

**LEGAL DEPARTMENT  
CITY OF GULFPORT**

*P. O. Box 1780  
Gulfport, MS. 39502*

*City Hall  
2<sup>nd</sup> Floor  
2309-15<sup>th</sup> Street*

**MEMORANDUM**

**[To Request Matter to be placed upon Council Agenda]**

**To: Mayor Billy Hewes: Attention Dr. John Kelly, CAO**

**Council President Ricky Dombrowski  
Councilman Kenneth Casey  
Councilwoman Ella Holmes-Hines  
Councilman F. B. "Rusty" Walker, IV  
Councilman Myles Sharp  
Councilman R. Lee Flowers  
Councilwoman Cara Pucheu**

**Ronda Cole, Clerk of Council**

**From: Chelsea Brannon, Assistant City Attorney**

**Dated: January 16, 2014**

**RE: A RESOLUTION BY THE GULFPORT CITY COUNCIL TO AUTHORIZE THE EXECUTION OF A MASTER SERVICES AGREEMENT FOR ENGINEERING SERVICES WITH A. GARNER RUSSELL & ASSOCIATES, BROWN, MITCHELL & ALEXANDER, INC., MS ENGINEERING GROUP, NEEL-SCHAFER, AND THE PICKERING FIRM AND TO AUTHORIZE THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THESE AGREEMENTS**

This is to respectfully request placement and consideration of the attached item, referenced above, **on the January 21, 2014, City Council Agenda.**

**Subject:** *This Resolution was prepared at the request of the Engineering Department and will authorize the City to enter into a Master Services Agreement for Engineering Services with A. Garner Russell & Associates, Brown, Mitchell & Alexander, Inc., MS Engineering Group, Neel-Schaffer, and the Pickering Firm. Each Agreement shall be non-exclusive, with work assigned to each firm on an as-needed basis, based on the overall requirements of the City. Services shall include, but are not limited to preparation of "preliminary engineering reports, design, environmental and surveying services, construction drawings and construction observations" as well as "other tasks that may become necessary during the process."*

The attached items originate from the following Departments

**Department**

**Approve**

**Disapprove**

Legal Department  
Purchasing  
Engineering

Chelsea Brannon

**Also reviewed and approved by:**

Submitted for review and approval to:

John Kelly, CAO, and/or  
Mayor Billy Hewes

\_\_\_\_\_  
\_\_\_\_\_

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the \_\_\_\_ day of \_\_\_\_\_, 2014, the following Resolution:

**A RESOLUTION BY THE GULFPORT CITY COUNCIL TO AUTHORIZE THE EXECUTION OF A MASTER SERVICES AGREEMENT FOR ENGINEERING SERVICES WITH A. GARNER RUSSELL & ASSOCIATES, BROWN, MITCHELL & ALEXANDER, INC., MS ENGINEERING GROUP, NEEL-SCHAFFER, AND THE PICKERING FIRM AND TO AUTHORIZE THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THESE AGREEMENTS**

**WHEREAS**, on December 13, 2013, the City received twenty (20) responses to a previously advertised Request for Qualifications; and

**WHEREAS**, as set forth in the attached January 13, 2014, memorandum from City Engineer Kris Riemann, (which along with the proposed Agreement and a Standard Rate Schedule are attached hereto collectively as **Exhibit “A”**), the City conducted a full review and evaluation of the responses received; and

**WHEREAS**, based on that review, the City Engineer is recommending entering into Agreements with five (5) firms: A. Garner Russell & Associates; Brown, Mitchell & Alexander, Inc.; MS Engineering Group; Neel-Schaffer; and the Pickering Firm; and

**WHEREAS**, these Agreements shall be non-exclusive with work assigned to each of the five firms based on the City’s overall requirements; and

**WHEREAS**, services under these Agreements will be on an as-needed basis and will include, but are not limited to, preparation of “preliminary engineering reports, design, environmental and surveying services, construction drawings and construction observations” as well as “other tasks that may become necessary during the process”; and

**WHEREAS**, under the proposed Agreement, each assignment shall include identification of the funding source and a specific work authorization, with the total for services performed under all five agreements not to exceed Three Hundred Thousand Dollars (\$300,000.00) per term.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS, TO WIT:**

**Section 1.** That the matters, facts and things recited in the Preamble hereto are hereby adopted as the official findings of the Governing Authority.

**Section 2.** That the proposed “Master Services Agreement” should be and hereby is approved in the same or substantially the same form as the Agreement set out in **Exhibit “A”**, and that the City should enter into a separate Agreement with A. Garner Russell & Associates, Brown, Mitchell & Alexander, Inc., MS Engineering Group, Neel Schaffer, and the Pickering Firm.

**Section 3.** That the Mayor is hereby authorized to sign any and all documents necessary to effectuate these Agreements.

**Section 4.** That this Resolution shall be in effect immediately upon its passage and enactment according to law, and shall be spread upon the minutes of the Gulfport City Council.

