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## STANDARD FORM OF AGREEMENT BETWEEN THE OWNER AND THE PROFESSIONAL

This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the Owner:

Department of Finance and Administration  
501 North West Street, Suite 1301 Woolfolk Building  
Jackson, Mississippi 39201

acting for the State of Mississippi; and the Professional:

Business Name \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

The Professional is a *(Check and complete one of the following)*:

- ( ) CORPORATION (includes PA, PC, Ltd, LLC, PLLC or Inc.) solely organized and existing under the laws of the State of \_\_\_\_\_ and having its principal office in \_\_\_\_\_ (City), \_\_\_\_\_, \_\_\_\_\_ (County) . \_\_\_\_\_ (State).
- ( ) PARTNERSHIP of the following *(List all partners)*: \_\_\_\_\_ JOINT VENTURE *(list all joint venture firms)*  
\_\_\_\_\_  
\_\_\_\_\_
- ( ) SOLE PROPRIETORSHIP

For the following Project:

Capitol Complex Improvement District Civil Engineering Consulting Services

and limited as described in Paragraph 2.1 to an amount not to exceed \$250,000.00 for the three (3) year initial term unless approved in writing by the Owner.

PROFESSIONAL:

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name and Title)

OWNER:

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name and Title)

APPROVED AS TO FORM:

By: \_\_\_\_\_  
(Signature of Attorney)  
\_\_\_\_\_  
(Name and Title)

The Owner and the Professional agree as set forth in pages one through eight, Articles one through three as follows:

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## TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND PROFESSIONAL

### ARTICLE 1: PROFESSIONAL'S SERVICES AND RESPONSIBILITIES

- 1.1 The Professional's services shall consist of both stipulated tasks and consulting on an as-needed basis that as stated in the Request for Qualifications herein attached as Exhibit A.
- 1.2 The inclusion of Professional's attachment to this Contract for the purpose of defining hourly rates for consulting is not an acceptance of Professional's terms and conditions. Any references to the Professional's terms and conditions that do not pertain to the hourly rates for consulting services are not applicable to this Contract. Professional expressly accepts all terms and conditions of the State of Mississippi.
- 1.3 The initial term shall be three (3) years with two (2) optional one (1) year renewals subject to the approval of the Public Procurement Review Board.
- 1.4 **INSURANCE**
- 1.4.1 The Professional shall purchase and maintain throughout the initial Contract term, and any/all subsequent renewals and extensions, with a company, or companies, licensed to do business in the State of Mississippi such insurance as will provide protection from claims resulting from errors and omissions, or negligent acts arising out of the performance of professional services and operations under this *Agreement* with coverage in an amount not less than \$250,000.00.
- 1.4.2 The Professional shall be fully responsible to the Owner for work performed by any associates and/or consultants. In the case of joint ventures, insurance in the name of the joint venture shall be provided.
- 1.4.3 The Professional, in accordance with 1972 Mississippi Code, Annotate Section 71-3-5 shall provide Workers Comp when the entity has five (5) or more workers.
- 1.4.4 Two copies of a Certificate of Insurance Coverage documenting such coverages that are required shall be provided to Owner on signing of this *Agreement*.

### ARTICLE 2: PROFESSIONAL'S FEE AND PAYMENT

- 2.1 The Owner agrees to pay the Professional for services rendered as shown on the first page in the not to exceed the amount of one hundred and fifty thousand dollars (\$150,000.00) in the first year and fifty thousand dollars (\$50,000.00) per year thereafter for two (2) additional years for a total not to exceed the amount of two hundred and fifty thousand dollars (\$250,000.00) without written approval of Owner. Renewals, if executed, shall not exceed fifty thousand dollars (\$50,000.00) per year without written approval of Owner.
- 2.2 **TASKS**
- 2.2.1 Data research and analysis shall be completed within 60 days of execution of contract with compensation of \$25,000.00 upon completion of reference data upload and submission and approval of report by Owner.
- 2.2.2 Development of prioritization methodology shall be completed within 90 days of execution of contract with compensation of \$15,000.00 upon approval of methodology by Owner.
- 2.2.3 Development of Master Plan shall be completed within 180 days of execution of contract with compensation of \$30,000.00 upon submission and approval of initial draft plan and \$30,000.00 upon submission and approval of final Master Plan by Owner for a total of \$60,000.00.
- 2.2.4 Consulting work shall be performed on an as-needed basis as directed by the Owner and compensated on an hourly basis in accordance with rates herein attached as Exhibit B and shall not exceed \$50,000.00 per year. Professional shall provide timely notice to Owner of any on-going work which could cause such total to be exceeded.

