

AGREEMENT
FOR
PROFESSIONAL SERVICES
(ArDOT VERSION – SPECIFIC RATE OF COMPENSATION)

Construction Manager/General Contractor (CMGC) Services for ArDOT Job No. 061331

PREAMBLE

THIS AGREEMENT, entered into this ____ day of _____, by and between the Arkansas State Highway Commission (“Commission”), acting by and through its Director of Highways and Transportation (“Director”), as authorized by Commission Action on _____, and _____ (“CMGC”), a corporation existing under the laws of the State of _____, with principal offices at _____.

WITNESSETH:

WHEREAS, Act 809 of 2017 granted the Commission authority to procure qualification based, Construction Manager-General Contractor (CMGC) services to implement the CMGC Method of Procurement Pilot Program; and

WHEREAS, the CMGC alternative project delivery method provides an advantage by including a construction contractor to participate in a project’s preconstruction activities and thereby shifting liability and risk for cost containment and project scheduling to the CMGC; and

WHEREAS, IN PULASKI COUNTY, in the City of Little Rock, a project is scheduled to provide operational improvements to Highway 10 from Pleasant Ridge Road to Pleasant Valley Drive; and

WHEREAS, it has been determined that this project is a good candidate for the CMGC Method of Procurement Pilot Program.

NOW THEREFORE, it has been determined to be in the best public interest for the Commission to obtain the assistance of the GMGC’s organization in connection with professional services. It has been determined that this project is a good candidate for the CMGC Method of Procurement Pilot Program. In consideration of the faithful performance of each party of the mutual covenants and agreements set forth hereinafter, it is mutually agreed as follows:

1. PRELIMINARY MATTERS

- 1.1. “Assistant Chief Engineer” means the Assistant Chief Engineer – Planning of the Arkansas Department of Transportation.
- 1.2. “Chief Engineer” means the Deputy Director and Chief Engineer of the Arkansas Department of Transportation.
- 1.3. “CMGC’s Representative” shall be _____, until written notice is provided to the Owner designating a new representative.
- 1.4. “Contract Ceiling Price.” The Contract Ceiling Price for this Agreement is \$_____. The Contract Ceiling Price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement. In no event, unless modified in writing, shall total payments by the Owner under this Agreement exceed the Contract Ceiling Price. The CMGC shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the

Owner, its officers, agents, employees, or representatives, incur any liability for, any invoice, fee, or cost exceeding the Contract Ceiling Price.

- 1.5. "Fee." As used herein, the term means the specific rates of compensation set forth in the schedule in Subsection 3.1.1. The Fee includes compensation for all cost and profit. There shall be no reimbursement of costs incurred by the CMGC in the performance of this Agreement.
- 1.6. "Default" means the failure of the CMGC to perform any of the provisions of this Agreement. *Default includes, but is not limited to, failure to complete phases of the work according to schedule or failure to make progress in the work so as to endanger timely performance of this Agreement, failure to pay subcontractors in a timely manner, failure to comply with federal and state laws, and failure to comply with certifications made in or pursuant to this Agreement.*
- 1.7. "DOT" means the United States Department of Transportation.
- 1.8. "FAR" means the Federal Acquisition Regulations, codified in 48 Code of Federal Regulations (CFR).
- 1.9. "FHWA" means the Federal Highway Administration.
- 1.10. "Owner" means, collectively, the Arkansas State Highway Commission and the Arkansas Department of Transportation ("Department" or "ArDOT").
- 1.11. "Title I Services" are those services provided by the CMGC before the award of the contract for the construction of the Project, consisting primarily of professional services related to the planning, environmental or design of the Project.
- 1.12. "Title I Services Ceiling Price." The Title I Services Ceiling Price for this Agreement is \$ _____. The Title I Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title I Services. In no event, unless modified in writing, shall total payments by the Owner related to Title I Services exceed the Title I Services Ceiling Price. The CMGC shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title I Services exceeding the Title I Services Ceiling Price.
- 1.13. "Title II Services" are those services provided by the Consultant after the award of the contract for the construction of the Project, consisting primarily of professional services related to the construction of the Project.
- 1.14. "Title II Services Ceiling Price" The Title II Services Ceiling Price for this Agreement is \$ _____. The Title II Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title II Services. In no event, unless modified in writing, shall total payments by the Owner related to Title II Services exceed the Title II Services Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title II Services exceeding the Title II Services Ceiling Price.

2. TYPE OF AGREEMENT

- 2.1. This Agreement is a specific rate of compensation contract. The CMGC is being hired to perform professional services in connection with the Project as set forth herein. In consideration for the services rendered by the CMGC, the Owner shall pay to the CMGC the Fee, to be determined according to the labor and activity rates as set forth in Section 3, Fees and Payment. The Fee includes compensation for any cost to be incurred by the CMGC, and the CMGC shall not be reimbursed for costs incurred. The CMGC shall bear the costs, and resulting risks, of performing this Agreement.
- 2.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay the CMGC. Therefore, notwithstanding any provision of this Agreement, all payments to the CMGC are subject to the requirements and limitations of FAR, and the CMGC shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any other information submitted to the Owner with any claim for full or partial payment.

3. FEES AND PAYMENT

- 3.1. *Fee.* The justification for the fees and the use of the specific rate of compensation method of payment is contained in Appendix A, the scope of services, and the description of the project as provided herein. The Owner shall pay CMGC a Fee determined by the hourly or other unit rate shown in the following schedule. Partial hours and units shall be pro-rated. Under no circumstances shall Fee payments exceed the Contract Ceiling Price.

3.1.1. SCHEDULE OF HOURLY RATES

Classification (<i>provided by CMGC</i>)	Min. Hourly	Max. Hourly

3.1.2. UNIT RATES FOR ACTIVITIES (as applicable) (e.g. Drilling \$X per foot)

[Provided by CMGC]

- 3.1.3. The foregoing paragraph does not authorize or permit the CMGC to perform services at the overtime rates shown, but only establishes the appropriate rates in the event that the Owner subsequently authorizes overtime. Payment of the Fee at overtime rates is expressly contingent upon the written approval by the Owner *before* the CMGC, its employees, or its agents begin the work for which the overtime rate will be requested. Regardless whether Owner authorizes and pays the overtime rates set forth above, the CMGC shall comply with all state and federal wage and hour laws and regulations.