The above and foregoing Resolution, after having been first reduced to writing and read by the Clerk, was introduced by \_\_\_\_\_, seconded by \_\_\_\_\_, and was adopted by the following roll call vote:

**AYES**

**NAYS**

**ABSENT**

**WHEREUPON**, the President declared the motion carried and the Resolution adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

(SEAL)

**ATTEST:**

**ADOPTED:**

\_\_\_\_\_  
**CLERK OF THE COUNCIL**

\_\_\_\_\_  
**PRESIDENT**

The above and foregoing Resolution was submitted to and approved by the Mayor, this  
the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**APPROVED:**

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**MAYOR**

# Memorandum – City of Gulfport

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**To:** Connie Debenport, Purchasing  
**CC:** Mayor Billy Hewes  
Dr. John Kelly, CAO  
Scott Wilson, Finance  
**From:** Kris Riemann, P.E. *RKR*  
**Date:** 1/21/14  
**Re:** Recommendation to Approve Engineering Contracts  
-Engineering Master Services Agreement 2014

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On December 13, 2013, RFQ's were received for the above referenced project. Twenty (20) firms responded to the request. A Consultant Selection process was completed by the Procurement Office and attached is a copy of the results. I am recommending that the City contract with five (5) firms for the Engineering Master Services agreement. Those firms are listed below.

1. MS Engineering Group
2. A. Garner Russell & Associates
3. Brown, Mitchell, & Alexander, Inc.
4. Neel-Schaffer
5. Pickering Firm

This agreement is for engineering services on an as-needed basis. Services will include, but are not limited to, preliminary engineering reports, design, environmental and surveying services, construction drawings and construction observation, and other tasks that may become necessary during the process. For tasks assigned under the agreement, the scope of service will be agreed to in advance, the funding will be identified, and a specific work authorization will be issued for each assignment.

Connie Debenport and I also have developed standard rates based on the rates that were furnished by the firms during the RFQ process. These standard rates were set from reviewing all rates submitted and using the lowest rates from the firms for the positions. The contracts are also standardized with the assistance of the Legal Department.

This contract allows for an initial term of one (1) year and the extension of the contract for three (3) one-year terms as approved by the Governing Authority. Without prior approval by the Governing Authority, total services provided under this agreement shall not exceed Three Hundred Thousand Dollars (\$300,000.00) per term.

I recommend approval to contract with each of the five (5) Engineering Firms listed above using the Standard Contract and Standard Rates Schedule attached. Please place this item on the January 21, 2014 Council Agenda.

Attachments:           1. Engineering Master Services Agreement 2014  
                              2. Standard Rates Schedule  
                              3. Consultant Selection Committee Spreadsheet

# Engineering Master Services Agreements Selection Spreadsheet

Engineering Firm	Areas of Expertise										Evaluator #1				Evaluator #2				Evaluator #3				Totals by Firm
	Drainage	Streets	Water	Sewer	Paving	Bridges	Landscaping	Local Conditions	LP/MDOT Projects	Government Grants	Experience	Qualifications	Public Funding Exp.	In-House Capabilities	Experience	Qualifications	Public Funding Exp.	In-House Capabilities	Experience	Qualifications	Public Funding Exp.	In-House Capabilities	
A. Garner Russell	X	X	X	X	X	X		X	X	X	25	25	25	25	17	21	23	22	25	25	25	25	283
Baker Engineering	X	X	X	X	X	X		X	X	X	15	25	25	25	23	22	22	20	24	22	21	21	265
BMA	X	X	X	X	X			X	X	X	25	25	25	25	20	23	23	19	25	25	25	25	285
Burk-Kleinpeter, Inc.	X	X	X	X	X			X	X	X	10	25	25	20	18	20	21	21	25	23	23	23	254
CDM Smith	X	X	X	X	X			X	X	X	22	25	25	25	19	21	20	21	23	20	21	21	263
Compton Engineering	X	X	X	X	X	X		X	X	X	15	25	25	25	21	21	23	19	24	22	23	22	265
Digital Engineering	X	X	X	X	X			X	X	X	10	25	25	25	22	22	21	19	25	24	23	23	264
GEC	X	X	X	X	X	X	X	X	X	X	15	25	25	25	20	22	21	20	23	22	24	24	266
Knesal Engineering	X	X	X	X	X			X	X	X	25	15	25	25	20	20	21	20	25	21	22	23	262
Machado-Patano	X	X	X	X	X		X	X	X	X	23	15	25	25	22	21	22	21	25	22	22	23	266
MS Engineering Group	X	X	X	X	X	X		X	X	X	23	25	25	25	21	21	21	21	25	23	23	24	277
Neel-Schaffer	X	X	X	X	X	X		X	X	X	23	25	25	25	22	21	23	22	25	25	25	25	286
N-Y Associates	X	X	X	X	X	X		X	X	X	15	25	25	25	12	20	12	12	23	20	20	21	230
Pickering Firm	X	X	X	X	X	X		X	X	X	23	25	25	25	22	21	23	23	24	25	25	25	286
Smith, Seckman, Reid, Inc.	X	X	X	X	X			X	X	X	15	25	25	15	22	22	22	18	24	22	23	22	255
Tice Engineering	X	X	X	X	X			X	X	X	10	25	25	15	19	21	20	19	23	24	22	25	248
URS	X	X	X	X	X	X		X	X	X	15	25	25	25	18	22	23	19	24	23	24	23	266
Volkert	X	X	X	X	X		X	X	X	X	15	15	25	15	20	21	21	22	23	25	24	24	250
Waggoner	X	X	X	X	X	X		X	X	X	15	25	25	25	21	21	21	21	25	25	24	25	273
WGK, Inc.	X	X	X	X	X	X		X	X	X	10	25	25	15	24	21	25	24	24	21	25	24	263

**CITY OF GULFPORT**  
**2014 ENGINEERING MASTER SERVICES AGREEMENT**  
**ENGINEERING FEES**  
**STANDARD HOURLY RATES SCHEDULE**

