

Questions and Answers, Part 1 – CMGC CONTRACT TEMPLATE – CMGC US 72 Marshall County

Date: December 11, 2024

Project Number: **SP-0007-01(102)/109563-101000 & 301000**

County: Marshall County

Project Description: Provide Construction Manager/General Contractor (CMGC) Preconstruction Services (which may be amended to add Construction Services) for **Interchange and Frontage Road Construction along US 72 from West of Lake Hill Road to East of Coopwood Road**, Project Number 109563/101000 & 301000 Marshall County (hereinafter referred to as the PROJECT).

From: Jessica Dilley – MDOT Director of Alternative Program Delivery

Question #1: What revisions were made to the Draft CMGC Contract template in comparison to the Final CMGC Contract template?

Answer: Please refer to the redline version of the CMGC Contract template provided below.

Mississippi Department of Transportation

Section 902 CMGC

Contract

Improvements to [PROJECT Name]

[PROJECT Number]

[Date]

CMGC CONTRACT

Termini:
PROJECT No.
County:

This Construction Manager/General Contractor Contract (the "CMGC Contract" or "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 ("MDOT") and, [Company Name] (the "CMGC Contractor" or "Contractor"), a/an [State] Corporation, duly licensed and registered to do business in the State of Mississippi, whose address for mailing is [Address] (the "Parties"). This Contract shall be effective as of the date of latest execution below.

WITNESSETH:

WHEREAS, the Commission requires the Services of a Construction Manager/General Contractor ("CMGC") for the purposes of advancing Project No._____, _____ County (the "Project"); and

WHEREAS, the Commission has authority under Mississippi Code Section 65-1-85(11) to utilize the CMGC method to deliver the Project, and pursuant thereto, has adopted CMGC Guidelines for this alternative delivery method; and

WHEREAS, Mississippi Code Section 65-1-85(11)(d) defines CMGC as a method of contracting where a Construction Manager "is engaged during the design phase to provide input on scheduling, pricing, phasing, and other information that assists or informs" the Commission on issues of constructability. In addition, the statute provides that, if the Commission and the Construction Manager "are able to negotiate a reasonable guaranteed maximum price for construction based on a defined scope and schedule", then the Construction Manager becomes the General Contractor "for the construction of the project or portions thereof"; and

WHEREAS, in accordance with state law and the Commission's CMGC Guidelines, the Commission desires to engage a qualified and experienced Contractor to perform CMGC work during the Preconstruction Phase ("Preconstruction Services"), and – if an agreement is reached regarding the construction of the Project – to perform CMGC work during the Construction Phase ("Construction Services") for the Project (collectively, the "Services"); and

WHEREAS, the Contractor 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, after a competitive process, Contractor has been selected to provide the Services as described herein; and

WHEREAS, the Commission desires to avail itself of and rely upon Contractor's expertise to perform the Services on time and within budget; and

WHEREAS, the Contractor wishes to provide that expertise with respect to the Project;

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 Contractor do hereby agree as follows:

ARTICLE I. DEFINITIONS

The following definitions apply to this Contract and shall supplement the definitions in Section 101 of the latest edition of the *Mississippi Standard Specifications for Road and Bridge Construction* (the “Standard Specifications”) as appropriate:

Construction ServicesPackage Amendment or Construction Package means any amendment to this Contract that describes the obligations of the Parties during the Construction Phase for a specified portion of Construction work.

Construction Package Price means the maximum amount payable to the Contractor for work performed pursuant to a Construction ~~PackageServices~~ Amendment.

Construction Phase or Construction means the Project phase during which the physical work of constructing the Project is performed pursuant to one or more Construction ~~PackageServices~~ Amendment(s), if any are executed.

Contract Documents - means all documents or papers, including electronically submitted documents, that comprise the CMGC Contract including those specifically incorporated or referenced in the CMGC Contract and any exhibits or amendments thereto. All Exhibits attached hereto and incorporated by reference into this Contract include those identified in the attached page entitled “List of Exhibits”.

Contractor Risk means a risk assigned to the Contractor as described in Article IV. Risk Management.

Early Work Package means a type of Construction Package for a portion of physical construction work (including, but not limited to: site preparation, structure demolition, hazardous material abatement/treatment/removal, or early material acquisition/fabrication) that is procured after National Environmental Protection Act (“NEPA”) approval is complete but before all design work for the Project is complete. Early Work Packages may be used to procure long-lead time construction materials and equipment in advance of construction, thus optimizing the overall Project schedule. Materials may also be procured with Early Work Packages to avoid price escalations for volatile construction materials. Work packages must be a severable phase of the construction, such that the Commission is not obligated to have the Contractor construct any other portions of the work. Early Work Packages are not to be used to piecemeal construction.

Fixed-Markup Percentage means the agreed upon percentage of Contractor’s fixed markup set forth in **Exhibit A.12**, to be included in the negotiated lump sum and unit-based prices for Construction Services making up the GMP as described in this Contract. This percentage includes Contractor profit, general and administrative (G&A) costs, regional and home office overhead, along with any non-reimbursable costs for the Project; ~~it shall not include any field indirect costs or direct costs of the Project.~~ The percentage will remain fixed, regardless of the final GMP for the Construction Phase, including any Early Work Packages.

Guaranteed Maximum Price (GMP) means the negotiated guaranteed maximum price for all combined amounts payable to the Contractor for work ~~for a specific scope and schedule~~ to be performed during the Construction Phase, as indicated in the Construction ~~PackageServices~~ Amendment(s), if any are executed. If multiple Construction ~~PackageServices~~ Amendments are executed, including Early Work Packages, then each Construction Package shall have its own GMP (“Package GMP”), as well, for the amounts payable under that particular Construction ~~PackageServices~~ Amendment for the work specified therein.

Independent Cost Estimator (ICE) means the person or firm identified by MDOT to perform independent cost estimation services.

MDOT Risk means a risk assigned to MDOT in accordance with Article IV. Risk Management.

Preconstruction Phase or Preconstruction means the Project phase during which the Contractor provides input on scheduling, pricing, phasing, risk identification and other information that assists or informs the Commission and MDOT on issues of constructability, as more specifically described in **Exhibit A.2** to this Contract.

Project Development Team means the team consisting of the appropriate MDOT staff, MDOT designers or design consultants, the CMGC Contractor, the Independent Cost Estimator (ICE), and any other relevant advisors and/or experts assembled by MDOT (such as FHWA staff and legal advisors). Contractor is a member of the Project Development Team whose input during the design process is used to supplement (but not replace or duplicate) the engineering or design services performed by MDOT and/or MDOT consultant(s).

Provisional Risk means a risk identified as a Provisional Risk in the Risk Register, the occurrence of which has associated Provisional Sums (which may be capped, uncapped, or shared) available in the Risk Register as described in Article IV. Risk Management.

Provisional Sum means a fixed sum allocable following the occurrence of a specific Risk Register Event identified as a Provisional Risk. An amount equal to the total of all Provisional Sums shall be included in the schedule of values for each Construction Package.

Risk Register means a register incorporating a listing of Risk Register Events for the Project, risk impacts (including cost and schedule impacts associated with the risks), required mitigation strategies, and allocation of responsibility for the occurrence of a Risk Register Event. Any Construction Package Services Amendment shall include, as of the date of its execution, the most-current Risk Register.

