

**REAL ESTATE SERVICE CONTRACT**  
**FOR LPA PROJECTS**

*Project Description Goes Here*

Project No. *Goes Here*

County Name Goes Here

This CONTRACT, is made and entered into by and between the *{Local Public Agency's name goes here}*, a body Politic of the State of Mississippi (the "LPA"), and *{Right of Way Consulting firm's name goes here}* (the "CONSULTANT"), a *{insert corporation, LLC, etc... goes here}* duly registered to do business in the State of Mississippi, whose address for mailing is *{physical address goes here}*, effective as of the date of latest execution below.

**WITNESSETH:**

WHEREAS, the LPA requires the right of way real estate services of a CONSULTANT to perform *{enter a brief project description and location here which may include appraisal, appraisal review, acquisition, relocation, property management services, and/or project management}*, as provided for in Project No. *{Enter LPA Project # Here}*, hereinafter called the "PROJECT", as requested by the LPA; and,

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

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

WHEREAS, the CONSULTANT herein was chosen pursuant to Mississippi Department of Transportation (hereinafter "MDOT") LPA Project Development Manual and pursuant to Federal Highway Administration ("FHWA") regulations, and found satisfactory;

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 LPA and the CONSULTANT do hereby CONTRACT and agree as follows:

**ARTICLE I. GENERAL RECITALS**

CONSULTANT shall, for the agreed fees, furnish all Right of Way (ROW) services and materials required to perform the tasks described in the Scope of Work for the proposed project. In so doing, CONSULTANT shall meet the current industry standards as to general format and content and in addition thereto, any special requirements of the LPA.

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

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

CONTRACT or subsequently directed by MDOT during the course of the CONTRACT. When in conflict between the Project Development Manual for LPA (PDM) and this CONTRACT, the PDM will govern.

#### **ARTICLE II. SCOPE AND PROCEDURE**

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

#### **ARTICLE III. CONTRACT TERM**

This CONTRACT shall commence upon the latest date of execution below and continue until the LPA issues a written **Letter of Acceptance (LOA)** at which time this CONTRACT shall absolutely and finally terminate. However, the CONSULTANT may not begin work **prior to receiving a written Notice to Proceed.**

During the term of this CONTRACT, the LPA reserves the right to terminate this CONTRACT in whole or in part, at any time, with or without cause, upon seven (7) days written notice to the CONSULTANT, notwithstanding any just claims by the CONSULTANT for payment of SERVICES rendered prior to the date of termination. The LPA shall be liable only for the costs, fees and expenses for demobilization and close out of contract, based on actual time and expenses incurred by CONSULTANT in the packaging and shipment of all documents covered by this CONTRACT to the LPA. In no event shall the LPA be liable for lost profits or other consequential damages.

#### **ARTICLE IV. TIME OF PERFORMANCE**

TIME IS OF THE ESSENCE IN THIS CONTRACT. The CONSULTANT shall be prepared to perform its responsibilities for providing SERVICES by the date of execution of this CONTRACT.

The CONSULTANT has submitted a proposed project schedule to the LPA which has been incorporated herein as a part of "Exhibit 2", which when approved by final execution of this CONTRACT shall control the evaluation of the CONSULTANT's progress on this PROJECT. A copy of the progress schedule, indicating the actual time expended on specific portions of this project, shall be submitted along with an estimated percentage completed with each monthly statement.

A Notice to Proceed shall be issued under authority from the LPA within 30 days after final execution of this CONTRACT. The CONSULTANT may not begin work on any feature of this PROJECT prior to receiving a Notice to Proceed from the LPA.

#### **ARTICLE V. RELATIONSHIP OF THE PARTIES**

The relationship of the CONSULTANT to the LPA is that of an independent contractor, and said CONSULTANT, 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 LPA. The CONSULTANT shall not make any claim, demand or application for any right or privilege applicable to an officer or employee of the LPA, 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.

All notices, communications, and correspondence between the LPA and the CONSULTANT shall be directed to the key personnel and designated agents designated in this CONTRACT.

