards, including standards of conduct and care, format and content, shall be corrected by the CONSULTANT without additional compensation. The CONSULTANT shall submit their "FINAL" invoice no later than 45 days following termination of the CONTRACT. MDOT reserves the right to refuse to make payment on any invoices submitted later than 45 days after the termination date of the CONTRACT.

ARTICLE VIII. REVIEW OF WORK

Authorized representatives of the COMMISSION may at all reasonable times review and inspect the SERVICES being provided under this CONTRACT and any addenda or amendments thereto.

All reports and studies prepared by and for the CONSULTANT, shall be made available to authorized representatives of the COMMISSION for inspection and review at all reasonable times in the General Offices of the COMMISSION. Acceptance by the COMMISSION shall not relieve the CONSULTANT of its contractual and professional obligations. CONSULTANT shall correct, at its expense, any of its breaches, errors and/or omissions, in the final version of the work.

The CONSULTANT shall be responsible for performance of and compliance with all terms of this CONTRACT, including the Scope of Work and other exhibits, and including any technical specifications and special requirements of the COMMISSION, to the satisfaction of the COMMISSION, and shall be responsible for errors and/or omissions, including those as to conduct and care, format and content, for all aspects of the CONTRACT, and including professional quality and other services furnished by the CONSULTANT.

Failure to comply with any terms of this CONTRACT shall be corrected by the CONSULTANT without additional compensation.

If any breach of CONTRACT, is discovered by COMMISSION personnel after final acceptance of the work by the COMMISSION, then the CONSULTANT shall, without additional compensation, cure any deficiency or breach including errors and/or omissions..

In the event that the project schedule requires that a breach of this CONTRACT be corrected by someone other than the CONSULTANT then the actual costs incurred by the COMMISSION for such corrections shall be the responsibility of the CONSULTANT. The COMMISSION shall give the CONSULTANT an opportunity to correct said breach unless (1) the COMMISSION determines, in its sole discretion, that the CONSULTANT cannot cure the breach within the schedule established by the COMMISSION, or (2) the COMMISSION determines, in its sole discretion, that the CONSULTANT cannot cure the breach to the satisfaction of the COMMISSION.

In the event that the CONSULTANT breaches this CONTRACT, and the breaches of the CONSULTANT are discovered prior to termination of this CONTRACT, then an accounting of all costs incurred by the COMMISSION resulting from such breach, including errors and/or omissions, will be made and such amount will be recovered from the CONSULTANT.

ARTICLE IX. RESPONSIBILITIES FOR CLAIMS AND LIABILITY

The CONSULTANT shall indemnify and hold harmless the COMMISSION and all its officers, agents and employees from any third party claim, loss, damage, cost, charge or expense, including reasonable attorney fees, to the extent caused by any negligent act, actions, neglect or omission by the CONSULTANT, its agents, employees, or subconsultants during the performance of this CONTRACT, whether direct or indirect, and whether to any person or property for which the COMMISSION or said parties may be subject, except that neither the CONSULTANT nor any of his agents or subconsultants will be liable under this provision for damages arising out of the injury or damage to persons or property to the extent caused by or resulting from the negligence of the COMMISSION or any of its officers, agents or employees.

The CONSULTANT'S obligations under this Article, including the obligations to indemnify, defend, hold harmless, pay reasonable attorney fees or, at the COMMISSION'S option, participate and associate with the COMMISSION in the defense and trial or arbitration of any damage claim, lien or suit and any related settlement negotiations, shall be initiated by the COMMISSION'S notice of claim for indemnification to the CONSULTANT. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the COMMISSION entirely responsible shall excuse performance of this provision by the CONSULTANT. In such case, the COMMISSION shall pay all costs and fees related to this obligation and its enforcement. Should there be a finding of dual or multiple liability, costs and fees shall be apportioned accordingly.

In conjunction herewith, the COMMISSION agrees to notify the CONSULTANT in writing as soon as practicable after receipt of notice of any third party claim involving the CONSULTANT. These indemnities shall not be limited by reason of the listing of any insurance coverage below.

ARTICLE X. INSURANCE

Prior to beginning any work under this CONTRACT, the CONSULTANT shall obtain and furnish certificates to the COMMISSION for the following minimum amounts of insurance:

A. Workers' Compensation Insurance in accordance with the laws of the State of Mississippi.

B. Comprehensive General Liability Insurance with a minimum combined limit of not less than One Million Dollars ($1,000,000.00) for each occurrence. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, contractors protective, sudden and accidental pollution, products and completed operations, and coverage for other hazards.