Risk Register Event means Construction Phase risks that are clearly identified and defined, but not mitigated during the Preconstruction Phase and are included in the Risk Register as described in Article IV. Risk Management.

ARTICLE II. CMGC OVERVIEW

As described more fully elsewhere herein, the Contractor will cooperate and collaborate with MDOT and the Project Development Team to furnish efficient business administration and supervision of all Services for which the Contractor is responsible under the Contract; to furnish at all times an adequate supply of workers and materials; and to perform the work in conformance with the terms and conditions of the Contract Documents in an expeditious and economical manner.

Services provided by the Contractor under this Contract shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. In so doing, the Contractor 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 Contractor 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 Preconstruction Services shall be performed by the Contractor in accordance with the provisions of this Contract, including the Scope of Work attached to this Contract as **Exhibit A.2**. The performance of the Services referred to in **Exhibit A.2** shall be the primary basis for measurement of performance of Preconstruction Services under this Contract.

MDOT, in support of the Contractor, will provide the Contractor any data within the possession and control of MDOT ~~that which~~ may be of assistance to the Contractor in the performance of Preconstruction Services. Manuals, guides, standards, and specifications applicable to Preconstruction Services under this Contract shall be those approved and/or adopted by MDOT and/or the Commission and ~~the~~ FHWA 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.

The Contractor will prepare Construction cost proposals including a proposed ~~Guaranteed Maximum Price (GMP)~~ for construction of the Project at the design stages identified in **Exhibit A. 2**. MDOT will compare the proposed GMP with the state estimate and the ICE estimate to determine its reasonableness. Cost proposals within 5% of the State and ICE estimates are expected. Cost proposals greater than 5% but within 10% of the State and ICE estimates may be accepted at the discretion of MDOT. If the GMP Proposal is not within a percentage difference acceptable to MDOT, then MDOT and the Contractor must negotiate to resolve major pricing differences. This may involve revisiting pricing assumptions made by both the Contractor, the State, and the ICE. To help resolve pricing differences, subsequent negotiations may be elevated to include executive level personnel from MDOT and the Contractor. MDOT reserves the right to terminate negotiations at any time and prepare the plans, specifications, and estimate package for advertisement.

The CMGC Fixed-Markup Percentage will be included in the negotiated lump sum and unit-based prices to make up the GMP. The CMGC Fixed-~~Markup~~ Percentage is set forth in **Exhibit A.12**. The CMGC Fixed-Markup Percentage includes all profit, general and administrative (G&A) costs, regional and home office overhead, as well as any non-reimbursable Project costs. Importantly, the CMGC ~~Fixed-Mmarkup P~~ercentage will remain fixed, regardless of the final, negotiated GMP for the Construction Phase, including any Early Work Packages. The CMGC Fixed-Markup Percentage is expressed as a percentage, carried out to two decimal places (e.g., 0.00%).

If a GMP is ultimately agreed upon and the Commission approves, the Contract will be amended to add the Construction Package(s), and the Contractor will be the Contractor for the Construction work identified in the Construction ~~PackageServices~~ Amendment(s). If the Contractor does not furnish a proposed GMP acceptable to the Commission, or if the Commission determines at any time in its sole discretion that the Parties may fail to reach an agreement on a GMP acceptable to the Commission, or a Construction ~~PackageServices~~ Amendment is not approved and executed for the Construction Phase or portions thereof, the Commission may then advertise for the Construction of the Project (or portions thereof) using MDOT's normal competitive bidding process (Design-Bid-Build). The Commission, in its sole discretion, may cancel the Project, reduce the scope, or deliver the Project by other means. As stated elsewhere herein, the Commission will retain ownership of the technical information developed under this Contract.

All provisions of this Contract (as may be modified in accordance with Article XIV. Modification) shall apply to the performance of Preconstruction Services, unless: (1) specifically indicated otherwise herein, or (2) a Construction ~~PackageServices~~ Amendment is executed, in which case Construction ~~PackageServices~~ Amendment(s) are understood to apply to Construction Services only. All provisions of this Contract shall apply to the performance of Construction Services, unless: (1) specifically indicated otherwise herein, or (2) stated otherwise in Construction ~~PackageServices~~ Amendment(s), if any. In the event the provisions of a Construction ~~PackageServices~~ Amendment conflict with any other provision(s) in the Contract, it is understood by and between the Parties that the provisions of the Construction ~~PackageServices~~ Amendment shall take precedence with respect to the specific Construction Services or portion thereof addressed in the applicable Construction ~~PackageServices~~ Amendment.

ARTICLE III. THE NEPA PROCESS

For any CMGC Contract executed prior to the completion of the NEPA environmental review process (the "NEPA Process") for the Project, the following provisions apply:

1. The Scope of Work for Preconstruction Services in **Exhibit A.2** includes all alternatives identified and considered in the NEPA process.
2. No commitments will be made to any alternative during the NEPA process. The comparative merits of all alternatives identified and considered during the NEPA process, including the no-build alternative, will be evaluated and fairly considered.
3. The Contractor shall not prepare NEPA documentation or have any decision-making responsibility with respect to the NEPA process. However, the Contractor may be requested to provide information about the Project and possible mitigation actions, including constructability information, and Contractor's work

product may be considered in the NEPA analysis and included in the record.

4. MDOT will not proceed, or permit any consultant or contractor (including the CMGC Contractor) to proceed, with the development of shop drawings and fabrication plans before the completion of the NEPA process for the Project.
5. No Construction ~~Package~~Services Amendment (including Early Work Packages such as advanced material acquisition or site work) will be executed and MDOT will not proceed, or permit any consultant or contractor (including the CMGC Contractor) to proceed, with Construction until the completion of the NEPA process for the Project.

In the event the environmental review process does not result in the selection of a build alternative, the Commission may terminate this Contract in accordance with Article V. Contract Term, Termination.

ARTICLE IV. RISK MANAGEMENT

The general requirements for the risk management construct for the Project are set forth below. Additional requirements for the development, maintenance, use and application of the Risk Register and related risk management concepts are set forth elsewhere in the Contract Documents.

A. Risk Register

During the Preconstruction Phase, the Parties shall develop a Risk Register to be included in each Construction ~~Package~~Services Contract. Any Construction Package Amendment shall include, as of the date of its execution, the most-current Risk Register. The Risk Register shall identify Risk Register Events. All Risk Register Events shall be categorized as either an MDOT ~~R~~isk, Provisional Risk, or a Contractor risk. The Risk Register shall include dates on which MDOT gives its approval of a particular Risk Register Event (including its associated relief), and the Risk Register Event shall be deemed as being in effect as of that date. The Risk Register shall also define mitigation strategies to be used with respect to Risk Register Events and identify any probable cost and/or time impacts to the Project.

B. MDOT Risks

All Risk Register events that are an MDOT Risk shall describe the types and extent of relief that the Contractor shall be entitled to seek upon occurrence of the Risk Register Event. Risk Register Events that are MDOT Risks may also include requirements for determination of time impacts, payment requirements, and other terms. If a Risk Register event occurs while performing Construction ~~Services~~work, and the Risk Register event is an MDOT Risk, then the Contractor shall be entitled to seek the remedy described in the Risk Register.

C. Provisional Risks

All Risk Register Events that are Provisional Risks shall specify:

1. The amount of any Provisional Sum.
2. Whether the Provisional Sum is a Shared Provisional Sum.
3. Whether the Provisional Sum is capped or uncapped.
4. A description of how the Risk Register Event is triggered.
5. Payment requirements for Provisional Sums.
6. Any required mitigation efforts to be taken by the Contractor.