## **ARTICLE VI. COMPENSATION, BILLING & AUDIT**

### **A. Cost and Fees**

If the CONSULTANT provides SERVICES hereunder, it shall be paid on a labor hour/unit cost basis and/or a lump sum/firm fixed price basis per parcel as set forth in "Exhibit 3" to this CONTRACT. If the CONSULTANT provides SERVICES hereunder, the maximum amount payable under this CONTRACT for all services that are provided hereunder is the dollar amount specified in Exhibit 3 to this CONTRACT hereof by reference as fully as if copied herein in words and figures. Under no circumstances shall the LPA be liable for any amounts, including all costs which exceed the maximum dollar amount of compensation that is specified in and set forth in the Exhibit 3.

For purposes of this CONTRACT, "parcel," also referred to as a "file," is a piece of real estate, improved or unimproved, that may be acquired as part of a right of way project, or is defined by property lines, described in metes and bounds, or other acceptable legal description, and includes all interests necessary for the LPA to acquire fee simple title to the property, less any interests that the LPA may exclude. Warranty deeds, quitclaim deeds, temporary easements, or other instruments may be required from one or more holders of a possible interest in the parcel for the LPA to acquire fee simple title. Compensation shall be based on acquisition of a "parcel" or "file" and not on the number of instruments necessary for acquisition of a "parcel" or "file."

Each phase of the SERVICES, being appraisal, acquisition, relocation assistance, and property management, shall become eligible for payment following the appropriate determination by the LPA of the following:

- (1) For Appraisal fees:  
An appraisal fee is due upon completion of the appraisal review of the appraisal report by the review appraiser that results in the appraisal being identified as either, **accepted** (meets all requirements but is not selected as recommended), or **recommended** (as the basis for the establishment of the amount believed to be just compensation).. **"Appraisal Revisions"** shall be completed at a fee to be determined by the LPA which shall be based on the percent of effort relative to the initial negotiated Appraisal fee.
- (2) For Review Appraisal fees:  
An appraisal review fee is due upon completion of the appraisal review of the appraisal report by the review appraiser that results in (a) the appraisal being identified as **recommended** as the basis for the establishment of the amount believed to be just compensation or (b) the review appraiser, as part of the review, present and analyze market information to support a **determination of the recommended value**, and (c) the Establishment of the Amount Believed to be Just Compensation (EJC) for the real property by the LPA. **"Review Appraisal Revisions"** shall be completed at a fee to be determined by the LPA which shall be based on the percent of effort relative to the initial negotiated Review Appraisal fee.
- (3) For Acquisition fees:  
For each parcel acquired by deed(s): Upon the recording of the deed and notification from the LPA, "Acquisition Revisions" and all other instruments necessary to convey

the title shall be completed at a fee to be determined by the LPA, which shall be based on the percent of effort relative to the initial negotiated Acquisition fee.

A Waiver Valuation fee is due upon the acceptance of the Waiver Valuation report and the Establishment of the Amount Believed to be Just Compensation. "Waiver Valuation Revisions" shall be completed at a fee determined by the LPA, which shall be based on the percent of effort relative to the initial negotiated Waiver Valuation fee.

For each parcel which is referred to the LPA for further negotiations or filing of condemnation proceedings. Acquisition fee will be invoiced upon receipt of Right of Entry and notification from LPA. Approval of written documentation and reports required and based on the LPA determination of the time and effort expended by the CONSULTANT, but not to exceed the price of a successful acquisition by deed(s). Parcels recommended for condemnation invoice on Right of Entry being granted.

- (4) For Relocation Assistance fees:  
Documentation that the displaced individual(s) has/have vacated the displacement site and the Relocation Assistance file has been accepted as closed by the LPA. The LPA may choose to pay the CONSULTANT up to 50% of the stated price for that parcel once the Relocation offer has been made. The LPA may then pay the CONSULTANT the final 50% of the stated price for that parcel once the CONSULTANT completes all additional relocation and relocation assistance as deemed appropriate by the LPA.
- (5) For Property Management fees:  
Property Management fees shall be paid on a per parcel basis for the satisfactory completion of the tasks outlined in the Property Management Inventory and Asbestos Abatement and Demolition sections of Exhibit 2.
- (6) For Project Management fees:  
Project Management fees shall be paid on a per parcel basis for the satisfactory completion of the tasks outlined in the Project Management scope of work at a fee to be determined by the LPA., and shall be invoiced upon final completion and closing of each parcel file. A parcel with an improvement will not be considered complete until all phases of Right of Way acquisition, relocation, and clearance have occurred.