- 3.1.4. Allowable costs for travel are reimbursed for actual expenses incurred and are subject to the limitations, regulations, and cost principals and procedures in FAR and the State Travel Regulations issued by the Department, which are expressly incorporated into this Agreement by reference.
- 3.2. *Invoices and Partial Payments.* Partial payments of the Fee shall be made as follows, unless modified by the written agreement of both parties:
- 3.2.1. Not more often than once per month, the CMGC shall submit to the Owner, in such form and detail as the Owner may require, an invoice or voucher stating the hourly rates and hours for each category of personnel, the unit rates and units for the activities performed, and the amount of the Fee due for the time period covered by the invoice.
- 3.2.2. Accompanying the invoice, the CMGC shall also submit an estimate of the amount and value of the work accomplished under this Agreement for the period of time covered by the invoice, along with any supporting data required by the Owner. The CMGC shall include in the invoice and estimate only that work which meets the standards of quality established under this Agreement. At a minimum, the supporting data shall include progress reports in the form and number required by the Owner.
- 3.2.3. Upon approval of the invoice and estimate by the Owner, payment upon properly executed vouchers shall be made to the CMGC, as soon as practicable, of 100 percent of the approved amount of the Fee earned, less all previous payments.
- 3.3. *Final payment.*
- 3.3.1. The CMGC shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than forty-five (45) days (or longer, as the Owner may approve in writing) after the completion date. Upon approval of the completion invoice or voucher, and upon the CMGC's compliance with all terms of this Agreement, the Owner shall promptly pay any balance of that part of the Fee (if any) earned and approved but not previously paid. After the final release, the CMGC agrees that it will continue to provide consultation services to the Owner as needed through supplemental agreement(s) with respect to the contracted services under this Agreement until all work is completed under both Title I and Title II.
- 3.3.2. Before final payment under this Agreement, the CMGC and each assignee whose assignment is in effect at the time of final payment shall execute and deliver a release of all claims discharging the Owner, its officers, agents, and employees from all liabilities, obligations, and claims which were known or could reasonably have been known to exist arising out of or under this Agreement.
- 3.4. *Owner's Right to Withhold Payment.* At any time, the Owner may withhold payment to such extent as it deems necessary as a result of: (1) third party claims arising out of the services of the CMGC and made against the Owner; (2) evidence of fraud, over-billing, or overpayment; (3) inclusion of non-allowable costs; (4) failure to make prompt payments to subcontractors in the time provided by this Agreement; (5) payment requests received including fees for unapproved subcontractors; and/or (6) unsatisfactory performance of services. The withholding of payment under this provision shall in no way relieve the CMGC of its obligation to continue to perform its services under this Agreement.

4. DISALLOWANCE OF COSTS

- 4.1. Notwithstanding any other clause of this Agreement, the Owner may at any time issue to the Consultant a written notice of intent to disallow specified costs incurred or planned for incurrence under this Agreement that have been determined not to be allowable under the contract terms.
- 4.2. Failure to issue a notice under this section shall not affect the Owner's rights to take exception to incurred costs.
- 4.3. If a subsequent audit reveals that items not properly reimbursable have, in fact, been reimbursed as costs, the Owner may offset, or the Consultant shall repay to Owner, any overpayment.

5. RECORDS & AUDITS

- 5.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 5.2. *Examination.* The CMGC shall maintain, and the Owner, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to document all work performed, all costs and fees claimed or anticipated to be incurred and earned during the performance of this Agreement, any request for modification or amendment of this Agreement, and any claim or dispute. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination that a specific rate of compensation type of agreement is justified, including any CPA audit. This right of examination shall also include inspection at all reasonable times of the CMGC's offices and facilities, or parts of them, engaged in performing the Agreement.
- 5.3. *Supporting Data.* If the CMGC has been required to submit data in connection with any action relating to this Agreement, including the negotiation of the Fee, request for an adjustment, or assertion of a claim, the Owner, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the CMGC's records, including computations and projections, related to—
 - Any proposal for the Agreement, subcontract, or modification;
 - Discussions conducted on the proposal(s), including those related to negotiating;
 - Fees or costs under the Agreement, subcontract, or modification;
 - Performance of the Agreement, subcontract or modification; or,
 - The amount and basis of any claim or dispute.
- 5.4. *Audit.* The Owner, FHWA, or their authorized representatives, shall have access to and the right to examine any of the CMGC's records involving transactions related to this Agreement or a subcontract hereunder.
- 5.5. *Reports.* If the CMGC is required to furnish cost, funding, or performance reports, the Owner, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the CMGC's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

5.6. *Availability.* The CMGC shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 29, Disputes and Claims, for examination, audit, or reproduction, until six years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—

5.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,

5.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.

5.7. The CMGC shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

6. DESCRIPTION OF THE PROJECT

The description of the project will be as stated in the Executed Agreement.

7. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY CMGC

Information and services to be provided will be as stated in each individual task order and in accordance with Appendix E – General Scope of Work.

8. INFORMATION TO BE PROVIDED BY THE OWNER

Information to be provided by the Owner will be as stated in each individual task order and in accordance with Appendix E – General Scope of Work.

9. TITLE II SERVICES TO BE PROVIDED BY CMGC

Information and services to be provided will be as stated in each individual task order.

10. COORDINATION WITH OWNER

Throughout the Project, the CMGC shall hold conferences **as needed** in Little Rock, Arkansas, or such other location as designated by the Owner, with representatives of the Owner and the FHWA so that as the Project progresses, the CMGC shall have full benefit of the Owner's knowledge of existing needs and facilities and be consistent with the Owner's current policies and practices. The extent and character of the work to be done by the CMGC shall be subject to the general oversight and approval of the Owner.

11. OFFICE LOCATION FOR REVIEW OF WORK

Review of the work as it progresses and all files and documents produced under this Agreement may be made by representatives of the Owner and the FHWA at the project office of the CMGC located in

_____ or at the regional offices of the
CMGC located in _____

_____ , or the CMGC's Arkansas office
located _____ at _____
_____.

12. ACCESS TO PROPERTY

The CMGC's services to the Owner may require entry upon private property. The Owner will present or mail to private landowners a letter of introduction and explanation, describing the work, which shall be drafted by the CMGC. The CMGC will make reasonable attempts to notify resident landowners who are obvious and present when the CMGC is in the field. The CMGC is not expected to provide detailed contact with individual landowners. The CMGC is not expected to obtain entry by means other than the consent of the landowner. If the CMGC is denied entry to private property by the landowner, the CMGC will not enter the property. If denied entry to the property, the CMGC shall notify the Owner and advise the Owner of an alternate evaluation method if one is feasible. The Owner shall decide on the course of action to obtain access to the property.