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<u>Position</u>	<u>Billing Rate</u>
Principal Engineer	\$ 135.00
Professional Engineer	\$ 97.00
Senior Project Manager	\$ 105.00
Project Engineer	\$ 75.00
Professional Land Surveyor	\$ 80.00
Survey crew chief	\$ 47.00
Instrument person	\$ 35.00
CAD Technician	\$ 50.00
Clerical	\$ 43.00
Resident Project Representative	\$ 70.00
Engineering Technician	\$ 50.00



**ENGINEERING MASTER SERVICES AGREEMENT  
BETWEEN  
THE CITY OF GULFPORT, MISSISSIPPI  
AND**

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**THIS AGREEMENT**, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2014, at Gulfport, Mississippi, by and between the City of Gulfport, Mississippi, acting by and through its Mayor and City Council ("the Governing Authority") hereinafter referred to as "Owner" or "City" and \_\_\_\_\_, hereinafter "Contractor" or "Engineer", with its principal place of business at \_\_\_\_\_, for the purposes, and on the terms and conditions, and under the authority hereinafter set forth:

**WITNESS THAT:**

**WHEREAS**, the City of Gulfport, Mississippi, is a municipal corporation, organized and existing according to the laws of the State of Mississippi, and it is governed by its Mayor and City Council "Governing Authority"; and

**WHEREAS**, the City previously advertised for proposals for Professional Engineering Firms to provide engineering services to the City on an as needed basis; and

**WHEREAS**, \_\_\_\_\_, submitted a response to the City's Request for Proposals, which response is incorporated herein and attached hereto as included as Exhibit "A"; and

**WHEREAS**, based on the information submitted in response to the Request for Proposal process, the City desires to enter into a Master Services Agreement with \_\_\_\_\_ to provide services on an as needed basis, which services are generally set out in Exhibit "B" and include, but are not limited to, preparing preliminary engineering reports, designing projects, providing surveying services, and preparing construction drawings; and

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the City and Engineer do hereby contract and agree as follows:

**ARTICLE I. SERVICES OF ENGINEER**

Engineer understands and agrees that this Agreement is for possible work and does not guarantee or assure that any projects or work assignments will be assigned during the term provided herein. Possible services are set forth in Exhibit "B". Any work assignment under this Agreement shall define the specific scope of work and not to exceed amount and shall be issued on the enclosed "Work Assignment" form attached hereto as Exhibit "C". All work assigned shall become part of this Agreement and shall be subject to the terms and conditions provided herein.

Engineer shall be responsible for all services and materials required to fully perform and completed the assigned work and shall exercise a reasonable standard of conduct and care, according to the prevailing industry standards, in all work, complying with all Federal and State manuals, guides and specifications for work. The City reserves the right to enlarge or reduce the overall scope of services under this Agreement. Engineer may limit or refuse to accept work assignments under this Agreement. Any limitation or refusal must be issued to the City in writing within five (5) days of receipt of the assignment.

Within seven (7) days of receipt of the work assignment, Engineer shall furnish a proposed estimated cost and progress schedule. Project schedules shall include the anticipated time, proposed beginning and conclusion dates, and such intermediate dates as may be required to adequately monitor the progress of the assignment. To meet the needs of the City, the City reserves the right to request changes in the progress schedule. Return of Exhibit "C" to the Director of Engineer or Director of Public Works will be required before a Notice to Proceed is issued. **Engineer may not begin work on any assignment without receiving a Notice to Proceed from the City.**

## **ARTICLE II. CONTRACT TERM**

The Agreement shall commence upon the latest date of execution and continue until March 1, 2015 at 11:59 P.M. Central Standard Time, at which time the Agreement shall automatically terminate. No new work shall be assigned or undertaken after March 1, 2015. Engineer shall complete any work assigned prior to March 1, 2015, with work not to exceed the termination or conclusion date identified by the specific assignment. During the term of this Agreement, the City reserves the right to terminate this Agreement in whole or in part, at any time, with or without cause, upon seven (7) days written notice to the Engineering. This contract allows for an initial term of one (1) year and the extension of the contract for three (3) one-year terms as approved by the Mayor and City Council.

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

The relationship of the Engineer to the City is that of an independent contractor, and said Engineer, 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 City by reason hereof. The Engineer will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employee of the City, 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.

## **ARTICLE IV. AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the City to proceed under this Agreement is conditioned upon the availability of funds, the appropriation of funds by the City of Gulfport, and/or the receipt of state and/or federal funds. If, at any time, the funds anticipated for the fulfillment of this Agreement are not forthcoming or are insufficient, either through the failure of the City to provide funds or of the City 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 City for the performance of this Agreement, the City shall have the right, upon written notice to the Consultant to immediately terminate or stop work on this Agreement without damage, penalty, cost, or expense to the City of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## **ARTICLE V. COMPENSATION, BILLING AND AUDIT**

- A. **Cost and Fees:** Engineer shall be paid on a labor hour/unit cost basis, as set forth in Exhibit "D". **Without prior approval by the Governing Authority, total services provided under this agreement shall not exceed Three Hundred Thousand Dollars (\$300,000.00) per term.** Under no circumstances shall the City be liable for any amounts expended or incurred by Engineer which exceed the maximum dollar amount of compensation.
- B. **Monthly Billing:** Engineer may submit monthly billing statements to the City. A sample of the preferred invoice is attached hereto as Exhibit "E". Each statement shall include time expended and allowable expenses through the end of the billing period. Direct expenses included the cost of long

distance telephone calls, testing and printing, if it is not company accounting policy to include the costs in overhead rates. City shall not reimburse for the cost of travel or shipping/ mailing charges. City reserves the right to verify time and expense records, related to work performed for the City, by audit of any or all Engineer's time and accounting records. Should the funding source require, Engineer agrees to allow the funding entity access to records for review. Records shall be available at all times during the period of the Agreement, and for a period of three years following.