**B. Billing (Labor Hour/Unit Cost price)**

The CONSULTANT may submit monthly progress billings based on the rates established in this CONTRACT and the time expended on the PROJECT through the end of the billing period. Each billing shall include all time and allowable expenses through the end of the billing period and should include all the supporting documentation necessary for the appropriate LPA personnel to recommend payment. Once the LPA has approved and accepted the work of the CONSULTANT, the LPA will pay the CONSULTANT any unpaid amounts of the CONTRACT total. Monthly payments will be made on the basis of a certified time record. The LPA retains the right to verify time and expense records by audit of any or all the CONSULTANT'S time and accounting records at any time during the life of the CONTRACT and up to three years thereafter.

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

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

**C. Record Retention**

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

**D. Retainage**

The LPA may retain the final 5% of the CONSULTANT'S contract amount until the final payment request has been received and an audit of the total PROJECT cost to date has been completed by the LPA or its designee.

**ARTICLE VII. FINAL PAYMENT**

The CONSULTANT agrees that acceptance of the final payment shall be in full and final settlement of all claims arising against the LPA for payment for work done, materials furnished, cost incurred, or otherwise arising out of this CONTRACT and shall release the LPA from any and all further claims for payment, whether known or unknown, for and on account of said CONTRACT, including payment for all work done, and labor and material furnished in connection with the same. Failure to perform, to the satisfaction of the LPA, all terms of this CONTRACT, which include the Scope of Work and other exhibits, any technical specifications, and special requirements of the LPA, or the CONSULTANT'S failure to perform according to the prevailing industry standards, including standards of conduct and care, format and content, shall be corrected by the CONSULTANT without additional compensation.

The CONSULTANT shall clearly indicate on its last Invoice that the Invoice is "FINAL". The LPA will confirm that the PROJECT is ready to be closed and the "FINAL" Invoice may be paid. The CONSULTANT shall submit their "FINAL" invoice no later than 45 days following termination/completion of the PROJECT.

**ARTICLE VIII. REVIEW OF WORK**

Authorized representatives of the LPA may at all reasonable times review and inspect the SERVICES under this CONTRACT thereunder or amendments thereto. Authorized representatives of the MDOT and/or 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 MDOT and/or FHWA interfere with the rights of either party hereunder.

All reports, drawings, studies, maps and computations prepared by and for the CONSULTANT, shall be made available to authorized representatives of the LPA for inspection and review at all reasonable times in the General Offices of the LPA. Authorized representatives of the MDOT and/or FHWA may also review

and inspect said reports, drawings, designs, studies, maps and computations prepared under this CONTRACT should funds of the United States of America be in any way utilized in payment for the same. Acceptance by the LPA shall not relieve the CONSULTANT of its contractual and professional obligation to correct, at its expense, any of its breaches, errors and/or omissions in the final version of the work.

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

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

If any breach of CONTRACT, is discovered by LPA personnel after final acceptance of the work by the LPA, then the CONSULTANT shall, without additional compensation, cure any deficiency or breach including errors and/or omissions in designs, plans, drawings, specifications, or other services.

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

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

#### **ARTICLE IX. RESPONSIBILITIES FOR CLAIMS AND LIABILITY**

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

The CONSULTANT'S obligations under this Article, including the obligations to indemnify, defend, hold harmless, pay reasonable attorney fees or, at the LPA'S option, participate and associate with the LPA in the defense and trial or arbitration of any damage claim, lien or suit and any related settlement negotiations, shall be initiated by the LPA'S notice of claim for indemnification to the CONSULTANT. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the LPA entirely responsible shall excuse performance of this provision by the CONSULTANT. In such case, the LPA 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 LPA agrees to notify the CONSULTANT in writing as soon as practicable after receipt or notice of any claim involving the CONSULTANT. These indemnities shall not be limited by reason of the listing of any insurance coverage below.

#### **ARTICLE X. INSURANCE**

Prior to beginning any work under this CONTRACT, the CONSULTANT shall obtain and furnish proof of insurance through Certificates of Insurance and, at the LPA's request, copies of insurance policies of the following:

- A. Workers' Compensation Insurance in accordance with the laws of the State of Mississippi.
- B. Commercial General Liability Insurance with a minimum combined limit of not less than one million dollars (\$1,000,000.00) for each occurrence.
- C. Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim.
- D.
- . Comprehensive Automobile Liability Insurance, in an amount not less than one million dollars (\$1,000,000.00) per occurrence.