13. DELIVERABLES

[List all expected deliverables]

14. SUBCONTRACTING

- 14.1. Unless expressly disclosed in Appendix B, the CMGC may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 14.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the CMGC's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the CMGC of any responsibility, obligation, or duty under this Agreement.
- 14.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fees payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 14.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 14.5. *Prompt Payment.* The CMGC shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the CMGC. Any retainage payments held by the CMGC must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the CMGC. If the CMGC fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:

- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the CMGC;
- notify any sureties; and/or,
- withhold any or all reimbursements or payments otherwise due to the CMGC until the CMGC ensures that the subcontractors have been and will be promptly paid for work performed.

14.6. The CMGC shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

15. RESPONSIBILITY OF THE CMGC

15.1. Notwithstanding any review, approval, acceptance or payment by the Owner, the CMGC shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CMGC under this Agreement. The CMGC shall, without additional compensation, correct or revise any errors or deficiencies in its services.

15.2. The CMGC shall demonstrate to the Owner's Representative the presence and implementation of quality assurance in the performance of the CMGC's work. The CMGC shall identify individual(s) responsible, as well as methods used to determine the completeness and accuracy of services provided.

15.3. The Owner shall have the right at any time and in its sole discretion to submit for review all or any portion of the CMGC's work to consulting firms engaged by the Owner for that purpose. The CMGC shall fully cooperate with any such review.

15.4. The CMGC and any subcontractor shall employ qualified and competent personnel to perform the work under this Agreement. The Key Personnel identified in the Proposal must remain unchanged for the duration of the work provided under this Agreement unless approved in writing by the Owner.

15.5. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement. The CMGC shall be and remain liable to the Owner for all damages to the Owner caused by the CMGC's negligent performance of any of the services furnished under this Agreement.

15.6. The rights and remedies of the Owner provided for under this Agreement are in addition to any other rights and remedies provided by law.

15.7. If the CMGC is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

16. WARRANTY OF SERVICES

16.1. *Definitions. Acceptance*, as used in this Agreement, means the act of an authorized representative of the Owner by which the Owner approves specific services, as partial or complete performance of the Agreement. *Correction*, as used in this Agreement, means the elimination of a defect.

- 16.2. Notwithstanding inspection and acceptance by the Owner or any provision concerning the conclusiveness thereof, the CMGC warrants that all services performed and work product under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement.
- 16.3. If the CMGC is required to correct or re-perform, it shall be at no cost to the Owner, and any services corrected or re-performed by the CMGC shall be subject to this section to the same extent as work initially performed. If the CMGC fails or refuses to correct or re-perform, the Owner may, by contract or otherwise, correct or replace with similar services and charge to the CMGC the cost occasioned to the Owner thereby, or make an equitable adjustment in the Fee.
- 16.4. If the Owner does not require correction or re-performance, the Owner shall make an equitable adjustment in the Fee.
- 16.5. Nothing within this section shall constitute a waiver or exclusion of any other right or remedy that the Owner may possess at law or under this Agreement.

17. TERM, COMMENCEMENT, AND COMPLETION

- 17.1. This Agreement shall commence on the effective date set forth above and remain in effect until the completion of the CMGC's Scope of Services, as defined herein, and remain in effect until _____, unless extended or terminated by the Owner in accordance with this Agreement.
- 17.2. The CMGC shall begin work under the terms of this Agreement within ten (10) days of receiving written notice to proceed. [If services are to be performed in subsequent phases, then each phase shall be commenced upon the Owner's approval of the previous phase. The CMGC shall not be entitled to any compensation or reimbursement for services performed in a phase unless and until it has received approval from the Owner to proceed with such services.]
- 17.3. It is further agreed that time is of the essence in performance of this Agreement. The CMGC shall complete the work, or each phase, as scheduled, and the Owner shall provide any required approval of the work or phase meeting the requirements contained herein in a reasonable and timely manner. Projects shall be completed as stated in each individual task order.

18. TERMINATION

- 18.1. The Owner may terminate this Agreement in whole or, from time to time, in part, for the Owner's convenience or because of the Default of the CMGC.
- 18.2. The Owner shall terminate this Agreement by delivering to the CMGC written notice of the termination.
- 18.3. Upon receipt of the notice, the CMGC shall:
- Immediately discontinue all services affected (unless the notice directs otherwise).
 - Deliver to the Owner all data, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.
 - Terminate all subcontracts to the extent they relate to the work terminated.
 - In the sole discretion and option of the Owner, and if and only if requested to do so, assign to the Owner all right, title, and interest of the CMGC under the subcontracts terminated, in

which case the Owner shall have the right to settle any claim or dispute arising out of those subcontracts without waiver of any right or claim the Owner may possess against the CMGC.

- With approval or ratification by the Owner, settle all outstanding liabilities arising from the termination of subcontracts, the cost of which would be allowable in whole or in part, under this Agreement.
 - Complete performance of the work not terminated.
 - Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the CMGC and in which the Owner has or may acquire an interest.
- 18.4. If the termination is for the CMGC's Default, the Owner may complete the work by contract or otherwise and the CMGC shall be liable for any reasonable and necessary additional cost incurred by the Owner to the extent caused by CMGC's default.
- 18.5. Disputes and claims arising from termination of this Agreement shall be governed by Section 29, Disputes and Claims (48 CFR 31.205-42(e)(2)).
- 18.6. The rights and remedies of the Owner provided in this section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy.

19. STOP WORK ORDERS

- 19.1. The Owner may, at any time, by written order to the CMGC, require the CMGC to stop all, or any part, of the work called for by this Agreement for a period of up to 90 days after the order is delivered to the CMGC, and for any further period to which the parties may agree. Upon receipt of the order, the CMGC shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the CMGC, or within any extension of that period to which the parties shall have agreed, the Owner shall either—
- 19.1.1. Cancel the stop work order; or,
 - 19.1.2. Terminate the work pursuant to Section 18, Termination.
- 19.2. If a stop work order issued under this section is canceled or the period of the order or any extension thereof expires, the CMGC shall resume work. The Owner shall make an equitable adjustment in the delivery schedule or Fee, or both, and the Agreement shall be modified, in writing, accordingly, if—
- The stop work order was not issued because of CMGC's Default in its performance of its obligations under any part of this Agreement;
 - The stop work order results in an increase in the time required for, or in the CMGC's cost properly allocable to, the performance of any part of this Agreement; and,
 - The CMGC provides Notice of Potential Claim pursuant to Section 29, Disputes and Claims.