Services rendered within a fiscal year (October 1-September 30), may required an invoice requesting payment for services within sixty days of the end of the fiscal year. Should Engineer fail to present the invoice within the allotted time, payment may be delayed.

- C. Progress Reports: Engineer shall provide the City monthly progress reports containing a narrative outline of work performed during the billing period, as well as a spreadsheet indicating the amount of progress for each designated assignment. Should the assignment be identified in "parts", the spreadsheet shall contain the progress for each part. A suggested format for Progress Reports is attached hereto as Exhibit "F". This provision shall not apply to any work assignment that is less than thirty (30) days in duration. At the request of the Engineer, the City may waive this requirement, which waiver shall be requested by, and responded to, in writing. Failure to provide progress reports may result in termination of the Agreement.
- D. Final Payment: Requests for final payment shall be submitted to the City no later than forty-five (45) days following the completion and/or termination of the work assignment. The City reserves the right to reject any final invoice not timely received. Engineer shall clearly indicate on the last invoice for a work assignment that the payment sought is the "final payment". The Director of Engineering or the Director of Public Works shall confirm that the assignment is completed and ready to be closed, allowing payment of the final invoice. Under no circumstances will the total amount paid exceed the maximum not to exceed amount established for the work assignment.

Engineer agrees and accepts that receipt of final payment shall be in full and final settlement of all claims arising against the City for payment for work completed, materials furnished, cost incurred, or otherwise arising out of this Agreement and/or associated work assignments. In accepting the final payment, Engineer shall release the City from any and all further claims for payment, whether known or unknown, for and on account of the Agreement and/or associated work assignments, including payment for all work done, and labor and materials furnished in connection with the same. Failure to perform, to the satisfaction of the City, all terms of this Agreement and/or associated work assignments, which includes the Scope of Work identified herein, or the Engineer's failure to perform according to the prevailing industry standards, including standards of conduct and care, format and content, shall be corrected by the Engineer without any additional compensation.

- E. In the event of termination of this Agreement, any just claims by the Engineer for payment of services rendered prior to the date of termination will be evaluated on a case by case basis. The City shall be liable only for the costs, fees and expenses for demobilization, if applicable, and close out of the Agreement, based on actual time and expenses incurred by Engineer in the packing and shipment of all documents covered by this Agreement. In no event shall the City be liable for lost profits or other consequential damages.

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

Engineer shall observe and comply with 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 Agreement or that may later become effective. Engineer shall not discriminate against any employee nor

shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, national origin, age or disability. Engineer shall execute any and all certifications required by the City, without limitation a Certification of Compliance with Title VI of the Americans with Disabilities Act, as amended.

Engineer 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 Engineer 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 Engineer 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 Engineer also acknowledges liability for any additional costs incurred by the City due to such contract cancellation or loss of license or permit.

#### **ARTICLE VII. COVENANT AGAINST CONTINGENT FEES, LOBBYING AND EMPLOYMENT OF CITY PERSONNEL**

Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Engineer, any fee commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of the Agreement. The Engineer warrants that it shall not contribute any money, gift or gratuity of any kind, either directly or indirectly to any employee of the City. For breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability, and the Engineer shall forfeit any sums due hereunder at the time of such breach and may be barred from performing any future services for the City or participating in any future contracts with the City. Unless specifically authorized in writing by the City, Engineer shall not employ any person or persons in the employ of the City for any work required under the terms of this Agreement.

#### **ARTICLE VIII. REVIEW OF WORK**

During the term of this Agreement, authorized representatives of the City may, at all reasonable times review and inspect the services and work assignments, including all reports, drawings, studies, maps and computations prepared by and for the Engineer in connection with this Agreement. As applicable and/or as required under the work assignment, Engineer shall make services and work assignments available for review by authorized State or Federal representatives, including, but not limited to, the Federal Highway Administration, the Federal Emergency Management Associate, the Mississippi Emergency Management Association, the Mississippi Department of Transportation, the Mississippi Department of Environmental Quality, and the Mississippi Department of Marine Resources. Inspection does not automatically make the inspecting entity a party to the Agreement.

Engineer shall be responsible for performance of and compliance with all terms of this Agreement and shall be responsible for correcting any errors and/or omissions, including those that relate to the conduct of care, format and content of material, professional quality and technical accuracy of all designs, drawings, specifications, and other services furnished by the Engineer that may be identified during or outside of a review. Any corrections necessary for compliance shall be at the Engineer's expense.

Any breach of contract, including, but not limited to deficiencies or errors and/or omissions in designs, plans, drawings, specifications, or other services, discovered by the City during the performance of the work shall immediately be addressed by the Engineer. Engineer shall provide a written statement of proposed remedy no less than ten (10) days after the identification of the breach. Any work performed to remedy the breach shall be at the expense of the Engineer.