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

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

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

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 LPA shall be issued to the LPA by the CONSULTANT prior to the execution of the CONTRACT by the CONSULTANT and thereafter on an annual basis for the duration of the CONTRACT as evidence that policies providing the required coverage, conditions and limits are in full force and effect. Such certificate shall identify this CONTRACT and contain provisions that coverage

afforded under the policies will not be cancelled, terminated, or materially altered until at least thirty (30) days prior written notice has been given to the LPA.

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

The CONSULTANT shall provide the LPA 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 LPA.

If the CONSULTANT fails to procure or maintain required insurance, the LPA 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 LPA shall be repaid by the CONSULTANT to the LPA upon demand, or the LPA may offset the cost of the premiums against any monies due to the CONSULTANT from the LPA.

#### **ARTICLE XI. COVENANT AGAINST CONTINGENT FEES AND LOBBYING**

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

#### **ARTICLE XII. EMPLOYMENT OF LPA'S PERSONNEL**

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

#### **ARTICLE XIII. MODIFICATION**

If, prior to the satisfactory completion of the SERVICES under this CONTRACT, the LPA 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 executed between the parties in the event that both parties agree the CONSULTANT'S compensation should be increased due to an unanticipated increase in the nature, scope or amount of work necessary to properly provide the SERVICES required on any particular phase of the CONTRACT begun hereunder.

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



The CONSULTANT **MAY NOT** begin work on any modifications, amendments, or addenda prior to receiving a Notice to Proceed.

Minor changes in the proposal which do not involve changes in the maximum not to exceed amount of the contract, extensions of time (except extensions of deadlines as specifically set forth under Article III) or changes in the goals and objectives of this CONTRACT may be made by written notification of such change by either the LPA or the CONSULTANT to the other party, and shall become effective upon written acceptance thereof (i.e. letter agreement).

#### **ARTICLE XIV. SUBLETTING, ASSIGNMENT OR TRANSFER**

It is understood by the parties to this CONTRACT that the work of the CONSULTANT is considered personal by the LPA. The CONSULTANT shall not assign, subcontract, sublet or transfer any or all of its interest in this CONTRACT without prior written approval of the LPA. The LPA acknowledges that due to the specialized tasks involving right-of-way acquisition services, the CONSULTANT will be utilizing subconsultants to perform a majority of the work under this contract. Consent by the LPA to any subcontract shall not relieve the CONSULTANT from any of its obligations hereunder, and the CONSULTANT is required to maintain final management responsibility with regard to any such subcontract.

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

The CONSULTANT shall make prompt payment to all subconsultants no later than 15 days from receipt of each payment the LPA makes to the CONSULTANT. The CONSULTANT shall pay any retainage owed to the subconsultant for the satisfactory completion of the work within 15 days after CONSULTANT has received payment for this work. If the CONSULTANT fails to comply with these requirements, the CONSULTANT may be subject to those sanctions listed in Exhibit 10.

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

The CONSULTANT agrees that all reports, documents, computer information and access, software, drawings, studies, notes, maps and other data and products, prepared by and for the LPA under the terms of this CONTRACT shall become and remain the property of the LPA upon creation and shall be delivered to the LPA upon termination or completion of work, or upon request of the LPA, 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 LPA.

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

If for any reason the Work would not be considered a work made for hire under applicable law, or in the event this CONTRACT is determined to be other than a contract or agreement for a work made for hire,

the CONSULTANT does hereby transfer and assign to the LPA, and its successors and assigns, the entire right, title, and interest in and to any Work prepared hereunder including, without limitation, the following: the copyright and all trademark, patent, and all intellectual property rights in the Work and any registrations and copyright, and/or all other intellectual property, applications relating thereto and any renewals and extensions thereof; all works based upon, derived from, or incorporating the Work; all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto; all causes of action, either in law or in equity, for past, present, or future infringement based on the copyrights and/or all other intellectual property; all rights, including all rights to claim priority, corresponding to the foregoing in the United States and its territorial possessions and in all foreign countries. The CONSULTANT agrees to execute all papers and perform such other proper acts as the LPA may deem necessary to secure for the LPA or its designee the rights herein assigned.