20. CHANGES

- 20.1. The Owner may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement, including but not limited to: (1) drawings, designs, or specifications; (2) time of performance (i.e., hours of the day, days of the week, etc.); and (3) places of inspection, delivery, or acceptance.
- 20.2. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, the Owner shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fee; and (3) other affected terms.
- 20.3. All claims and disputes shall be governed by Section 29, Disputes and Claims. As provided in Section 29, the CMGC must provide written notice of its intention to make a claim for additional compensation before beginning the work on which the claim is based. If such notice is not given, the CMGC hereby agrees to waive any claim for such additional compensation.
- 20.4. Failure to agree to any adjustment shall be a dispute under Section 29, Disputes and Claims. *However, nothing in this section or any other provision of this Agreement shall excuse the CMGC from proceeding with the Agreement as changed.*

21. OWNERSHIP OF DOCUMENTS & DATA

Except for any pre-existing intellectual property, all project documents and data, regardless of form and including but not limited to estimates, files, field notes, and data, shall be the property of the Owner. The CMGC shall further provide all documents and data to the Owner upon the Owner's request. The CMGC may retain reproduced copies of drawings and other documents. In the event that any patent rights or copyrights are created in any of the documents, data compilations, or any other work product, the Owner shall have an irrevocable license to use such documents, or data compilations, or work product.

22. PATENT AND COPYRIGHT INFRINGEMENT

- 22.1. The CMGC shall report to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the CMGC has knowledge.
- 22.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the CMGC shall furnish to the Owner, when requested by the Owner, all evidence and information in possession of the CMGC pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the CMGC.
- 22.3. The CMGC agrees to include, and require inclusion of, the provisions of this section in all subcontracts at any tier for supplies or services.
- 22.4. The CMGC shall indemnify the Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Owner of such supplies or construction work.

22.5. This indemnity shall not apply unless the CMGC shall have been informed within ten (10) business days following the Owner's receipt of legal notice of any suit alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the CMGC, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the CMGC, unless required by final decree of a court of competent jurisdiction.

23. BANKRUPTCY

In the event the CMGC enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the CMGC agrees to furnish, by certified mail, written notice of the bankruptcy to the Owner. This notice shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notice shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of ArDOT job numbers and FAP numbers for all contracts with Owner against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

24. FUNDING LIMITATIONS

The Owner's obligations under this Agreement are contingent upon the availability of appropriated funds from which payments under the terms of this Agreement can be made in this and each subsequent fiscal year for the duration of the Agreement. No legal liability on the part of the Owner of any kind whatsoever under this Agreement shall arise until funds are made available to the Owner for performance of this Agreement, including those to be appropriated by the State of Arkansas and those to be provided by the United States.

25. EMPLOYMENT PROVISIONS

25.1. The CMGC shall not be permitted to employ or make an offer of employment, for regular or part-time work related to any Department projects during the term of this Agreement, to any person who:

- is or has been employed with the Department at any time and, during the person's employment with the Department, the person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise on any matter pertaining to this Agreement;
- is or has been an employee of the Department within the twelve (12) months immediately preceding the execution of this Agreement and, during the person's employment with the Department, any matters pertaining to this Agreement were within the person's official responsibility; or
- is or has been an employee of the Department within the twelve (12) months immediately preceding the execution of this Agreement and will engage in selling or attempting to sell commodities or services, including technical or professional CMGC services to the Department, unless the former employee's last annual salary with the Department did not exceed ten thousand five hundred dollars (\$10,500).

- has been employed by the Department at any time and was terminated with cause or allowed to resign/retire in lieu of termination with cause.

25.2. Any individual or entity acting as a principal or agent on behalf of any person disqualified pursuant to the terms of provision 25.1 shall not be permitted to perform any work related to any Department project for the CMGC during the term of this Agreement.

26. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties and their successors and assigns, and except as expressly set forth herein, neither the Owner nor the CMGC may assign, delegate, or transfer any benefit or obligation under this Agreement without the express written consent of the other party. Nothing herein shall be construed as a waiver of any immunity or as creating any personal liability on the part of any officer or agent of the Owner or any other governmental entity either made a party to, or possessing any interest in, this Agreement.

27. INDEMNITY AND RESPONSIBILITY FOR CLAIMS AND LIABILITY

27.1. *Indemnity.* The CMGC shall hold harmless and indemnify the Owner, Owner's officers, employees, and agents, and all other governmental agencies from and for all claims and liabilities stemming from any wrongful (whether negligent, reckless, or intentional) acts or omissions on the part of the CMGC and its subcontractors, and their agents and employees.

27.2. *No Personal Liability.* No director, officer, manager, employee, agent, assign, or representative of the Owner shall be liable to the CMGC in a personal or individual capacity under any term of this Agreement, because of any breach thereof, or for any act or omission in its execution or performance.

27.3. *Independent Contractor Relationship.* The parties intend that the CMGC shall be an independent contractor of the Owner and that the CMGC shall be solely liable for any act or omission of the CMGC or its agents, employees, or subcontractors arising under or occurring during the performance of this Agreement. No act or direction of the Owner shall be deemed to be an exercise of supervision or control of the CMGC's performance.

28. INSURANCE

28.1. *Professional Liability Insurance Coverage.* The CMGC shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts arising out of the performance of this Agreement in an amount per claim of not less than five (5) times the original Contract Ceiling Price or \$1,000,000, whichever is less. Such insurance shall extend to the CMGC and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of the CMGC's subcontractors, agents, and employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the CMGC or alleged to have been committed by the CMGC or any person for whom the CMGC is legally responsible.

28.2. *Deductible.* The CMGC may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Owner if, in the judgment and opinion of the Owner, the CMGC's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The CMGC shall submit promptly to the Owner, upon request as often as quarterly, detailed financial statements and any other information requested by the Owner to reasonably determine whether or not the CMGC's financial resources are sufficient to adequately

cover possible liability in the amount of the deductible.