Any breach of contract, including, but not limited to deficiencies or errors and/or omissions in designs, plans, drawings, specifications, or other services, discovered by the City after final acceptance of the work shall, without additional compensation, be corrected by the Engineer. If Engineer fails, or is unable to correct, the City reserves the right to have the deficiencies corrected. Any costs incurred by the City for such corrections shall be the responsibility of the Engineer. City shall provide Engineer an opportunity to correct any identified breach unless:

- 1) The City determines, in its sole discretion, that the Engineer cannot cure the breach within the schedule established by the City; or
- 2) The City determines, in its sole discretion, that the Engineer cannot cure the breach to the satisfaction of the City.

#### **ARTICLE IX. OWNERSHIP OF PRODUCTS, DOCUMENTS AND WORK**

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

The Parties intend and agree that this Agreement is a contract for services and each party considers the products and results of the services to be rendered by the Engineer hereunder, including any and all material produced and/or delivered under this Agreement, to be a "work made for hire" under U.S. copyright and all applicable laws. Engineer acknowledges and agrees that the City 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 Agreement is determined to be other than a contract or agreement for a work made for hire, the Engineer does hereby transfer and assign to the City, 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 Engineer agrees to execute all papers and perform such other proper acts as the City may deem necessary to secure for the City or its designee the rights herein assigned.

The City may, without any notice or obligation of further compensation to the Engineer, publish, re-publish, anthologize, use, disseminate, license, or sell the Work in any format or medium now known or hereafter invented or devised. The City'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 Engineer shall obtain any and all right, title, and interest to all input and/or material from any third party sub-consultant, 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 City

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

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

Neither this Agreement, nor any right or obligation hereunder may be assigned or transferred in whole or in part by Engineer without prior written consent of the City. Under no circumstance will Engineer be allowed to sublet more than sixty percent (60%) of the work required under this Agreement. Specific projects or phases of the work assigned under this contract may be sublet provided that the Engineer performs at least forty percent (40%) of the overall contract. Consent by the City to sublet a portion of the work shall not relieve Engineer from any of its obligations hereunder. Engineer is required to maintain full management responsibility throughout the duration of the Agreement. The City reserves the right to review all subcontract documents and agreements, including any subcontractor's cost estimates, entered into with respect to this Agreement.

#### **ARTICLE XI. CONFIDENTIAL INFORMATION AND PRODUCTION OF DOCUMENTS**

It is understood that from time to time confidential and/or privileged information may be shared. Engineer agrees not to disclose any privileged or confidential information unless (a) disclosure is authorized by the City in writing; (b) is reasonably required in connection with the fulfillment of the disclosing party's obligations hereunder and made only to the minimum extent necessary to carry out such obligations; (c) is information which had generally become known to the public other than through the disclosure thereof by the disclosing party or which is otherwise subject to disclosure under state or federal law and not within any exemption from such disclosure; (d) to any authorized attorney, accountant or other professional advisor of the disclosing party under confidentiality agreements and/or attorney-client or similar privilege; or (e) pursuant to any compulsory legal process.

Engineer agrees that it shall immediately refer any third party who requests information pertaining to the work under this Agreement. This Article shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Engineer 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 Engineer to defend itself from any suit or claim. Any published finding, report or recommendation shall include the following provision:

*The opinions, findings, and conclusions in this publication are those of the author(s) and not necessarily those of the CITY OF GULFPORT.*

## ARTICLE XII. STOP WORK ORDER

- A. **Order to Stop Work.** The City may, by written order to the Engineer at any time, and without notice to any surety, require the Engineer to stop all or any part of the work called for by this Agreement. This order shall be for a specified period not exceeding thirty (30) days after the order is delivered to the Engineer 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 Engineer 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 City shall either:
- (1) cancel the stop work order; or
  - (2) terminate the work covered by such order according to the terms provided herein
- 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 Engineer shall have the right to resume work. If the City 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 Engineer's cost properly allocable to the performance of any part of this Agreement and the Engineer asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage, an equitable adjustment in this Agreement may be made by written modification of this Agreement as provided by the terms of this Agreement.
- C. **Termination of Stopped Work.** If a stop work order is not canceled and the work covered by such order is terminated, the Engineer may be paid for services rendered prior to the Termination. In addition to payment for services rendered prior to the date of termination, the City shall be liable only for the costs, fees, and expenses for demobilization and close out of this Agreement, based on actual time and expenses incurred by the Engineer in the packaging and shipment of all documents covered by this Agreement to the City. In no event shall the City be liable for lost profits or other consequential damages.

## ARTICLE XIII. INSURANCE

Prior to commencement of work under this Agreement, Engineer shall obtain and furnish certificates of coverage, or any required documentation to evidence coverage, to the City for the following minimum amounts of insurance:

- A. Workers Compensation Insurance as required by the State of Mississippi;
- B. Comprehensive General Liability Insurance with a minimum combined limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, including coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, contractors protective, sudden and accidental pollution, products and completed operations, and coverage for other hazards;
- C. Valuable Documents Insurance, whether as part of the property damage insurance referenced above or as separate insurance, in an amount sufficient to cover all costs associated with repairing, restoring, or replacing any documents kept or created by Engineer, as a part of the services, in the event of casualty to, or loss or theft of such documents;

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

The City shall be listed as a certificate holder or additional insured on any of the insurance required under this Agreement. Insurance identified herein shall be maintained in full force and effect by the Engineer throughout the duration of the Agreement, including any extra time for which ongoing work is completed. Should Engineer cease to carry the errors and/or omissions coverage provided herein, Engineer shall obtain "tail" or extension coverage at the same limits for a period of not less than three (3) years subsequent to policy termination or Agreement termination, whichever is longer.