When a Provisional Risk Register Event occurs, the Contractor shall coordinate with MDOT and obtain MDOT approval of all Provisional Sum payment amounts and applicable relief. Contractor shall include requests for payment of approved Provisional Sum amounts as part of payment requests required by the Contract. An amount equal to the total of all Provisional Sums shall be included in the schedule of values for each Construction Package.

D. Provisional Risks with Capped Provisional Sums

If a Risk Register Event occurs while performing construction, and the Risk Register Event is a Provisional Risk with a capped Provisional Sum, then the Contractor shall not be entitled to seek any additional costs or schedule relief for occurrence of the Risk Register Event beyond what is described in the Risk Register.

E. Provisional Risks with Uncapped Provisional Sums

If a Risk Register Event occurs while performing construction, and the Risk Register Event is a Provisional Risk with an uncapped Provisional Sum, and the Provisional Sum or other relief provided in the Risk Register is exhausted, then the Contractor may seek a Supplemental Agreement for increased cost or time beyond what is described in the Risk Register.

F. Shared Provisional Sums

For all Risk Register Events that identify a shared Provisional Sum, upon achievement of final acceptance, or such earlier date determined by MDOT in its sole discretion, any unused shared Provisional Sums across all Construction Packages shall be allocated to MDOT or the Contractor as described in the Risk Register.

G. Contractor Risks

To facilitate transparent pricing, the Risk Register may also include Contractor Risks and identify Contractor Risk contingency sums. Contractor Risk contingency sums are not shared and are retained by the Contractor, regardless of whether they are used. For avoidance of doubt, any risk not identified in the Risk Register shall also be considered a Contractor Risk, even if it is not included in the Risk Register. The Contractor shall receive no additional compensation for ~~Contractor~~ **ONTRACTOR** Risks beyond any contingency identified in the Risk Register or as otherwise provided by this Contract.

ARTICLE V. CONTRACT TERM, TERMINATION

As of its effective date, this Contract shall remain in effect until negotiations for Construction Services are formally terminated by MDOT or the latest termination date of any Construction ~~Package~~ **Services** Amendment(s), as may be applicable. The Commission specifically reserves the right and privilege to enlarge or reduce the scope or to cancel this Contract at any time with or without cause.

A. Preconstruction Services Termination

During the term of this Contract, the Commission reserves the right to terminate this Contract for Preconstruction Services in whole or in part, at any time, with or without cause, upon prior written notice to the Contractor, notwithstanding any just claims by the Contractor 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 time and expenses incurred by the Contractor 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 Contractor, in writing, of MDOT's intentions to ask the Commission to terminate this Contract. Upon notice from the Executive Director of MDOT, the Contractor shall suspend all activities under this Contract, pending final action by the Commission.

B. Construction Services Termination

It is understood by and between the Parties that Construction ~~Package~~ **Services** Amendment(s), if any, will be subject to the termination provisions stated or referenced therein, including ~~the MDOT's~~ Standard Specifications

and any Special Provisions applicable thereto.

ARTICLE VI. TIME OF PERFORMANCE

Time is of the essence in this Contract. The Contractor shall be prepared to perform its responsibilities for providing Services by the date of execution of this Contract. ~~The CONTRACTOR has submitted a proposed Project schedule to the Commission which has been incorporated herein as a part of Exhibit A.2, which, when approved by final execution of this Contract, shall control the evaluation of the CONTRACTOR'S progress on this Project.~~ The Contractor may not begin work on any feature of this Project prior to the Notice to Proceed Date.

It is understood by and between the Parties that Construction ~~Package~~Services Amendment(s), if any, will be subject to the additional scheduling provisions and requirements stated or referenced therein, including ~~MDOT's~~ the Standard Specifications and any Special Provisions applicable thereto.

ARTICLE VII. RELATIONSHIP OF THE PARTIES

The relationship of the Contractor 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 or MDOT. The Contractor shall not make any claim, demand or application or any right or privilege applicable to an officer or employee of the Commission or MDOT, 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 Contractor shall be directed to the key personnel and designated agents designated in this Contract.

The terms "MDOT" and "Commission" as used in the Contract may be interchanged as appropriate.

ARTICLE VIII. COMPENSATION, BILLING, AND AUDIT

A. Preconstruction Services Payment

The following provisions apply to compensation, billing, and audit for Preconstruction Services.

1. Cost and Fees

The ~~Contractor~~CONTRACTOR shall be paid on the basis set forth in **Exhibit A.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 A.3**.

2. Monthly Billing

The Contractor may submit monthly billing to the Commission. All billing must be submitted electronically to csuinvoice@mdot.ms.gov, unless otherwise authorized by the Commission or MDOT. (A sample of a required invoice is attached as **Exhibit A.4** and includes the Commission-supplied CSU-001 Form that must precede all electronically submitted invoices.) The Commission may supply the CSU-001 Form immediately following the execution of the Contract. In the event of multiple counties on a Contract, the Commission may supply a CSU-001 Form for each county. Each billing shall include all time and allowable expenses through the end of the billing period. Direct expenses, as used herein, include the costs of travel, subsistence, shipping charges, long distance telephone calls and printing if it is not ~~an~~company accounting policy of the Contractor to include these costs in overhead rates. Monthly payments will be made on the basis of a certified time record. The Commission retains the right to verify time and expense records by audit of any or all the Contractor's time and accounting records at

any time during the life of this Contractor and up to three years thereafter.

The Contractor 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.

~~—3. Progress Reports~~

~~Unless stated otherwise by the MDOT, the Contractor shall use appropriate software to develop a project management plan for tracking and updating its progress based on the approved project schedule and budget. The project management plan shall include all Preconstruction tasks identified in the Contract fee schedule along with each task's begin date, end date, and estimated budget. This plan will be submitted for MDOT approval within 10 days of the Notice to Proceed Date.~~

~~The Contractor shall submit a progress report based on the approved management plan with each billing. This progress report will include all actual tasks performed on the project to date and their relationship to the percentage of fees claimed for each task. The report will include a chart and line graph which will include the projected cumulative budget, expenditures, and percent complete in a format consistent to **Exhibit A.11**.~~

~~The report will be used to verify the Contractor's performance in relationship to the costs claimed and to allow the MDOT to monitor the Contractor's efforts. The Contractor shall be responsible for any updates to these schedules and for documenting in writing to the Agency any major deviations in the actual versus estimated projected time frames.~~

- ~~3. Should an invoiced amount for costs earned appear to exceed the work effort believed to be completed, MDOT reserves the right to refuse payment for those costs unless the Contractor provides satisfactory evidence to support these costs. Without sufficient evidence, payment will be withheld until the Contractor's deviation in actual versus estimated projected time frame has been narrowed to an acceptable limit deemed appropriate by MDOT.~~

~~4.3. 4~~Final Payment

The Contractor shall clearly indicate on its last invoice for Preconstruction Services that the invoice is "FINAL". The MDOT Project Manager will confirm that Preconstruction Services are concluded and that the "FINAL" invoice for Preconstruction Services may be paid. Under no circumstances will the total amount paid exceed the maximum not to exceed amount established for Preconstruction Services in this Contract.