- 28.3. *Worker's Compensation Insurance.* The CMGC shall at all times during the Term of this Agreement maintain Worker's Compensation and Employers Liability Insurance as required under Arkansas law.
- 28.4. *General Liability Insurance.* The CMGC shall at all times during the term of this Agreement maintain comprehensive general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles. The CMGC's insurance coverage shall also cover restoration of plans, drawings, field notes, and other documents in the event of their loss or destruction while in the custody of the CMGC.
- 28.5. *Insurance Policies and Certificates.* The CMGC shall allow the Owner upon request the right to examine or inspect its insurance policies and evidence satisfactory to the Owner concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, the CMGC shall furnish to the Owner certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The CMGC's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which Owner, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- 28.6. *Additional Insurance Requirements.* All insurance maintained by the CMGC pursuant to this Section shall be written by insurance companies authorized to do business in Arkansas, in form and substance satisfactory to the Owner, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the Owner. In the event that the insurance is cancelled, terminated, or changed during its term and thirty (30) days written notice cannot be provided to the Owner, the CMGC shall provide any insurance required under this Article for continual coverage upon expiration of the existing policy or become financially responsible for any claims associated with the expired period.
- 28.7. *Duration of Insurance Obligations.* The CMGC shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the project or the completion of the CMGC's services under this Agreement, whichever comes later. Comprehensive General Liability Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of the CMGC's services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the project or completion of the CMGC's services, whichever comes first.
- 28.8. *CMGC's Insurance Primary.* All insurance policies maintained by the CMGC pursuant to this Agreement shall provide that insurance as applying to the Owner shall be primary and the Owner's own insurance shall be non-contributing.
- 28.9. *Additional Insured.* All liability insurance policies, except the professional liability policy, maintained by the CMGC pursuant to this Agreement shall be endorsed to include the Owner, its officers, directors, managers, employees, agents, assigns and representatives, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Owner.

29. DISPUTES AND CLAIMS

- 29.1. *Notice of Potential Claim.* Whenever a CMGC deems that any additional compensation is due, the CMGC shall notify the Assistant Chief Engineer in writing of its intention to make a claim for additional compensation (“Notice of Potential Claim”) **before beginning the work that gives rise to the claim.**
- 29.2. *Time & Manner for Submitting Claim.* All disputes and claims shall first be submitted in writing to the Assistant Chief Engineer within 45 calendar days after the completion or termination date. **The CMGC hereby agrees that the failure to submit the dispute or claim to the Assistant Chief Engineer prior to 45 calendar days after the completion or termination date shall constitute a waiver of the dispute or claim.**
- 29.3. *Form.* All disputes and claims must be submitted in writing and in sufficient detail to permit the Owner to determine the basis for entitlement and the actual allowable costs incurred. Each claim must contain:
- A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim;
 - The date the actions resulting in the claim occurred or conditions resulting in the claim became evident;
 - A copy of the “Notice of Potential Claim”;
 - The name, title, and activity of each Department employee knowledgeable about facts that gave rise to such claim;
 - The name, title, and activity of each CMGC, Subcontractor, or employee knowledgeable about the facts that gave rise to the claim;
 - The specific provisions of the Agreement that support the claim and a statement why such provisions support the claim;
 - The identification and substance of any relevant documents, things, or oral communications related to the claim;
 - A statement whether the claim is based on provisions of the Agreement or an alleged breach of the Agreement;
 - If an extension of time is sought, the specific number of days sought and the basis for the extension;
 - The amount of additional compensation sought and a specific cost breakdown of the amount claimed; and,
 - Any other information or documents that are relevant to the claim.
- 29.4. *Decision and Appeal.* If an adverse decision is rendered by the Assistant Chief Engineer, the CMGC shall submit the claim or dispute in writing to the Chief Engineer within 60 days from the date of the decision the Assistant Chief Engineer. The decision of the Chief Engineer shall be final and conclusive unless, within 60 calendar days from the date of receipt of the Chief Engineer’s decision, the CMGC files a claim with the Arkansas State Claims Commission (“Claims Commission”) appealing the decision of the Chief Engineer. The CMGC will be afforded an opportunity to be heard and offer evidence in support of its appeal before the Claims

Commission, subject to the rules and regulations of the Claims Commission, including Ark. Code Ann. § 19-10-302, which requires pursuit and exhaustion of all remedies against responsible third parties and insurance coverage.

- 29.5. *Continued Performance.* Pending final resolution of a dispute or claim, unless the Owner has terminated this Agreement pursuant to Section 18 or issued a stop work order pursuant to Section 19, the CMGC shall proceed diligently with the performance of this Agreement in accordance with the Assistant Chief Engineer's and Chief Engineer's decisions.
- 29.6. *Nonexclusive Remedies.* The rights and remedies of the Owner provided in this section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy. If the Owner decides the facts justify the action, the Owner may, at its sole option and discretion, receive and act upon a proposal, dispute, or claim submitted at any time before final payment under this Agreement.

30. COVENANT AGAINST CONTINGENCY FEES

- 30.1. The CMGC warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Fee or consideration, or otherwise recover, the full amount of the contingent fee.
- 30.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the CMGC for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 30.3. *Bona fide employee*, as used in this section, means a person, employed by the CMGC and subject to the CMGC's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 30.4. *Contingent fee*, as used in this section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 30.5. *Improper influence*, as used in this section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

31. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Agreement, the CMGC, for itself, successors, and assigns, certifies and agrees as follows:

- 31.1. *Compliance with Regulations.* The CMGC shall comply with the Regulations relative to Title VI (Nondiscrimination Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 CFR as amended, and hereinafter referred to as the "Regulations". These regulations are herein incorporated by reference and made a part of this Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, religion, sex, age, or disability, be excluded from

participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

- 31.2. *Nondiscrimination.* The CMGC, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CMGC shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 31.3. *Solicitations for Subcontracts, Including Procurements of Materials & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the CMGC or for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CMGC of the CMGC's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, religion, sex, age, or disability.
- 31.4. *Information and Reports.* The CMGC shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities by the Owner or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the CMGC is in the exclusive possession of another who fails or refuses to furnish this information, the CMGC shall so certify to the Department or the USDOT and its Affiliated Modes, as appropriate, and shall set forth what efforts it has made to obtain the records or information.
- 31.5. *Sanctions for Noncompliance.* In the event of the CMGC's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such contract sanctions as it or USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the CMGC under the Agreement until the CMGC complies with the provisions and/or cancellation, termination, or suspension of the Agreement, in whole or in part.
- 31.6. *Incorporation of Provisions.* The CMGC shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CMGC shall take such action with respect to any subcontract or procurement as the Owner or USDOT and its Affiliated Modes may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided*, however that in the event the CMGC becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the CMGC may request the Owner to enter into such litigation to protect the interests of the State and litigation to protect the interest of the United States.

32. DBE CLAUSE

- 32.1. The CMGC or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the performance of this Agreement. The CMGC shall comply with the applicable requirements of 49 CFR Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the CMGC to comply with or perform these requirements is a material breach of this Agreement, which may result in the cancellation, termination, or suspension of this Agreement in whole or in part, or such other remedy that the Owner may determine appropriate.
- 32.2. The CMGC shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

33. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)

- 33.1. The CMGC will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 33.2. The CMGC, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The CMGC shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 33.3. In accordance with Section 504 regulations 49 CFR Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

34. CERTIFICATION REGARDING LOBBYING

- 34.1. The Consultant certifies, to the best of their knowledge and belief, that:
 - 34.1.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making 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.
 - 34.1.2. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying".
 - 34.1.3. The Consultant shall require that the language of this certification be included in the agreement for all subcontracts and that all subcontractors shall certify and disclose accordingly.

35. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- 35.1. The CMGC certifies, to the best of its knowledge and belief, that—
 - 35.1.1. The CMGC and any of its Principals—
 - 35.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;

- 35.1.1.2. Have not, within a 3-year period preceding this offer, 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) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 35.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 35.1.1.2; and,
- 35.1.1.4. The CMGC has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.
- 35.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.
- 35.3. The CMGC shall provide immediate written notice to the Owner if, at any time prior to contract award, the CMGC learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 35.4. The certification in subsection 35.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the CMGC knowingly rendered an erroneous certification, the Owner may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the Owner.

36. MISCELLANEOUS

- 36.1. *General Compliance with Laws.* The CMGC shall comply with all Federal, State, and local laws, regulations, and ordinances applicable to the work, including but not limited to, the Americans with Disabilities Act and Occupational Safety and Health Act as amended.
- 36.2. *Registered Professional Engineer's Endorsement.* All plans, specifications, estimates, and engineering data provided by the CMGC shall be endorsed and recommended by an authorized representative of the CMGC, who shall be a registered Professional Engineer licensed in the State of Arkansas.
- 36.3. *Choice of Law.* This Agreement shall be governed by the laws of the State of Arkansas without consideration of its choice of law provisions.
- 36.4. *Choice of Forum.* The CMGC agrees that any cause of action stemming from or related to this Agreement, including but not limited to disputes or claims arising under this Agreement, for acts or omissions in the performance, suspension, or termination of this Agreement, whether sounding in contract or tort, equity or law, may only be brought in the appropriate forum within State of Arkansas. The CMGC's sole remedy following the decision of the Chief Engineer regarding any claim or dispute, pursuant to Section 29, Disputes and Claims, shall be before the Arkansas State Claims Commission.

- 36.5. *No Waiver of Immunity.* The Owner expressly does not waive any defense of immunity that it may possess under either federal or state law, and no provision in this Agreement shall be construed to constitute such a waiver in whole or in part.
- 36.6. *Conflicts Between Laws, Regulations, and Provisions.* In the event of conflicting provisions of law, the interpretation shall be governed by the following in this order, from most controlling to least: Federal law and regulations, Arkansas State law and regulations, Department and FHWA Standards, and this Agreement.
- 36.7. *Severability.* If any term or condition of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, all remaining terms of this Agreement shall remain valid and enforceable unless one or both of the parties would be materially prejudiced.
- 36.8. *No-Waiver.* The failure of the Owner to strictly enforce any term of this Agreement shall not be construed as a waiver of the Owner's right to require the CMGC's subsequent performance of the same or similar obligation or duty.
- 36.9. *Modification and Merger.* This written Agreement and any provisions incorporated by reference reflect the entire agreement of the parties and may be modified only by the express written agreement of both parties.
- 36.10. *Force Majeure Clause.* Neither party to this Agreement shall be liable for any delay direct or indirect in performance caused by an unforeseen event such as acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party beyond such party's reasonable control. Each party will take reasonable steps to mitigate the impact of any force majeure.
- 36.11. *Authorization to Proceed.* Execution of this Agreement by the Owner will be made by **written authorization to the** CGMC. Execution of subsequent supplemental agreements will be made by written or electronic authorization to the CMGC. The CMGC and Subcontractor shall not seek reimbursement for work initiated prior to receiving notice to proceed or work order authorization.

37. CERTIFICATION OF AUTHORIZED REPRESENTATIVES

This Agreement and the certifications contained herein or attached hereto constitute the whole Agreement of the parties, and each party certifies that this Agreement and any attached certification have been executed by their duly authorized representatives.

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38. **NOTICE**

38.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be addressed to either the Owner's Assistant Chief Engineer – Planning or the CMGC's Representative, and mailed or hand-delivered to:

38.1.1. To the Owner:

Arkansas Department of Transportation
10324 Interstate 30
Post Office Box 2261
Little Rock, AR 72203

38.1.2. To the CMGC:

IN WITNESS WHEREOF, the parties execute this Agreement, to be effective upon the date set out above.

(CMGC NAME)

ARKANSAS STATE
HIGHWAY COMMISSION

BY: _____
NAME
TITLE

BY: _____
Scott E. Bennett, P.E.
Director

APPENDICES

- APPENDIX A JUSTIFICATION OF FEES AND COSTS – **N/A**
Will be stated in executed agreement.
- APPENDIX B SUBCONTRACTS
B-1 (Subcontractor Name)
B-2 (Subcontractor Name)
- APPENDIX C STANDARD CERTIFICATIONS
C-1 (CMGC Name)
C-2 (Subcontractor Name)
C-3 Arkansas State Highway Commission
- APPENDIX D PROJECT SCHEDULE

SUBCONTRACTOR AGREEMENT

Construction Manager/General Contractor (CMGC) Services for ArDOT Job No. 061331

1. SUBCONSULTANT AGREEMENT

- 1.1. The services to be performed under this Subcontractor Agreement will be performed in connection with the Agreement for Professional Services ("Prime Agreement") between the CMGC and the Arkansas State Highway Commission ("Commission") for Construction Manager/General Contractor Services for ArDOT Job No. 061331, dated _____, _____. _____ ("CMGC") and _____ ("Subcontractor") hereby agree that the Subcontractor shall perform the professional and related services as described herein. In consideration for the performance of the professional services the CMGC agrees to compensate (and reimburse, if applicable) the Subcontractor in the manner and at the rate(s) provided herein.
- 1.2. The definitions of the Prime Agreement, and its provisions relating to the obligations, duties, and rights of subcontractors, *or which are otherwise required to be inserted into any subcontracting agreements*, are deemed to be part of, and are hereby incorporated by reference into, this Subcontractor Agreement and made binding upon the Subcontractor.

2. DESCRIPTION OF PROJECT AND SERVICES TO BE PROVIDED

The description of the project will be as stated in {INFORMATION WITH THE CONTRACT EXECUTION}. Information and services to be provided will be as stated herein.