In the event that the Engineer retains any subcontractor or other personnel to perform services or to carry out any activities under or incident to work on any work assigned as part of this Agreement, Engineer agrees to obtain from said subcontractor or other personnel, certificates of insurance demonstrating that said subcontractor or other personnel has all of the above coverage or sufficient coverage to cover their portion of the work. As an alternative, Engineer may include said subcontractor or other personnel within Engineer's coverage for the duration of the work assignment involving the subcontractor or other personnel. Should Engineer change carriers or policies for any insurance required herein, Engineer shall provide new certificates of coverage, as well as any retroactive coverage from the new carrier. If the Engineer fails to procure or maintain required insurance, the City may immediately terminate this Agreement.

#### **ARTICLE XIV. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES**

Engineer, and its agents, servants, employees, and representatives agree to fully defend, indemnify, and hold harmless the City and its employees, agents, and officials with respect to and from and against any and all claims, demands, causes of actions, damages, including, but not limited to, any and all indirect, special, incidental, punitive, or consequential damages, injuries, fees, expenses, penalties, lawsuits, judgments, and orders, including without limitation, attorney's fees, which in any way arise out of or relate to any negligent, intentional, willful or grossly negligent acts of omission or commission of or attributed to Engineer and/or its agents, servants, employees, sub-contractors, officials, visitors, invitees, and/or guests. Engineer's obligations to indemnify, defend, and hold harmless, or at the City's option, participate and associate with the City in defense of any claim for damage, lien or suit and/or any related settlement negotiations shall be initiated by the City's Notice of Claim for Indemnification to the Engineer.

#### **ARTICLE XV. CONTRACT DISPUTES**

This Agreement shall be deemed to have been executed in Harrison County, Mississippi. Any claim or action brought by either party related to this Agreement shall be brought in a court of competent jurisdiction in Harrison County, First Judicial District. This Agreement shall be governed by the laws of the State of Mississippi and such Mississippi laws shall apply to the construction or enforcement of all provisions of this Agreement and to any action which may be brought pursuant thereto. Any right or remedy under this Agreement is cumulative, not exclusive, and is in addition to any other rights or remedies either provided in this Agreement or otherwise available at law or in equity. Failure to exercise or delay in exercising any rights shall not constitute a waiver in whole or in part of any such rights.



#### **ARTICLE XVI. CONFLICT OF INTEREST**

The Engineer 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 Engineer's Agreement. The Engineer further covenants that no employee of the Engineer or of any sub-consultant, 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 Engineer's execution of this Agreement.

#### **ARTICLE XVII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the City and the Engineer and no prior written or oral covenants or representations relating thereto and not set forth herein shall be binding on either party hereto. Any changes or amendments to this Agreement

#### **ARTICLE XVIII. WAIVER**

The failure of either the City or the Engineer to enforce at any time or for any period of time any provision hereof shall not be construed to be a waiver of such provision of the right thereafter to enforce each and every provision. No waiver to this Agreement by either the City or the Engineer, either express or implied, or any breach of any term, condition or obligation of this Agreement shall be construed as a waiver of any subsequent breach of that term, condition or obligation or of any other term, condition or obligation of this Agreement.

#### **ARTICLE XIX. SEVERABILITY**

If any word, clause, sentence, paragraph, condition, provision, or term of this Agreement is or hereafter becomes legally unenforceable, the same shall be severed from this agreement, and all remaining provisions of this Agreement, shall be unaffected, and shall be interpreted in accordance with the express written intention of this Agreement.

## ARTICLE XX. KEY PERSONNEL & DESIGNATED AGENTS

Engineer agrees that Key Personnel identified as assigned to this Agreement shall not be changed or reassigned without prior approval of the City or, if prior approval is impossible, then notice to the City and subsequent review by the City which may approve or disapprove the action. For purposes of implementing this section and all other sections of this Agreement with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise identified in the addenda hereto:

### **CITY:**

For Contractual Matters:

Robert Kris Riemann, P.E.  
Director of Engineering  
4050 Hewes Avenue  
Gulfport, Mississippi 39507

(228) 868-5815  
(228) 868-5822 Fax  
Email: [kriemann@gulfport-ms.gov](mailto:kriemann@gulfport-ms.gov)

For Technical Matters:

Same

or

Wayne Miller, P.E.  
Director of Public Works  
4050 Hewes Avenue  
Gulfport, Mississippi 39507

(228) 868-5740  
(228) 868-5822 (fax)  
Email: [wmiller@gulfport-ms.gov](mailto:wmiller@gulfport-ms.gov)

Same

### **ENGINEER:**

For Contractual Matters:

For Technical Matters:

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IN WITNESS WHEREOF as duly authorized:

**City of Gulfport**

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Clerk

Dated: \_\_\_\_\_, 2014

**Engineer:**

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2014

**EXHBIT "A"**  
**ENGINEER'S PROPOSAL**

## **EXHIBIT "B"**

### **SCOPE OF SERVICES**

Engineer shall provide professional services for the City pursuant to Work Assignments issued from time to time. All work assignments shall be subject to the terms and conditions set forth herein and any additional conditions or limitations provided for the specific assignment. General areas of services include, but are not limited to, work related to Water, Wastewater, Streets, Bridges, Storm Drainage, Traffic Control, and Landscape Design. Engineer may be asked to provide preliminary engineering reports, designs, environmental and surveying services, construction drawings, construction observation, and other tasks that may become necessary during the process. For tasks assigned under this Agreement, the scope of service will be agreed to in advance, funding identified, and a specific work authorization issued for each assignment. (See Exhibit "C" for format.)