The Contractor agrees that acceptance of the final payment for Preconstruction Services 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 with respect to Preconstruction Services 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 Preconstruction Services 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 Contractor's failure to perform according to the prevailing industry standards, including standards of conduct and care, format and content, shall be corrected by the Contractor without additional compensation. Neither the Commission's review, approval or acceptance of, nor payment for, the Preconstruction Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract, or of any cause of action arising out of the performance of this Contract. The Contractor shall be and remain liable to the Commission for all damages to the Commission caused by the Contractor's negligent acts, errors and/or omissions in the performance of any of the Preconstruction Services furnished under this ~~C~~contract. Notwithstanding inspection and acceptance by the Commission or any provision concerning the conclusiveness

thereof, the Contractor represents that Preconstruction Services performed and work product(s) provided under this Contract conform (or exceed) the requirements of this Contract. The Contractor shall submit its “FINAL” invoice for Preconstruction Services no later than 45 days following termination of negotiations for Construction Services or the execution of a Construction Services Amendment for the final construction of the Project as applicable. MDOT reserves the right to refuse to make payment on any invoices submitted later than 45 days after this date.

5-4.5 Record Retention

The Contractor 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 Contractor agrees that the provisions of this Article shall be included in any Contract it may make with any subcontractors, assignees or transferees.

B. Construction Services Payment

The following provisions apply to compensation, billing, and audit for Preconstruction Services, as will be further described and delineated in the Construction ~~Package~~Services Amendment(s), if any.

1. Early Work Packages

The Commission and MDOT desire to construct the Project using as few Construction ~~Package~~Services Amendments as possible. While one Construction Package is typically the most efficient, Early Work Packages may be allowed where there are quality, cost, or scheduling efficiencies to be gained.

MDOT will consider the following criteria in approving work to be delivered through multiple Construction ~~Package~~Services Amendments:

- a. The independent utility of each Construction Package;
- b. The ~~National Environmental Policy Act~~ (NEPA) status of the Project;
- c. The status of the Project’s pricing estimates;
- d. Whether authorizing the work will create risk to MDOT. The following types of work are not viewed as creating increased risks.
 - i. The Construction Package is used to purchase materials that can be stored for later incorporation into the Project or disposed of/reused in the event of Contract termination; and
 - ii. The Construction Package is for preliminary work such as utility investigation or relocation, environmental mitigation, weather-sensitive work, or other work that will be needed regardless of how the Project is delivered and does not create an unreasonable risk of increased cost to MDOT if the Contract is terminated;
- e. Any other criteria or circumstances MDOT determines to be relevant.

If an Early Work Package is to be issued, a GMP for the entire project must be requested from the Contractor prior to the execution of the Construction ~~Package~~Services Amendment for the Early Work Package. The GMP for the entire Project is used by MDOT to confirm that the overall construction scope can be completed within the available Project budget. Any work performed as an Early Work Package will come from the overall Project budget.

2. GMP

Each Construction Package Amendment (including Early Work Packages) shall have a Package GMP. Each Package GMP shall be computed as the sum of the following and any other components agreed to by the Parties:

- a. The CMGC Fixed-Markup Percentage in **Exhibit A.12** will be included in the negotiated lump sum and unit-based prices to make up the Package GMP; and
- b. The cumulative total of Provisional Sums specific to the Pricing Package, as described in the Risk Register.

Construction Package Prices shall be developed on an open book basis. Upon request, the Contractor shall allow MDOT to review all underlying assumptions, information, documents, and data associated with the construction work, including assumptions as to costs of construction (including extra work), delay costs, changes in cost, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, quotes, estimates, proposals, productivity rates, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, gross commercial revenues, insurance rates, insurance proceeds, credits and refunds, letter of credit fees, overhead, profit, and other items reasonably required by MDOT to satisfy itself as to the reasonableness and accuracy of any amount). MDOT shall have the right to access and copy all records, accounts, and other data used by the Contractor in connection with the preparation of any Construction Package Price.

Under no circumstances shall the Commission or MDOT be liable for any amount that exceeds the GMP stated in the Construction ~~Package~~Services Amendment(s) for any given Construction Package or the total Project.

It is understood by and between the Parties that Construction ~~Package~~Services Amendment(s), if any, will be subject to the additional compensation, billing, and audit provisions and requirements stated or referenced therein, including ~~MDOT's~~The Standard Specifications and any Special Provisions applicable thereto.

ARTICLE IX. 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. Authorized representatives of the FHWA may also review and inspect the Services under this Contract should funds of the United States of America be in any way utilized in payment for said Services. Such inspection shall not make the United States of America a party to this Contract, nor will FHWA interfere with the rights of either party hereunder.

All reports, drawings, designs, studies, maps, or other work product(s) prepared by and for the Contractor, 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. Authorized representatives of the FHWA may also review and inspect said reports, drawings, designs, studies, maps, and other work product(s) prepared under the Contract should funds of the United States of America be in any way utilized in payment for the same. Acceptance by the Commission shall not relieve the Contractor of its Contractual and professional obligations. Contractor shall correct, at its expense, any of its breaches, negligent acts, errors and/or omissions, in the final version of the work.

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

ARTICLE X. RESPONSIBILITIES FOR CLAIMS AND LIABILITY

Except as the requirements of this Article may be modified by the Construction ~~Package~~Services Amendment(s), if any, the Contractor agrees as follows. Contractor shall indemnify and hold harmless the Commission and all its officers, agents and employees from any claim, loss, damage, cost, charge or expense, including reasonable attorney fees, to the extent caused by any negligent act, actions, neglect, error or omission by the Contractor, its agents, employees, or subcontractors 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 Contractor

nor any of his agents or subcontractors 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 Contractor'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 Contractor. 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 Contractor. 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 Contractor in writing as soon as practicable after receipt or notice of any claim involving the Contractor.

ARTICLE XI. INSURANCE

A. Preconstruction Services Insurance Requirements

The following insurance requirements and provisions apply to Preconstruction Services. Prior to beginning any work under this Contract, the Contractor shall obtain and furnish proof of insurance through Certificates of Insurance and, at MDOT's request, copies of insurance policies of the following:

1. Workers' Compensation Insurance in accordance with the laws of the State of Mississippi.
2. Commercial General Liability Insurance with a minimum combined limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence.
3. Comprehensive Automobile Liability Insurance, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

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 Contractor retains any ~~s~~Subcontractor 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 Contractor agrees to obtain from said subcontractor or other personnel, certificates of insurance demonstrating that said subcontractor or other personnel shall have sufficient coverage, or Contractor agrees to include said subcontractor or other personnel within the Contractor's coverage for the duration of ~~the period this Project or phase~~ for which said subcontractor or other personnel is employed.

The ~~i~~Insurance coverage recited above shall be maintained in full force and effect by the Contractor until the ~~f~~Final payment for Preconstruction Services is issued or the Contract is terminated, whichever occurs first. The Commission shall be notified of cancellation of any of the required insurance by the Contractor and by the insurance company issuing any such cancellation of the required policies. Should Contractor cease to carry the errors and/or omissions coverage listed above for any reason, it shall obtain "tail" or extended reporting period 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.

All insurance carriers shall be licensed and in good standing with the Office of the Insurance Commissioner of the State of Mississippi.

A certificate of insurance acceptable to the Commission shall be issued to the Commission by the Contractor prior to beginning any work under this Contract and thereafter on an annual basis, until termination of this Contract or issuance of ~~f~~Final payment for Preconstruction Services (whichever occurs first), as evidence that policies providing the required insurance are in full force and effect for the Preconstruction Phase. All policies of required insurance

shall give thirty days written notice to the Commission before the effective date of cancellation or reduction in limits of any required insurance.