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

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

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

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

#### **ARTICLE XVI. PUBLICATION AND PUBLICITY**

The CONSULTANT agrees that it shall not for any reason whatsoever communicate to any third party in any manner whatsoever concerning any of its CONTRACT work product, its conduct under the CONTRACT, the results or data gathered or processed under this CONTRACT, which includes, but is not limited to, reports, computer information and access, drawings, studies, notes, maps and other data prepared

by and for the CONSULTANT under the terms of this CONTRACT, without prior written approval from the LPA, unless such release or disclosure is required by judicial proceeding. The CONSULTANT agrees that it shall immediately refer any third party who requests such information to the LPA and shall also report to the LPA any such third party inquiry. This Article shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the CONSULTANT to defend itself from any suit or claim.

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

*The opinions, findings, and conclusions in this publication are those of the author(s) and not necessarily those of the Local Public Agency, Mississippi Department of Transportation, Mississippi Transportation Commission, the State of Mississippi, or the Federal Highway Administration.*

#### **ARTICLE XVII. CONTRACT DISPUTES**

This CONTRACT shall be deemed to have been executed in *{insert County name here}* 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 *{insert County name here}* County, State of Mississippi. The CONSULTANT expressly agrees that under no circumstances shall the LPA be obligated to or responsible for payment of an attorney's fee for the cost of legal action to or on behalf of the CONSULTANT.

#### **ARTICLE XVIII. COMPLIANCE WITH APPLICABLE LAW**

- A. The undersigned certify that to the best of their knowledge and belief, the foregoing is in compliance with all applicable laws.
- B. The CONSULTANT shall observe and comply with all applicable federal, state, and local laws, rules and regulations, policies and procedures, ordinances, and orders and decrees of bodies or tribunals of the United States of America or any agency thereof, the State of Mississippi or any agency thereof, and any local governments or political subdivisions, that are in effect at the time of the execution of this CONTRACT or that may later become effective.
- C. The CONSULTANT shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this CONTRACT because of race, creed, color, sex, national origin, age or disability.
- D. IT IS FURTHER SPECIFICALLY AGREED that the CONSULTANT 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 5" which is incorporated herein by reference.
- E. The CONSULTANT shall comply with the provisions set forth in 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 herefrom.

- F. The CONSULTANT shall abide by the provisions of the U.S. Department of Transportation regulations on Disadvantaged Business Enterprises, 49 CFR Part 26 (as amended), and include the certification made in "Exhibit 5" to this CONTRACT in any and all subcontracts which may result from this CONTRACT.
- G. The CONSULTANT shall comply and shall require its subconsultants to comply with Code of Federal Regulations CFR 23 Part 634 - Worker Visibility – as stated in "Exhibit 5".
- H. IMMIGRANT STATUS CERTIFICATION. The CONSULTANT represents that it is in compliance with the Immigration Reform and Control Act of 1986 (Public Law 99-603), as amended, in relation to all employees performing work in the State of Mississippi and does not knowingly employ persons in violation of the United States immigration laws. The CONSULTANT further represents that it is registered and participating in the Department of Homeland Security's E-Verify™ employment eligibility verification program, or successor thereto, and will maintain records of compliance with the Mississippi Employment Protection Act including, but not limited to, requiring compliance certification from all subcontractors and vendors who will participate in the performance of this Agreement and maintaining such certifications for inspection if requested. The CONSULTANT acknowledges that violation may result in the following: (a) cancellation of any public contract and ineligibility for any public contract for up to three (3) years, or (b) the loss of any license, permit, certification or other document granted by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. The CONSULTANT also acknowledges liability for any additional costs incurred by the LPA due to such contract cancellation or loss of license or permit. The CONSULTANT is required to provide the certification on Exhibit 9 in this CONTRACT to the LPA verifying that the CONSULTANT and subconsultant(s) are registered and participating in E-Verify prior to execution of this CONTRACT
- I. The covenants herein shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

#### **ARTICLE XIX. WAIVER**

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

#### **ARTICLE XX. SEVERABILITY**

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

#### **ARTICLE XXI. ENTIRE AGREEMENT**

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

## **ARTICLE XXII. CONFLICT OF INTEREST**

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

## **ARTICLE XXIII. AVAILABILITY OF FUNDS**

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

## **ARTICLE XXIV. STOP WORK ORDER**

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

- (1) cancel the stop work order; or
- (2) terminate the work covered by such order according to and as provided in Article III of this CONTRACT.