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## ARTICLE 3: MISCELLANEOUS TERMS AND CONDITIONS

### 3.1 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the Owner to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or 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 Owner shall have the right upon ten (10) working days written notice to the Professional, to terminate this agreement without damage, penalty, cost or expenses to the Owner of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

### 3.2 APPLICABLE LAW

The Contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. The Professional shall comply with applicable federal, state, and local laws and regulations.

### 3.3 COMPLIANCE WITH LAWS

The Professional understands that the Owner is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Professional agrees during the term of the agreement that the Professional will strictly adhere to this policy in its employment practices and provision of services. The Professional shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

### 3.4 CODES

Comply with current editions of all applicable codes including, but not limited to:

International Building Code	International Existing Building Code	International Plumbing Code
International Mechanical Code	International Fuel Gas Code	
International Electrical Code	International Fire Code	

### 3.5 REPRESENTATION REGARDING CONTINGENT FEES

The Professional represents that it has not retained a person to solicit or secure an Owner contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Professional's proposal.

### 3.6 REPRESENTATION REGARDING GRATUITIES

The offeror or Professional represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

### 3.7 PROCUREMENT REGULATIONS

If applicable, the Contract shall be governed by the applicable provisions of the Department of Finance and Administration Bureau of Building, Grounds and Real Property Management Planning and Construction Manual.

### 3.8 E-PAYMENT

The Professional agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Owner agrees to make payment in accordance with Mississippi law on "Timely Payments for

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Purchases by Public Bodies”, Section 31-7-301, *et seq.* of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.

### **3.9 PAYMODE**

Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Professional’s choice. The State, may, at its sole discretion, require the Professional to electronically submit invoices and supporting documentation at any time during the term of this Agreement. The Professional understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

### **3.10 E-VERIFICATION**

If applicable, the Professional represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Section 71-11-1, *et seq.* of the Mississippi Code Annotated and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Professional agrees to maintain records of such compliance, and upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Professional further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. The Professional understands and agrees that any breach of these warranties may subject the Professional to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to the Professional by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, the Professional would also be liable for any additional costs incurred by the State due to the contract cancellation or loss of license or permit to do business in the State.

### **3.11 CHANGES IN SCOPE OF WORK**

The Owner may order changes in the work, consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by the Professional that the scope of the project or of the Professional’s services has been changed, requiring changes to the amount of compensation to the Professional or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by the Owner and the Professional.

### **3.12 PRICE ADJUSTMENTS**

Any adjustment in contract price pursuant to a clause in this Contract shall be made in one or more of the following ways:

- (a) By agreement on a fixed price adjustment before commencement of the additional performance;
- (b) By unit prices specified in the Contract; or
- (c) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

### **3.13 ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract must be made in writing by the Owner.

### **3.14 MODIFICATION OR RENEGOTIATION**

This agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or Owner revisions, of any applicable laws or regulations, make changes in this agreement necessary.

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### **3.15 ASSIGNMENT**

The Professional shall not assign, subcontract or otherwise transfer in whole or in part, its right or obligations under this agreement without prior written consent of the Owner. Any attempted assignment or transfer without said consent shall be void and of no effect.

### **3.16 INDEPENDENT PROFESSIONAL**

The Professional shall perform all services as an independent Professional and shall at no time act as an agent for the Owner. No act performed or representation made, whether oral or written, by Professional with respect to third parties shall be binding on the Owner. Neither the Professional nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Owner; and the Owner shall at no time be legally responsible for any negligence or other wrongdoing by the Professional, its servants, agents, or employees.

### **3.17 PROFESSIONAL'S PERSONNEL**

The Owner shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or consultants assigned to the work by the Professional. If the Owner reasonably rejects staff or consultants, the Professional must provide replacement staff or consultants satisfactory to the Owner in a timely manner and at no additional cost to the Owner. The day-to-day supervision and control of the Professional's employees and consultants is the sole responsibility of the Professional.

### **3.18 STOP WORK ORDER**

**3.18.1** The Owner may, by written Stop Work Order to the Professional at any time, and without notice to any surety, require the Professional to stop all or any part of the work called for by this Contract. This Order shall be for a specified period not exceeding 90 days after the Order is delivered to the Professional, 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 Professional shall comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to 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 Owner shall either:

- (a) Cancel the Stop Work Order; or
- (b) Terminate the work covered by such Order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Contract.

**3.18.2** 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 Professional shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Professional price, or both, and the Contract shall be modified in writing accordingly, if:

- (a) The Stop Work Order results in an increase in the time required for, or in the Professional's cost properly allocable to, the performance of any part of this Contract; and
- (b) The Professional asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Owner decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

**3.18.3** If a Stop Work Order is not canceled and the work covered by such Order is terminated for default or convenience, the reasonable costs resulting from the Stop Work Order shall be allowed by adjustment or otherwise.