3. COSTS, FEES, PAYMENTS AND RATE SCHEDULES

- 3.1. This Agreement is a specific rate of compensation contract. The Subcontractor is being hired to perform professional services in connection with the Project as set forth herein. In consideration for the professional services rendered by the Subcontractor, the CMGC shall pay to the Subcontractor the Fee, to be determined according to the labor and activity rates as set forth in Section 3, Fees and Payment. The Fee includes compensation for any cost to be incurred by the Subcontractor, and the Subcontractor shall not be reimbursed for costs incurred. The Subcontractor shall bear the costs, and resulting risks, of performing this Agreement.
- 3.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay the CMGC. Therefore, notwithstanding any provision of this Agreement, all payments to the Subcontractor are subject to the requirements and limitations of 48 Code of Federal Regulations (CFR) Part 31 ("FAR"), and the Subcontractor shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any other information submitted to the CMGC with any claim for full or partial payment.
- 3.3. *Fee.* The justification for the fees and the use of the specific rate of compensation method of payment is contained in Appendix A, the scope of services, and the description of the project as provided herein. The CMGC shall pay Subcontractor a Fee determined by the hourly or other unit rate shown in the following schedule. Partial hours and units shall be pro-rated. Under no circumstances shall Fee payments exceed the Contract Ceiling Price.

3.3.1. SCHEDULE OF HOURLY RATES (e.g. _____ \$X per Hour)

Classification (provided by Subcontractor)	Min. Hourly	Max. Hourly

UNIT RATES FOR ACTIVITIES (e.g. Drilling \$X per foot)

[Provided by Subcontractor]

3.4. The foregoing paragraph does not authorize or permit the Subcontractor to perform services at the overtime rates shown, but only establishes the appropriate rates in the event that the Owner subsequently authorizes overtime. Payment of the Fee at overtime rates is expressly contingent upon the written approval by the Owner *before* the Subcontractor, its employees, or its agents begin the work for which the overtime rate will be requested. Regardless whether Owner authorizes and pays the overtime rates set forth above, the Subcontractor shall comply with all state and federal wage and hour laws and regulations.

4. COMPENSATION SUBJECT TO LIMITATIONS OF FEDERAL AND STATE LAW

The Project (as defined in the Prime Agreement), part of which is to be performed under this Subcontractor Agreement, is a federally-assisted project and federal funds will be used, in part, to pay the CMGC and Subcontractor. Therefore, notwithstanding any provision of this Subcontractor Agreement or the Prime Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of FAR, including those relating to determination of indirect cost rates, if applicable. The Subcontractor shall certify the accuracy of all invoices, requests for payment, and cost rates (if applicable), along with supporting documentation and any supporting information or records provided prior to, during, or after the term of this Subcontractor Agreement.

5. COMMISSION, DEPARTMENT, AND FHWA AS THIRD PARTY BENEFICIARIES

5.1. This Subcontractor Agreement is between and binding upon only the CMGC and Subcontractor. The Commission, Department, and FHWA are not parties to this Subcontractor Agreement, but are expressly made third-party beneficiaries of this Subcontractor Agreement and shall be entitled to enforce any obligation of the Subcontractor owed to the CMGC. No provision of this Subcontractor Agreement or the Prime Agreement, nor the exercise of any right thereunder, shall be construed as creating any obligation or any liability on the part of, or operating as a waiver of any immunity of, the Commission, the Department, the FHWA, or any of their employees, officers, or agents.

5.2. The Subcontractor's sole recourse, if any, for any injury arising under or related to this Subcontractor Agreement, the performance of services hereunder, or compensation or claims hereunder, shall be against the CMGC.

5.3. The Disputes and Claims provisions of the Prime Agreement shall not apply to this Subcontractor Agreement.

6. RECORDS & AUDITS

- 6.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 6.2. *Examination.* The Subcontractor shall maintain, and the Owner, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Subcontractor's offices and facilities, or parts of them, engaged in performing the Agreement.
- 6.3. *Supporting Data.* If the Subcontractor has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the CMGC's records, including computations and projections, related to—
- The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
 - Any proposal for the Agreement, subcontract, or modification;
 - Discussions conducted on the proposal(s), including those related to negotiating;
 - Fees or allowable costs under the Agreement, subcontract, or modification;
 - Performance of the Agreement, subcontract or modification; or,
 - The amount and basis of any claim or dispute.
- 6.4. *Audit.* The Owner, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Subcontractor's records involving transactions related to this Agreement or a subcontract hereunder.
- 6.5. *Reports.* If the Subcontractor is required to furnish cost, funding, or performance reports, the Owner, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 6.6. *Availability.* The Subcontractor shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this section and Section 29, Disputes and Claims, for examination, audit, or reproduction, until six years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 6.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,

- 6.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.

7. PATENT AND COPYRIGHT INFRINGEMENT

- 7.1. The Subconsultant shall report to the Consultant and to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Subconsultant has knowledge.
- 7.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Subconsultant shall furnish to the Owner, when requested by the Owner, all evidence and information in possession of the Subconsultant pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Subconsultant.
- 7.3. The Subconsultant agrees to include, and require inclusion of, the provisions of this section in all subcontracts at any tier for supplies or services.
- 7.4. The Subconsultant shall indemnify the Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Owner of such supplies or construction work.
- 7.5. This indemnity shall not apply unless the Subconsultant shall have been informed within ten (10) business days following the Owner's receipt of legal notice of any suit alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Subconsultant, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Subconsultant, unless required by final decree of a court of competent jurisdiction.

8. SUBCONTRACTING

- 8.1. Unless expressly disclosed in Appendix B, the Subcontractor may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 8.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Subcontractor of any responsibility, obligation, or duty under this Agreement.

- 8.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 8.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 8.5. *Prompt Payment.* The CMGC shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the CMGC. Any retainage payments held by the CMGC must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the CMGC. If the CMGC fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:
- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the CMGC;
 - notify any sureties; and/or,
 - withhold any or all reimbursements or payments otherwise due to the CMGC until the CMGC ensures that the subcontractors have been and will be promptly paid for work performed.

9. RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES

- 9.1. The Subconsultant shall not be permitted to employ or make an offer of employment, for regular or part-time work related to any Department projects during the term of this Agreement, to any person who:
- is a present employee of the Department;
 - is a former employee of the Department and at any time during the person's employment with the Department, the person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, on any particular matter pertaining to this Agreement;
 - is a former employee of the Department within the twelve (12) months of employment cessation, and under this Agreement will knowingly act as a principal or as an agent in matters which were within this person's official responsibility; or
 - is a former employee of the Department within the twelve (12) months of employment cessation will engage in selling or attempting to sell commodities or services, including technical or professional consultant services to the Department, unless the former employee's last annual salary with the Department did not exceed ten thousand five hundred dollars (\$10,500).
 - is a former employee of the Department and at any time was terminated with cause or allowed to resign/retire in lieu of termination with cause.