**EXHIBIT "C"**

**WORK ASSIGNMENT**

**WORK ASSIGNMENT NO.** \_\_\_\_ - \_\_\_\_ 20 \_\_\_\_ - \_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_  
**CITY OF GULFPORT**  
**HARRISON COUNTY**

This Work Assignment is executed in accordance with the Master Services Agreement entered into by the City of Gulfport, Mississippi and \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_ 2014.

**WHEREAS**, each of said parties represents that it continues to have authority to execute this Work Assignment and that all certifications previously made in said Agreement remain in effect;

**NOW THEREFORE**, the parties hereto do further contract and agree to add the following items of work to the above Agreement under the additional terms and conditions as are hereinafter stated:

**SPECIFIC SCOPE OF WORK FOR THIS WORK ASSIGNMENT OR PHASE**

{{{Insert specific Scope of Work for this Work Assignment}}}  
{{{Make sure Termination is defined in the Work Assignment}}}

**WORK ASSIGNMENT TERM** [No new Work Assignments shall be executed after \_\_\_\_\_  
***{Enter Master Contract Termination Date Here}*** \_\_\_\_.]

This WORK ASSIGNMENT shall be effective upon the latest date of execution hereof and continue until insert Work Assignment Termination date here \_\_\_\_, at 11:59 P.M. CDT. However, the Engineer may not begin work prior to receiving a Notice to Proceed.

**DBE GOAL**

*The DBE goal established for this Work Assignment shall be \_\_\_\_ %.*

**KEY PERSONNEL**

{{{Designate project engineer and the Engineer's project representative here. Also include a list of any key personnel who are dedicated to this particular job by the CONSULTANT. }}}}

**CITY PROJECT ENGINEER:**

**CONSULTANT PROJECT MANAGER:**  
**(Certified as a Professional Engineer to do  
business in the State of Mississippi)**

**PROGRESS SCHEDULE**

{{{Attach at the end of "Exhibit C" the progress schedule, including a not to exceed date}}}

**MAXIMUM ALLOWABLE COST** *{Delete the other cost methods not used}*

**Contract Maximums:**

**[Use for Labor Hour/Unit Cost Work Assignments]**

Under no circumstances shall the amount payable by the City for this assignment exceed \$\_\_\_\_\_ (Total of all Charges) without the prior written consent of both parties. The Labor Rates have been identified in Table 1: Rate Schedule for Labor Hours.

**Table 1: Rate Schedule for Labor Hours**

NAMES	LABOR CLASSIFICATION	RATE

Both parties hereto represent that they have authority to enter into Work Assignment No.\_\_\_\_\_, as "Exhibit C" of the Agreement executed by and between the City and Engineer to which is now made a part of said Agreement.

SO EXECUTED AND AGREED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

**City of Gulfport, Mississippi**

\_\_\_\_\_  
**By:**

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

**CONSULTANT NAME GOES HERE**

\_\_\_\_\_  
**By:**

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

## **EXHIBIT "D"**

### **FEES AND EXPENSES**

The City shall pay the Engineer on an actual Labor Hour/Unit Cost Basis for the satisfactory completion of the Scope of Work set forth herein, for all salaries, payroll additives, overhead, direct costs and the Engineer's fixed fees attributable to a Work Assignment. The Engineer shall prepare an estimate for the specific work identified for the contemplated transportation improvement, and the City shall review and may approve this amount on a Work Assignment by Work Assignment basis using typical rates, and when acceptable issue the Notice to Proceed to the Engineer.

Actual costs as the term is used herein shall include all direct salaries, payroll additives, overhead and direct. Direct salaries are those amounts actually paid to the person performing the services which are deemed reasonably necessary by the City for the advancement of the Scope of Work. Overtime work is not contemplated by the Work Assignment. Accordingly, direct salaries chargeable to the Work Assignment shall not include any overtime premium. 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 Engineer's allowable indirect costs attributable to the Work Assignment.

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

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

Labor Hour as the term is used herein shall include all direct salaries, payroll additives, overhead, and profit. Unit-Costs, as the term is used herein shall include all direct costs and profit. Labor Hour/Unit-Costs are not subject to any adjustments on the basis of the Engineer's cost experience in performing the Work Assignment. The Labor Hour/Unit-Costs shall be paid based on the rates established in the Work Assignment

Each month, the Engineer shall submit OCR-484-C found on MDOT's website to the CITY along with the Invoice. This form certifies payments to all Subcontractors and shows all firms even if the Engineer has paid no monies to the firm during that estimate period (negative report).

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

#### **Direct costs:**

The City will reimburse the Engineer's printing, long distance phone calls, and testing for actual documented expenses. All Direct costs shall be substantiated with supporting documentation. Testing costs shall not exceed 2% of the construction costs and the CITY shall approve the testing agreement in advance of testing working being performed. All direct 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 B" to this Agreement.