C. Valuable Documents Insurance, whether as a part of the property damage insurance referenced above or as separate insurance, in an amount sufficient to cover all costs associated with repairing, restoring or replacing any documents kept or created by the CONSULTANT as a part of the SERVICES, in the event of casualty to, or loss or theft of such documents.

D. Errors and Omission Insurance in an amount not less than One Million Dollars ($1,000,000.00) per incident; One Million Dollars ($1,000,000.00) aggregate.

E. Comprehensive Automobile Liability Insurance, with a combined single limit for bodily injury and property damage of not less than One Million Dollars ($1,000,000.00) per incident with respect to the CONSULTANT'S (owned, hired or non-owned) vehicles, assigned to or used in the performance of services.

The COMMISSION shall be listed as a certificate holder of insurance on any of the insurance required under this CONTRACT.

In the event that the CONSULTANT retains any subconsultant or other personnel to perform SERVICES or carry out any activities under or incident to work on any project or phase of this CONTRACT, the CONSULTANT agrees to obtain from said subconsultant or other personnel, certificates of insurance demonstrating that said subconsultant or other personnel has sufficient coverage, or CONSULTANT agrees to include said subconsultant or other personnel within the CONSULTANT'S coverage for the duration of this PROJECT or phase for which said subconsultant or other personnel is employed.

The Insurance coverage recited above shall be maintained in full force and effect by the CONSULTANT during the life of this CONTRACT. Should CONSULTANT cease to carry the errors and/or omissions coverage listed above for any reason, it shall obtain "tail" or extended coverage at the same limits for a period of not less than three (3) years subsequent to policy termination or contract termination, whichever is longer. Should CONSULTANT change insurance carriers for errors and /or coverage, it shall obtain a "retroactive coverage" endorsement from its new insurance carrier."

Insurance carriers must be must be admitted to do business in the State of Mississippi by the Mississippi Insurance Department.

A certificate of insurance acceptable to the COMMISSION shall be issued to the COMMISSION by the CONSULTANT prior to the execution of this CONTRACT by the CONSULTANT and thereafter on an annual basis for the duration of this CONTRACT as evidence that policies providing the required coverage, conditions and limits are in full force and effect. Such certificate shall identify this CONTRACT and contain provisions that coverage afforded under the policies will not be cancelled, terminated, or materially altered until at least thirty (30) days prior written notice has been given to the COMMISSION.

The CONSULTANT will furnish certified copies, upon request, of any or all of the policies and/or endorsements to the COMMISSION prior to the execution of this CONTRACT and thereafter on an annual basis for the duration of this CONTRACT

The CONSULTANT shall provide the COMMISSION any and all documentation necessary to prove compliance with the insurance requirements of this CONTRACT as such documentation is requested, from time to time, by the COMMISSION.

If the CONSULTANT fails to procure or maintain required insurance, the COMMISSION may immediately elect to terminate this CONTRACT or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the COMMISSION shall be repaid by the CONSULTANT to the COMMISSION upon demand, or the COMMISSION may offset the cost of the premiums against any monies due to the CONSULTANT from the COMMISSION.

ARTICLE XI. COVENANT AGAINST CONTINGENT FEES AND LOBBYING

The CONSULTANT shall comply with the relevant requirements of all federal, state or local laws. The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this CONTRACT, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this CONTRACT. The CONSULTANT warrants that it shall not contribute any money, gift or gratuity of any kind, either directly or indirectly to any employee of the COMMISSION, or to any employee of the MDOT. For breach or violation of this warranty, the COMMISSION shall have the right to annul this CONTRACT without liability, and the CONSULTANT shall forfeit any sums due hereunder at the time of such breach and may be barred from performing any future services for the COMMISSION or participating in any future contracts with the COMMISSION.

ARTICLE XII. EMPLOYMENT OF COMMISSION'S PERSONNEL

The CONSULTANT shall not employ any person or persons in the employ of the COMMISSION for any work required by the terms of this CONTRACT, without the written permission of the COMMISSION, except as may otherwise be provided for herein.