The Contractor will furnish certified copies, upon request, of any or all of the required policies and/or endorsements to the Commission prior to the execution of this Contract and thereafter on an annual basis.

The Contractor 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 Contractor 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 Contractor to the Commission upon demand, or the Commission may offset the cost of the premiums against any monies due to the Contractor from the Commission.

B. Construction Services Insurance Requirements

It is understood by and between the Parties that Construction ~~Package~~Services Amendment(s), if any, will be subject to the additional insurance requirements stated or referenced therein, including ~~MDOT's~~The Standard Specifications and any Special Provisions applicable thereto.

ARTICLE XII. COVENANT AGAINST CONTINGENT FEES AND LOBBYING

The Contractor shall comply with the relevant requirements of all federal, state or local laws. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, 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 Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. The Contractor 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 Contractor 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 XIII. EMPLOYMENT OF COMMISSION'S PERSONNEL

The Contractor shall not employ any person or persons in the employ of the Commission or MDOT 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 XIV. MODIFICATION

Except as the requirements of this Article may be modified by the Construction ~~Package~~Services Amendment(s), if any, the Contractor agrees as follows. 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 Contractor's compensation should be increased due to a change in the scope 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 Contractor may not begin work on any modifications, amendments, or addenda prior to the Notice to Proceed Date. Minor changes in the proposal ~~which that~~ do not involve changes in the Contract maximum not to exceed amount, 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 Contractor to the other party, and shall become effective upon written acceptance thereof (i.e. letter agreement).

ARTICLE XV. SUBLETTING, ASSIGNMENT, OR TRANSFER

It is understood by the parties to this Contract that the work of the Contractor is considered personal by the Commission.

A. Preconstruction Services Subletting Assignment, or Transfer

The following requirements and provisions apply to the subletting, assignment, or transfer of Preconstruction Services. The Contractor shall not assign, subcontract, sublet or transfer any or all of its interest in the Preconstruction Phase of this Contract without prior written approval of ~~the~~ MDOT. Under no condition will the Contractor be allowed to sublet or subcontract more than 70% of the work required under the Preconstruction Phase of this Contract. It is clearly understood and agreed that specific tasks may be sublet or subcontracted in their entirety provided that the Contractor performs at least 30% of the overall Preconstruction Phase with its own forces. Consent by ~~the~~ MDOT to any subcontract shall not relieve the Contractor from any of its obligations hereunder, and the Contractor is required to maintain final management responsibility with regard to any such subcontract.

~~The~~ MDOT reserves the right to review all subcontract documents prepared in connection with this Contract, and the Contractor agrees that it shall submit to ~~the~~ MDOT any proposed subcontract document together with subcontractor cost estimates for review and written concurrence of ~~the~~ MDOT in advance of their execution.

The Contractor shall make prompt payment to all subcontractors no later than 15 days from receipt of each payment the Commission makes to the Contractor.

B. Construction Services Subletting, Assignment, or Transfer

It is understood by and between the Parties that Construction ~~Package~~ Services Amendment(s), if any, will be subject to the additional subletting, assignment, or transfer requirements stated or referenced therein, including ~~MDOT's~~ The Standard Specifications and any Special Provisions applicable thereto.

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

Except as the requirements of this Article may be modified by the Construction ~~Package~~ Services Amendment(s), if any, the Contractor agrees as follows. 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor shall obtain any and all right, title, and interest to all input and/or material from any third party subcontractor, 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 Contractor and not subject to the terms of this Contract, the Contractor 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 Contractor 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 Contractor does not apply to a situation involving a third party who enters a license agreement directly with the Commission.

The Contractor 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 Contractor 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 Contractor herein.

ARTICLE XVII. PUBLICATION AND PUBLICITY

The Contractor 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 Contractor under the terms of this Contract, without prior written approval from the Commission, unless such release or disclosure is required by judicial proceeding. The Contractor 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 Contractor 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 Contractor 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, the State of Mississippi or the Federal Highway Administration.

ARTICLE XVIII. CONTRACT DISPUTES

This ~~Contract~~~~ONTRACT~~ 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 Contractor 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 Contractor.

ARTICLE XIX. 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 Contractor 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 Contractor 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 Contractor shall comply and shall require its subcontractors 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 A.5** which is incorporated herein by reference.

E. The Contractor shall comply with the provisions set forth in U.S. Department of Transportation regulations, Uniform Administrative Requirements for Grants and Cooperative Agreements, 49 CFR, Part 18, (as amended) in its administration of this Contract or any subcontract resulting here from.

F. The Contractor shall comply and shall require its subcontractors to comply with Code of Federal Regulations CFR 23 Part 634 - Worker Visibility – as stated in **Exhibit A.5**.

G. **IMMIGRANT STATUS CERTIFICATION.** The Contractor 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 Contractor 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 subcontractors and vendors who will participate in the performance of this Agreement and maintaining such certifications for inspection if requested. The Contractor 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 Contractor also acknowledges liability for any additional costs incurred by the Commission due to such Contract cancellation or loss of license or permit. The Contractor is required to provide the certification on **Exhibit A.9** in this ~~Contract~~**ONTRACT** to the Commission verifying that the Contractor and subcontractors(s) are registered and participating in E-Verify prior to execution of this Contract.

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. It is understood by and between the Parties that additional federal or state requirements for Construction Services will be stated or referenced in the Construction Packet Amendment(s), if any, including ~~MDOF's~~**The** Standard Specifications and any Special Provisions applicable thereto.

ARTICLE XX. 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 XXI. 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 XXII. 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 XXIII. CONFLICT OF INTEREST

The Contractor covenants that no public or private interests exist and none shall be acquired directly or indirectly ~~which~~**that** would conflict in any manner with the performance of the Contract. The Contractor further covenants that no employee of the Contractor or any subcontractor(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 Contractor's execution of this Contract.

The responsibility of the Contractor to disclose a conflict of interest if one is discovered is ongoing throughout the ~~C~~**e**ontract period. The Contractor agrees that, if a conflict of interest is discovered, the Contractor must make an immediate and full disclosure to MDOF that includes a description of the action that the Contractor **has** taken or proposes to take to avoid or mitigate such conflict. If the conflict of interest cannot be avoided to the Commission's satisfaction, the Commission may terminate the 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. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the Commission to proceed under this ~~Contract~~**ONTRACT** 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 Contractor, 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 XXV. STOP WORK ORDER

A. Order to Stop Work on Preconstruction Services

The following requirements and provisions apply to stop work orders for Preconstruction Services. The Commission may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor 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 Contractor 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 Contractor 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 V. Contract Term, Termination.

Prior to the Commission's taking official action to stop work under this Contract, the Executive Director of MDOT may notify the Contractor, in writing, of MDOT'S intentions to ask the Commission to stop work under this Contract. Upon notice from the Executive Director of MDOT, the Contractor shall suspend all activities under this Contractor.

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 Contractor 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 Contractor's cost properly allocable to the performance of any part of this Contract and the Contractor 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.

If a stop work order is not canceled and the work covered by such order is terminated, the Contractor 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 time and expenses incurred by the Contractor 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.

B. Order to Stop Work on Construction Services

It is understood by and between the Parties that Construction ~~Package~~Services Amendment(s), if any, will be subject to the additional ~~sStop w~~Work requirements stated or referenced therein, including ~~MDOT's~~The Standard Specifications and any Special Provisions applicable thereto.