- 9.2. Any individual or entity acting as a principal or agent on behalf of any person disqualified pursuant to the terms of provision 25.1 shall not be permitted to perform any work related to any Department project for the Subconsultant during the term of this Agreement.
- 9.3. This section is not intended to preclude a former employee from accepting employment with the Subconsultant solely because the Consultant has entered into this Agreement with the Consultant.

10. INSURANCE

The CMGC may insert Insurance requirements as necessary.

11. COVENANT AGAINST CONTINGENCY FEES

- 11.1. The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain this Subcontractor Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the ArDOT and CMGC shall have the right to annul this Subcontractor Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.
- 11.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the Subcontractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 11.3. *Bona fide employee*, as used in this section, means a person, employed by the Subcontractor and subject to the Subcontractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 11.4. *Contingent fee*, as used in this section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 11.5. *Improper influence*, as used in this section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

12. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Subcontractor Agreement, the Subcontractor, for itself, successors, and assigns, certifies and agrees as follows:

- 12.1. *Compliance with Regulations*. The Subcontractor shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Subcontractor Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis

of race, color, national origin, religion, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

- 12.2. *Nondiscrimination.* The Subcontractor, with regard to the work performed by it during the term of this Subcontractor Agreement, shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Subcontractor shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 12.3. *Solicitations for Subcontracts, Including Procurements of Materials & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Subcontractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Subcontractor of the Subcontractor's obligations under this Subcontractor Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 12.4. *Information and Reports.* The Subcontractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the ARDOT or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the CMGC is in the exclusive possession of another who fails or refuses to furnish this information, the Subcontractor shall so certify to the ARDOT or the USDOT and its Affiliated Modes, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 12.5. *Sanctions for Noncompliance.* In the event of the Subcontractor's noncompliance with the nondiscrimination provisions of this Subcontractor Agreement, the ARDOT shall impose such contract sanctions as it or the USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the CMGC or Subcontractor under the Agreement until the Subcontractor complies with the provisions and/or cancellation, termination, or suspension of the Subcontractor Agreement, in whole or in part.
- 12.6. *Incorporation of Provisions.* The Subcontractor shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Subcontractor shall take such action with respect to any subcontract or procurement as the ARDOT or the USDOT and its Affiliated Modes may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided*, however that, in the event the Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Subcontractor may request the ARDOT to enter into the litigation to protect the interests of the State, and, litigation to protect the interest of the United States.

13. DBE CLAUSE

- 13.1. The Subcontractor shall not discriminate on the basis of race, color, national origin, religion, or sex in the performance of this Subcontractor Agreement. The Subcontractor shall comply with the applicable requirements of 49 CFR Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Subcontractor to comply with or perform these requirements is a material breach of this Subcontractor Agreement, which may result in the cancellation, termination, or suspension of this Subcontractor Agreement in whole or in part, or such other remedy that the ARDOT may determine appropriate.

13.2. The Subcontractor shall insert a clause containing all the terms of this section in all subcontracts under this Subcontractor Agreement.

14. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)

14.1. The Subcontractor will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.

14.2. The Subcontractor, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Subcontractor shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.

14.3. In accordance with Section 504 regulations 49 CFR Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

15. CERTIFICATION REGARDING LOBBYING

The Subcontractor certifies, to the best of their knowledge and belief, that:

15.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making 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.

15.2. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying".

15.3. The Subconsultant shall require that the language of this certification be included in the agreement for all subcontracts and that all subcontractors shall certify and disclose accordingly.

16. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

16.1. The Subcontractor certifies, to the best of its knowledge and belief, that—

16.1.1. The Subcontractor and any of its Principals—

16.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;

16.1.1.2. Have not, within a 3-year period preceding this offer, 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) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

16.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 16.1.1.2; and,

16.1.1.4. The Subcontractor has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.

16.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.

16.3. The Subcontractor shall provide immediate written notice to the ARDOT if, at any time prior to contract award, the Subcontractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

16.4. The certification in subsection 16.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Subcontractor knowingly rendered an erroneous certification, the ARDOT may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the ARDOT.

17. NOTICE

17.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be mailed or hand-delivered to:

17.1.1. To the Subcontractor:

17.1.2. To the CMGC:

IN WITNESS WHEREOF, the parties execute this Subcontractor Agreement, to be effective _____.

(SUBCONTRACTOR NAME)

(CMGC NAME)

BY: _____
NAME
TITLE

BY: _____
NAME
TITLE

Construction Manager/General Contractor (CMGC) Services for ArDOT Job No. 061331

CERTIFICATION OF CMGC

I hereby certify that I, _____, am the _____ and duly authorized representative of the firm of _____ whose headquarters address is _____, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;
- (d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 31 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 34 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurement of materials or equipment.

NOTICE OF NONDISCRIMINATION STATEMENT
[Provided by CMGC/Subcontractor. A sample is shown below.]

The _____ ("CMGC"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the CMGC does not discriminate on the basis of race, sex, color, age, national origin, religion, or disability, in the admission, access to and treatment in CMGC's programs and activities, as well as the CMGC's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the CMGC's nondiscrimination policies may be directed to [Insert Contact's name] (ADA/504/Title VI Coordinator), [Insert Contact's address and telephone number], (Voice/TTY 711), or, the following email address: _____.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

Authorized Firm Representative

Date

Construction Manager/General Contractor (CMGC) Services for ArDOT Job No. 061331

CERTIFICATION OF SUBCONTRACTOR

I hereby certify that I, _____, am the _____ and duly authorized representative of the firm of _____ whose headquarters address is _____, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;
- (d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 12 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 15 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurement of materials and equipment.

NOTICE OF NONDISCRIMINATION STATEMENT
[Provided by Subcontractor. A sample is shown below.]

The _____ ("Subcontractor"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Subcontractor does not discriminate on the basis of race, sex, color, age, national origin, religion, or disability, in the admission, access to and treatment in Subcontractor's programs and activities, as well as the Subcontractor's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Subcontractor's nondiscrimination policies may be directed to _____ [Insert Contact's name] (ADA/504/Title VI Coordinator), _____ [Insert Contact's address and telephone number], (Voice/TTY 711), or the following email address: _____.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

Authorized Firm Representative

Date

Construction Manager/General Contractor (CMGC) Services for ArDOT Job No. 061331

CERTIFICATION OF ARKANSAS STATE HIGHWAY COMMISSION

I hereby certify that I am the Director of the Arkansas Department of Transportation and that the aforementioned consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee contributions donation, or consideration of any kind:

except as here expressly stated (if any):

Scott E. Bennett, P.E.
Director

Date