ARTICLE XIII. MODIFICATION

If, prior to the satisfactory completion of the SERVICES under this CONTRACT, the COMMISSION materially alters the scope, character, complexity or duration of the SERVICES from those required under this CONTRACT, a supplemental agreement may be executed between the parties. Also, a supplemental agreement may be negotiated and executed between the parties in the event that both parties agree the CONSULTANT'S compensation should be increased due to an increase in the nature, scope or amount of work necessary to properly provide the SERVICES required on any particular phase or project begun hereunder.

Oral agreements or conversations with the COMMISSION, any individual member of the COMMISSION, officer, agent, or employee of MDOT, either before or after execution of this CONTRACT, shall not affect or modify any of the terms or obligations contained in this CONTRACT. All modifications to this CONTRACT, amendments or addenda thereto must be submitted in writing and signed by the parties thereto before the modifications, amendments, or addenda become effective.

The CONSULTANT may not begin work on any modifications, amendments, or addenda prior to receiving a Notice to Proceed.

Minor changes in the proposal which do not involve changes in amount of the contract, extensions of time or changes in the goals and objectives of this CONTRACT may be made by written notification of such

change by either the MDOT or the CONSULTANT to the other party, and shall become effective upon written acceptance thereof (i.e. letter agreement).

ARTICLE XIV. SUBLETTING, ASSIGNMENT OR TRANSFER

It is understood by the parties to this CONTRACT that the work of the CONSULTANT is considered personal by the COMMISSION. The CONSULTANT shall not assign, subcontract, sublet or transfer any or all of its interest in this CONTRACT without prior written approval of the COMMISSION. Consent by the COMMISSION to any subcontract shall not relieve the CONSULTANT from any of its obligations hereunder, and the CONSULTANT is required to maintain final management responsibility with regard to any such subcontract.

The COMMISSION reserves the right to review all subcontracts documents prepared in connection with this CONTRACT, and the CONSULTANT agrees that it shall submit to the COMMISSION any proposed subcontract document together with subconsultant cost estimates for review and written concurrence of the COMMISSION in advance of their execution.

The CONSULTANT shall make prompt payment to all subconsultants no later than 15 days from receipt of each payment the COMMISSION makes to the CONSULTANT. The CONSULTANT shall pay all retainage owed to the subconsultant for satisfactory completion of the accepted work within 15 days after receipt of payment.

ARTICLE XV. OWNERSHIP OF PRODUCTS AND DOCUMENTS AND WORK MADE FOR HIRE

The CONSULTANT agrees that all reports, documents, computer information and access, software, drawings, studies, notes, maps and other data and products, prepared by and for the COMMISSION under the terms of this CONTRACT shall become and remain the property of the COMMISSION upon creation and shall be delivered to the Commission upon termination or completion of work, or upon request of the COMMISSION, regardless of any claim or dispute between the parties. All such data and products shall be delivered within thirty (30) days of receipt of a written request by the COMMISSION.

The CONSULTANT and the COMMISSION intend and agree that this CONTRACT to be a contract for services and each party considers the products and results of the services to be rendered by the CONSULTANT hereunder, including any and all material produced and/or delivered under this CONTRACT (the "Work"), to be a "work made for hire" under U.S. copyright and all applicable laws. The CONSULTANT acknowledges and agrees that the COMMISSION owns all right, title, and interest in and to the Work including, without limitation, the copyright thereto and all trademark, patent, and all intellectual property rights thereto.

If for any reason the Work would not be considered a work made for hire under applicable law, or in the event this CONTRACT is determined to be other than a contract or agreement for a work made for hire, the CONSULTANT does hereby transfer and assign to the COMMISSION, and its successors and assigns, the entire right, title, and interest in and to any Work prepared hereunder including, without limitation, the following: the copyright and all trademark, patent, and all intellectual property rights in the Work and any registrations and copyright, and/or all other intellectual property, applications relating thereto and any renewals and extensions thereof; all works based upon, derived from, or incorporating the Work; all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto; all causes of action, either in law or in equity, for past, present, or future infringement based on the copyrights and/or all other intellectual property; all rights, including all rights to claim priority, corresponding to the foregoing in the United States and its territorial possessions and in all foreign countries. The CONSULTANT agrees to execute all papers and perform such other proper acts as the COMMISSION may deem necessary to secure for the COMMISSION or its designee the rights herein assigned.