**3.18.4** Any adjustment in Contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment" clause of this Contract.

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### **3.19 TERMINATION FOR CONVENIENCE**

**3.19.1** The Owner may, when the interests of the State so require, terminate this Contract in whole or in part for the convenience of the State. The Owner shall give written notification of the termination to the Professional specifying the part of the Contract terminated and when the termination becomes effective.

**3.19.2** The Professional shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Professional will stop work to the extent specified. The Professional shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Professional shall settle the liabilities and claims arising out of the termination of consultants and orders connected with the terminated work. The Owner may direct the Professional to assign the Professional's right, title, and interest under terminated orders or subcontracts to the Owner. The Professional must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

### **3.20 TERMINATION FOR DEFAULT**

**3.20.1** If the Professional refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified within this Contract, or any extension thereof otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Owner may notify the Professional in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Owner, may terminate the Professional's right to proceed with the Contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the Owner may procure similar supplies or services in a manner and upon terms deemed appropriate by the Owner. The Professional shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

**3.20.2** Notwithstanding termination of the Contract and subject to any directions from the Owner, the Professional shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Professional in which the State has an interest.

**3.20.3** Payment for completed services delivered and accepted by the Owner, shall be at the contract price. The Owner may withhold from amounts due the Professional such sums as the Owner deems to be necessary to protect the State against loss because of outstanding lien holders and to reimburse the Owner for the excess costs incurred in procuring similar goods and services.

**3.20.4** Except with respect to defaults of consultants, the Professional shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Professional to make progress in the prosecution of the work hereunder which endangers performance) if the Professional has notified the Owner within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the state and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a consultant to perform or make progress, and if such failure arises out of causes similar to those set forth above, the Professional shall not be deemed to be in default, unless the services to be furnished by the consultant were reasonably obtained from other sources in sufficient time to permit the Professional to meet the Contract requirements. Upon request of the Professional, the Owner shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Professional's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause of this Contract entitled "Termination for Convenience".

**3.20.5** If, after notice of termination of the Professional's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that the delay was excusable under the provisions of sub-paragraph four (4) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Contract entitled "Termination for Convenience".

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**3.20.6** The rights and remedies provided under this clause are in addition to any other rights and remedies provided by law or under this Contract.

**3.21 RECORD RETENTION AND ACCESS TO RECORDS**

The Professional agrees that the Owner, or any of its duly authorized representatives at any time during the term of this agreement shall have unimpeded, prompt access to and the right to audit and examine any pertinent books, documents, papers, and records of Professional related to Professional's charges and performance under this agreement. All records related to this agreement shall be kept by Professional for a period of three (3) years after final payment under this agreement and all pending matters are closed unless the Owner authorizes their earlier disposition. However, if any litigation, claim, negotiation, audit or other action arising out of or related in any way to this Contract has been started before the expiration of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved. Professional agrees to refund to the Owner any overpayment disclosed by any such audit arising out of or related in any way to this Contract. However, if any litigation, claim, negotiation, audit or other action has been started before the expiration of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved.

**3.22 OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

The Owner shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for the Professional's internal administrative and quality assurance files and internal project correspondence. The Professional shall deliver such documents and work papers to the Owner upon termination or completion of the Agreement. The foregoing notwithstanding, the Professional shall be entitled to retain a set of such work papers for its files. Professional shall be entitled to use such work papers only after receiving written permission from the Owner and subject to any copyright protections.

**3.23 INDEMNIFICATION**

To the fullest extent allowed by law, the Professional shall indemnify, defend, save and hold harmless, protect, and exonerate the Owner, its Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Professional and/or its partners, principals, agents, employees and/or consultants in the performance of or failure to perform this Contract Agreement. In the State's sole discretion, Professional may be allowed to control the defense of any such claim, suit, etc. In the event Professional defends said claim, suit, etc., Professional shall use legal counsel acceptable to the State; professional shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Professional shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.

**3.24 THIRD PARTY ACTION NOTIFICATION**

Professional shall give the Owner prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Professional by any entity that may result in litigation related in any way to this Contract Agreement.

**3.25 NOTICES**

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the addresses shown on Page 1. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

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**3.26 RECOVERY OF MONEY**

Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Professional to the Owner, the same amount may be deducted from any sum due to the Professional under the Contract or under any other Contract between the Professional and the Owner. The rights of the Owner are in addition and without prejudice to any other right the may have to claim the amount of any loss or damage suffered by the Owner on account of the acts or omissions of the Professional.

**3.27 FAILURE TO ENFORCE**

Failure by the Owner at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the Owner to enforce any provision at any time in accordance with its terms.

**3.27 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this agreement shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>