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

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

CONTRACT may be made by written modification of this CONTRACT as provided by the terms of this CONTRACT.

- C. **Termination of Stopped Work.** If a stop work order is not canceled and the work covered by such order is terminated, the CONSULTANT may be paid for services rendered prior to the Termination. In addition to payment for services rendered prior to the date of termination, the LPA 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 CONSULTANT in the packaging and shipment of all documents covered by this CONTRACT to the LPA. In no event shall the LPA be liable for lost profits or other consequential damages.

#### **ARTICLE XXV. KEY PERSONNEL & DESIGNATED AGENTS**

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

#### **LPA:**

For Contractual Matters:

{Name Here}

{Title Here}

{Physical Address Here}

{City, State Zip Code Here}

Telephone: {Number Here}

Facsimile: {Number Here}

E Mail: {Email Address Here}

For Technical Matters:

{Name Here}

{Title Here}

{Physical Address Here}

{City, State Zip Code Here}

Telephone: {Number Here}

Facsimile: {Number Here}

E Mail: {Email Address Here}

#### **CONSULTANT:**

For Contractual Matters:

{Name Here}

{Title Here}

{Physical Address Here}

{City, State Zip Code Here}

Telephone: {Number Here}

Facsimile: {Number Here}

E Mail: {Email Address Here}

For Technical Matters:

{Name Here}

{Title Here}

{Physical Address Here}

{City, State Zip Code Here}

Telephone: {Number Here}

Facsimile: {Number Here}

E Mail: {Email Address Here}

**ARTICLE XXVI. AUTHORIZATION**

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

WITNESS this my signature in execution hereof, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*LPA NAME GOES HERE*

\_\_\_\_\_  
*Chief Administrative Official NAME GOES HERE*

WITNESS this my signature in execution hereof, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*CONSULTANT NAME GOES HERE*

BY: \_\_\_\_\_  
{Typed Name Here}

ATTEST: \_\_\_\_\_

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

## LIST OF EXHIBITS

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



**EXHIBIT 1**

{{{Attach a copy of authority to execute contracts on behalf of the LPA}}}

{{{Attach a copy of authority to execute contracts on behalf of the Consultant Corporation here}}}

**EXHIBIT 2**

*Insert the Specific Scope of Work here*

*{NOTE: SCOPES OF WORK MUST BE DETAILED – INCLUDE TERMINI}*

*{ATTACH THE PROGRESS SCHEDULE AT THE BACK OF THIS EXHIBIT – SEE ARTICLE IV}*

***{THE LPA MUST CONTACT THE MDOT ROW LPA COORDINATOR FOR ASSISTANCE IN THE  
DEVELOPMENT OF PROJECT SCOPE OF WORK}***

## EXHIBIT 3

### FEES AND EXPENSES

The LPA shall pay the CONSULTANT on an actual Labor Hour/Unit Cost Basis and/or Lump Sum/Firm Fixed Price Basis for the satisfactory completion of the Scope of Work set forth under "Exhibit 2" hereto, or all salaries, payroll additives, overhead, direct costs and the CONSULTANT'S fixed fees attributable to this CONTRACT.

Actual costs as the term is used herein shall include all direct salaries, payroll additives, overhead, and direct costs. Direct salaries are those amounts actually paid to the person performing the Services which are deemed reasonably necessary by the LPA for the advancement of the Scope of Work. Overtime work is not contemplated unless specifically stated otherwise in the Contract. Accordingly, direct salaries chargeable to the Contract shall not include any overtime premiums. Salaries for officers, principals or partners shall not increase at a rate in excess of that for other employees. Payroll additives and overhead consist of employee fringe benefits and that part of CONSULTANT'S allowable indirect costs attributable to the Contract.

Direct Costs are those charges deemed reasonably necessary by the LPA for the successful completion of the Scope of Work which are charged directly to the project and not included in overhead.

Fixed-fee as the term is used herein shall mean a dollar amount established to cover the CONSULTANT'S profit and business expenses not allocable to overhead for the successful completion of the Services.