The COMMISSION may, without any notice or obligation of further compensation to the CONSULTANT, publish, re-publish, anthologize, use, disseminate, license, or sell the Work in any format or medium now known or hereafter invented or devised. The COMMISSION'S rights shall include, without limitation, the rights to publish, re-publish, or license a third party to publish, re-publish, or sell the Work in print, on the World Wide Web, or in any other electronic or digital format or database now known or hereafter invented or devised, as a separate isolated work or as part of a compilation or other collective work, including a work different in form from the first publication, and to include or license a third party to include the Work in an electronic or digital database or any other medium or format now known or hereafter invented or devised.

The CONSULTANT shall obtain any and all right, title, and interest to all input and/or material from any third party subconsultant, or any other party, who may provide such input and/or material to any portion of the Work so that said right, title, and interest, and all such interest in and to the Work including, without limitation, the copyright thereto and all trademark, patent, and all intellectual property rights thereto, shall belong to the COMMISSION.

For any intellectual property rights currently owned by third parties or by the CONSULTANT and not subject to the terms of this CONTRACT, the CONSULTANT agrees that it will obtain or grant royalty-free, nonexclusive, irrevocable license(s) for or to the COMMISSION at no cost to the COMMISSION to use all copyrighted or copyrightable work(s) and all other intellectual property which is incorporated in the material furnished under this CONTRACT. Further, the CONSULTANT warrants and represents to the COMMISSION that it has obtained or granted any and all such licensing prior to presentation of any Work to the COMMISSION under this CONTRACT. This obligation of the CONSULTANT does not apply to a situation involving a third party who enters a license agreement directly with the COMMISSION.

The CONSULTANT warrants and represents that it has not previously licensed the Work in whole or in part to any third party and that use of the Work in whole or in part will not violate any rights of any kind or nature whatsoever of any third party. The CONSULTANT agrees to indemnify and hold harmless the COMMISSION, its successors, assigns and assignees, and its respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any way connected with any breach of any representation or warranty made by CONSULTANT herein.

ARTICLE XVI. PUBLICATION AND PUBLICITY

The CONSULTANT agrees that it shall not for any reason whatsoever communicate to any third party in any manner whatsoever concerning any of its CONTRACT work product, its conduct under the CONTRACT, the results or data gathered or processed under this CONTRACT, which includes, but is not limited to, reports, computer information and access, drawings, studies, notes, maps and other data prepared by and for the CONSULTANT under the terms of this CONTRACT, without prior written approval from the COMMISSION, unless such release or disclosure is required by judicial proceeding. The CONSULTANT agrees that it shall immediately refer any third party who requests such information to the COMMISSION and shall also report to the COMMISSION any such third party inquiry. This Article shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the CONSULTANT to defend itself from any suit or claim.

All approved releases of information, findings, and recommendations shall include a disclaimer provision and all published reports shall include that disclaimer on the cover and title page in the following form:

> The opinions, findings, and conclusions in this publication are those of the author(s) and not necessarily those of the Mississippi Department of Transportation, Mississippi Transportation Commission or the State of Mississippi.

ARTICLE XVII. CONTRACT DISPUTES

This CONTRACT shall be deemed to have been executed in Hinds County, Mississippi, and all questions including but not limited to questions of interpretation, construction and performance shall be governed by the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect to this CONTRACT shall be brought in a court of competent jurisdiction in Hinds County, State of Mississippi. The CONSULTANT expressly agrees that under no circumstances shall the COMMISSION be obligated to or responsible for payment of an attorney's fee for the cost of legal action to or on behalf of the CONSULTANT.

ARTICLE XVIII. COMPLIANCE WITH APPLICABLE LAW

A. The undersigned certify that to the best of their knowledge and belief, the foregoing is in compliance with all applicable laws.

B. The CONSULTANT shall observe and comply with all applicable federal, state, and local laws, rules and regulations, policies and procedures, ordinances, and orders and decrees of bodies or tribunals of the United States of America or any agency thereof, the State of Mississippi or any agency thereof, and any local governments or political subdivisions, that are in effect at the time of the execution of this CONTRACT or that may later become effective.

C. The CONSULTANT shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this CONTRACT because of race, creed, color, sex, national origin, age or disability.

D. The CONSULTANT shall comply and shall require its subconsultants to comply with the regulations for compliance with Title VI of the Civil Rights Act of 1964, as amended, and all other applicable federal regulations as stated in "Exhibit 5" which is incorporated herein by reference.