ARTICLE XXVI. KEY PERSONNEL & DESIGNATED AGENTS

The Contractor agrees that Key Personnel identified as assigned to phases hereunder as set forth in this Contract or as established in the organizational chart of the Contractor's proposal, 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.

All notices required or permitted to be given under this Contract must be in writing and personally delivered to the party identified below or sent by certified United States mail, postage prepaid, return receipt requested to the party identified below. Notice shall be deemed given when actually received or when refused. As a courtesy, an email copy of a notice may also be sent to the person identified below, but an email shall not constitute legal notice for purposes of this Contract.

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:

For the Commission

Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

For the Contractor

Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

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

ARTICLE XXVII. AUTHORITY

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 a certified copy of the applicable Resolution of the Corporate Board of Directors of the Contractor is attached hereto as **Exhibit A.1**.

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

CONTRACTOR:

TITLE: _____

Attest: _____

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

**MISSISSIPPI TRANSPORTATION COMMISSION,
BY AND THROUGH THE DULY AUTHORIZED
EXECUTIVE DIRECTOR OF THE
MISSISSIPPI DEPARTMENT OF TRANSPORTATION**

Brad White, MDOT Executive Director

Book: _____ Page: _____

LIST OF EXHIBITS

- A.1. Evidence of Authority
- A.2. Preconstruction Services General Scope of Work and Common Specifications
- A.3. Preconstruction Services Fees and Expenses
- A.4. Preconstruction Services Sample Invoice
- A.5. Preconstruction Services Notice to the Contractor
- A.6. The Contractor's Certificate Regarding Debarment, Suspension and Other Responsibility Matters
- A. 7. Certification of Mississippi Transportation Commission
- A.8. [RESERVED]
- A.9. Prime Contractor EEV Certification and Agreement
- A.10. [RESERVED]
- A.11. ~~Preconstruction Services Project Budget and Schedule Status~~ [RESERVED]
- A.12. CMGC Fixed-Markup Percentage

EXHIBIT A.1

EVIDENCE OF AUTHORITY

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

EXHIBIT A.2

PRECONSTRUCTION SERVICES SCOPE OF WORK

NOTE:

CUT AND PASTE TO THE END OF THE GENERAL REQUIREMENTS PARAGRAPH OF THE SCOPE:

Manuals, guides, and specifications applicable to this ~~Contract~~~~ONTRACT~~ shall be those approved and/or adopted by MDOT and/or the ~~Commission~~~~OMMISSION~~ and in effect at the time of each ~~Contract~~~~ONTRACT~~ unless otherwise specified in this ~~Contract~~~~ONTRACT~~ or subsequently directed by MDOT or the ~~Comission~~~~Commission~~~~OMMISSION~~ during the course of the ~~Contract~~~~ONTRACT~~.

EXHIBIT A.3

PRECONSTRUCTION SERVICES FEES AND EXPENSES

The ~~Commission~~OMMISSION shall pay the ~~Contractor~~ONTRACTOR on a ~~Labor Hour~~Billing Rate/Unit Cost Basis, with an upset limit of \$_____ for the satisfactory completion of the Scope of Work set forth under "Exhibit A.23", hereto, for all salaries, payroll additives, ~~facilities and administrative costs overhead~~, direct costs and the ~~Contractor~~ONTRACTOR'S fixed fees attributable to this ~~Contract~~ONTRACT.

Actual costs as the term is used herein shall include all direct salaries, payroll additives, ~~facilities and administrative indirect costs (overhead)~~ and direct costs. Direct salaries are those amounts actually paid to the person performing the ~~Preconstruction Services~~ERVICES which are deemed reasonably necessary by the ~~Commission~~OMMISSION for the advancement of the Scope of Work. Salaries for officers, principals or partners shall not increase at a rate in excess of that for other employees. ~~Facilities and administrative costs Overhead~~ consist of employee fringe benefits and that part of ~~Contractor~~ONTRACTOR'S allowable indirect costs attributable to the ~~Contract~~ONTRACT.

If requested by MDOT, all charges for ~~Preconstruction Services~~ERVICES 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~~OMMISSION for the successful completion of the Scope of Work, which are charged directly to the project and not included in ~~facilities and administrative costs 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 ~~facilities and administrative overhead~~ rates. Direct costs, including subcontractors for Preconstruction Services shall not be marked up and will be only reimbursed for actual incurred costs.

The ~~Commission~~OMMISSION will reimburse the ~~Contractor~~ONTRACTOR'S actual documented expenses; or the amount allowable under the current edition of the State Travel Handbook (*i.e. State Travel Policy Rules & Regulations published by the Mississippi Department of Finance and Administration*), whichever is lower. Except as otherwise specifically provided herein, the procedures generally outlined in the State Travel Handbook shall govern the allowability of any expense reimbursement. **However, Direct costs for lodging shall be reimbursed in accordance with FAR 31.205-46(a)(2).** In addition, no meal reimbursement will be allowed when there is no overnight stay. All Direct costs shall be substantiated with supporting documentation in accordance with the State Travel Handbook. **All direct costs must be substantiated by supporting data in accordance with the State Travel Handbook, i.e. mileage, ~~log books~~logbooks, receipts, etc.**

All other expenses will be reimbursed upon receipt of acceptable paid invoices.

Billing~~Labor Hour~~ Rate / Unit-~~e~~Cost Rates:

A Billing Rate, as the term is used herein, shall include those costs attributed to the recovery of any operating costs necessary to cover an employee's salary, facilities and administrative costs, and a reasonable margin of profit that are incurred on an hourly basis. A Unit Cost Rate, as the term is used herein, shall include all labor and other associated costs charged on a per unit basis, unless specifically stated otherwise in the Contract. Billing Rate/Unit Cost Rates are not subject to any adjustments on the basis of the Contractor's cost experience in performing the Contract. All rates shall be consistent with governmental and non-governmental fees under comparable circumstances.

~~Labor Hour Rate as the term is used herein shall include all direct salaries, overhead, and profit. Unit Costs as the term is used herein shall include all labor, operational costs, overhead, profit, and any associated costs unless specified otherwise. Labor Hour Rate / Unit Costs are not subject to any adjustments on the basis of the CONTRACTOR'S cost experience in performing the PROJECT. The Billing Labor Hour Rate / Unit Costs Rates shall not exceed those rates established in this Exhibit A.3 (found in "Table 1: Rate Schedule"). Under no circumstances shall the Contractor alter the personnel/descriptions, classifications, and rates listed in the Rate Schedule without an approved Letter Agreement signed by both parties. Any additions to an existing Billing Rate table via Letter Agreement and/or Supplemental Agreement shall utilize the facilities and administrative rate(s) applied to the original Contract. Any additions to an existing Labor Hour Rate table via Letter Agreement and/or Supplemental Agreement shall utilize the overhead rate(s) applied to the original CONTRACT. Once the COMMISSION has approved and accepted the work of the CONTRACTOR, the COMMISSION will pay the CONTRACTOR any unpaid amounts of the PROJECT.~~

Table 1: Rate Schedule

| <u>Name</u> | <u>Labor</u> Classification | <u>Billing Labor</u> <u>Hour</u> <u>Rate/Unit</u> <u>Cost Rate</u> |
|-------------|-----------------------------|---|
| | | |
| | | |
| | | |

SCHEDULE OF MAXIMUM RATES, EXPENSES & FEES:

The following schedule of rates for services will not be exceeded for all work under this ~~Contract~~ CONTRACT:

CONTRACT Maximums:

Under no circumstances shall the amount payable by the ~~Commission~~ COMMISSION for Preconstruction Services under this Contract ~~this assignment~~ exceed \$ _____ without the prior written consent of both parties.