Labor-Hour rate as the term is used herein shall include all direct salaries, payroll additives, overhead, and). Unit costs, as the term is used herein shall include all direct costs and profit, and any other associated costs Labor-Hour rates/Unit Costs are are not subject to any adjustments on the basis of the CONSULTANT's cost experience in performing the services in the CONTRACT. The Labor Hour rates/Unit costs shall not exceed those rates established in the Rate Table of Exhibit 3.

Lump sum/Firm-fixed price, as the term is used herein, shall include a firm price for a defined deliverable. The price will not be subject to adjustment based on the consultant's cost of performing the Scope of Work in the Contract. Unit-cost rates as the term is used herein shall include all direct salaries, payroll additives, overhead, direct costs and profit, as well as any other associated expenses. The Unit-Cost rates shall be established in the Rate Table of Exhibit 3. Unit-cost rates are not subject to any adjustments on the basis of the CONSULTANT's cost experience in performing the services in the CONTRACT. The Unit-cost rates shall not exceed those rates established in the Rate Table of Exhibit 3.

If requested by the LPA, all charges for services must be substantiated by supporting data, i.e. certified time sheets, daily logs, check stubs, pay vouchers, etc.

#### **Direct Costs:**

The LPA will reimburse the CONSULTANT'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 must be substantiated by supporting data in accordance with the State Travel Handbook, i.e., mileage, log books, receipts, etc.**

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

**Direct Salaries:**

Direct salaries shall not exceed those amounts actually paid to an employee performing services reasonably necessary for the completion of the Scope of Work set forth under "Exhibit 2" to this CONTRACT.

**{LPA MUST CONTACT MDOT ROW LPA COORDINATOR FOR ASSISTANCE/REVIEW OF FEE SCHEDULE}**

The CONSULTANT shall not exceed the “Cost per Parcel/Unit/Hour” Rate established for this Rate Table identified below. The “Est. No. of Parcels/Units” are estimates only and may be modified upon the LPA’s approval; however, the Maximum Not to Exceed Amount shall not be exceeded.

Insert Fee Schedule from Scope of Work here

**EXHIBIT 4**

**SAMPLE COVER SHEET FOR CONSULTANT INVOICE (Summary)  
[Labor-Hour/Unit Cost]**

{LPA Name Here}  
{Physical Address Here}  
{City, State Zip Code Here}

DATE:

ATTENTION:

INVOICE NO. 0000\*  
PERIOD \_\_\_\_\_, 20\_\_\_\_ THROUGH \_\_\_\_\_, 20\_\_\_\_  
PROFESSIONAL SERVICES IN ACCORDANCE WITH  
CONTRACT DATED \_\_\_\_\_, 20\_\_\_\_, AS RELATES TO  
PROJECT NO. \_\_\_\_\_ IN \_\_\_\_\_ COUNTY. HIGHWAY \_\_\_\_\_.

CONSULTANT: \_\_\_\_\_  
CUSTOMER NUMBER 0000000000 FILE NUMBER 000-000000  
REPORT NUMBER: 000 through 000 FMS NUMBER 000000-000000LPA

	Summary of Billings		
	CURRENT	PREVIOUS	TOTAL ALLOWED
	<u>Invoice</u>	<u>Invoice</u>	<u>TO DATE</u>

UNIT COSTS

Appraisal	\$	\$	\$
Review Appraisal	\$	\$	\$
Acquisition	\$	\$	\$
Relocation	\$	\$	\$
Property Management	\$	\$	\$
Eminent Domain Services			
Appraisals for Court			

LABOR HOUR

Eminent Domain Servicesre-Trial Preparation	\$	\$	\$
Trial Testimony	\$	\$	\$

DIRECT EXPENSES

Eminent Domain Services	\$	\$	\$
Title Services	\$	\$	\$

PROJECT TOTAL	\$	\$	\$
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NOTE:

1. Attach supporting documentation.

2. \* Invoice numbers should be no more than 12 characters in length (including letters, numbers, spaces, and symbols). No duplicate invoice numbers are allowed.
3. 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.