E. IMMIGRANT STATUS CERTIFICATION. The CONSULTANT represents that it is in compliance with the Immigration Reform and Control Act of 1986 (Public Law 99-603), as amended, in relation to all employees performing work in the State of Mississippi and does not knowingly employ persons in violation of the United States immigration laws. The CONSULTANT further represents that it is registered and participating in the Department of Homeland Security's E-Verify™ employment eligibility verification program, or successor thereto, and will maintain records of compliance with the Mississippi Employment Protection Act including, but not limited to, requiring compliance certification from all subconsultants and vendors who will participate in the performance of this Agreement and maintaining such certifications for inspection if requested. The CONSULTANT acknowledges that violation may result in the following: (a) cancellation of any public contract and ineligibility for any public contract for up to three (3) years, or (b) the loss of any license, permit, certification or other document granted by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. The CONSULTANT also acknowledges liability for any additional costs incurred by the Commission due to such contract cancellation or loss of license or permit. The CONSULTANT is required to provide the certification on Exhibit 9 in this CONTRACT to the COMMISSION verifying that the CONSULTANT and subconsultant(s) are registered and participating in E-Verify prior to execution of this CONTRACT.

F. The covenants herein shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE XIX. WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants, and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time, or of any other provision hereof, nor shall it be construed to be a modification of the terms of this CONTRACT.

ARTICLE XX. SEVERABILITY

If any terms or provisions of this CONTRACT are prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this CONTRACT shall not be affected thereby and each term and provision of this CONTRACT shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XXI. ENTIRE AGREEMENT

This CONTRACT constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating thereto.

ARTICLE XXII. CONFLICT OF INTEREST

The CONSULTANT covenants that no public or private interests exist and none shall be acquired directly or indirectly which would conflict in any manner with the performance of the CONSULTANT'S CONTRACT. The CONSULTANT further covenants that no employee of the CONSULTANT or of any subconsultant(s), regardless of his/her position, is to personally benefit directly or indirectly from the performance of the SERVICES or from any knowledge obtained during the CONSULTANT'S execution of this CONTRACT.

ARTICLE XXIII. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the COMMISSION to proceed under this CONTRACT is conditioned upon the availability of funds, the appropriation of funds by the Mississippi Legislature, and the receipt of state and/or federal funds. If, at any time, the funds anticipated for the fulfillment of this CONTRACT are not forthcoming or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the COMMISSION for the performance of this CONTRACT, the COMMISSION shall have the right, upon written notice to the CONSULTANT, to immediately terminate or stop work on this CONTRACT without damage, penalty, cost, or expense to the COMMISSION of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

ARTICLE XXIV. STOP WORK ORDER

A. **Order to Stop Work.** The COMMISSION may, by written order to the CONSULTANT at any time, and without notice to any surety, require the CONSULTANT to stop all or any part of the work called for by this CONTRACT. This order shall be for a specified period not exceeding twenty-four (24) months after the order is delivered to the CONSULTANT unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the CONSULTANT shall forthwith comply with its terms and take all steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the COMMISSION shall either:

(1) cancel the stop work order; or

(2) terminate the work covered by such order according to and as provided in Article III of this CONTRACT.

Prior to the COMMISSION'S taking official action to stop work under this CONTRACT, the Executive Director of MDOT may notify the CONSULTANT, in writing, of MDOT's intentions to ask the COMMISSION to stop work under this CONTRACT. Upon notice from the Executive Director of MDOT, CONSULTANT shall suspend all activities under this CONTRACT, pending final action by the COMMISSION.

B. **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONSULTANT shall have the right to resume work. If the COMMISSION decides that it is justified, an appropriate adjustment may be made in the delivery schedule. If the stop work order results in an increase in the time required for or in the CONSULTANT'S cost properly allocable to the performance of any part of this CONTRACT and the CONSULTANT asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage, an equitable adjustment in this CONTRACT may be made by written modification of this CONTRACT as provided by the terms of this CONTRACT.

C. **Termination of Stopped Work.** If a stop work order is not canceled and the work covered by such order is terminated, the CONSULTANT may be paid for services rendered prior to the Termination. In addition to payment for services rendered prior to the date of termination, the COMMISSION shall be liable only for the costs, fees, and expenses for demobilization and close out of this CONTRACT, based on actual expenses incurred by the CONSULTANT in the packaging and shipment of all documents covered by this CONTRACT to the COMMISSION. In no event shall the COMMISSION be liable for lost profits or other consequential damages.