Section 902 CMGC Contract

EXHIBIT A.4

SAMPLE CSU-001 – LABOR HOUR RATE/UNIT COST

**MISSISSIPPI DEPARTMENT OF TRANSPORTATION
CONSULTANT ESTIMATE - RECAP SHEET**

CSU-001
REV 5-96
 Jan 0, 1900
 Vendor Number V0000000000
 MDOT Project No. 0 County 0
 In Account With 0
 Contract Number CS 000000 Surety 0
 Est. No. 0 **Progress** Period January 0, 1900 To January 0, 1900 Document No. 1 of 2

Consultant Project # 0
 Invoice Number 0
 Sheet No. 1 of 2

| | Line Item | OCA | User Code 1 | Object | Detail Code | User Code 2 | Current Period | Previous Estimate | Total Allowed to Date |
|------------------------------|-----------|-----|-------------|--------|-------------|-------------|----------------|-------------------|-----------------------|
| Total Participating Cost | 001 | | | | | | \$ | \$ | \$ |
| Total Non-Participating Cost | 002 | | | | | | | | |
| Total | 003 | | | | | | \$ | \$ | \$ |
| Retainage at 0 % | 004 | | | | | | (\$) | (\$) | (\$) |
| | 005 | | | | | | | | |
| Total All Work Due | 006 | | | | | | \$ | \$ | \$ |
| | 007 | | | | | | | | |
| | 008 | | | | | | | | |
| | 009 | | | | | | | | |
| | 010 | | | | | | | | |
| | 011 | | | | | | | | |
| | 012 | | | | | | | | |
| | 013 | | | | | | | | |
| Total Net Work Due | 014 | | | | | | \$ | \$ | \$ |

| | | | | |
|--------------------|------------------------|------------------|--|--|
| Quantities Checked | | Termination Date | | |
| Original Signed | | January 0, 1900 | | |
| Approved: | MDOT Division Director | | | |
| Chief Engineer By: | | Contract Maximum | | |
| Original Signed | Director of CSU | \$0.00 | | |
| Stephen Rone | labor hour rate | | | |

NOTE:

1. PAYMENTS SHOULD BE SUBMITTED ELECTRONICALLY TO CSUINVOICE@MDOT.MS.GOV UNLESS OTHERWISE AUTHORIZED BY MDOT.
2. WHEN REQUIRED, THE OCR-484-C SHOULD ACCOMPANY THE INVOICE WITH ALL SUPPORTING BACKUP.
3. WHEN THE FINAL PAYMENT IS SUBMITTED, THE OCR-482-C SHOULD ACCOMPANY THE INVOICE AND ALL SUPPORTING BACKUP.

EXHIBIT A.4

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
CONSULTANT SERVICES ESTIMATE

PROJECT NO.
IN ACCOUNT WITH:

ESTIMATE NO.

0
0
0

Progress

COUNTY: 0

PERIOD: January 0, 1900 to January 0, 1900

Sheet No. 2 of 2

| CONTRACT DATE | PHASES | PHASE COST PER CONTRACT | CURRENT PERIOD | PREVIOUS ESTIMATE | TOTAL ALLOWED TO DATE |
|-----------------|------------------|----------------------------|-------------------|----------------------|--------------------------|
| January 0, 1900 | | | | | |
| 0.00 | COST | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Supplementals: | DIRECT EXPENSE | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| | SUBCONSULTANT 1: | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| | SUBCONSULTANT 2: | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| | TOTAL | \$0.00 | \$0.00 | \$0.00 | \$0.00 |

TOTAL

\$0.00\$0.00\$0.00\$0.00

Termination Date:
January 0, 1900

Total Balance of Contract\$0.00

EXHIBIT A.4

SAMPLE INVOICE – LABOR HOUR RATE/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 _____.

CONSULTANT: _____

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

NOTE:

1. * INCLUDES OVERHEAD & PROFIT
2. THE ESTIMATED FCCM FOR COST PROPOSALS AND SUPPLEMENTAL AGREEMENTS MUST BE SPECIFICALLY IDENTIFIED AND DISTINGUISHED FROM THE OTHER COSTS. PROFIT/FEE SHALL NOT INCLUDE AMOUNTS APPLICABLE TO FCCM.
3. ** DIRECT COSTS (ATTACH SUPPORTING DATA)
4. THE CONSULTANT MAY USE ITS OWN INVOICE FORM SO LONG AS IT HAS BEEN APPROVED.
PRIOR TO SUBMISSION BY THE CONSULTANT SAID FORM SHOULD, AT A MINIMUM, CONTAIN THE ABOVE INFORMATION.

SUPPORTING DATA

PROJECT No. 00-0000-00-000-00

County _____

| <u>Employee and Classification</u> | <u>Pay Period Date</u> | <u>Rate of Pay</u> | <u>Period Hours</u> | <u>Period Costs</u> | <u>Period Costs</u> | <u>To Date</u> |
|--|----------------------------|------------------------|-------------------------|-------------------------|-------------------------|--------------------|
| DIRECT LABOR AND DIRECT COSTS | | | | | | |
| John P. Public, Jr Engineer | | 0.00 | 0.0 | 0.00 | 0.00 | 0.00 |
| John P. Public, Jr Designer | | 0.00 | 0.0 | 0.00 | 0.00 | 0.00 |
| John P. Public, Jr Engineer | | 0.00 | 0.0 | 0.00 | 0.00 | 0.00 |
| John P. Public, Jr Technician | | 0.00 | <u>0.0</u> | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> |
| Sub Total | | | 0.0 | 0.00 | 0.00 | 0.00 |
| Payroll Additives | | | | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> |
| Total Labor | | | | 0.00 | 0.00 | 0.00 |
| Direct Costs | | | | 0.00 | 0.00 | 0.00 |
| Subconsultant(s) | | | | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> |
| Project Total | | | | 0.00 | 0.00 | 0.00 |

EXHIBIT A.5

**PRECONSTRUCTION SERVICES NOTICE TO CONTRACTOR
NOTICE TO CONTRACTOR
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
WORKER VISIBILITY**

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

1. Compliance with Regulations: The CONTRACTOR will comply with the Regulations of the COMMISSION, relative to nondiscrimination in Federally-assisted programs of the U. S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Preconstruction Services Contract.

2. Nondiscrimination: The CONTRACTOR, 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 CONTRACTOR will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Preconstruction Services Contract covers a program set forth in Appendix B of the Regulations. In addition, the CONTRACTOR will not participate either directly or indirectly in discrimination prohibited by 23 C.F.R. 710.405(b).

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

4. 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 CONTRACTOR 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 CONTRACTOR shall report all suspected or reported violations to the COMMISSION.

5. 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

Section 902 CMGC Contract

Labor. In addition, CONTRACTORS shall be required to pay wages not less often than once a week.

6. 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.

7. 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).

8. 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).