**Sample Invoice by Parcel Unit Cost /Hourly Rate**

{LPA Name Here}  
 {Physical Address Here}  
 {City, State Zip Code Here}

DATE:

ATTENTION: {LPA} 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: \_\_\_\_\_

<b>Services Rendered under this Invoice: {Appraisal, Review Appraisal, Acquisition, Relocation, Property Management, or Eminent Domain}</b>				
<b>Parcel No.</b>	<b>No. of Units</b>	<b>Unit Fee</b>	<b>Type of Work**</b>	<b>Total</b>
		\$		\$
		\$		\$
		\$		\$

AMOUNT DUE THIS INVOICE: \$

NOTE:

1. Attach supporting documentation.
2. \* Invoice numbers should be no more than 12 characters in length (including letters, numbers, spaces, and symbols). No duplicate invoice numbers are allowed.
3. 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.
4. \*\* Specify "Type of Work" as denoted in Function list of Rate Schedule in Exhibit 3.



**Sample Invoice by Lump Sum**

{LPA Name Here}  
{Physical Address Here}  
{City, State Zip Code Here}

DATE:

ATTENTION: {LPA} 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
<b>Contract Mas \$</b> _____			
Percentage complete to date _____%	\$	\$	\$

## EXHIBIT 5

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

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

1. Compliance with Regulations: The CONSULTANT will comply with the Regulations of the LPA, 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 CONTRACT.
2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, religion, color, sex, national origin, age or disability in the selection and retention of subconsultants including procurement of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this CONTRACT covers a program set forth in Appendix B of the Regulations. In addition, the CONSULTANT will not participate either directly or indirectly in discrimination prohibited by 23 C.F.R. 710.405(b).
3. Solicitations for Subcontracts. Including Procurement of Materials and Equipment: In all Solicitations, either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this CONTRACT and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, national origin, age or disability.
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 CONSULTANT or subconsultant shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The CONSULTANT shall report all suspected or reported violations to the LPA.
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 Labor. In addition, contractors shall be required to pay wages specified in a wage determination

made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week.

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 LPA and the CONSULTANT shall comply with the "Mississippi Department of Transportation's Disadvantage Business Enterprise Programs For United States Department Of Transportation Assisted Contracts".

Neither the CONSULTANT, nor any sub-recipient or sub-consultant shall discriminate on the bases of race, color, national origin, or sex in the performance of this CONTRACT. The CONSULTANT 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 CONSULTANT to carry out those requirements is a material breach of this CONTRACT which may result in the termination of this 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 6

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

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

- (1) The CONSULTANT certifies to the best of its knowledge and belief that it and its principals:
  - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for LPA 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 LPA 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 LPA of any of the offenses enumerated in paragraph (l)(b) of this certification;
  - (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; and
  - (e) has not either directly or indirectly entered into any agreement participated in any collusion; or otherwise taken any action in restraint of free competitive negotiation in connection with this CONTRACT.
  
- (2) The CONSULTANT further certifies, to the best of his/her knowledge and belief, that:
  - (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; and
  - (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 CONSULTANT shall include the language of the certification in all subcontracts exceeding \$25,000 and all sub-consultants shall certify and disclose accordingly.

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

- (a) employed or retained for LPA, percentages, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this agreement, or
- (b) agreed, as an express or implied condition for obtaining this CONTRACT, to employ or retain the services of any firm or person in connection with carrying out the agreement, or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bone fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the agreement; except as herein expressly stated (if any).

I acknowledge that this Agreement 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\_\_\_\_\_.

**{Consultant Firm}**

BY: \_\_\_\_\_  
{typed name}

ATTEST: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Notary

CERTIFICATION OF THE LPA

I hereby certify that I am the Chief Administrative Official, duly authorized by the LPA 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\_\_.

*LPA* \_\_\_\_\_  
{LPA typed name}

\_\_\_\_\_  
*Chief Administrative Official*

**EXHIBIT 8**

**{Intentionally Left Blank}**

EXHIBIT 9

**PRIME CONSULTANT / CONTRACTOR EEV CERTIFICATION AND AGREEMENT**

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

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

\_\_\_\_\_  
EEV\* Company Identification Number [Required]

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

BY: \_\_\_\_\_ Date \_\_\_\_\_  
Authorized Officer or Agent

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent Title of Authorized Officer or Agent of Contractor / Consultant

SWORN TO AND SUBSCRIBED before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

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