ARTICLE XXV. KEY PERSONNEL & DESIGNATED AGENTS

The CONSULTANT agrees that Key Personnel identified as assigned to phases hereunder as set forth in this CONTRACT and the Consultant's Proposal (Statement of Qualifications), shall not be changed or reassigned without prior approval of the MDOT or, if prior approval is impossible, and then notice to the MDOT and subsequent review by the MDOT which may approve or disapprove the action. For purposes of implementing this section and all other sections of this CONTRACT with regard to notice, the following individuals are herewith designated as agents for the respective parties:

COMMISSION

For Contractual Matters	For Technical Matters

CONSULTANT

For Contractual Matters	For Technical Matters

ARTICLE XXVI. AUTHORIZATION

Both parties hereto represent that they have authority to enter into this CONTRACT and that the individuals executing this CONTRACT are authorized to execute it and bind their respective parties and certified copies of the applicable Resolution of the Corporate Board of Directors of the CONSULTANT are attached hereto as "Exhibit 1" and incorporated herein by reference and made a part hereof as if fully copied herein in words and figures.

WITNESS this my signature in execution hereof, this the ____ day of _____, 20___.

MISSISSIPPI TRANSPORTATION COMMISSION BY
AND THROUGH THE EXECUTIVE DIRECTOR OF THE
MISSISSIPPI DEPARTMENT OF TRANSPORTATION

_____
MELINDA L. MCGRATH, P.E., EXECUTIVE DIRECTOR

WITNESS this my signature in execution hereof, this the _____ day of _____, 20__.

{Consultant's name entered here}

_____

ATTEST: _____

Exhibits attached hereto and incorporated by reference into this contract include those identified on the attached page entitled "List of Exhibits".

LIST OF EXHIBITS

1. Evidence of Authority
2. General Scope of Work and Common Specifications
3. Fees and Expenses
4. Sample Invoice
5. Notice to the CONSULTANT
6. The CONSULTANT'S Certificate Regarding Debarment, Suspension and Other Responsibility Matters
7. Certification of Mississippi Transportation Commission
8. This Exhibit was intentionally left blank
9. Prime Consultant /Contractor EEV Certification and Agreement

EXHIBIT 1

{{{{Attach certified copy of Resolution of the Corporate Board of Directors here}}}}

EXHIBIT 2

SCOPE OF WORK

Scope of Work 1

EXHIBIT 3

FEES AND EXPENSES

The COMMISSION shall pay the CONSULTANT on a Labor hour/unit cost basis with an upset limit of **$_____** for the satisfactory completion of the Scope of Work set forth under "Exhibit 2", hereto, for all salaries, payroll additives, overhead, direct costs and CONSULTANT'S fixed fees attributable to this CONTRACT.

All charges for services must be substantiated by supporting data, i.e. certified time sheets, daily logs, check stubs, pay vouchers, etc.

Direct Costs:

Direct Costs are those expenses deemed reasonably necessary by the COMMISSION for the successful completion of the Scope of Work, which are charged directly to the project and not included in overhead. These direct expenses, as used herein, include the costs of travel, subsistence, shipping charges, long distance telephone calls and printing if it is not company accounting policy to include these costs in overhead rates. The COMMISSION will reimburse the CONSULTANT'S actual documented expenses; or the amount allowable under the current edition of the MDOT State Travel Handbook, whichever is lower. Except as otherwise specifically provided herein, the procedures generally outlined in the MDOT State Travel Handbook shall govern the allowability of any expense reimbursement. (e.g. no meal reimbursement when there is no overnight stay).

Labor Hour / Unit-cost Rates:

Labor Hour, as the term is used herein, shall include all direct salaries, payroll additives, overhead, and profit. Unit-Costs, as the term is used herein, shall include all direct costs, labor costs, profit, and any associated costs. Labor Hour / Unit-Costs are not subject to any adjustments on the basis of the CONSULTANT's cost experience in performing the PROJECT. The Labor Hour / Unit-costs shall not exceed the rates established in EXHIBIT 3 (found in Table 1: Rate Schedule for Labor Hours/Unit Costs). Once the COMMISSION has approved and accepted the work of the CONSULTANT, the COMMISSION will pay the CONSULTANT any unpaid amounts of the PROJECT.