9. Disadvantaged Business Enterprises (DBE): It is the policy of the MDOT to comply with the requirements of 49 C.F.R. 26, to prohibit unlawful discrimination, to meet its goal for DBE participation, to meet that goal whenever possible by race-neutral means, to create a level playing field, and to achieve that amount of DBE participation that would be obtained in a non-discriminatory market place. To meet that objective in any United States Department of Transportation assisted contracts, the COMMISSION and the CONTRACTOR shall comply with the "Mississippi Department of Transportation's Disadvantage Business Enterprise Programs For United States Department Of Transportation Assisted contracts".

Neither the CONTRACTOR, nor any sub-recipient or sub-consultant shall discriminate on the bases of race, color, national origin, or sex in the performance of this Preconstruction Services Contract. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. 26 in the award and administration of United States Department of Transportation assisted contracts. Failure of the CONTRACTOR to carry out those requirements is a material breach of this Preconstruction Services Contract which may result in the termination of this Preconstruction Services Contract or such other remedies as the MDOT deems appropriate.

10. Worker Visibility: All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for the purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel – personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage, and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107–2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear" – for compliance with 23 CFR, Part 634.

EXHIBIT A.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 CONTRACTOR 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 (1)(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 CONTRACTOR further certifies, to the best of his/her knowledge and belief, that:
 - (a) 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.
 - (b) 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 or 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 CONTRACTOR shall include the language of the certification in all subcontracts exceeding \$25,000 and all subcontractors shall certify and disclose accordingly.

Section 902 CMGC Contract

I hereby certify that I am the duly authorized representative of the CONTRACTOR 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 CONTRACTOR) 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 bona fide employee working solely for me or the above CONTRACTOR) 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 may be furnished to the Federal Highway Administration, United States Department of Transportation, in connection with the Agreement involving participation of Federal-Aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

SO CERTIFIED this _____ day of _____, 20____.

[COMPANY NAME]

ATTEST: _____

My Commission Expires: _____

Notary

EXHIBIT A.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

BRAD WHITE, EXECUTIVE DIRECTOR

EXHIBIT A.8

{RESERVED}

PRIME CONSULTANT / CONTRACTOR EEV CERTIFICATION AND AGREEMENT

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.

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.

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

NOTARY PUBLIC
My Commission Expires:

35

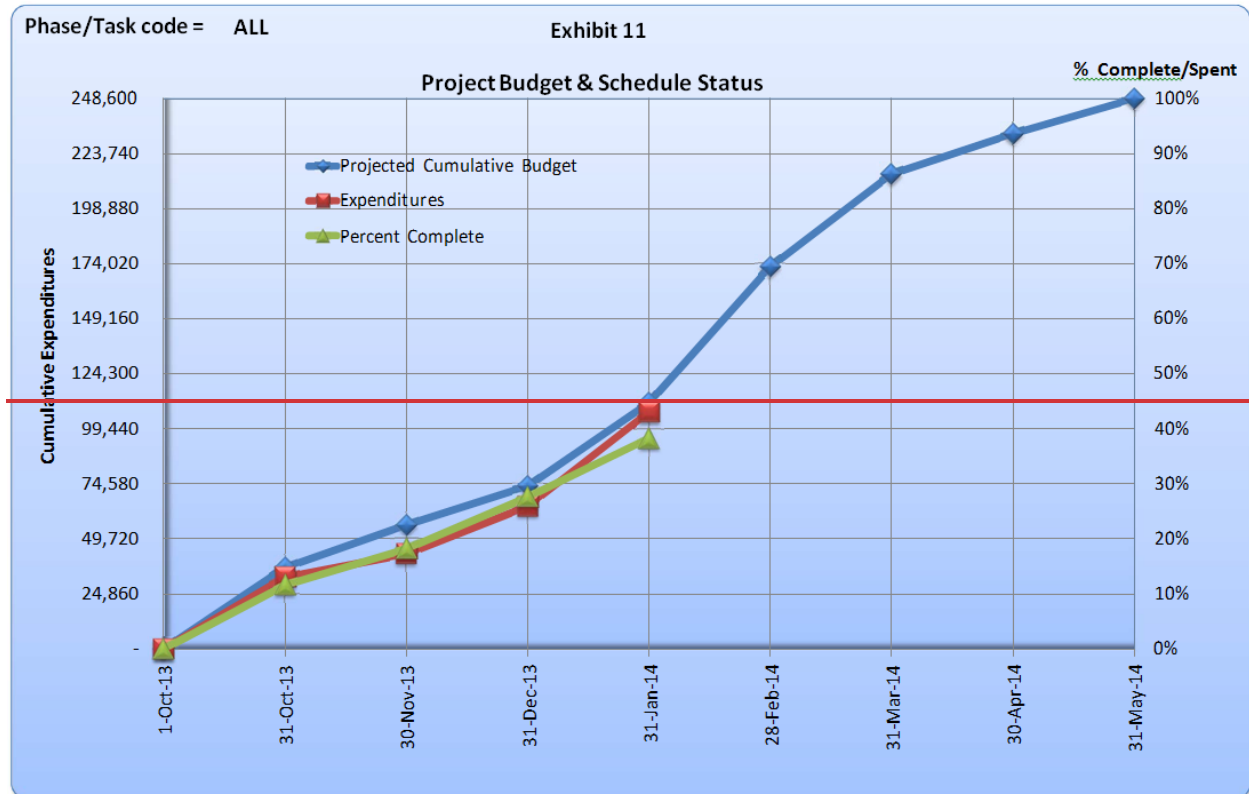
EXHIBIT A.10

{RESERVED}

EXHIBIT A.11

{RESERVED}

**PRECONSTRUCTION SERVICES
PROJECT BUDGET & SCHEDULE STATUS**



Section 902 CMGC Contract

Termini

Project Number

County

| | Task Percentage of Overall Project | Percent Complete of Overall Project | Percent Complete of Task | \$ Value of Task |
|-------------|---|--|--------------------------------|------------------|
| Task | | | | |
| Task 1 | 0% | 0% | 0% | \$ 0.00 |
| Task 2 | | | | |
| —Task 2.1 | 0% | 0% | 0% | \$ 0.00 |
| —Task 2.2 | 0% | 0% | 0% | \$ 0.00 |
| —Task 2.3 | 0% | 0% | 0% | \$ 0.00 |
| Task 3 | | | | |
| —Task 3.1 | 0% | 0% | 0% | \$ 0.00 |
| —Task 3.2 | 0% | 0% | 0% | \$ 0.00 |
| —Task 3.3 | 0% | 0% | 0% | \$ 0.00 |
| —Task 3.4 | 0% | 0% | 0% | \$ 0.00 |
| —Task 3.5 | 0% | 0% | 0% | \$ 0.00 |
| —Task 3.6 | 0% | 0% | 0% | \$ 0.00 |
| Task 4 | 0% | 0% | 0% | \$ 0.00 |
| Task 5 | 0% | 0% | 0% | \$ 0.00 |
| Task 6 | 0% | 0% | 0% | \$ 0.00 |
| | 0% | 0% | 0% | \$ 0.00 |

EXHIBIT A.12

CMGC FIXED-MARKUP PERCENTAGE

If this Contract is amended to include Construction Services, the CMGC Fixed-Markup Percentage for inclusion in the negotiated lump sum and unit-based prices comprising the GMP for this Project shall be _____. [Carry percentage out to two decimal places (e.g., 0.00%).]

The percentage will remain fixed, regardless of the final GMP for the Construction Phase, including any Early Work Packages.