**EXHIBIT "E"**

**SAMPLE INVOICE**  
**[Labor-Hour/Unit Cost]**

City of Gulfport, Mississippi

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Invoice No. 0000

Period \_\_\_\_\_, 20\_\_ Through \_\_\_\_\_, 20\_\_

**PROFESSIONAL SERVICES IN ACCORDANCE WITH MASTER SERVICES AGREEMENT**

Project No.. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ in Harrison County, Mississippi

Work Assignment: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Engineer: \_\_\_\_\_

	Current Period	Previous Estimate	Total Allowed to Date
Labor Costs *	\$	\$	\$
Direct Costs **	\$	\$	\$
Project Total	\$	\$	\$
Amount Due this Invoice			\$

**NOTE:**

1. \* PAYROLL ADDITIVES (INCLUDING ALL FRINGE BENEFITS & OVERHEAD)
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 BY THE CONSULTANT SERVICES DIRECTOR. PRIOR TO SUBMISSION BY THE CONSULTANT SAID FORM SHOULD, AT A MINIMUM, CONTAIN THE ABOVE INFORMATION

**SUPPORTING DATA (Sample Only)**

Project No. 00-0000-00-000-00  
County \_\_\_\_\_

<b>Employee and Classification</b>	<b>Rate of Pay</b>	<b>Current Period Hours</b>	<b>Current Period Costs</b>	<b>Previous Period Costs</b>	<b>Costs to Date</b>
John P. Public, Jr. Engineer	\$0.00/hour	0.00	\$0.00	\$0.00	\$0.00
John P. Public, Jr. Designer	\$0.00/hour	0.00	\$0.00	\$0.00	\$0.00
John P. Public, Jr. Technician	\$0.00/hour	0.00	\$0.00	\$0.00	\$0.00
<b>SUBTOTAL</b>	\$0.00/hour	0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL LABOR</b>					
Direct Costs					
<b>PROJECT TOTAL</b>					

**EXHIBIT "F"**  
**PROGRESS REPORT**

<b>MONTHLY PROJECT STATUS REPORT</b>
<b>Reporting Period:</b>
<b>City Representative:</b>
<b>Consultant:</b>
<b>Project No.:</b>
<b>Project Description:</b>
<b>Work Completed:</b>
<b>Work Planned:</b>
<b>Issues to be Addressed:</b>

Report Submitted by: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT "G"

### **NOTICE TO CONTRACTORS, FEDERAL AID CONTRACT COMPLIANCE WITH TITLE VI OF THE AMERICANS WITH DISABILITIES ACT, 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 Agreement, the Engineer, for itself, its assignees and successor-in-interest (hereinafter referred to as the "Engineer") agrees as follows:

1. Compliance with Regulations: The Engineer will comply with the Regulations of the City, 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 Agreement.

2. Nondiscrimination: The Engineer, 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 sub-consultants including procurement of materials and leases of equipment. The Engineer will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in Appendix B of the Regulations. In addition, the Engineer 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 Engineer for work to be performed under a subcontract, including procurement of materials or equipment, each potential sub-consultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Agreement 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 agreements 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/contractor or sub-consultant/sub-contractor 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 Engineer shall report all suspected or reported violations to the City.

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 City 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 an non-discriminatory market place. To meet that objective in any United States Department of Transportation assisted contracts, the City and the Engineer shall comply with the "Mississippi Department of Transportation's Disadvantage Business Enterprise Programs For United States Department Of Transportation Assisted Contracts".

Neither the Engineer, nor any sub-recipient or sub-consultant shall discriminate on the bases of race, color, national origin, or sex in the performance of this Agreement. The Engineer 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 Engineer to carry out those requirements is a material breach of this Agreement which may result in the termination of this Agreement or such other remedies as the City 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 "H"**

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

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

- (1) The CONSULTANT certifies to the best of its knowledge and belief that it and its principals:
  - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Agreement under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (l)(b) of this certification: and
  - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default;
  - (e) has not either directly or indirectly entered into any agreement participated in any collusion; or otherwise taken any action in restraint of free competitive negotiation in connection with this Agreement.
- (2) The Engineer further certifies, to the best of his/her knowledge and belief, that:
  - (f) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or employee of a member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (g) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or any employee of a member of Congress in connection with this Agreement, 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 Agreement. Failure to comply shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000.00. The Engineer shall include the language of the certification in all subcontracts exceeding \$25,000.00 and all sub-consultants shall certify and disclose accordingly.**

I hereby certify that I am the duly authorized representative of the Engineer 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 Engineer) to solicit or secure this agreement,
- (b) agreed, as an express or implied condition for obtaining this Agreement, 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 Engineer) 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, or any other applicable Federal or State Agency 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\_\_.

**{Enter Consultant's Name}**

\_\_\_\_\_  
*{Type name}*

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

My Commission Expires:

\_\_\_\_\_  
Notary

## EXHIBIT "I"

### PRIME CONSULTANT / CONTRACTOR EEV CERTIFICATION AND AGREEMENT

By executing this Certification and Agreement, the undersigned verifies its compliance with the, "Mississippi Employment Protection Act," Section 71-11-3 of the Mississippi Code of 1972, as amended, and any rules or regulations promulgated by the CITY, Mississippi Transportation Commission [MTC], Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq., Mississippi Code of 1972, as amended), stating affirmatively that the individual, firm, or corporation which is contracting with the CITY 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 CITY if the undersigned is no longer registered or participating in the program.

The undersigned agrees that, should it employ or contract with any entity(s) in connection with the performance of this Agreement, the undersigned will secure from such entity(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 the City, if requested, for the benefit of the City or this Contract.

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

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

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

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

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