Table 1: Rate Schedule for Labor Hours/Unit Costs

EXHIBIT 4

SAMPLE INVOICE – LABOR HOUR/UNIT COST

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
P. O. BOX 1850
JACKSON, MS 39215-1850 DATE:

ATTENTION: Consultant Services Administrator

INVOICE NO. 0000
PERIOD _____, 20__ THROUGH ____, 20__
PROFESSIONAL SERVICES IN ACCORDANCE WITH
CONTRACT DATED_____, 20__, AS RELATES TO
PROJECT NO. ___-___-____-____-____ IN_____ COUNTY, HIGHWAY_____.
WORK ASSIGNMENT: ____-_____ _____-_____
CONSULTANT:_____

	CURRENT PERIOD	PREVIOUS ESTIMATE	TOTAL ALLOWED TO DATE
*LABOR/UNIT COSTS	$	$	$
**DIRECT COSTS	$	$	$
SUBCONSULTANT(S)	$	$	$
PROJECT TOTAL	$	$	$
AMOUNT DUE THIS INVOICE:	**$**	**$**	**$**

NOTE:

1. * LABOR/UNIT COSTS MUST BE BROKEN DOWN WITH SUPPORTING DOCUMENTATION INDICATING THE NUMBER OF HOURS/UNITS UTILIZED PER PERIOD.
2. ** DIRECT COSTS MUST INCLUDE SUPPORTING DATA IF NOT ALREADY INCLUDED IN THE UNIT COST OF THE ITEM.
3. THE CONSULTANT MAY USE ITS OWN INVOICE FORM SO LONG AS IT HAS BEEN APPROVED BY MDOT.

   PRIOR TO SUBMISSION BY THE CONSULTANT SAID FORM SHOULD, AT A MINIMUM, CONTAIN THE ABOVE INFORMATION.

EXHIBIT 5

NOTICE TO CONTRACTORS, FEDERAL AID CONTRACT
COMPLIANCE WITH TITLE VI OF
THE CIVIL RIGHTS ACT OF 1964
COPELAND ANTI-KICKBACK ACT
DAVIS BACON ACT
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
CLEAN AIR ACT
ENERGY POLICY AND CONSERVATION ACT
DISADVANTAGED BUSINESS ENTERPRISES ACT
WORKER VISIBILITY

During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees and successor-in-interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

1. Nondiscrimination: The CONSULTANT, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, religion, color, sex, national origin, age or disability in the selection and retention of subconsultants including procurement of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this CONTRACT covers a program set forth in Appendix B of the Regulations. In addition, the CONSULTANT will not participate either directly or indirectly in discrimination prohibited by 23 C.F.R. 710.405(b).

2. Solicitations for Subcontracts. Including Procurement of Materials and Equipment: In all Solicitations, either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this CONTRACT and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, national origin, age or disability.

3. Anti-kick back provisions: All CONTRACTS and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each CONSULTANT or subconsultant shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The CONSULTANT shall report all suspected or reported violations to the COMMISSION.

4. Davis Bacon Act: When required by the federal grant program legislation, all construction contracts awarded to contractors and subcontractors in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week.

5. Contract Work Hours and Safety Standards Act: Where applicable, all contracts awarded by contractors and subcontractors in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under section 103 of the Act, each

contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Clean Air Act: Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857 (h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts and subcontracts in amounts in excess of $100,000).

7. Energy Policy and Conservation Act: Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

EXHIBIT 6

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - Certification in accordance with Section 29.510 Appendix A, C.F.R./Vol. 53, No. 102, page 19210 and 19211:

(1) The CONSULTANT certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or CONTRACT under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (l)(b) of this certification: and

(d) have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default;

(e) has not either directly or indirectly entered into any agreement participated in any collusion; or otherwise taken any action in restraint of free competitive negotiation in connection with this CONTRACT.

(2) The CONSULTANT further certifies, to the best of his/her knowledge and belief, that:

(f) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or employee of a member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(g) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of employee of Congress, or any employee of a member of Congress in connection with this CONTRACT, Standard Form-LLL,"Disclosure Form to Report Lobbying", in accordance with its instructions will be completed and submitted.

