CCO Form DE01-HR
Approved: 02/98 (BDG)
Revised: 07/07 (AR)
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
CONSULTANT SERVICES AGREEMENT
(HOURLY RATE FEE ARRANGEMENT-NONFEDERAL)

THIS AGREEMENT is entered into by _____ (hereinafter, "Consultant") and the Missouri Highways and Transportation Commission (hereinafter, "Commission").

WITNESSETH:

WHEREAS, the Commission has need at various times over the term of this Agreement as stated herein of a consultant to perform professional services in the work categories of _____; and

WHEREAS, the Commission has selected the Consultant to provide those services on an as-needed basis.

NOW, THEREFORE, in consideration of the payments to be made and the covenants set forth in this Agreement to be performed by the Commission, the Consultant hereby agrees that it shall faithfully perform the professional services called for by this Agreement in the manner and under the conditions described in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in this Agreement:

(A) "AASHTO" means the American Association of State Highway and Transportation Officials.

(B) "COMMISSION" means the Missouri Highways and Transportation Commission, an executive branch agency of state government, which acts by and through its Director, Chief Engineer and others in the Missouri Department of Transportation.

(C) "CONSULTANT" means the firm providing professional services to the Commission as a party to this Agreement.

(D) "CONSULTANT'S REPRESENTATIVE" means the person or persons designated in writing by the Consultant to represent that firm in negotiations, communications, and various other contract administration dealings with the Commission's Engineers.

(E) "DELIVERABLES" means all data, studies, documents, designs, drawings, plans, specifications, or any other products prepared in performance of this Agreement, to be delivered to and become the property of the Commission pursuant to the terms and conditions set out in paragraph **(13)** of this Agreement.

(F) "DISADVANTAGED BUSINESS ENTERPRISE (DBE)" means an entity owned and controlled by a socially and economically disadvantaged individual as defined in 49 C.F.R. Part 26, which is certified as a DBE firm in Missouri by the Commission. Appropriate businesses owned and controlled by women are included in this definition.

(G) "ENGINEER" means the Chief Engineer or any other authorized representative of the Commission. Where the specific term "Chief Engineer" is used, it shall mean the Chief Engineer exclusively.

(H) "FHWA" or "FHA" means the Federal Highway Administration within the USDOT, headquartered at Washington, D.C., which acts through its authorized representatives.

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONSULTANT" means any individual, partnership, corporation, or joint venture to which the Consultant, with the written consent of the Engineer, subcontracts any part of the professional services under this Agreement but shall not include those entities which supply only materials or supplies to the Consultant.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the Commission either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Consultant, or the unilateral cancellation of this Agreement by the Commission.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of

this Agreement.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for _____, from time to time as needed and requested by the Commission.

(B) Scope and Cost of Requested Services: Each individual request for services shall be covered by a Memorandum of Understanding submitted by the Consultant and endorsed by the Commission. The memorandum will define the scope of work to be performed by the Consultant, the time limitations within which the work is to be performed, the specific deliverables required, an estimate of the hours required to complete the services multiplied by the appropriate hourly rates and state the maximum price for those services. Only those hourly rates included in the version of Exhibit I currently in effect shall be used as the basis of preparing any Memorandum of Understanding. The maximum price or ceiling for any Memorandum of Understanding shall not be exceeded prior to the execution of a supplemental Memorandum of Understanding. The Memorandum of Understanding will also indicate where the Consultant is to forward all deliverables.

(3) TERM OF AGREEMENT: The Consultant's services are to commence upon execution of this Agreement and terminate on _____, 20__ unless otherwise terminated prior to this date: (a) pursuant to the provisions of paragraph **(12)** of this Agreement, or (b) pursuant to execution of a new Consultant Services Agreement (Hourly Rate Fee Arrangement) for performance of the same professional services. Upon agreement of all parties, this Agreement may be renewed for an additional one (1) year term said term to begin on the day of termination of this Agreement.

(4) INFORMATION AND SERVICES PROVIDED BY THE COMMISSION:

(A) At no cost to the Consultant and in a timely manner, the Commission will provide available information of record which is pertinent to the requested services project to the Consultant upon request. In addition, the Commission will provide the Consultant with the specific items or services set forth in the Memorandum of Understanding for the particular services requested by the Commission. The Consultant shall be entitled to rely upon the accuracy and completeness of such information, and the Consultant may use such information in performing services under this Agreement.

(B) The Consultant shall review the information provided by the Commission concerning the requested services and will as expeditiously as possible advise the Engineer of any of that information which the Consultant believes is inaccurate or inadequate or would otherwise have an effect on any of its activities under this Agreement. In such case, the Commission shall provide the Consultant with new or

verified data or information upon which the Consultant is entitled to rely. The Consultant shall not be liable for any errors, omissions, or deficiencies in the Consultant's services resulting from inaccurate or inadequate information furnished by the Commission which inaccuracies or inadequacies are not detected by the Consultant unless the errors should have been detected by the Consultant through reasonable diligence.

(5) RESPONSIBILITY OF THE CONSULTANT:

(A) The Consultant shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding. The Consultant shall provide the services in accordance with the criteria and requirements established and adopted by the Commission; and if none are expressly established in this Agreement, published manuals and policies of the Commission which shall be furnished by the Commission upon request; and, absent the foregoing, manuals and policies of AASHTO, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding.

(B) Without limiting the foregoing, the performance of these services will be in accordance with the specific criteria and project procedures as indicated by the information set out in the appropriate Memorandum of Understanding.

(C) The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all deliverables or any other services furnished under this Agreement. At any time during any subsequent stage of project development or phase of work performed by others based upon any deliverables or other services provided by the Consultant, the Consultant shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Consultant or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though final payment may have been received by the Consultant. The Consultant shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Consultant of the responsibility to correct such negligent acts, errors, or omissions.

(D) All deliverables produced under this agreement shall be signed, sealed, and dated by the appropriate party responsible for performance of the services and who possesses appropriate registration in the state of Missouri to perform the type of services included in this Agreement or any subsequent Memorandum of Understanding. All requirements for professional registration and the signing and sealing of deliverables shall be in accordance with Missouri state law. All deliverables which are not the final version shall carry the words "Draft or Preliminary" or other similar language in an obvious location where it can readily be found, easily read, and is not obscured by other markings, as a disclosure to others that the deliverables are

incomplete or preliminary. When the deliverables are presented in their final form, the word "Draft or Preliminary" or other similar language shall be removed and the deliverables thereupon signed, sealed, and dated as previously described in this paragraph.

(E) Where the scope of services requires the preparation of completed plans, plans submitted for review by permit authorities, and plans issued for construction, the plans shall be signed, sealed, and dated by a professional engineer registered in the State of Missouri. Incomplete or preliminary plan(s), when submitted for review by others, shall not be sealed, but the name of the responsible engineer, along with the engineer's Missouri registration number, shall be indicated on the plan(s) or included in the transmittal document. In addition, the phrase "Preliminary - Not for Construction," or similar language, shall be placed on the incomplete or preliminary plan(s) in an obvious location where it can readily be found, easily read, and not obscured by other markings, as a disclosure to others that the plan(s) are incomplete or preliminary. When the plan(s) are completed, the phrase "Preliminary - Not for Construction" or similar language shall be removed and the plan(s) shall thereupon be sealed.

(F) The Consultant shall cooperate fully with the Commission and its Engineers, consultants, and contractors on adjacent projects, and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer. This may include attendance at meetings, discussions, and hearings as requested by the Engineer.

(G) In the event any lawsuit or court proceeding of any kind is brought against the Commission, arising out of or relating to the Consultant's activities or services performed under this Agreement, including any Memorandum of Understanding, or any subsequent stage of project development or phase of work or any project of construction undertaken employing the deliverables provided by the Consultant in performing this Agreement, including any Memorandum of Understanding, the Consultant shall have the affirmative duty to assist the Commission in preparing the Commission's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the Commission by the Consultant will be compensated at an amount or rate negotiated between the Commission and the Consultant as will be identified in a separate agreement between the Commission and the Consultant. To the extent the assistance given to the Commission by the Consultant was necessary for the Commission to defend claims and liability due to the Consultant's negligent acts, errors, or omissions, the compensation paid by the Commission to the Consultant will be reimbursed to the Commission.

(6) <u>NO SOLICITATION WARRANTY</u>: The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, 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, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or

resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission will have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) SUBCONSULTANTS:

(A) The Consultant agrees that except for those firms and for those services listed in the appropriate Memorandum of Understanding, there shall be no transfer of engineering services performed under this Agreement without the written consent of the Commission. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

(B) The Consultant agrees, and shall require the selected Subconsultants, to maintain books, documents, papers, accounting records, and other evidence pertaining to direct costs and expenses incurred under the Agreement and to make such materials available at their offices at reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement, for inspection by the Commission or any of its authorized representative, and copies thereof shall be furnished.

(C) Unless waived or modified by the Commission, the Consultant agrees to require, and shall provide evidence to the Commission, that those Subconsultants shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subconsultant agreements, and in not less than the following amounts:

1. Commercial General Liability: $400,000 per claim up to $2,500,000 per occurrence;

2. Automobile Liability: $400,000 per claim up to $2,500,000 per occurrence;

3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: $1,000,000; and

(D) The subletting of the services will in no way relieve the Consultant of its primary responsibility for the quality and performance of the services to be performed hereunder and the Consultant shall assume full liability for the services performed by its Subconsultants.

(E) The payment for the services of any Subconsultants will be reimbursed at cost by the Commission in accordance with the submitted invoices for

such services, as set forth in paragraph **(10)**, entitled "Fees and Payments".

(F) The Consultant agrees to furnish a list of any Commission-approved DBE subconsultants under this Agreement upon the request of the Commission.

(G) The Consultant agrees that any agreement between the consultant and any subconsultant shall be an actual cost plus fixed fee agreement if the amount of the agreement between the consultant and subconsultant exceeds $25,000.

(8) EXECUTIVE ORDER: The Consultant shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.

(A) By signing this Agreement, the Consultant hereby certifies that any employee of the Consultant assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law.

(B) In the event the Consultant fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the Consultant has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.

(9) INCORPORATION OF PROVISIONS: The Consultant shall include the provisions of paragraph 8 of this Agreement in every subcontract. The Consultant shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(10) COMPENSATION: The following provisions apply with respect to the payment of fees to the Consultant:

(A) Labor Costs, Overhead and Profit: Payment shall be made based on the actual hours expended by personnel multiplied by the corresponding hourly rates for the appropriate employee classification indicated in the "Schedule of Hourly Labor Billing Rates", attached as Exhibit I and incorporated herein. These rates include overhead and profit. The schedule is effective for the entire time that this Agreement remains in effect but may be revised within this time period no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the Commission's execution of this Agreement. All information requested in the attached Exhibit I shall be provided by the Consultant.

1. Overhead - Direct Labor: Direct labor overhead costs include additions to payroll cost for holidays, sick leave, vacation, group insurance, workers' compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items. Direct labor overhead is shown on Exhibit I.

2. Overhead - General and Administrative: General and administrative overhead costs include administrative salaries (including non-productive salary of associates and employees), officer services, equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, professional development expenses, legal and audit fees, professional dues and licenses, use of electronic computer for accounting, and other related items. The percentage of direct straight time payroll to be added to salary costs is shown on Exhibit I.

(B) Changes in Hourly Rates: The hourly rates indicated in Exhibit I may be revised no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the Commission's execution of this Agreement. The effective date established by the Commission for any subsequent revisions to Exhibit I shall re-establish the beginning date for measuring the aforementioned twelve (12) month period. A new "Schedule of Hourly Labor Billing Rates" must be submitted by the Consultant and approved by the Commission prior to the inclusion of the revised rates in any subsequent Memorandum of Understanding. The Consultant shall submit all revisions to Exhibit I no later than forty-five (45) days prior to the desired effective date for use of the revised hourly rates. If no revisions are submitted and approved by the Commission, the billing rates established in the most recently approved Exhibit I will be used as the basis for all subsequent Memorandum of Understandings. Any revisions to the hourly rates included in Exhibit I and approved by the Commission will in no way change the hourly labor billing rates included in any previously executed Memorandums of Understanding. Any approved revisions to the hourly billing rates will only be applicable to Memorandums of Understanding that are executed beyond the effective date of the revised Exhibit I.

(C) Individual Project Payment Ceiling: Total payment for an individual project carried out under this Agreement shall be limited to the "contract ceiling" stated in the Memorandum of Understanding covering that specific investigation. No work shall be done or costs incurred in excess of this ceiling until a supplemental Memorandum of Understanding is executed by the Commission.

(D) Payments: The Consultant may submit an invoice for services rendered to the Commission not more than once every month. Upon receipt of the invoice, the Commission will, as soon as practicable, pay the Consultant for the services rendered. The Commission reserves the right to withhold payment, with out penalty, to resolve disputes that may arise regarding the number of hours billed, the hourly rates used to develop the invoice, or the performance of services.

(E) Audit: The Commission, if it so elects, will conduct an final cost audit of the Consultant's services performed under the terms of this Agreement. The Consultant will, during normal working hours, permit access to all records and books for the audit.

(11) PERIOD OF SERVICE:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in the Memorandum of Understanding for each request for services. The Consultant and the Commission will be required to meet this schedule.

(B) The Commission will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant. Requests for extensions of time shall be made in writing by the Consultant, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested. Such extension of time shall be the sole allowable compensation for all such delays.

(C) The Consultant and Commission agree that time is of the essence, and the Consultant and Commission will be required to meet the schedules in the appropriate Memorandum of Understanding. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant, no claim for damage shall be made by either party. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;

2. Flooding, earthquake, or other major natural disaster preventing the Consultant from performing necessary services at the project site, or in the Consultant's offices, at the time such services must be performed;

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project design or plans by the Consultant;

4. Court proceedings;

5. Changes in services or extra services.

(12) SUSPENSION OR TERMINATION OF AGREEMENT:

(A) The Commission may, without being in breach hereof, suspend or terminate the Consultant's services under this Agreement, or any services included in an active Memorandum of Understanding, for cause or for the convenience of the Commission, upon giving to the Consultant at least fifteen (15) days' prior written notice of the effective date thereof. The Consultant shall not accelerate performance of services during the fifteen (15) day period without the express written consent of the Commission.

(B) Should the Agreement be suspended or terminated for the convenience of the Commission, the Commission will pay to the Consultant its costs as set forth in paragraph **(10)**(A), for actual hours expended prior to such suspension or termination multiplied by the hourly rates included in the "Schedule of Hourly Billing Rates", plus reasonable hours incurred by the Consultant in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Consultant's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

(C) The Consultant shall remain liable to the Commission for any claims or damages occasioned by any failure, default, error or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a termination for non-performance or breach by Consultant. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.

(D) The Consultant shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of a suspension or termination where the Consultant is deprived of the opportunity to complete the Consultant's services.

(13) <u>OWNERSHIP OF DRAWINGS AND DOCUMENTS</u>:

(A) All deliverables, drawings and documents prepared in performance of this Agreement shall be delivered to and become the property of the Commission upon suspension, abandonment, cancellation, termination, or completion of the Consultant's services hereunder; provided, however,

1. the Consultant shall have the right to their future use with written permission of the Commission;

2. the Consultant shall retain its rights in its standard drawing details, designs, specifications, CADD files, databases, computer software, and any other proprietary property; and

3. the Consultant shall retain its rights to intellectual property developed, utilized, or modified in the performance of the services subject to the

following:

A. Copyrights. Commission, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this agreement, or under a subgrant or contract under this agreement; and

II. Any rights of copyright to which Commission, its consultant or subconsultant purchases ownership with payments provided by this agreement.

B. Patents. Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g)(1) of the clause;

II. paragraphs(g)(2) and (g)(3) of the clause shall be deleted; and

III. paragraph (l) of the clause, entitled "communications" shall read as follows: "(l) Communications. All notifications required by this clause shall be submitted to the Chief Engineer.

IV. The following terms in 37 C.F.R. 401.14 shall for the purpose of this Agreement have the following meaning:

Contractor - Consultant

Government and Federal Agency - Commission

Subcontractor - Subconsultant

4. Basic survey notes, design computations, and other data prepared under this Agreement shall be made available for use by the Commission without further compensation and without restriction or limitation on their use.

(B) The Commission may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Consultant; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the Commission and the Commission

shall use same at its sole risk and expense; and (2) the Commission shall remove the Consultant's name, seal, endorsement, and all other indices of authorship from the deliverables.

(14) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by the Consultant and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications or other deliverables; all questions as to the acceptable fulfillment of the Agreement on the part of the Consultant; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Consultant, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious of the result of fraud.

(C) If the Consultant has a claim for payment against the Commission which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Consultant's receipt of final payment. Notwithstanding paragraph **22** of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the office of the Secretary to the Commission in Jefferson City, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the Commission.

(E) The claims procedure in paragraphs **14 (C)** and (D) do not apply to any claims of the Commission against the Consultant. Further, any claims of the Commission against the Consultant under this Agreement are not waived or estopped by the claims procedure in paragraphs **14 (C)** and (D).

(15) SUCCESSORS AND ASSIGNS: The Commission and the Consultant agree that this Agreement and all agreements entered into under the provisions of this

Agreement shall be binding upon the parties hereto and their successors and assigns.

(16) INDEMNIFICATION RESPONSIBILITY:

(A) The Consultant agrees to save harmless the Commission and the FHWA from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Consultant's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Consultant's employees, agents, and Subconsultants.

(B) The Consultant shall be responsible for the direct damages incurred by the Commission as result of the negligent acts, errors, or omissions of the Consultant or anyone for whom the Consultant is legally responsible, and for any losses or costs to repair or remedy any subsequent stage of project development, phase of work, or project construction as a result of such negligent acts, errors or omissions; provided, however, the Consultant shall not be liable to the Commission for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the subsequent stages of project development or the construction of the project.

(C) Neither the Commission's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the completion of subsequent stages of project development or the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the Commission on this project arising out of the Consultant's services hereunder.

(17) INSURANCE:

(A) The Consultant shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Consultant from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Consultant and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Consultant shall also maintain professional liability insurance to protect the Consultant against the negligent acts, errors, or omissions of the Consultant and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Consultant's insurance coverages shall be for not less than the following limits of liability:

1. Commercial General Liability: $400,000 per claim up to $2,500,000 per occurrence;

2. Automobile Liability: $400,000 per claim up to $2,500,000 per occurrence;

3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: $1,000,000; and

4. Professional ("Errors and Omissions") Liability: $1,000,000, each claim and in the annual aggregate.

(D) The Consultant shall, upon request at any time, provide the Commission with certificates of insurance evidencing the Consultant's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. **(17)** shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri. In addition, any such insurance policy, except for Worker's Compensation, will name the Commission as additional insured.

(18) NONDISCRIMINATION CLAUSE: The Consultant shall comply with all state and federal statutes applicable to the Consultant relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq*.); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq*.).

(19) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that this Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place or be delivered at Jefferson City, Missouri, by reason of which the Consultant consents to venue of any action against it in Cole County, Missouri. The Consultant shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subconsultants of the Consultant in the performance of this Agreement.

(20) AUDIT OF RECORDS: For purpose of an audit, the Consultant shall maintain all those records relating to direct costs and expenses incurred under this

Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the Commission or its designees and representatives, at the Consultant's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the Commission has notice of a potential claim against the Consultant and/or the Commission based on the Consultant's services under this Agreement, the Consultant, upon written request of the Commission, shall retain and preserve its records until the Commission has advised the Consultant in writing that the disputed claim is resolved.

(21) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the Commission or the Consultant at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the Commission: Notices to the Commission shall be addressed and delivered to the following Engineer, who is hereby designated by the Commission as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Consultant hereunder:

[Addressee Name]
[Addressee Title]
Missouri Department of Transportation
[Street Address and P.O. Box, if any]
[City], Missouri [Zip Code]
Telefax No.: [Give Number]
Telephone No.: [Give Number]

The Commission reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the Commission may now or hereafter deem appropriate. Such substitution or designations shall be made by the Chief Engineer in a written notice to the Consultant.

(B) Notice to the Consultant: Notices to Consultant shall be addressed and delivered to Consultant's representative, as follows:

[Addressee Name]
[Addressee Title]
[Consultant Firm Name]
[Street Address and P.0. Box, if any]
[City], [State] [Zip Code]

Telefax No.: [Give Number]
Telephone No.: [Give Number]

The Consultant reserves the right to substitute another person for the individual named at any time, and to designate one or more Consultant's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Consultant may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Consultant's president or chief executive officer in a written notice to the Commission.

(22) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Consultant shall comply with all local, state, and federal laws and regulations which govern the performance of this Agreement.

(23) CONFIDENTIALITY: The Consultant agrees that the Consultant's services under this Agreement is a confidential matter between the Consultant and the Commission. The Consultant shall not disclose any aspect of the Consultant's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subconsultants, and agents as may be necessary to allow them to perform services for the Consultant in the furtherance of this Agreement, without the prior approval of the Commission's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Consultant's services or to any information which (1) is already in the public domain or is already in the Consultant's possession at the time the Consultant performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the Commission under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the Commission's Engineer, in advance.

(24) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Consultant.

(25) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Commission and the Consultant.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Consultant under this Agreement or the termination of this Agreement for any reason.

(26) PAYMENT BOND: In the event a subconsultant is used for any services under this Agreement, Consultant shall provide a payment bond under Section 107.170 RSMo., as amended, for any services which are printing, aircraft, archaeology, hazardous waste or geotechnical including but not limited to the collection of soil samples. Any payment bond must be acceptable to the Commission and must be provided prior to the performance of service. The cost for the payment bond must have been included in the fee of the Consultant under this Agreement.

(27) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding the performance of these professional services and supersedes prior hourly rate fee arrangements and written or oral communications between the parties regarding these services.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Consultant the _____ day of _____, 20_____.

Executed by the Commission the _____ day of _____, 20_____.

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION	[CONSULTANT'S FIRM NAME]
By _____	By _____
Title: _____	Title: _____
ATTEST:	ATTEST:
_____	_____
Secretary to the Commission	Title: _____
APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____
Commission Counsel	Title: _____

EXHIBIT 1
XYZ CORPORATION
HOURLY BILLING RATES
December 31, 2007

EMPLOYEE CLASSIFICATION	Actual Hourly Labor Rate	Payroll Additives 61.67%	G & A Overhead 82.18%	Profit 12.00%	Billing Rate
		(1)	(2)	(3)	(4)
Partner	60.00	37.00	49.31	17.56	163.87
Engineer 4	55.00	33.92	45.20	16.09	150.21
Engineer 3	50.00	30.84	41.09	14.63	136.56
Engineer 2	45.00	27.75	36.98	13.17	122.90
Engineer 1	40.00	24.67	32.87	11.70	109.24
Technician 4	35.00	21.58	28.76	10.24	95.59
Technician 3	30.00	18.50	24.65	8.78	81.93
Technician 2	25.00	15.42	20.55	7.32	68.28
Technician 1	20.00	12.33	16.44	5.85	54.62
Typist	15.00	9.25	12.33	4.39	40.97

SAMPLE FORMAT

Note:

* The above categories and amounts are for **illustration purposes only** and should not be mistaken for allowable or acceptable rates. Rates must be based on actual costs incurred by your company.
* Maximum allowable Profit is 12%

(1) Payroll Additive = 37.00 = 60 * .6176
(2) G & A Overhead = 49.31 = 60 * .8218
(3) Profit = 17.56 = (60 + 37 + 49.31) * .12
(4) Billing Rate = 163.87 = 60 + 37 + 49.31 + 17.56

XYZ CORPORATION
OVERHEAD SCHEDULE
December 31, 2007

DESCRIPTION	TOTAL PER RECORDS	ADJUSTMENTS (UNALLOWABLES)	ADJUSTED AMOUNT	PERCENT (1)	
Direct Labor Base	$1,320,565.00	$26,703.00	$1,347,268.00		(2)
Payroll Additives					
Vacations	161,578.00		161,578.00	11.99%	
Holidays	54,250.00		54,250.00	4.03%	
Sick Leave	24,972.00		24,972.00	1.85%	
Payroll Taxes	147,870.00		147,870.00	10.98%	
Employee Insurance	90,043.00		90,043.00	6.68%	
Unemployment Taxes	17,528.00		17,528.00	1.30%	
Worker's Compensation	7,564.00		7,564.00	0.56%	
Retirement	39,998.00	430.00	40,428.00	3.00%	
Bonuses	300,201.00	(13,588.00)	286,613.00	21.27%	
	844,004.00	(13,158.00)	830,846.00	61.67%	
General Overhead					
Indirect Labor	597,632.00	(34,164.00)	563,468.00	41.82%	(3)
Rent	142,947.00		142,947.00	10.61%	
Repairs and Maintenance	17,785.00		17,785.00	1.32%	
Telephone	18,604.00	(1,232.00)	17,372.00	1.29%	
Legal and Accounting Services	71,006.00	(5,570.00)	65,436.00	4.86%	
Office Supplies	65,386.00		65,386.00	4.85%	
Insurance	101,571.00	(7,590.00)	93,981.00	6.98%	
Printing	82,585.00	(4,490.00)	78,095.00	5.80%	
Computer Expenses	59,967.00	(52,741.00)	7,226.00	0.54%	
Transportation	35,749.00	(24,939.00)	10,810.00	0.80%	
Dues, Registrations, Seminars	31,186.00	(552.00)	30,634.00	2.27%	
Subscriptions and Publications	6,444.00		6,444.00	0.48%	
Depreciation	78,703.00	(59,829.00)	18,874.00	1.40%	
Mileage Reimbursement	(15,694.00)		(15,694.00)	-1.16%	(4)
Advertising and Promotion	9,218.00	(9,218.00)		0.00%	
Bad Debts	12,007.00	(12,007.00)		0.00%	
Entertainment	3,800.00	(3,800.00)		0.00%	
Contributions	1,110.00	(1,110.00)		0.00%	
Federal Income Tax	66,258.00	(66,258.00)		0.00%	
Interest	7,535.00	(7,535.00)		0.00%	
Miscellaneous	14,876.00	(10,508.00)	4,368.00	0.32%	
Total	1,408,675.00	(301,543.00)	1,107,132.00	82.18%	
Total Overhead Costs	$2,252,679.00	($314,701.00)	$1,937,978.00	143.85%	

See next page for notes:

SAMPLE FORMAT

NOTE:

The above categories and amounts are for **illustration purposes only** and should not be mistaken for allowable or acceptable overhead rates. Overhead rates must be based on actual costs incurred by your company.

(1) Percent is Adjusted Amounted divided by Adjusted Direct Labor Base Amount.
(2) Adjustments may need to be made to reclassify some indirect labor to direct labor
(3) Unallowable indirect labor such as marketing salaries or project labor not billed should be removed.
(4) Adjustments must be made for any expenses shown above for which reimbursement has been received, such as travel expenses billed directly to a client.

COMMON UNALLOWABLE COSTS

Information related to the allowability of various types of costs can be found in the Code of Federal Regulations, 48 CFR Chapter 1, Part 31, Contract Cost Principles and Procedures. All consulting services contracts with the Department are governed by these regulations which are commonly referred to as the FARs. Listed below are some commonly encountered unallowable costs. This list should not be construed as all inclusive and we recommend the consultant refer to the FARs for any particular cost which appears to be questionable.

	Common Unallowable Costs
31.201-6(c)	Expenses with no supporting documentation
31.205-1	Public relations and advertising costs
31.205-3	Bad debts
31.205-6(f)	Compensation - See MoDOT policy. Compensation in the form of bonuses or incentive awards are allowable costs. However, bonus amounts for partners, principals, officers, or stockholders is limited to the amount of bonus paid to the most highly compensated regular employee.
31.205-8	Donations
31.205-11	Depreciation in excess of amounts claimed on federal tax returns
31.205-13	Gifts for employees, flowers
31.205-14	Entertainment costs, Christmas parties, gifts for customers
31.205-15	Fines, penalties and mischarging costs
31.205-19	Key man life insurance premiums
31.205-20	Interest expense
31.205-22	Lobbying and political activity costs
31.205-36(b)(3)	Related party profit portion on rent -- See also MoDOT policy on common control. If a firm incurs rental costs through the rental of a facility from a related party (i.e., an owner, principal, officer, stockholder, or anyone related by blood or marriage to an owner, principal, officer or stockholder) then the charges allowed for rent cannot exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money and maintenance.
31.205-41	Federal income and excess profits taxes and tax preparation
31.205-51	Alcoholic beverages