The certification contained in (1) and (2) above is a material representation of fact upon which reliance is placed and a pre-requisite imposed by Section 1352, Title 31, U. S. Code prior to entering into this CONTRACT. Failure to comply shall be subject to a civil penalty of not less than $10,000 and not more than $100,000. The CONSULTANT shall include the language of the certification in all subcontracts exceeding $25,000 and all sub-consultants shall certify and disclose accordingly.

I hereby certify that I am the duly authorized representative of the CONSULTANT for purposes of making this certification, and that neither I, nor any principal, officer, shareholder or employee of the above firm has:

(a) employed or retained for commission, percentages, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this agreement,

(b) agreed, as an express or implied condition for obtaining this CONTRACT, to employ or retain the services of any firm or person in connection with carrying out the agreement, or

(c) paid, or agreed to pay, to any firm, organization or person (other than a bone fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the agreement; except as herein expressly stated (if any).

I acknowledge that this Agreement is subject to applicable state and federal laws, both criminal and civil.

SO CERTIFIED this_____ day of _____, 20___.

{Enter Consultant's name here}

_____

ATTEST: _____

My Commission Expires:

_____
Notary

EXHIBIT 7

CERTIFICATION OF MISSISSIPPI TRANSPORTATION COMMISSION

I hereby certify that I am the Executive Director of the Mississippi Department of Transportation, duly authorized by the Mississippi Transportation Commission to execute this certification and that the above consulting firm or its representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this agreement to:

(a) employ or retain, or agree to employ or retain, firm or person, or

(b) pay, or agree to pay, to any firm, person organization, any fee, contribution, donation, or consideration of any kind except as here expressly stated (if any).

SO CERTIFIED on the_____ day of _____, 20___.

THE MISSISSIPPI TRANSPORTATION COMMISSION
BY AND THROUGH THE EXECUTIVE DIRECTOR OF
THE MISSISSIPPI TRANSPORTATION DEPARTMENT

_____
MELINDA L. MCGRATH, P.E., EXECUTIVE DIRECTOR

EXHIBIT 8

{Intentionally Left Blank}

EXHIBIT 9

PRIME CONSULTANT / CONTRACTOR EEV CERTIFICATION AND AGREEMENT

By executing this Certification and Agreement, the undersigned verifies its compliance with Senate Bill 2988 from the 2008 Mississippi Legislative Session, "Mississippi Employment Protection Act," as published in Laws, 2008 and codified in the Mississippi Code of 1972, as amended, and any rules or regulations promulgated by Mississippi Transportation Commission [MTC], Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq., Mississippi Code of 1972, as amended), stating affirmatively that the individual, firm, or corporation which is contracting with MTC has registered with and is participating in a federal work authorization program***** operated by the United States Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, Pub.L.99-603,100 Stat 3359 as amended. The undersigned agrees to inform the MTC if the undersigned is no longer registered or participating in the program.

The undersigned agrees that, should it employ or contract with any subconsultant(s) and/or subcontractor(s) in connection with the performance of this Contract, the undersigned will secure from such subconsultant(s) and/or subcontractor(s) verification of compliance with the Mississippi Employment Protection Act. The undersigned further agrees to maintain records of such compliance and provide a copy of each such verification to MTC, if requested, for the benefit of the MTC or this Contract.

_____
EEV***** Company Identification Number [Required]

The undersigned certifies that the above information is complete, true and correct to the best of my knowledge and belief. The undersigned acknowledges that any violation may be subject to the cancellation of the contract, ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted by any agency, department or government entity for the right to do business in Mississippi for up to one (1) year, or both, any and all additional costs incurred because of the contract cancellation or the loss of any license or permit, and may be subject to additional felony prosecution for knowingly or recklessly accepting employment for compensation from an unauthorized alien as defined by 8 U.S.C §1324a(h)(3), said action punishable by imprisonment for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or both, in addition to such prosecution and penalties as provided by Federal law.

BY:_____ _____
Authorized Officer or Agent Date

_____ _____
Printed Name of Authorized Officer or Agent Title of Authorized Officer or Agent of Contractor / Consultant

SWORN TO AND SUBSCRIBED before me on this the _____ day of _____, 20____.

_____
NOTARY PUBLIC
My Commission Expires: _____

* As of the effective date of the Mississippi Employment Protection Act, the applicable federal work authorization program is E-Verify™ operated by the U. S. Citizenship and Immigration Services of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration.